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**Devetzi/Stergiou (Eds.)**

# Social security in times of corona



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ATHENS - THESSALONIKI



**Social security in times of corona**  
**a legal comparison of selected European countries**



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SAKKOULAS PUBLICATIONS S.A.  
ATHENS - THESSALONIKI

**Athens**

- 23, Ippokratous Str. - 106 79 Athens

Tel.: (+30 210) 33.87.500, Fax: (+30 210) 33.90.075

**Thessaloniki**

- 1, Fragon Str. - 546 26 Thessaloniki

Tel.: (+30 2310) 535.381, Fax: (+30 2310) 546.812

- 42, Ethnikis Aminis Str. - 546 21 Thessaloniki

Tel.: (+30 2310) 244.228, 9, Fax: (+30 2310) 244.230

<http://www.sakkoulas.gr> • e-mail: [info@sakkoulas.gr](mailto:info@sakkoulas.gr)

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## LIST OF CONTRIBUTORS

**Edoardo Ales** graduated in Political Sciences at LUISS (1990) and in Law at Sapienza Università di Roma (1997). He has been guest researcher at Max-Planck-Institute for International and Comparative Social Law and Policies (Munich 1996 - 1997), researcher in Labour Law and Social Security at the University of Rome "Tor Vergata" (1996-1999), Associate Professor (2000-2002) and then Full Professor (2002-2018) of Labour Law and Social Security at the University of Cassino and Southern Lazio. In 2018 he moved to the Department of Law of the University of Naples "Parthenope" where he teaches Labour Law and Industrial Relations. He is invited professor of International and Comparative Labour Law at the Pontifical Lateran University (Vatican State). He is Member of the Board of Directors of the *Giornale del Diritto del Lavoro e delle Relazioni Industriali*, *Rivista del Diritto della Sicurezza Sociale*, *Italian Labour Law e-Journal*, *Diritti Lavori Mercati*. He is Member of the Scientific Committee of the Marco Biagi Foundation of the University of Modena and Reggio Emilia (Italy), where he is the Director of the Multilocal Work Observatory. He is the National Expert for Italy in the ICF-ECE and MoveS Network supporting the EU Commission in the field of Labour Law and Free Movement of Workers.

**Effrosyni Bakirtzi** is Coordinator of the university partnership project "Social Security Coordination and Migration", Adjunct Lecturer at the University of Applied Sciences Fulda and doctoral research fellow of the interdisciplinary Joint Graduate Research School on Social Human Rights. She is a qualified attorney at law in Greece, having graduated from the Law School of the Faculty of Law, Economic and Political Sciences of the Aristotle University of Thessaloniki in Greece, with a postgraduate title of studies in international and European law from the same university and a second LL.M. course of studies at the University of Johann Wolfgang Goethe in Frankfurt/Main, Germany. She has worked as a legal researcher at the Department of Labour Law of the Johann Wolfgang Goethe University of Frankfurt in Germany and at the K.U. Leuven (Catholic University of Leuven) in Belgium.

**Stamatia Devetzi** is Professor of Social Security Law at the University of Applied Sciences in Fulda, Germany. She studied law in Athens, Rome and Osnabrück, has a diploma in law from the Law Faculty of University of Athens (1994) and a PhD from Osnabrück University (1998). After working as a legal expert with the German Pensions Insurance Institution (1998-2003), in 2003 she became professor in Fulda. From 2011-2016 she was delegated as professor for Public Law and European Social Security Law at Osnabrück University, Faculty of Law. She has been active in teaching and research in the fields of Social Security, European Law and Law Comparison for over 20 years. She is member of the advisory board of FNA (Research Institute of the German Pensions Insurance) and of FIS (Network for Interdisciplinary Research on Social Policy, funded by the German Ministry of Labour), and member of the editorial board of the European Journal of Social Security.

**Thomas Erhag** is Professor of Public Law at the School of Business, Economics and Law at Gothenburg University (Sweden). His research focuses on the relationship between EU internal market law and national welfare law. He is also Chair of the Steering Group of the Centre for European Research at Gothenburg University (CERGU).

**Éva Lukács Gellérné PhD.** is Associate Professor at the Department of International Private Law and European Economic Law at ELTE University, Faculty of Law. She has been working as a civil servant in the Ministry of Human Affairs of Hungary for over 15 years. Within that capacity, she was appointed member of the Administrative Commission for the Coordination of Social Security Systems (AC) and the MISSOC between 2004–2017, and participated in the work of the Social Protection Committee (SPC). At present, she is an independent member of the Conciliation Board of the AC. Her main research focus is the free movement of persons and social rights of persons residing in the EU. She has authored over 100 articles and chapters in books (in both Hungarian and English). She is also Academic Coordinator of the English-speaking LLM programme of the Faculty of Law. She was awarded the Knights Cross – Award for Merit of the Republic of Hungary by the President of the State in 2004 for her work related to the accession of Hungary to the European Union.

**Leszek Mitrus** is Professor at the Chair of Labour Law and Social Policy at the Jagiellonian University in Kraków (Poland). He is the national expert of the European Labour Law Network. From September 2016 to March 2018,



Mitrus was a member of the Commission for Codification of Labour Law in Poland. He has authored around 120 publications on Polish, European and international labour law and social security law. Among these publications are books on the free movement of workers, EU directives on employment contracts and the impact of European labour law on the Polish legal system. He is also the co-author of commentaries on the Treaty on the Functioning of the European Union, the Charter of Fundamental Rights of the European Union and the Polish Labour Code.

**Frans Pennings** is Professor of Labour Law and Social Security Law at the Utrecht University School of Law. His research and teaching focuses on labour law and social security law, with a special interest in international standards and European law. He has produced numerous publications on these topics. Pennings was one of the editors of the *European Journal of Social Security*. He obtained an honorary doctorate from the Gothenburg University in 2014.

**Cristina Sánchez-Rodas Navarro** is Professor at the Department of Labour and Social Security Law of the University of Sevilla (Spain). She has produced over 100 publications in several languages ([https://investigacion.us.es/sisius/sis\\_showpub.php?idpers=2652](https://investigacion.us.es/sisius/sis_showpub.php?idpers=2652)). Her main research focus is labour law, social security law and the coordination of social security systems. She is Vice-President of the Asociación Española de Salud y Seguridad Social and President of the Asociación de Mujeres Laboralistas de Andalucía.

**María Salas Porras**, Doctor of Law, is Full Professor at the Department of Labour Law and Social Security, University of Malaga, Spain, where she teaches graduate classes (Masters and PhD). Her research activity, which focuses primarily on migration, gender, public employment policies, social economy, European labour law and comparative labour law, has taken her to Brazil, Switzerland, Portugal, Malta, Italy, Bulgaria and Romania.

**Hans-Joachim Reinhard** has been a Research Fellow at the Max-Planck Institute for Social Law and Social Policy. Since 2000 he is also Head of the Commission for the Admission of Medical Practitioners to the Public Health System in Bavaria, and since 2010 Professor for Social and Private Law at the University of Fulda. He had been awarded the Heinrich-Lünendonck-Medaille and the Unterfränkischer Gedenkjahrpreis for his Ph.D. thesis. He was also awarded the Medal of Honour of the Association

of Lawyers in Latin America for his merits concerning the scientific exchange between Europe and Latin America on Social Security Law.

**Ioannis Skandalis** completed his undergraduate studies at the Law School of the National and Kapodistrian University of Athens and his graduate and doctoral studies at the above University, as well as the Law School of the University of Oxford. He is currently Assistant Professor of Labour Law at the National and Kapodistrian University of Athens.

**Angelos Stergiou** studied law at the University of Thessaloniki (Greece) and social law at the "Université Paris I, Panthéon, Sorbonne" (France), where he gained his Ph.D. cum laude (1985). Since 1982 he has been working as barrister at law in Thessaloniki, and since 1990 has been Professor of Social Law at the Faculty of Law at the University of Thessaloniki. He currently collaborates with the Toulouse University (France) and the Fulda University of Applied Sciences (Germany). He has published extensively on social law issues.

**Anna Tsetoura**, PhD, LLM KU Leuven, BA Aristotle University of Thessaloniki, is a member of the Hellenic Open University's Associate Teaching Staff. She has lectured at various Greek universities as well as at the National School of Judges on topics including European social security law, social insurance and social institutions, retirement and pension systems, health care, civil society and social policy financing. She has also participated in national and European research programmes on improving social protection. Her research interests focus on the protection of social rights, the sustainability of social security systems, pensions and health, comparative social law, international and European social protection policies and social justice.

**Anne Walter** is Professor of Migration and Social Law at the Department of Social and Cultural Sciences at Fulda University of Applied Sciences since 2017. Her research focuses on European and international law. Her doctoral thesis concerned the law of family reunification in international law, EU law and national law.

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First and foremost, we would like to thank the conference speakers/contributors of this book for their commitment and joint efforts to the success of the conference and this publication.

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## INTRODUCTION

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Effrosyni BAKIRTZI, Stamatia DEVETZI, Aggelos STERGIU

The global health crisis unleashed by the COVID-19 pandemic is possibly the most serious crisis since World War II. It has caused major and unprecedented challenges. The restrictive measures introduced during the pandemic in combination with the massive and unprecedented disruptions of work and the ensuing economic recession have had a strong – though in many cases uneven – impact on the global labour market and people’s livelihoods.

Europe was among the first regions to be hit by the pandemic on a large scale, and governments took substantial steps to mitigate the economic and social impact of the health crisis. The majority of adopted measures followed a similar logic to differing degrees. Their aim, in particular, was to reduce the spread of the virus through prevention (quarantine – an old tested method – and social distancing) and to mitigate the pandemic’s consequences (strengthening the national health care system and income support mechanisms). The dilemma many governments faced was choosing between rising cases of coronavirus infections or an economic downturn. Finding a “fair balance” between public health and public wealth, social security measures served as “antibodies” against the virus’s negative economic consequences.

Our conviction that mutual learning requires an exchange of national experiences inspired the online conference: “Social security in times of corona from a comparative law perspective: The case of migrant workers and other vulnerable groups (of workers)”. The leading question was: Have national laws successfully addressed the problems caused by this extraordinary situation? From a comparative law perspective, our conference aimed to explore both the existing and new special regulations introduced in the field of social security law in selected European countries. The legal analysis of the responses of different national social security systems to the same challenges as well as the transformation of social security protection reveals both common trends and diverging approaches, which can be in-

spirational for effective policy considerations and initiatives in the long term.

One particular focus of our legal comparison were migrant/mobile workers, on the one hand, and other inadequately protected groups of workers, on the other. Social security law measures are usually applicable to all *insured* persons. But what about those working in non-standard employment relationships? The pandemic has taken a heavy toll on migrant workers and other groups of workers, who are particularly vulnerable because their social protection coverage is weak.<sup>1</sup> The conference aimed to address the legal challenges of social protection for such workers in selected European countries, and to gain insights into future perspectives in the context of the European Union.

Many colleagues have contributed to make this study possible, sharing their national experiences and highlighting the key issues of discussion as a starting point for the comparative legal analysis.

The first country included in the present publication is Germany. The situation in the country is reviewed in two separate chapters, one by Hans-Joachim Reinhard and the other by Anne Walter.

Hans-Joachim Reinhard describes the steps taken by the German government to respond to the emergency triggered by the COVID-19 pandemic. He highlights some problems that arose due to the fragmented and sometimes contradictory legislation attributable to the federal German State structure. The fast-track legislative process for extraordinary social protection measures primarily targeted unemployed persons (in terms of both contributory and non-contributory benefits), families and children. While most of the measures initially were time limited, they were repeatedly extended. Anne Walter explores whether the extraordinary social protection measures adopted in Germany in response to the pandemic also covered migrants, who often hold temporary jobs in sectors that have

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1. For statistical information and policy considerations on the sectors and vulnerable workers most affected by the containment measures across European OECD countries, see OECD Note dated 12 June 2020 on Policy Responses to Coronavirus: Distributional risks associated with non-standard work: Stylised facts and policy considerations, available at: <http://www.oecd.org/coronavirus/policy-responses/distributional-risks-associated-with-non-standard-work-stylised-facts-and-policy-considerations-68fa7d61/>. Especially on migrants, see ILO-Brief: Social protection for migrant workers: A necessary response to the Covid-19 crisis, 23. June 2020.



been severely impacted by the crisis. The chapter discusses how and why certain measures, such as short-time work or expanding the eligibility of new groups for means-tested basic income support for jobseekers, could not always prevent income losses and the risk of precariousness and in-work poverty of migrant workers.

Next, Greece's experience in mitigating the impact of crisis is analysed. Anna Tsetoura and Effrosyni Bakirtzi identify a multidimensional concept of worker vulnerability as a result of the health crisis in Greece. Furthermore, they examine each social protection measure in consideration of the economic and health risks, vulnerability due to non-standard working arrangements or family obligations, and migration or cross-border labour mobility. The authors point out that although a relatively broad legal framework was developed in the wake of the pandemic, certain groups of persons remained outside this protective framework. This analysis of social protection measures is followed by a brief critique by Ioannis Skandalis of the labour market measures adopted in Greece in the context of the coronavirus pandemic.

The Hungarian perspective is presented by Éva Lukács Gellérné. In her chapter, she discusses the development of initiatives within the wider state of emergency context. She draws attention to specific social protection measures adopted during the pandemic. The government primarily focused on job retention, family benefits, rehabilitation and disability benefits as well as housing support. No interventions were introduced to mitigate the effects of the crisis on mobile workers.

In the next chapter, Edoardo Ales reviews the "improvised" adaptive and fragmented approach of policy responses in Italy. Firstly, he discusses the general context within which income support measures were adopted or already existing measures were adapted to the new challenges. This is followed by an overview of the application of the measures, with a focus on employment, cross-border workers, families in need and undertakings whose operations were suspended.

Beginning with an overview of the development of measures to respond to the pandemic, Frans Pennings provides details on the special temporary schemes adopted in the Netherlands. These mainly included the job support scheme to help businesses retain their workers, a support scheme for the self-employed and a temporary bridging scheme for flexible workers. His chapter reviews the scope and content of these measures and places them in the wider context of labour mobility and EU social se-

curity coordination, with a focus on frontier workers and self-employed persons living outside the Netherlands.

Leszek Mitrus examines the COVID-19 response within the context of Poland's overall segmented labour market situation. Without declaring a state of emergency, but only a state of epidemic threat, the Polish government adopted several measures, mainly providing financial support to protect jobs and to co-finance the costs of economic activities. Temporary work stoppages and working time reductions could only be implemented in agreement with trade unions or employee representatives. New benefits were introduced and sickness and unemployment schemes were to some extent modified. Despite these initiatives, it is argued that financial and social support for the most vulnerable (especially workers under civil law contracts without employee status) is still inadequate, partially due to the regulations' complexity and the difficulty of applying them in practice.

The case of Spain is discussed in two separate chapters. The first one by Cristina Sánchez-Rodas Navarro explores whether the Spanish social security system has been successful in guaranteeing protection for two particularly vulnerable groups in times of corona, namely the unemployed and those at risk of social exclusion. The eligibility requirements for unemployment benefits were eased and special (temporary) benefits and exceptional extraordinary allowances or subsidies were introduced. The non-contributory minimum vital income also played an important role as a safety net for those at risk of social exclusion. The author concludes that the measures have increased the complexity of Spain's unemployment protection system and identifies weaknesses at the administrative management level.

In the second chapter on Spain, María Salas Porrás concentrates on migrants and mobile workers and discusses the extent to which the emergency social security measures have guaranteed protection for these workers during the pandemic. Among the most effective measures are child care allowance for caretakers of minors suffering from a serious illness, temporary hiring that is compatible with unemployment benefits to meet the urgent needs of the agricultural sector, and the extension of work and residence permits. The minimum vital income benefit, which is conditional on certain eligibility criteria, may prove less successful and the residence requirement for all types of financial and social relief may have left some migrant workers outside the scope of protection.

The final national chapter examines the case of Sweden. Thomas Erhag explains the immediate, albeit temporary, social security responses of

the Swedish government in view of the pandemic's major social and economic effects. The delegation of emergency powers from parliament to the government for the adoption of measures changed the regular legislative procedure. The majority of initiatives relaxed benefit conditionality for employees, the self-employed and job seekers, included an increase in the level of benefit rates, and provided additional funding to employers for job retention. It is argued that these temporary adaptations have revealed that some of the challenges are not only temporary – one illustrative example are precarious workers. The author also addresses questions of cross-border work in the frame of European social security law.

Future perspectives within the European Union context are discussed by Angelos Stergiou. The pandemic is part of a wider dynamic of other social, economic and ecological crises. The responses to the challenges so far give an indication of how future income security might develop. The chapter examines the pandemic's impact on the sustainability of pension systems and the adequacy of future pensions. The author argues that temporary "special crisis compensation law" is not capable of absorbing the effects of future crises. A permanent instrument of compensation may be necessary, especially for vulnerable groups in society. Furthermore, in the face of the pandemic, the role of the European Union has reached a crucial turning point. The author provides insights into how the pandemic could change the role of Europe in the future, proposing a transition from social security to income support.

The study concludes with a comparative chapter by Stamatia Devetzi. When looking at the emergency social security measures adopted by Member States, the initial picture that emerges is one that is very fragmented. However, when analysing the countries' responses to the crisis from a comparative law perspective, common approaches and tendencies begin to emerge. The chapter classifies the States' responses and instruments into three main categories: (1) measures supporting employment; (2) measures facilitating access to / increasing the level of / extending the duration of (existing) social security benefits, and (3) introduction of new or "ad hoc" benefits. Challenges that "vulnerable groups of workers" face are identified and discussed. A closer look at the situation of migrant workers also raises some pressing questions. The chapter concludes that one of the biggest challenges of the future is how to make social security systems more inclusive instead of only adopting temporary and provisional measures during periods of crisis.



# COVID-19: Challenges for Germany's social security system

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Hans-Joachim REINHARD\*

## 1. Pandemic situation

Germany has slightly more than 83 million inhabitants. The country is thus by far the most populated country in the European Union. At the turn of the year 2020/21, COVID-19 had already killed almost 39,000 persons, and the daily death toll had reached 1,100. There were 26,000 active cases and in total, 1.86 million people had already recovered from COVID-19.<sup>1</sup> Despite these high figures, compared with other European countries such as Italy, France, Spain and the UK, Germany had – at least to some extent – successfully curtailed the disease. Unfortunately, this did not last, and a second strict lockdown was introduced for January and February 2021 to contain the number of infections.

Like in other countries, medical staff and politicians completely underestimated the threat of COVID-19. The first case in Germany was reported on 27 January 2020, when a man contracted the virus from a colleague who had recently returned from the Chinese hotspot of Wuhan. The Federal Minister of Health, Jens Spahn, and other officials of the Robert-Koch-Institute (RKI), a scientific institution responsible for fighting infectious diseases, declared that the virus was not a threat for public health and that the German health system was well prepared to deal with the new challenge.

The first COVID-19 death was reported on 9 March 2020; the active case count on that day was 1,996. Due to the rising number of cases, restrictions were imposed on 22 March 2020. Schools, universities, restaurants and shops were closed, cultural events cancelled, and social distancing measures implemented. Non-essential enterprises ceased operations and much of public life was put on hold. At the onset, politicians

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\* Fulda University of Applied Sciences, Germany.

1. At the time of writing at the end of May 2021, over 87,000 persons had died and over 3.6 million people were infected with COVID-19.

vowed to limit the restrictions to two weeks, but they were ultimately in place for over two months until the beginning of June 2020. One of the main problems that emerged in the fight against COVID-19 is Germany's federal structure, which divides the country into 16 very different states with extensive legislative powers. The restrictions were not very popular, and COVID-19 had not occurred evenly across the country. The heads of the federal states therefore called for exceptions and less restrictive rules, resulting in a rag rug of applicable legislation. The often contradictory regulations between the different states considerably hampered acceptance of the restrictions, allowing the virus to further spread across the country.

During summer 2020, due to warmer weather conditions, the number of infections and deaths decreased, but virologists warned politicians and residents about a second wave in autumn. Life had almost returned to normal and most people neglected the experts' warnings. Right before the Christmas holidays, a second, even tougher and more restrictive lockdown than in the spring was imposed, forcing residents to stay at home and to refrain from close contacts with family members and friends. Despite these restrictions, the virus pushed the healthcare system to its limits. At some hospitals in eastern Germany, the chief physicians mentioned that triage (sorting and allocating treatment to patients) might be necessary, and media images showed caskets stacked in a storage room in one of the overwhelmed crematoria.

The new year 2021 has witnessed an even higher number of infections. The restrictions have not only been extended until mid-February, they have been further tightened in the hope of preventing hospital collapse. It comes as no surprise that the number of infections and the death toll, in particular, increased dramatically in regions where groups of COVID deniers demonstrated in the streets, refuting the virus's existence and the need to wear protective face masks. COVID deniers also do not seem to understand that vaccination is an efficient means to stopping or slowing the spread of the disease. It is still unclear whether the national health insurance system or the individual taxpayers should cover the costs of vaccination. As the pandemic disease affects all citizens equally, the expectation at present is that the federal budget and federal state budgets will shoulder the expenses associated with the vaccination.

## 2. German social security law

By spring it had become obvious that this pandemic disease will have a severe impact on the country's social security system. Germany's social security system is managed by independent institutions. The benefits and allowances provided are mainly financed via contributions, and the prerequisites are stipulated in the different Books of the Social Code (Sozialgesetzbuch). The Social Code (SC) also comprises two tax-financed, means-tested benefits in case of unemployment (Book 2), and welfare assistance for non-employable persons, namely disabled and elderly persons (Book 12 SC). Some tax-financed benefits for children, which are not means-tested, are provided for as well.

Employees can claim contributory unemployment benefits (Book 3 SC), which are not means-tested, for up to one year, amounting to 60 per cent of the employee's former net wages in case of a single person, and 67 per cent for a married couple or families. After this one-year base period expires, the unemployed person moves into the tax-financed and means-tested unemployment assistance system (Book 2 SC). He or she is entitled to a fixed monthly payment of EUR 446, plus an allowance for rent and heating costs. The limits for any additional income or assets are very low. Moving into this means-tested system increases the risk of falling into poverty. Many try to avoid dependence on this means-tested system because they either do not want to disclose all of their assets or are ashamed of having to apply for social assistance.

Health care, according to Book 5 SC, is provided in kind, and is generally free of charge. Each resident in Germany is expected to contribute to the health insurance system; in case of need, welfare assistance will cover the costs of the individual's contributions. When an employee becomes sick, his or her regular wages are continued to be paid by the employer for six weeks; thereafter, the employee receives up to 70 per cent of his or her net wages for a maximum of 78 weeks. Parents can apply for this benefit if they have to stay home to take care of a sick child. They can claim up to 10 days per child, for a maximum of 25 days annually if they have more than two children.

Book 6 covers retirement and survivors' benefits; Book 7 SC focuses on protection for employees in case of work accidents and occupational disease. Book 8 SC entails support for parents (education and child care); Book 9 SC provides for rehabilitation and the protection of persons with disabilities. Book 11 comprises benefits related to long-term care. One

unique feature of Germany's welfare system is the provision of long-term care benefits not only for elderly persons, but for all persons in need of personal care, irrespective of age.

### 3. Impact of COVID-19 on social security in general

COVID-19 will have an impact on all branches of social security law. Firstly, many employees will lose their jobs in the long run, and might find themselves stuck in long-term unemployment as a result of the closure of shops, restaurants, manufacturers, etc. In the best case, they will have paid enough national insurance contributions to be eligible for unemployment benefits for one year, but may thereafter be forced to apply for benefits under the means-tested unemployment assistance system, which for many is humiliating. The health care system has been hit particularly hard by the pandemic. COVID-19 treatment costs are exploding. Some hospitals are already facing financial difficulties and insolvency despite the additional transfer payments from the state budget. Routine medical care has been postponed or cancelled, which considerably reduces hospitals' income. The demographic trends will not change significantly and the pandemic could likely affect pension plan funding.<sup>2</sup>

One question that has not yet been resolved is the link between COVID-19 and work accidents or occupational disease. Health professionals and care workers are in close contact with COVID-19 patients. Relatively high numbers of health care workers have contracted COVID-19, and some have suffered severe and long-lasting consequences or have died. Under normal circumstances, such incidences would be considered a work accident or occupational disease, resulting in higher cash benefits for the beneficiaries or their survivors. The pandemic character of COVID-19, however, implies that the source of infection does not necessarily have to be the workplace, the virus can be contracted outside of work as well. It will thus be difficult to prove that COVID-19 transmission occurred during working hours.<sup>3</sup>

The social security system provides support in kind for parents facing difficulties in their children's education. In times of COVID-19, most schools, kindergartens and day care facilities are closed, and many parents

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2. Hans Nakielski, Kurzarbeit - Folgen für ältere Arbeitnehmer, Altersübergänge und die Rente, SozSich 2020, 176-179.

3. For details see: <https://www.bgw-online.de/DE/Presse/Pressearchiv/2020/PM-DGUV-COVID-19-als-Berufskrankheit.html>.



are working from home. Many parents are overwhelmed and cannot cope with this unprecedented situation. Moreover, living in tight quarters increases the risk of domestic violence. Experts estimate that during the lockdown, in particular, many families need assistance and support from social workers to cope with these problems, but cannot access the help they need. Professionals claim that once the pandemic ends, many families will need emotional support and mental health care.<sup>4</sup>

Many COVID-19 patients take a long time to recover. One of the challenges for the social security system is to ensure adequate treatment facilities and sufficient qualified staff to provide appropriate rehabilitation services to patients, not to mention the excessively high treatment costs.

#### 4. Emergency measures in the social security system

COVID-19 will not have an immediate impact on all components of the social security system. Rehabilitation measures and non-financial support for families will be a task for the future.

When the government imposed the first lockdown in March 2020, it quickly realised that the disruption to employment and income losses would soon lead to an increase in the unemployment rate and financial constraints. In what can be considered emergency legislation, the German Bundestag (national parliament) sought to mitigate the impacts of the lockdown by introducing extraordinary social protection measures.<sup>5</sup> It was astounding and striking to see how fast the legislative process can be. The debate on legislative proposals usually takes weeks, if not months. The lockdown started on 22 March 2020, and in less than one week, namely on 27 March 2020, the Federal Gazette published the new legislation<sup>6</sup>, which came into force the

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4. Cf. Sofia Amaral, Victoria Endl-Geyer, Helmut Rainer, Familiäre Gewalt und die Covid-19-Pandemie: Ein Überblick über die erwarteten Auswirkungen und mögliche Auswege, ifo Schnelldienst, ISSN 0018-974X, ifo Institut – Leibniz-Institut für Wirtschaftsforschung an der Universität München, München, 2020, Vol. 73, Iss. 07, pp. 52-56.

5. Manfred Löwisch, Das Gesetzespaket zum Sozialschutz, BB 2020, 948-952; Wiebke Bartels, Aktuelle Gesetze zur Abmilderung der Folgen der COVID-19-Pandemie in Bezug auf Bereiche des Sozialen Schutzes, NDV 193-196; Thomas Voelzke, Nicht kleckern, sondern klotzen - das Sozialschutzpaket I, jM2020, 235-240.

6. Gesetz für den erleichterten Zugang zu sozialer Sicherung und zum Einsatz und zur Absicherung sozialer Dienstleister aufgrund des Coronavirus SARS-CoV-2 (Sozialschutz-Paket) vom 27. März 2020 [Social Protection Package I], BGBl. I 575.

following day. Some benefits are also regulated in the Law on Protection against Infectious Diseases (Infektionsschutzgesetz – IfSG),<sup>7</sup> in tax laws or other more specific regulations.<sup>8</sup>

Two months later, another law<sup>9</sup> extended some of the previously approved measures and added new ones.<sup>10</sup> In summer 2020, a debate on a Third Social Protection Package was launched, but it did not come into force before April 2021. Together with other regulations passed at the end of 2020, the third package extended some minor measures, but did not substantially improve the overall situation. All of these legal regulations are limited in time and will end in December 2021 or once the COVID-19 pandemic is over.

The most significant measures are the following:<sup>11</sup>

#### ***4.1. Non-contributory unemployment benefits***

As already mentioned, non-contributory unemployment benefits represent the last resort for unemployed persons. The eligibility requirements are usually very stringent, and the paperwork is quite extensive. In the wake of COVID-19, access to benefits has been eased.<sup>12</sup> To accelerate the administrative procedure, the applicant's capital is not included in the means test and it is presumed that his or her assets do not exceed the threshold.<sup>13</sup> In

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7. Gesetz zum Schutz der Bevölkerung bei einer epidemischen Lage von nationaler Tragweite, BGBl. I S. 587.
  8. Cf. Franz Josef Düwell, Beschäftigungssicherungsgesetz: Das Arbeits- und Sozialrecht in der Covid-19-Pandemie, jurisPR-ArbR 50/2020 Anm. 1.
  9. Gesetz zu sozialen Maßnahmen zur Bekämpfung der Corona-Pandemie (Sozialschutz-Paket II) vom 20. Mai 2020 [Social Protection Package II], BGBl. I S. 1055.
  10. Anders Leopold, Sozialschutzpaket II - Weitere Abfederung der Folgen der Covid-19-Pandemie, jurisPR-SozR 11/2020 Anm. 1; Michael Fuhlrott, Sönke Oltmanns, Sozialschutz-Paket II: Änderungen bei Kurzarbeit, Arbeitslosengeld und Verfahrensrecht, ArbR 2020, 275-278; Leandro Valgolio, Das Gesetz zu sozialen Maßnahmen zur Bekämpfung der Corona-Pandemie (Sozialschutz-Paket II), jM 2020, 285-290.
  11. Cf. Andy Groth, Das Sozialschutz-Paket: (Erste) Auswirkungen der COVID-19-Pandemie auf das Sozialrecht, jurisPR-SozR 7/2020 Anm. 1.
  12. For details cf. Torsten Schaumberg, Sozialrechtliche Sonderregelungen in der Zeit der Coronavirus-SARS-CoV-2-Pandemie, ASR 2020, 128-134
  13. Christian Burkiczak, "Hartz IV" in Zeiten von Corona, NJW 2020, 1180-1182; Martin Kellner, Das vereinfachte Verfahren des Sozialschutz-Paketes in der Grundsicherung für Arbeitsuchende nach § 67 SGB II, NJ 2020, 213-214.

addition, the real costs for rent and heating will be reimbursed; usually a flat rate is paid out. Initially, the easing of this procedure was limited until 30 June 2020, but was soon extended until 30 September 2020.<sup>14</sup> The Bundestag eventually extended the regulation until 31 December 2021.<sup>15</sup> Recently, the Federal Minister of Labour and Social Affairs stated that he was in favour of maintaining this regulation even after the pandemic ends, a legislative turn that would result in a decisive shift in Germany's social welfare system.

#### **4.2. Unemployment benefits (contributory system)**

The most important measure introduced in this regard has been the extension of short-time working allowance (Kurzarbeitergeld).<sup>16</sup> This benefit is paid to employees whose working time has been reduced due to COVID-19 restrictions. A single person is entitled to an allowance of 60 per cent of his or her missing net wage, or 67 per cent if he or she has at least one child. After 4 months of short-time working, the allowance rate rises to 70 per cent (77 per cent), and after 7 months, it increases to 80 per cent (87 per cent) of the worker's missing net wage. In addition, the employer may apply for reimbursement of social security contributions.<sup>17</sup> In the first half of 2021, the rate for reimbursement is 100 per cent, and reduces to 50 per cent in the second half of 2021.

Income from another job is not taken into account for the payment of short-time working allowance. Between 1 March 2020 and 31 October

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14. Vereinfachter-Zugang-Verlängerungsverordnung vom 25. Juni 2020, BGBl. I 2020, 1509.

15. Gesetz zur Regelung einer Einmalzahlung der Grundsicherungssysteme an erwachsene Leistungsberechtigte und zur Verlängerung des erleichterten Zugangs zu sozialer Sicherung und zur Änderung des Sozialdienstleister-Einsatzgesetzes aus Anlass der COVID-19-Pandemie (Sozialschutz-Paket III) BGBl. 2021 I Nr. 10, 335.

16. Cf. Detlef Grimm, Kurzarbeitergeld bei Nichtbeschäftigung und Betriebsstörungen aufgrund Corona (SARS-Covid 19), Gmbh-StB 2020, 119-123; Alexander R Zumkeller, Das Kurzarbeitergeld - ein gutes und bewährtes Instrument in Krisenzeiten, BB 2020, Heft 40, I; Benjamin Schmidt, COVID-19 - Sonderregelungen im Arbeitsförderungsrecht, NZS 2020, 361-362. For a comparative approach see Regina Konle-Seidl, Kurzarbeit in Europa - Die Rettung in der aktuellen Corona-Krise?, IAB-Forschungsbericht 2020, Nr 4, 1-18; Manfred Glombik, Kurzarbeitergeld in der Europäischen Union, SozSich Öst 2020, 273-278; WzS 2020, 267-271.

17. Felix Geulen, Volker Vogt, Kurzarbeit in der Coronakrise, ArbR 2020, 181-185; Detlef Grimm, Lohnfortzahlung und Entgeltrisiko bei Corona (COVID-19), DB 2020, 1177-1182.

2020, the source of any additional income had to be generated from a job in an essential business (e.g. pharmacy, lorry driver, food industry, etc.). The regulation was extended until 31 December 2020, but now any additional income, irrespective of its source, is not taken into consideration. The short-time working allowance can be paid for up to 24 months.

Unemployment benefits usually expire after a maximum period of one year. Until the end of 2020, an additional 3-month period was granted without having to re-submit an application for unemployment benefits.<sup>18</sup> This period has been extended to the end of 2021.<sup>19</sup>

Short-time working may influence occupational pension schemes,<sup>20</sup> and reduce future retirement benefits within the statutory pension scheme as well.<sup>21</sup> Cases of fraud and misuse have also been reported.<sup>22</sup> Last but not least, the allowance is not available for employees who work for an international employer.<sup>23</sup>

### 4.3. Children

Children are one of the most vulnerable groups during a pandemic. Due to the closure of schools, kindergartens and day care facilities, many have lost the opportunity to one warm meal a day. A special benefit has been introduced for parents in need so they can order warm meals for their children.<sup>24</sup>

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18. Cf. Ulrich Freudenberg, COVID-19 - Kurzarbeitergeld und Elterngeld i.d.F. der Ersten Änderungsverordnung zur Kurzarbeitergeldverordnung und des Beschäftigungssicherungsgesetzes, B+P 2021, 54-57; Hans Nakielski, Kurzarbeitergeld und Erleichterungen bei Sozialleistungen verlängert, SozSich 2020, 349-350.

19. § 421c SGB III, cf. Otfried Böhmer, Covid-19-Maßnahmen: Auch 2021 gelten Erleichterungen beim Kurzarbeitergeld, LGP 2021, 015-018.

20. Peter A Doetsch, Adrian Liebert, Auswirkungen von Kurzarbeit auf die betriebliche Altersversorgung, BetrAV 2020, 171-172;

21. Hans Nakielski, Kurzarbeit - Folgen für ältere Arbeitnehmer, Altersübergänge und die Rente, SozSich, 176-179.

22. Cf. Nina Kiehne, Stefan Middendorf, Barnim Freiherr von Gemmingen, Gelegenheit durch die Krise: Betrug und Missbrauch bei Kurzarbeit, DB 2020, 2409-2412.

23. Cf. Ulrich Freudenberg, Kurzarbeit für Leiharbeitnehmer in Zeiten von COVID-19: Kein Kurzarbeitergeld für Arbeitnehmer eines ausländischen Arbeitgebers, B+P 2021, 59-61

24. Gesetz zur zielgenauen Stärkung von Familien und ihren Kindern durch die Neugestaltung des Kinderzuschlags und die Verbesserung der Leistungen für Bildung und Teilhabe (Starke-Familien-Gesetz), BGBl. I 2019, 530.

The closure of schools and kindergartens has forced many parents to stay at home to take care of their children.<sup>25</sup> They can apply for an additional allowance to compensate the loss of wages.<sup>26</sup> As a rule, parents may be eligible to receive 100 per cent of their former net income for six weeks. For the subsequent 4 weeks, they can receive 67 per cent up to a ceiling of EUR 2,016. Single parents can claim this allowance for a maximum of 20 weeks. The child must be under the age of 12 years or disabled (irrespective of age), and the parents must confirm that no other person is available to care for the child.<sup>27</sup> Since 19 November 2020, parents have also been entitled to this allowance if the child – and not the parents – has to quarantine.<sup>28</sup> This measure has been extended until 31 March 2021.

Another child-related benefit has recently been extended as well. Under normal circumstances, parents can take a total of 10 days of paid leave annually per child if the child falls sick. Under the pandemic, 5 additional days per child per year have been added. Since most schools and kindergartens will remain closed until at least mid-February 2021, 10 additional days of this special leave (and 20 additional days for single parents) were introduced from 5 January 2021.<sup>29</sup> This compensation is paid by the health care insurance system.

Poorer families, primarily single parent families, are eligible to receive a higher supplement payment for children because more generous income thresholds apply.

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25. Cf. Wolfgang Kleinebrink, Arbeitsbefreiung zur Betreuung eines Kindes- Rechte von Arbeitnehmern und Reaktions- sowie Gestaltungsmöglichkeiten für Arbeitgeber - DB 2020, 952-957.

26. § 56 Abs. 1a InfSG; cf. Michael Worzella, Corona: Verdienstausschlag wegen Betreuungsbedarf für Kinder nach Schließung von Schulen und Kitas, P&R 2020, 99-104; Alexander Eufinger, § 56 InfSG - Coronavirus SARS-CoV-2 und die Entdeckung einer Norm, Voraussetzungen des Entschädigungsanspruchs, Rechtsfolgen und Prozessuales, DB 2020, 1121-1124.

27. Cf. Felix Geulen, Jannis Sothmann, Entschädigungen nach dem Infektionsschutzgesetz - Quarantäne, Kita- und Schulschließung in der Corona-Krise, ArbR 2020, 217-220.

28. Drittes Gesetz zum Schutz der Bevölkerung bei einer epidemischen Lage von nationaler Tragweite, BGBl. I, S. 2397.

29. In case of several children, the maximum period is 45 days and for single parents 90 days, respectively.

#### ***4.4. Orphans' pension***

Orphans' pension usually ceases when the child turns 18 years. If the child is studying at a university, he or she can continue receiving the allowance until the age of 27 years. Many universities have remained closed due to COVID-19, hence beneficiaries could not start their studies and were at risk of losing eligibility for orphans' pension. An amendment of the law ensures continued payment of the orphans' pension in such cases.

#### ***4.5. Procedures in Social Courts and Labour Courts***

Procedures in Social Courts and Labour Courts are essential for resolving disputes on contested social security benefit payments, on wages or unfair dismissals. A basic right in court procedures is that the parties can appear in person. Under COVID-19, video conferences are being used instead.<sup>30</sup> However, many courts did not possess the necessary equipment, and concerns about data protection were also raised. Consequently, the number of disputes heard in video conferences has not been particularly high.

#### ***4.6. Low-income jobs (mini-jobs)***

There are two different types of "mini-jobs".<sup>31</sup> "Mini-jobs" are limited either in terms of wages (maximum 450 € per month) or in working time (maximum 70 days annually irrespective of earnings). "Mini-jobs" are subject to a reduced tax and social security contribution rate. The great majority of mini-jobbers are women working as shop assistants, cleaning staff or in part-time positions. The limit for mini-jobs based on working time annually has now been extended from 70 days (3 months) to a total of 115 days (five months) annually.<sup>32</sup> This allows low-income earners to earn an additional income in times of COVID-19 without paying exces-

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30. Franz Josef Düwell, Sicherung der Funktionsfähigkeit der Arbeits- und Sozialgerichtsbarkeit während der Covid-19-Epidemie, *jurisPR-ArbR* 16/2020 Anm. 1; Michael Fuhlrott, Sönke Oltmanns, Virtuelle Arbeitsgerichte - Verhandlungen im HomeOffice, *ArbR* 2020, 222-225; Sven Rebehn, Mehr Online-Verfahren vor Arbeits- und Sozialgerichten, *DRiZ* 2020, 164-165.

31. § 8 SGB IV.

32. Ralf Hauner, Versicherungsrechtliche Beurteilung von geringfügigen Beschäftigungen - vorübergehende Erhöhungen der Zeitgrenzen für kurzfristige Beschäftigungen vom 1. März 2020 bis 31. Oktober 2020, *Die Beiträge* 2020, 378-384.

sive taxes and social security contributions. The other type of "mini-jobs" based on a maximum monthly wage of 450 € without restrictions in working time was kept untouched.

#### ***4.7. Retirement age pension system***

Pensioners can earn an additional income of maximum EUR 6,000 annually. Earning a higher income will result in the reduction of the individual's pension payment. For the year 2020, this limit was raised more than seven times to reach a total of EUR 44,590. The reason for this is to motivate pensioners to return to work in essential sectors (e.g. health care, education, food supply) and support the overstrained regular staff.<sup>33</sup>

#### ***4.8. Extra payments for essential workers in the fight against COVID-19***

Essential businesses directly involved in the fight against COVID-19 are eligible for a monthly payment of up to 75 per cent of wages paid to hire additional staff.<sup>34</sup> In addition, they also receive subsidies for protective equipment. The beneficiaries of this measure are hospitals and assisted living facilities for seniors and for persons with disabilities.<sup>35</sup>

### **5. Conclusion**

The legislative response to the COVID-19 pandemic following the near-complete shutdown of society was almost immediate. It was a first in the history of the German Bundestag to nearly unanimously pass and implement legislation with such high financial consequences within just a week's time. The measures focus primarily on unemployed persons, children and low-income earners. Most regulations were initially limited to 6 months and later extended to nine months (until the end of the year), but have now been prolonged until mid-2021. At the onset, politicians be-

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33. Johann F Niemeyer, Flexirente - das "Gewinner-Gesetz" im Zeichen von Corona!, rv 2020, 99-105.

34. Ragnar Hoenig, Das Sozialdienstleister-Einsatzgesetz (SodEG), Ein Rettungsschirm für die soziale Infrastruktur?, TuP 2020, Heft 3, 211-217; Annette Tabbara, Das Sozialdienstleister-Einsatzgesetz - Sicherung der Sozialen Infrastruktur in der Corona-Krise, NZS 2020, 837-841.

35. Antje Welke, Corona-Pandemie - Neue Sozialschutzgesetze in der Behindertenhilfe im Überblick, RdLH 2020, 55-57; Annette Tabbara, Corona und die Auswirkungen auf Institutionen der Behindertenhilfe und Inklusionsbetriebe, SozSich 2020, 344-347.

lieved that this crisis would be over soon and the benefits enacted were therefore relatively generous. Now, over 10 months into the pandemic and with no end in sight, some of the measures have been extended for an additional six months. Although Germany is a wealthy country, its resources are not unlimited. Apart from these benefits provided by the social security system, substantial tax relief has been granted for the self-employed and enterprises. At the same time, tax revenue is decreasing and cases of insolvency are on the rise. Germany furthermore carries the obligation of contributing to the EU COVID-19 Rescue Fund that will support EU Member States that have been affected even more severely by the pandemic.

In the long run, it is uncertain whether the country will have the financial power to shoulder all of these additional financial burdens. The development of a vaccine in less than one year will hopefully not only save millions of lives, but will also help save millions of euros so protection can be provided for those in need.



# Social protection for migrant workers in Germany in times of corona

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Anne WALTER\*

## 1. Introduction

The scope of German social protection for migrant workers depends on what type of work they perform. The three key measures that have been introduced by the government in response to the COVID-19 outbreak – bridging programmes for enterprises, short-time work benefits for workers and facilitated social benefits system – do not always target migrant workers. This is demonstrated in the figures of the Federal Employment Agency (BA): the unemployment rate during the pandemic is highest among migrants and non-qualified workers.<sup>1</sup>

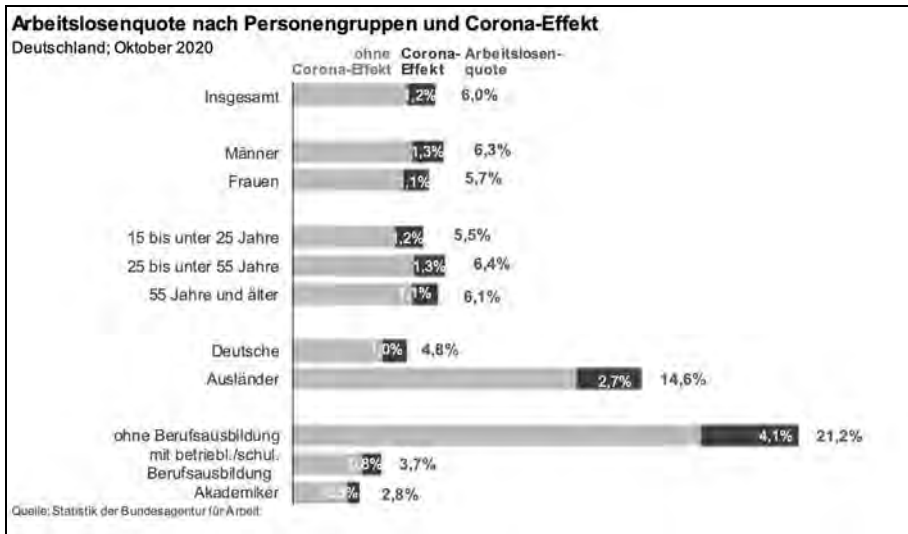
Refugees have also been hit particularly hard by the COVID-19 pandemic, with the unemployment rate among refugees rising and reaching nearly 40 per cent, which is 5 per cent higher than in March 2020. This rise is probably attributable to the fact that migrants are more likely to work in sectors that have been severely impacted by the COVID-19 crisis, such as hotels and restaurants, and the fact that many only hold temporary jobs.<sup>2</sup>

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\* Fulda University of Applied Sciences, Germany.

1. BA, Auswirkungen der Corona-Krise auf den Arbeits- und Ausbildungsmarkt, October 2020, [https://statistik.arbeitsagentur.de/Statistikdaten/Detail/202010/arbeitsmarktberichte/am-kompakt-corona/am-kompakt-corona-d-0-202010-pdf.pdf?\\_\\_blob=publicationFile&v=1](https://statistik.arbeitsagentur.de/Statistikdaten/Detail/202010/arbeitsmarktberichte/am-kompakt-corona/am-kompakt-corona-d-0-202010-pdf.pdf?__blob=publicationFile&v=1).
2. BA, Berichte Arbeitsmarkt kompakt, Jan. 2021, Auswirkungen der Migration auf den deutschen Arbeitsmarkt ([https://statistik.arbeitsagentur.de/DE/Statischer-Content/Statistiken/Themen-im-Fokus/Migration/Generische-Publikationen/Auswirkungen-der-Migration-auf-den-Arbeitsmarkt.pdf?\\_\\_blob=publicationFile&v=6](https://statistik.arbeitsagentur.de/DE/Statischer-Content/Statistiken/Themen-im-Fokus/Migration/Generische-Publikationen/Auswirkungen-der-Migration-auf-den-Arbeitsmarkt.pdf?__blob=publicationFile&v=6)).

Figure 1: Unemployment according to different groups.



## 2.2. Relevance of short-time work benefit for validity of residence permits

As regards the short-time work benefit for persons who actually *have* a job (*Kurzarbeitergeld*, 60 per cent of net income; 67 per cent of net income if the worker has children), the question arises what the consequence of receiving short-time work benefits is in terms of meeting the financial conditions for maintaining a residence permit for Germany. Those with a special residence permit ("Blue Card") for academics and high-skilled workers (residence title according to Art. 18b para. 2 Residence Act), which is issued quite frequently in Germany (approx. 12,000 in 2017 and 2018<sup>3</sup>), have better working and contractual conditions, which has shown to have a protective effect in times of crisis, mainly because of the high minimum salary required to be issued a Blue Card (EUR 55.200 in 2020 and EUR 56.800 in 2021<sup>4</sup>). Even in case of a reduction in income, e.g. due to unem-

3. <https://www.bamf.de/SharedDocs/Meldungen/DE/2020/20200108-am-migrationsbericht-2018.html?nn=282388>.

4. The minimum salary threshold is set annually and is at least two-thirds of the contribution assessment ceiling in the general pension insurance. Highly qualified professionals (scientists, mathematicians, engineers, doctors and IT specialists) are issued an EU Blue Card with a gross annual salary of EUR 44.304 (in 2021).

ployment (i.e. receiving unemployment benefits or short-time allowance), such workers will not have to fully rely on the basic social assistance system. By contrast, receiving only 60-67 per cent of an already low income will not, for example, secure the livelihoods of self-employed persons, especially low-wage workers and part-time workers in low-wage sectors.

### 3. Self-employed migrant workers and the corona effect

As 21 per cent of self-employed persons in Germany are migrants,<sup>5</sup> they have been hit particularly hard by the measures, including lockdown orders and operating bans, as well as by the limited social protection provided for this group. Aside from legal instruments such as workers' compensation due to temporary business closure (Art. 56 Federal Infection Protection Act)<sup>6</sup>, self-employed persons can apply for different emergency assistance programmes provided by the Federal Government to all sectors of the economy; the amount of financial assistance is based on the self-employed person's fixed costs. The initial packages "Bridging Aid I and II" of March and July 2020 have been extended again. The further improved "Bridging Aid III" package will apply as of January 2021 and run until June 2021. In addition, extraordinary financial assistance was made available for November and December 2020. Tax relief measures, guarantees and sureties will also be extended.<sup>7</sup> However, apart from practical and administrative problems, not all of these programmes are geared towards actually securing the livelihood of self-employed persons (but rather to secure coverage of their running costs, such as rental fees for business premises).

### 4. Marginal part-time employees and the corona effect

Marginal part-time employees (so called "mini-jobbers") are only marginally covered by the social security and tax system. Moreover, they have no protection against dismissal. That is, mini-jobbers can be dismissed or

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5. <https://de.statista.com/infografik/2609/existenzgruendungen-durch-personen-mit-migrationshintergrund/>.

6. § 56 Infektionsschutzgesetz: compensation for six weeks, compensation for loss of earnings amounting to 100 per cent, thereafter, similar to sickness benefit. Art 56 IfSG is only applicable to administrative measures based on other specific provisions of the statute, and not to general social security.

7. <https://www.bundesregierung.de/breg-de/themen/coronavirus/info-unternehmen-selbstaendige-1735010>.

given leave of absence as a result of business closure due to the pandemic. In addition, they are not eligible for the short-time work benefit. Even if mini-jobbers can now exceed the initially set upper income limit (EUR 450) in times of the pandemic without affecting their exemption to pay social security contributions, it does not help them if they lose their job.

Often, (international<sup>8</sup>) students work as mini-jobbers in COVID-affected sectors, e.g. in the catering industry. In addition to changes to the crediting of income and assets for recipients of student grants under the Federal Education Assistance Act (BAföG),<sup>9</sup> the Federal Ministry of Education and Research has provided a bridging aid for students who are facing pandemic-related emergencies. This aid consists of two elements: the KfW Student Loan (*Studienkredit* KfW EUR 650/mth) and grants from student bridging aid programmes (*Überbrückungshilfe* of EUR 100-500/mth) that will run until the end of the winter term 2020/2021.<sup>10</sup>

## 5. Inclusion of new groups in the Social Code Book II system

Despite the introduction of different financial measures to prevent unemployed persons from having to fall back on basic social benefits system (so-called "Hartz Four", Social Code Book II), new groups that can apply for benefits under the subsidiary scheme of the basic social income support for jobseekers have been identified, namely solo self-employed persons, freelancers and temporary agency workers (*Leiharbeiter*). By facilitating access to these basic benefits and easing the Job Centre's sanction regime,<sup>11</sup> the Federal Government has taken action to contain the effects of the coronavirus at an early stage. The government's aim was to provide benefits as swiftly as possible without a great deal of bureaucracy, to ensure that no one has to face existential hardship as a result of the eco-

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8. The number of 109,995 foreign first-year students in 2018 has reached a new high (2017: 104,940), cf. <https://www.bamf.de/SharedDocs/Meldungen/DE/2020/20200108-am-migrationsbericht-2018.html>.

9. In detail, see Ulrich Becker, *The Community Steps Up: Changing Responsibilities in Germany*, in: Becker/He/Hohnerlein et al. (eds.), *Protecting Livelihoods in the COVID-19 Crisis: Legal Comparison of Measures to Maintain Employment, the Economy and Social Protection*, MPISoc Working paper 7/2020 (November), p. 23 (29).

10. <https://www.bmbf.de/de/wissenswertes-zur-ueberbrueckungshilfe-fuer-studierende-11509.html>.

11. Christian Burkiczak, "Hartz IV" in Zeiten von Corona, NJW 2020, 1180.

conomic effects of this crisis, but also to avoid administrative burdens. In addition to expanding the groups that are eligible for this benefit, people who are already covered by the system are receiving an additional 'top-up benefit' (*Aufstocker*), i.e. persons who work in low-income jobs and who are not unemployed, but are entitled to a 'top-up' below the social assistance rate (e.g. single parents). The crisis has all but wiped out micro-employment. In September 2020, around 100,000 fewer financial assistance recipients than in the previous year reported that they were also earning an additional income from work.<sup>12</sup>

In view of the importance of this *de facto* basic income instrument during the crisis, the exclusion of job-seeking EU citizens from this system – a discussion that has been ongoing for years in Germany and Luxembourg – represents a particular hardship, all the more so in times of the pandemic, since access to this basic social income support for jobseekers is also linked to health insurance. Of high relevance for this group of workers with children might be the ECJ's recent decision of October last year, according to which a national of a Member State with a right of residence based on Article 10 of Regulation (EU) No. 492/2011 cannot be excluded from entitlement to such special non-contributory cash benefits.<sup>13</sup>

## 6. Conclusion and open questions about migrant workers and the corona effect

The results of initial studies<sup>14</sup> conclude that persons with a migratory background have so far suffered higher income losses than those without a migratory background. The share of migrants in self-employment and flexible work is also higher than for others. More persons belonging to "lower" income groups (up to EUR 900 net/month) have experienced financial losses than those who belong to "upper" income groups (from EUR 4,500 net/month). The short-time benefit for workers is insufficient, especially for low-income earners, as 33-40 per cent of their income is lost. Self-employed persons have also been strongly impacted by the crisis, especially due to business closures. Those who work in atypical or precarious

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12. *Kolja Rudzio*, DIE ZEIT, 28. Jan. 2021, p. 20.

13. Court of Justice, 6 Oct. 2020, C-181/19, ECLI:EU:C:2020:794.

14. Redaktion FD-ArbR, Wer hat durch die Corona-Krise Einkommen verloren? Neue Analyse leuchtet Ursachen und Folgen aus, FD-ArbR 2020, 433411 (Beck Online).

employment, for example, temporary agency workers (not only in the meat industry, such as for the *Tönnies* Group, but also in the automotive industry) or mini-jobbers, have suffered higher income losses in the course of the crisis than other, more “stable” employees. International students frequently work in the catering industry, which has been severely affected by COVID-19. Finally, migrants face even higher risks because they often hold more precarious jobs and many work in COVID-affected sectors.

The described problems are not new. The deficits of labour and social security law already existed before the pandemic. Working in the low-wage segment does not guarantee subsistence, which is particularly problematic in case of illness. It also does not protect against (mainly female) old-age poverty, and furthermore considerably limits the development potential of the children of such workers. “Mini-jobbers” have suffered the most during this crisis; this form of marginal employment must be limited and such workers must be re-included in the social protection system. Also, the statutory minimum wage (from 1 January 2021, EUR 9.50 and up to EUR 10.45 per hour by July 2022) does not prevent in-work poverty. The coronavirus crisis has highlighted all of these factors. Insofar, the conclusions are in fact “old” issues that have never been resolved. Poverty can be reduced by improving social security for all. The introduction of a permanent basic income should be discussed, as it would solve several of the problems addressed above. We need a basic income system at least for families to fight the high child poverty rate in this rich country. The second issue that needs to be tackled is access to social protection for self-employed persons. Germany will hopefully be able to overcome the crisis because of its social security system and its economic strength, which migrants have also contributed to. But what are the lessons for the future of social security to ensure solidarity and dignity for all – including migrants?

# **Greek social law in times of the pandemic**

## **Social security in times of corona from a comparative law perspective: The case of migrant workers and other vulnerable groups (of workers) in Greece**

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Anna TSETOURA<sup>\*</sup>, Effrosyni BAKIRTZI<sup>\*\*</sup>

### **1. Introduction**

The world has faced an unprecedented health crisis over the past year. The COVID-19 pandemic has already cost over 2.5 million lives worldwide, and according to current projections, this number could continue to rise over the next few months.

Governments have attempted to contain the spread of the COVID-19 virus and to mitigate its devastating effects on citizens' health. Several restrictions have been adopted to limit the free movement of citizens within and beyond national borders. The imposition of national lockdowns or for severely affected regions is still ongoing and will be the new normal in forthcoming months.

In Greece, a strict national lockdown was imposed as an emergency measure in March 2020 to limit the spread of the virus. An extraordinary fast-track legislative procedure was implemented, allowing the government to adopt emergency measures without prior consultation of Parliament.<sup>1</sup> The Greek government adopted these measures following consultations with a team of experts (medical doctors and renowned virologists). Greece did not, however, declare a state of emergency<sup>2</sup> in response to the health crisis caused by the COVID-19 pandemic. During the second wave of the pandemic, another strict national lockdown was imposed in Greece

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\* Hellenic Open University, Greece.

\*\* Fulda University of Applied Sciences, Germany.

1. Article 44 para. 1 of the Greek Constitution.
2. Pursuant to Article 15 of the ECHR, which allows Greece to derogate from its obligations to protect human rights due to the extraordinary situation.

with several restrictions to the freedom of movement and suspension of operations of nearly all businesses. Schools moved online in November 2020, and it is uncertain how this situation will evolve considering that the health care system has reached its limits. The measures are being re-evaluated continuously, but a long-term strategy seems to be lacking.

### ***Multidimensional concept of worker vulnerability due to the health crisis in Greece***

During the first lockdown, the measures imposed restricted the exercise of a number of rights, but were proportionate, time-limited and had a legal basis. In addition, the measures had to take vulnerabilities resulting from the COVID-19 pandemic into account.

In this paper, the concept of “vulnerability” in terms of social protection coverage comprises the following aspects:

- a. Vulnerability in terms of economic difficulties resulting from the pandemic. Businesses whose activity has been suspended are especially vulnerable economically; their employees need social protection. Young people who recently completed their training/education and are searching for a job or are in vocational training, as well as certain groups of self-employed persons and artists were also severely affected.
- b. Vulnerability in terms of non-standard working arrangements or precarity deriving from the necessity to balance work and personal/family life. The former includes temporary, casual, seasonal workers and self-employed persons, those working in the tertiary sector and in the air and sea transport services. The latter refers to working parents who have been affected by school closures and in some cases are not able to perform their work due to increased care duties in combination with imposed teleworking. This has affected women, in particular, and equal treatment with regard to social protection.
- c. Vulnerability in terms of the high health risk workers are exposed to. This includes both high-risk workers who suffer from specific diseases as well as those whose health and safety conditions at work do not provide adequate protection against contracting COVID-19. Specific “vulnerable groups” are identified in the respective legislative acts and in the guidelines of the National Organisation of Public Health (EODY). Health professionals have to manage their own health status and at the same time treat patients who



have contracted COVID-19. As employees in the national health system, health professionals carry a significant burden due to the high number of patients being admitted to public hospitals; they must take extra precautions in accordance with medical protocol due to their direct exposure to the coronavirus. Private health professionals and private hospitals must also comply with state intervention measures and assist in relieving public hospitals when required.

- d. Vulnerability in terms of the physical (non-) movement of workers. This refers to internal migration movements across regions within a country, or movements beyond national borders, i.e. migration to another country. The pandemic has certainly discouraged many people from moving and finding work in other European countries. Recently, the Greek Ministry of Migration and Asylum issued a press release stating that the residence permits of third-country nationals in Greece have decreased by 5.9 per cent compared to the beginning of 2020, because of the COVID-19 restrictions imposed.<sup>3</sup> This has affected seasonal workers migrating to Greece to perform agricultural activities (a combination of the cross-border element and the seasonal/precarious character of activities performed by migrant workers who are employed by farmers). This category of migrants has been hit particularly hard by the coronavirus due to the prohibition of movement between countries. Migrants are estimated to comprise 90 per cent of total wage labour in agriculture in Greece.<sup>4</sup>

There may be multiple situations of vulnerability and measures that intersect with more than one aspect and category of vulnerable workers.

## 2. Economic vulnerability and urgent social security measures

### *2.1. Suspension of employment contracts, the special purpose compensation measure and insurance coverage of employees*

The imposed restrictions had and still have a severe impact on the organisation of work both in the private and in the public sector. During

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3. <https://www.skai.gr/news/politics/mitarakis-meiothikan-oi-adeies-diamonis-kata-6-apo-arxi-etous> (in Greek).

4. Papadopoulos A.G., (2015). In what way is Greek family farming defying the economic crisis?, *Agriregionieuropa*, No. 43.

lockdowns, businesses generally remain closed either due to lack of clients/ orders or because their operations have been suspended by law. Lockdowns of varying degrees – full or ‘light’ restrictions – were imposed during the first wave of the pandemic and have been re-imposed during the second wave.

The interruption of business operations goes hand-in-hand with the suspension of employment contracts in the respective businesses.<sup>5</sup> The Greek state introduced the so-called compensation of special cause – an *ad hoc* state financial support measure – for employees whose contracts were suspended. This compensation was intended to substitute the employee’s loss of income for the duration of business closure. It is not taxable and not subject to social security contributions.

Two cases of employers are distinguished, namely those whose business activity was prohibited and those whose business activity has been significantly affected as a result of the COVID-19 pandemic.

Employees of companies with an employer registration number (AME) in e-EFKA (Electronic National Social Security Institution), *whose business activity was prohibited* by order of the public authority, were released from the obligation to provide work, and their employer was not obligated to pay their wages, because the prohibition of operation by order of a public authority constitutes *force majeure*.<sup>6</sup> In this case, the employees’ employment contracts were suspended for as long as the law prohibited the respective business activity. After the expiration of the suspension period, the employment contracts were extended for the agreed remaining time. Unpaid leave agreed between the employee and the employer, whose business activity was suspended by order of a public authority, was automatically revoked. The contracts of such employees were thus suspended and they were entitled to special purpose compensation instead.

Employers, whose business activity has been suspended by order of a public authority, and for the duration of the COVID-19 measures, may not reduce their staff by terminating employment contracts.<sup>7</sup> In case of dismissal, the termination of the employment contract will be null and void *ex lege*.

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5. See Bakirtzi, E. (2020) COVID-19 and Labour Law: Greece. *Italian Labour Law E-Journal*, 13(15). <https://doi.org/10.6092/issn.1561-8048/10785>.

6. In accordance with the provisions of Article 1 of Chapter A.1. of No. 12998/232/2020 of the Joint Decision of the Ministers of Finance and of Labour and Social Affairs.

7. According to Article 2 of the aforementioned Joint Ministerial Decision.

Businesses that were significantly affected by the negative effects of the coronavirus *could* suspend the employment contracts of part or of all of their employees, who worked for them on 21 March 2020, and for a continued irrevocable period of 45 calendar days, depending on their main activity or on their gross revenue in 2018.<sup>8</sup> Fixed-term employment contracts, which had not expired by 21 March 2020, could also be suspended. After the expiration of the period of suspension, the employment contract continued for the agreed remaining time. During the period of suspension of the employment contract, the employer could not terminate any employment contracts; in case of termination, the dismissals were deemed null and void *ex lege*. Employers who benefitted from the financial support measure were required to maintain the same number of jobs after the suspension period had ended for a period equal to that of the suspension (for example, 45 days for the first lockdown), i.e. the employment relationships with the same employees under the same working conditions that were valid on 21 March 2020 had to be continued. The requirement to retain the same number of jobs did not include the posts of those who had voluntarily left their jobs; those whose contracts ended due to retirement, as well as fixed-term employees whose employment contracts expired after the end of the suspension period.

The employees referred to in the abovementioned cases were entitled to the *ad hoc* special purpose compensation. Employees whose employment contracts were suspended and who work for employers whose business activity was prohibited or suspended, were entitled to the special purpose compensation in the amount of EUR 800 for a period of 45 calendar days, unless they had another contract of employment with another employer. If the employee was employed by more than one employer whose business activity was suspended by order of a public authority, and consequently, his/her employment contracts were suspended, the employee could only designate one employer to claim the special purpose compensation. The special purpose compensation was *unrestricted, tax free and was not offset against any debt*, while the employees benefitted from *full social security coverage* calculated on the basis of their regular wages for a period of 45 days during the first wave of the pandemic, and on a monthly basis during the second wave. This compensation is financed

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8. In accordance with the provisions of Article 1 of Chapter A.2. of No. 12998/232/2020 of the Joint Decision of the Ministers of Finance and of Labour and Social Affairs.

by *the state budget*. An additional obligation for the employer was the submission of detailed periodic statements (APD) for employees whose contracts had been suspended.

Additionally, a special support mechanism was established by law.<sup>9</sup> The mechanism applied to employees with a dependent employment relationship in companies whose operation was temporarily prohibited due to the emergency COVID-19 response measures, and included financial support measures, special purpose compensation, social insurance coverage, emergency allowances and training cheques.

Employers who re-hired employees, who had been employed under an employment contract in 2019, to work in the seasonal accommodation and tourism industry during the summer tourism season of 2020, had the right to suspend the employment contracts of part or of all of their staff from 1 June 2020 to 30 September 2020 according to the applicable legislation in combination with the terms of sectoral collective labour agreements in force. Likewise, tour bus operators that re-hired drivers, who had been employed in 2019 under an employment contract, to work during the summer tourism season of 2020, had the right to suspend the employment contracts of part or all of their staff from 1 June 2020 to 30 September 2020, according to the applicable legislation in combination with the terms of sectoral collective agreements in force.

The calculation of social security contributions (the employer's and employees' contributions) for the entire period of suspension was based on the amount of special purpose compensation, namely EUR 534 for each month of suspension of the employment contract, and were not paid by the employer, but were fully covered from the state budget. The employment contracts of employees who had the right to re-employment in companies that did not reopen at all or only reopened partially between 1 June 2020 to 30 September 2020, were considered to be suspended, and their corresponding insurance contributions were covered from the state budget. No further actions were required by the employers, since the detailed periodic statements normally submitted by the employers for each salary period, were prepared by the e-EFKA (Electronic National Social Security Institution).<sup>10</sup>

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9. See Article 13 of the Act of Legislative Content of 14 March 2020 "Urgent measures to address the need to limit the spread of COVID-19 and other provisions", as ratified by Article 3 of Law 4682/2020.

10. Since 2020, the competences of this institution have been extended to all services for

Most of the adopted extraordinary measures to mitigate the economic impact as a result of the closure of businesses and the restrictive measures to contain the spread of the virus, applied to employees who have standard employment relationships. Other groups of workers were left outside the extension of the protective framework and therefore became even more vulnerable in light of the new challenging and unprecedented economic, working and social conditions.

### *2.1.1. Exclusion of those on sick leave and maternity leave (pregnancy-maternity leave) for the period of suspension of operations due to the COVID-19 emergency measures*

Clarifications regarding the mechanism of suspension of employment relationships have been provided.<sup>11</sup> As already noted, a special support mechanism was established.<sup>12</sup> According to para. 5 of the relevant Article, persons on leave, among others, were excluded from the special support mechanism.

However, during the applicability of the special support mechanism, cases of employees who joined were observed, resulting in the suspension of their employment contract, although they were entitled to either sick leave or maternity leave (i.e. to the corresponding benefits). Employees who were either already on sick leave or maternity leave when they joined the special support mechanism and whose employment contract was erroneously or inadvertently suspended for the same period, or those who went on sick leave or maternity leave after joining the mechanism, the following applied: for as long as the period of sick leave or maternity leave coincides with the suspension of their employment contract as a result of their inclusion in the special support mechanism, a modification of their social insurance history is necessary.

To correctly record the social insurance history of employees in the respective DPAs and to avoid paying double insurance contributions for the

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employers, employees, self-employed and pensioners in the private and public sector. The administrative procedures have been digitised and unified.

11. According to the General Document EFKA Pr. No. 181147 of 7/8/2020 and No. Φ.40021/32117/1357/06-08-2020 Circular of the Ministry of Labour and Social Affairs.

12. Under Article 13 of the Legislative Act of 14 March 2020 "Urgent measures to address the need to limit the spread of COVID-19 and other provisions", as ratified by Article 3 of Law 4682/2020.

same period, employers had to make the necessary corrections, since the insurance days corresponded to different types of salary codes for the period of sick leave or maternity leave during the period of suspension of the employment contract.

Hence, for workers who joined the special support mechanism<sup>13</sup> while they were on sick leave or maternity leave, employers had to inform the revenue services of the employees' e-EFKA branch to which they belonged and request a revision of the employees' insurance history by submitting the duly completed form "Insurance Data Change Sheet", including

- the correct calculation of insurance contributions, and
- the correct recording of insurance contributions funded by the state budget as a result of the employee's coverage by the special support mechanism.

Based on the amendment, and if the other conditions for eligibility to the respective allowance were met, the above category of employees was entitled to receive sick leave benefits or maternity allowance.

Employers were required to provide employees with certificates of absence from work or from active employment for the period during which their employment contracts were suspended due to the exceptional and temporary labour market measures introduced to address and limit the spread of COVID-19. These certificates were a prerequisite for the employees to exercise their legal rights, such as subsidies from their social insurance institution for sick leave or maternity leave (pregnancy and maternity allowance), as well as from the Labour Employment Institution (OAED) (supplementary maternity benefit, special maternity protection benefit).

The suspension of the employment relationship, in principle, deferred the execution of the parties' obligations for the duration of the suspension period, but did not terminate these obligations. It simply suspended the performance of the employment relationship, but it was maintained for the purpose of continuation once the reason for its suspension ended. Suspension applied to the parties' main obligations arising from the employment relationship, i.e. the employee's obligation to perform the agreed work and the employer's obligation to pay the agreed or legally

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13. Mechanism of Article 13 of the Legislative Act of 14 March 2020 "Urgent measures to address the need to limit the spread of COVID-19" and other provisions, as ratified by Article 3 of Law 4682/2020.

determined wages. On the other hand, the parties' other ancillary obligations were not affected, although the period of suspension is usually calculated as working time with regard to all of the employee's rights that arise from his/her employment relationship.

Those who received the special purpose compensation<sup>14</sup> were eligible for sickness and maternity allowance, provided that they met the requirements of the law, without an amendment to their insurance history. This was the case because these employees were subsidised without a simultaneous suspension of their active employment contracts and the coverage of the corresponding insurance contributions from the state budget.

### 2.1.2. *Trainees*

An ad hoc special purpose compensation was granted to trainees with an active trainee contract during the first lockdown. This compensation amounted to EUR 700, plus the costs of their full basic social security coverage from the imposition of the lockdown until 18 May 2020, when vocational training institutes resumed their operations.<sup>15</sup> The Greek government clearly recognised the vulnerability of this group of young trainees and adopted this measure after the lack of social and income protection for this group became evident.

### 2.1.3. *Self-employed persons*

Furthermore, targeted relief measures for self-employed persons were introduced. Initially, the Greek government decided to finance distance training of self-employed persons at an amount of EUR 600. These training vouchers were intended as income support or rather income replacement, conditional upon training attendance, and was available to professionals, including lawyers, doctors, engineers, architects, economists, accountants and researchers. These training vouchers/educational allowance were financed by funds from the European Structural and Investment Fund, not from the state budget.

This measure cannot be compared with the special purpose compensation paid to employees. The legislative initiative to cover employees'

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14. Within the scope of application No. 16073/287 Joint Decision of the Ministers of Labour and Social Affairs.

15. Decisions No. Φ16 / 154871 / ΓΓ4 of 12/11/2020 Financial support for apprentices in apprenticeships to reduce the spread of COVID-19.

“atypical” temporary unemployment (loss of income) as a result of the suspension of their business operations and short-time work arrangements was not extended to self-employed persons affected by the COVID-19 crisis whose activity was not officially fully suspended, but who had to temporarily interrupt their activity and thus lost large parts of their income. These economically active –though temporarily inactive– persons could not claim unemployment benefits because of the precondition of the formal closure of their business. An interesting solution could have been partial unemployment benefits for self-employed persons whose activity was temporarily interrupted.<sup>16</sup>

### *Special case of self-employed lawyers*

Lawyers associations in Greece protested against the violation of their social rights which are protected in the provisions of the European Social Charter. The majority of the Greek Bar Associations submitted a complaint and urgent request for interim measures before the European Social Rights Committee in late May 2020.<sup>17</sup> With this initiative, they requested the safeguarding of the dignity of lawyers’ functions in a democratic society and the protection of their members’ professional interests and social rights from further disadvantages due to the measures adopted by the Greek government to respond to the COVID-19 pandemic.

The complaint asserted that lawyers were excluded from social protection and that the protection provided was inferior and inadequate compared to all other professional groups affected. In addition, lawyers were excluded from financial relief measures such as the EUR 800 allowance that was granted to employees and other affected workers. However, because the operations of many public administration services (mortgage offices, cadastral offices, abstention of bailiffs, underperformance of public services) as well as court activities were suspended during the first lockdown in Greece, in combination with the ban on citizen movement, lawyers were not able to perform judicial or extrajudicial work. Their livelihood was therefore at risk and they were unable to meet their obligations and support their families. A first solution to this problem following the heavy criticism was introduced by the Greek govern-

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16. Paul Schoukens, Unemployment insurance for the self-employed: a way forward post-corona, EISS research papers, 2020, p. 17.

17. ECSR, *Greek Bar Associations v. Greece*, Complaint No. 196/2020 of 22 June 2020.



ment, which announced that lawyers would be provided *with training vouchers in the amount of EUR 600* for training via asynchronous teleconferencing. Other professionals, such as doctors, engineers, architects, economists, accountants and researchers were also included in this programme. This education allowance was paid in two instalments upon completion of each module.

Given the non-existence of an effective form of income support for self-employed persons (which could have taken the form of an allowance of EUR 800 within the scope of a general aid scheme similar to that provided for a large share of the working population or income support provided by the social security system), the Bar Associations in Greece argued that the Greek government had failed to properly implement and had breached the provisions of the European Social Charter (Revised), and more specifically, Article E (obligation to ensure that any individual or group that falls within the Charter's scope *ratione personae* is equally entitled to the rights of the Charter) and Articles 30 (right to protection against poverty and social exclusion), 11 (right to protection of health), 13 (right to social and medical assistance), 16 (right of the family to social, legal and economic protection), 17 (right of children and young persons to social, legal and economic protection) and 31 §2 (right to housing) with regard to the economic and social protection of lawyers, their children and their families.

Following these events, the Greek government adopted legislation during the second lockdown in the *ad hoc* rescue package for the provision of an allowance of EUR 400 for lawyers, engineers and economists with a low income for the month December 2020. The decision to cover the loss of income through a flat-rate benefit is attributable to the fact that it is difficult to measure the precise loss of income of self-employed persons.<sup>18</sup>

#### 2.1.4. Artists

A special purpose compensation was also introduced for artists, as many cultural activities (such as theatres, cultural events, concerts, etc.) were restricted due to the lockdown and the measures to prevent overcrowding.

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18. Paul Schoukens, Unemployment insurance for the self-employed: a way forward post-corona, EISS research papers, 2020, p. 18.

*Artists, creators and professionals of art and culture*, who were registered in the special electronic platform *artandcultureprofessionals.services.gov.gr* in the Information System "ERGANI" of the Ministry of Labour and Social Affairs before 20 October 2020 could benefit from a special purpose compensation of EUR 534 per month, with full insurance coverage provided for the months of September and October 2020.<sup>19</sup> In view of the recently adopted Joint Ministerial Decisions, a special category of workers was added to the income protection measures.<sup>20</sup> According to the latter, *employed artists, creators and professionals of art and culture*, who were registered in the special electronic platform *artandcultureprofessionals.services.gov.gr* at the Information System "ERGANI" of the Ministry of Labour and Social Affairs before 20 October 2020, were entitled to the special purpose compensation, amounting to EUR 800.<sup>21</sup>

## ***2.2. Extension of the deadline for payment of insurance contributions and for payment in instalments of arrangements or facilities for partial payment of insurance contributions***

According to the provisions of para. 1 and 3 of Article 1 of sub-no. D.15 / D/ No. 13226/325 of the Joint Decision of the Ministers of Finance and of Labour and Social Affairs, on the details of the application of the

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19. Pursuant to Article 20 of Law 4722/2020 and the Joint Ministerial Decision with reference number 43110/1078 of 21/10/2020; Measures to support professionals of art and culture, guides and tourist guides.

20. Joint Ministerial Decision No. 39436/994 of 30/9/2020 and the Joint Ministerial Decision with the reference number 39436/994 of 30/9/2020.

21. The persons excluded from the above special purpose compensation are: (i) those who were beneficiaries of a regular unemployment benefit for the period from 1 January 2020 to 31 May 2020, ii) those who were beneficiaries and had already received or were to receive the special purpose compensation, amounting to EUR 800, provided by reference number 16073/287 of 22/4/2020 Joint Ministerial Decision, iii) those who received the special purpose compensation provided for in JMD number 12998/232 of 23/3/2020, iv) those who received the financial support introduced in Article 8 of 20 March 2020 Act of Legislative Content (A '68), as in force, for the self-employed as defined in Article 2 of Law 4387/2016, v); those who received financial aid compensation of a special purpose with the number 16604/3224 of 27/4/2020 JMD, vi) those who are civil servants or have an employment contract and/or lease under a project with public bodies (intersection with the Register of Human Resources of the Greek State of the Ministry of Interior).

provisions of the Legislative Act, the following provisions<sup>22</sup> regarding the payment of insurance contributions were determined.

Employers' insurance contributions for the period of employment of February and March 2020 until the prohibition of operations or the suspension of employment contracts is lifted in application of case a) of sub-para. 2A of Article 11, of the Legislative Act of 20 March 2020, receivables until 31 March 2020 and 30 April 2020, respectively, can be deferred until 30 September 2020 and until 31 October 2020, respectively. This is without the calculation of interest and other surcharges for the respective period due to overdue payment.

The deadline for the payment of social security contributions for self-employed and freelancers due until 30 June 2020, as well as any instalments of debt from additional liquidation of insurance contributions of previous years, if required, was extended without calculating any interest and other surcharges for this period due to overdue payment.<sup>23</sup> The contributions of the previous paragraph are to be paid in four equal monthly instalments, payable until the last working day of each month, with a deadline of payment of the first instalment by 31 October 2020. In case of late payment of an instalment, the total amount will be increased by the late interest owed due to late payment. Insurance contributions are considered to be contributions for all branches of insurance (main insurance, health care, supplementary insurance, lump sum benefit), as well as any other body for which e-EFKA provides contributions, with the exception of contributions for optional insurance (paragraph 2).

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22. General Document of EFKA of 31 March 2020 Pr. No. 68084 [subject: Notification of the provisions of Article 3 of the Legislative Content Act of 11/3/2020 on "Urgent measures to address the negative consequences of the occurrence of coronavirus COVID-19 and the need to limit its spread"].

23. According to Article 1 of Decision D.15 / D' / No. 21552 / 681/2020 of the Ministry of Labour and Social Affairs. "Determination of details of application of Article 8 of the Legislative Content Act of 20 March 2020" "Urgent measures to address the consequences of the risk of spread of the coronavirus COVID-19, to support society and entrepreneurship and to ensure the operation of the market and public administration" (A '68), as ratified by Article 1 of Law 4683/2020 (A' 83) and is valid (paragraph 11) (Contributions of self-employed) (Government Gazette 2599, issue B 'of 27 June 2020).

### ***2.3. Extension of health care insurance coverage to employed and non-employed workers insured under EFKA and their family members, as well as for unemployed persons***

Health care coverage of insured persons under e-EFKA, their family members and for unemployed persons in the form of in-kind benefits, was extended, and the previous conditions for entitlement to sickness benefits in kind were eased.<sup>24</sup> The relevant legal provision defines the prerequisites for such an extension.<sup>25</sup>

Specifically, for the year 2020, health care insurance coverage was extended from 1 March 2020 to 31 December 2020 for the self-employed who were insured on 28 February of 2020.<sup>26</sup> The extension was enacted with the exception of any contrary provision and in any case, only until 31 December 2020. The above extension was valid retroactively from 1 July 2020. In addition, the insurance coverage for health care benefits in kind was extended for the period from 1 March 2020 to 28 February 2021 without the precondition of having accumulated the required insurance period for certain groups of persons and their family members.<sup>27</sup>

### ***2.4. Strengthening social protection for the unemployed***

The range of social protection measures for the unemployed has been amplified to mitigate the impact of the Coronavirus pandemic on this group of economically vulnerable persons. Firstly, the duration of the

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24. Articles 29, 30 and 31 of Law 4722/2020.

25. Article 31 of Law 4722/2020 amends Article 41 of Law 4387/2016 and stipulates that the insurance capacity and the provision of in-kind health care benefits to those directly insured and to their family members is acquired from 1 January 2020 onwards if: a) the employee has performed at least 50 working days during the previous calendar year or in the last 12 months before the date of arrival or occurrence of the insurance risk, and b) the non-employee has accumulated two months of insurance during the previous calendar year or in the last 12 months before the date of arrival or occurrence of the insurance risk and if he/she has paid the required insurance contributions in accordance with the provisions in force, otherwise in accordance with the provisions of Article 23 of Law 4529/2018.

26. Circular EFKA No. 44 of 1/10/2020 Pr. No. 237834.

27. Article 29 of Law 4722/2020. This article defines the persons covered, such as certain categories of employees, farmers, those working on shipyards, as well as unemployed persons.

regular unemployment benefit has been extended initially for two months, i.e. until the end of May 2020. This regulation concerned those who were already receiving this benefit, but their entitlement to it either expired or was about to expire within the first trimester of 2020.<sup>28</sup> This extension can be further applied in the future based on Joint Decisions of the Ministers of Finance and Labour and Social Affairs.<sup>29</sup>

Secondly, long-term unemployed persons who were not eligible to any unemployment benefit, were granted a special extraordinary benefit of 400 EUR at a two-stage procedure: one instalment in April-May 2020 and one in December 2020.<sup>30</sup>

Thirdly, seasonal workers and more specifically those working in the tourist and food sector, were eligible to unemployment benefits under less stricter prerequisites, that is the number of working days which was required for claiming seasonal unemployment benefit, has been drastically reduced, from 100 to 50 days in total. It has been also extended until the end of September 2020.<sup>31</sup>

Finally, special provisions were made for the employees related to the Thomas Cook company<sup>32</sup> and seafarers.<sup>33</sup>

The application for extending the unemployment benefits payment as well as the possibility to register as unemployed takes place distantly and without physical presence at the offices of the Labour Employment Institution (OAED) due to the measures to limit the spread of the virus.

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28. Article 7 para. 1 of the Act of Legislative Content of 20 March 2020 on the "Urgent measures to address the consequences of the risk of spread of the coronavirus COVID-19, to support society and entrepreneurship and to ensure the operation of the market and public administration" (A '68), as ratified by Article 1 of Law 4683/2020 (A' 83).

29. Article 7 para. 3 of the *op. cit.* Act of Legislative Content of 20 March 2020.

30. Joint Decision of the Ministers of Finance and Labour and Social Affairs of 16 April 2020 No. 15687/282 (Government Gazette 15129/ issue B' of 16 April 2020).

31. Article 33 of the Act of Legislative Content of 1 May 2020 which has been ratified by Article 1 of the Law 4690/2020 (Government Gazette issue A' 104 of 30 May 2020). See further details in section 3.2 of the present chapter.

32. Article 30 of the *op. cit.* Act of Legislative Content of 1 May 2020.

33. Eligibility to the unemployment benefit was extended for six months since the entry into force of the relevant *op. cit.* Act of Legislative Content of 1 May 2020 (Article 44 paragraphs 1-3).

### 3. Professional vulnerability and urgent labour social protection

#### 3.1. *Teleworking*

Article 4 of the Legislative Act of 11 March 2020 entitled “Extraordinary and temporary measures in the labour market to deal with and limit the spread of the COVID-19 coronavirus in terms of the organisation of time and place of work” (paragraph 2) provides that *the employer may, by its decision, determine* that the work provided by the employee at the workplace and agreed in the individual contract, will be carried out within a *scheme of distance working*. The period of application of the extraordinary and temporary measure may be extended by joint decision of the Ministers of Finance, Labour and Social Affairs and Health.

#### 3.2. *Financial aid through social security contributions - seasonal workers*

Certain measures of employment and financial support for workers were adopted in a number of legal acts and laws.<sup>34</sup>

With the provisions of Article 31 of Law 4690/2020, as in force, a mechanism to strengthen employment was established from 15 June 2020 in the form of financial support for short-term work, called “SYNERGASIA” meaning “COOPERATION”, or “CO-WORKING”. The Unified Institution of Social Insurance<sup>35</sup> determined the amount of social security contributions in the context of implementation of the employment enhancement mechanism “COOPERATION”, the measures of financial assistance for *seasonal workers*, with or without the right of re-employment, and additional support measures for employees and employers that are active *in the tertiary sector and in the air and sea transport services*, whether or not they are included in the “COOPERATION” mechanism. The purpose of this mechanism was to provide support for employees and private sector companies across the country, with the aim of maintaining full-time jobs.

The “COOPERATION” mechanism included all companies with either continuous or seasonal operations, under the condition that their VAT turnover has decreased. More specifically, employers that are required to submit

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34. Under the provisions of Articles 31, 32 & 33 of Law 4690/2020, as well as Article 123 of Law 4714/2020 and No. 28700/1559/2020, 32085/1771/2020, 34060/1857/2020 Common Ministerial Decisions.

35. EFKA-Document No. 39 of 18/9/2020 Pr. No. 218767.

a periodic VAT return must have recorded a loss of at least 20 per cent in VAT turnover in relation to their reference turnover, depending on the month of their inclusion in the "COOPERATION" mechanism and the type of applicable tax books. Companies that were part of the "COOPERATION" mechanism, could unilaterally reduce the weekly working time by up to 50 per cent of part or of all of their employees, depending on their operational needs. The temporary reduction of employees' working time could last for one or more months for the duration of the programme's validity.

As long as the employer was included in the "COOPERATION" mechanism, he/she had to pay all social security contributions (i.e. the employer's and the workers' share), which corresponded to the employee's reduced working hours. As for the working hours during which the employees did not provide work, two different working time periods were distinguished. From 15 June 2020 to 30 June 2020, the employer had to pay 40 per cent of social security contributions, while the remaining 60 per cent were covered from the state budget, as were 100 per cent of the workers' contributions. From 01 July 2020 to 15 October 2020, employers were not required to pay their share of the contribution, because the social security contributions in full (the employer's and the employees' share) were paid at a rate of 100 per cent from the state budget. However, the social security contributions (the employer's and the employees' share), which corresponded to the employees' reduced working hours had to be paid by the employer in case of reduced working hours. The social security contributions (the employer's and the employees' share), which corresponded to the employees' remaining contractual working time during which they did not provide work, were covered at a rate of 100 per cent from the state budget.

Moreover, additional support measures for employees and employers with regard to full coverage (100 per cent subsidy) of the employer's social security contributions from the state budget were introduced for the period from 01 July 2020 to 30 September 2020, in the following two cases:

- Businesses that operate in the tertiary sector and are subject to VAT, which earned more than 50 per cent of their gross income during the third quarter of 2019, and

- Businesses active in the aviation and shipping sectors (for staff insured under the e-EFKA transport, except for those insured under the special fund for sailors). If the above companies joined the "COOPERATION" mechanism, the subsidy period of the social security contributions from the state budget was extended, i.e. from 01 July 2020 to 15 October 2020

for companies active in the tertiary sector, and from 01 July 2020 to 31 December 2020 for companies active in the aviation and shipping sectors (for staff insured under the e-EFKA transport).<sup>36</sup>

The payment of social security contributions in both cases was paid at a rate of 100 per cent from the state budget. Specifically, the full amount of the employer's contributions, which corresponded to both the employees' actual working hours and their remaining contractual time were covered in the "COOPERATION" mechanism, and were paid at a rate of 100 per cent from the state budget. Furthermore, the full amount of social security contributions, which corresponded to the employees' remaining reduced contractual working time, during which they were covered by the "COOPERATION" mechanism but did not provide work, was paid at a rate of 100 per cent from the state budget.

In addition, certain provisions extended the social protection of seasonal workers. According to the provisions of Article 33 of Law 4690/2020, as in force, measures for extraordinary compensation of seasonal workers without the right to compulsory re-employment were introduced. Seasonal workers in the tourism and food industry, which were subsidised (in accordance with the abovementioned legal provisions), and who had been employed in the year 2019, full-time or part-time, for whom there was no obligation to re-employ under the provisions in force, and who had received regular unemployment benefits for three months and five days during the period from September 2019 to February 2020, were entitled to a monthly emergency allowance equal to the last monthly unemployment benefit they had received. The compensation was paid monthly for the months of June, July and August 2020, provided that the above beneficiaries remained registered in the register of unemployed of the Labour Employment Institution (OAED) for the corresponding period of time. The employer's share of social security contributions for the above employees, who were hired part time or who were to be hired part time until 30 September 2020, were covered (100 per cent subsidy) from the state budget for the period from 01 June 2020 to 30 September 2020.

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36. According to the provisions of Article 123 of Law 4714/2020 in combination with No. 32085/1771/2020 and No. 34060/1857/2020 Joint Ministerial Decisions.



### ***3.3. Working parents and special leave***

Working parents were entitled to a special purpose leave. Working parents, according to the provisions of this regulation, are defined as those whose children are enrolled in nurseries and day care centres, are attending compulsory education or special schools or special education facilities, regardless of age, as well as working parents of persons with disabilities, who, regardless of age, are eligible for open care services for persons with disabilities.<sup>37</sup> Due to the suspension of operation of the aforementioned facilities in the context of taking precautionary measures to control and limit the spread of the coronavirus, parent-employees had the right to special purpose leave of a specific duration.<sup>38</sup> The provisions specify that both parents are employees (in the private sector or one in the private and the other in the public sector)<sup>39</sup> or one of the two parents is working,<sup>40</sup> the proportional entitlement to this special purpose leave,<sup>41</sup> the

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37. In view of Article 4, paragraph 3 of the Act of Legislative Content of 11 March 2020 as ratified by Article 2 of Law 4682/2020.

38. The duration is established in accordance with the legal provision (Article 4, paragraph 3 of the Act of Legislative Content of 11 March 2020 as ratified by Article 2 of Law 4682/2020) at least three days, provided that the employee uses one day of his/her normal leave for every three days of the special purpose leave, in the context of the tripartite participation in this extraordinary and temporary measure. The above leave can be obtained from the entry into force of this measure until 10 April 2020, if at least one parent is working in the private sector as an employee, even if the other parent is self-employed.

39. Article 4, paragraph 3 (b) and (c) of the Legislative Act 11/3/2020 as ratified by Article 2 of Law 4682/2020: "b) In case both parents are employees, with the same or different employers, with a joint official statement to the employer or their employers, they announce which of them will use the above leave or, as the case may be distribute the respective periods between the two of them. c) In the event that one parent is employed in the private sector and the other in the public sector within the meaning of Article 5, the working parent in the public sector is required to provide an official statement to the employer that he/she has not used the special purpose leave. A private sector employee can also use this permit."

40. Article 4, paragraph 3 (d) of the Act of Legislative Content of 11 March 2020 as ratified by Article 2 of Law 4682/2020: "d) If only one of the two parents works, then he/she cannot use the special purpose leave, unless the non-working parent is hospitalised for any reason or is sick with the coronavirus or is a person with a disability (disabled) and receives an allowance from the Organisation for Welfare Benefits and Social Solidarity (OPECA)."

financing of this leave<sup>42</sup> and the declaration of obligations of the employer(s).<sup>43</sup> For public sector employees, an alternative option to special leave was introduced.<sup>44</sup>

Interestingly, no additional support, apart from the special leave, was provided for parents whose children remained at home due to the closure of schools. Especially for parents with young children, performing their work duties was incompatible with fulfilling their obligations as parents and teachers during the closure of schools. The period of paid leave was not able to cover the entire period of school closure and many parents, in particular women burdened with the task of taking care of young children, became unemployed.

#### 4. Health vulnerability

##### *4.1. Vulnerability of working persons due to their personal health status*

In the *broader public sector, vulnerable groups* include:

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41. Article 4, paragraph 3 (g) of the Act of Legislative Content of 11/3/2020 as ratified by Article 2 of Law 4682/2020: “g) In any case, in order for an employee to be able to use the special purpose leave, he/she must meet the legal requirements for obtaining an annual regular leave of at least six (6) days in a six-day work week and five (5) days in a five-day work week. In case the above condition is not met, then he/she is entitled to the special purpose leave in proportion (para. 8) to the days of normal leave to which he/she is entitled.”
  42. Article 4, paragraph 3 (h) of the Act of Legislative Content of 11 March 2020 as ratified by Article 2 of Law 4682/2020: “h) From the days of the special purpose leave, two-thirds (2/3) are covered by the employer, and one-third (1/3) from the regular budget, after crossing with the data of the Ministries of Finance, Labour and Social Affairs and Interior, as defined in a joint decision of the competent Ministers. Especially for employees in the public sector, as determined by the provisions of Law 1256/82 (A'65), the three days of the special purpose leave are covered by the employer.”
  43. Article 4, paragraph 3 (f) of the Act of Legislative Content of 11 March 2020 as ratified by Article 2 of Law 4682/2020: “f) The employer is obliged to inform the Information System “ERGANI” of the Ministry of Labour and Social Affairs which employees used the above leave, as well as its duration, by 10 April 2020, and in any case, until 15 April 2020. Every term and detail of the application of this paragraph is determined by decision of the Minister of Labor and Social Affairs.”
  44. Article 5, paragraph 4 of the Act of Legislative Content of of 11 March 2020 provides that instead of using the special leave of paragraph 1, civil servants can, upon their request, make use of reduced working time, of up to 25 per cent per day, without a corresponding reduction of their salaries.

(a) people with severe heart disease,  
(b) people with severe lung disease,  
(c) people with unregulated diabetes,  
(d) cancer patients undergoing active chemotherapy or radiotherapy or immunotherapy; and

(e) transplant patients under active immunosuppression therapy receiving two or more drugs.<sup>45</sup> Additional cases of health vulnerability are found in other legal acts (persons over 65 years of age with persistent hypertension, chronic respiratory diseases, chronic cardiovascular diseases, chronic end-stage renal failure, women who are pregnant, etc).<sup>46</sup>

As regards the *private sector*, Circular No. 12339/404 of 12/03/2020 of the Ministry of Labour and Social Affairs *defines vulnerable groups* in line with the respective instructions of the National Organisation of Public Health (EODY). According to the general instructions of the EODY, vulnerable, high-risk groups include the elderly, as well as people with chronic underlying diseases, e.g. chronic respiratory diseases, malignancies, etc.<sup>47</sup>

At the same time, the competent authorities and control bodies were to ensure that all the needs of persons with disabilities and chronic illnesses were met when implementing the emergency measures to address the COVID-19 pandemic. This was to prevail over any contrary provision, general or specific.<sup>48</sup>

Although some provisions for the protection of high-risk employees exist in the public sector,<sup>49</sup> the working arrangements (such as teleworking) and social protection issues of employees living in the same household with vulnerable persons has not been addressed so far.

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45. According to Article 25 (para. 14) of the Act of Legislative Content of of 14 March 2020 (Government Gazette A '64 of 14/03/2020) in combination with reference number DIDAD / F. 64/315 / No. 8030 Joint Ministerial Decision (Government Gazette B '928 of 18/03/2020).

46. In the decision DIDAD / Φ.64 / 341/9188 of 11/5/2020 (Government Gazette 1800 / B of 11/5/2020) (abolished the previous one), as well as in the newer DIDAD F. 64/346/9011 of 14/5/2020 (Government Gazette 1856 / B) - the second DIDAD / 464/9188 was abolished.

47. <https://eody.gov.gr/loimoxi-apo-to-neo-koronoio-covid-19-odigies-gia-eypatheis-omades/>.

48. Article 73 of Law 4690/2020 referring to people with disabilities and chronic diseases.

49. Special leave according to Article 25 of the Legislative Act from 14 March 2020, ratified by Law 4682/2020.

## ***4.2. Health vulnerability of “exposed” professions***

### ***4.2.1. Health professionals in the public sector***

#### ***a. The measure of extraordinary financial aid***

For the year 2020, an extraordinary financial plan was developed to support all staff of hospitals, health centres and other facilities of the Ministry of Health as well as of the General Secretariat for Policy Protection.<sup>50</sup>

As was clarified,<sup>51</sup> in case the above persons received remuneration or compensation for the provision of additional work or service, in addition to their regular monthly salaries, there will be no deductions from 1 July 2018 onwards<sup>52</sup> to their main and auxiliary insurance, health care, lump-sum benefits and the branches of the Labour Employment Organisation (OAED). This is because these fees/compensations are not paid in a fixed and systematic way so that they are tied to regular earnings.

Following the abovementioned rationale, by analogy, the extraordinary financial aid paid for the year 2020 to all types of workers serving in such institutions, as defined in the legal provision,<sup>53</sup> whether he/she was employed under a public or private law employment relationship and was remunerated by either a single or special salary,<sup>54</sup> whether the amount was for a special purpose or was granted due to the exceptional performance of that staff member to deal with the effects of the COVID-19 pandemic, was not subject to any insurance contributions (not primary and auxiliary insurance, no lump sum, health care and affiliated OAED branches).<sup>55</sup>

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50. With the provisions of Article 4 of the Legislative Act of 30 March 2020 on “Measures to address the coronavirus pandemic COVID-19 and other urgent provisions” (Government Gazette 75 / issue A’ of 30/3/2020).

51. General Document EFKA of 8 April 2020 Pr. No. 71306, subject: “Regarding insurance contributions for the amount of the extraordinary financial support of Article 4 of the Act of Legislative Content of of 30 March 2020” on “Measures to deal with the COVID-19 coronavirus pandemic and other urgent provisions.”

52. Date of notification of the Interpretative Circular No. Φ10042 / οικ.13567 / 329 of 8/06/2018 of the Ministry of Labour and Social Affairs ΑΔΑ: 7ΑΛ246501ΩΑ46.

53. According to Article 4 of the Act of Legislative Content of 30 March 2020.

54. Law 4354/2015 and Law 4472/2017, respectively.

55. On the above extraordinary financial support, according to the relevant document of the Ministry of Labour and Social Affairs what is required: a) for the insured of the former civil servants welfare Sector/current branch of lump sum benefits of e-E.Φ.Κ.Α., the special contribution of 1 per cent, as provided in the provisions of para. 2b of Article 38

*b. Staff deployment depending on the needs of affected regions*

The deployment of medical, nursing and other support staff in the health sector may be ordered by the Secretary General of Health Services for specific periods from hospitals, health centres or health bodies of non-affected areas to areas heavily affected by the spread of the coronavirus for the purpose of public health protection. Similar competency is given to the President of the National Emergency Centre (EKAB) regarding the deployment of the Centre's staff. Non-compliance with the deployment decision shall result in disciplinary measures.<sup>56</sup>

*4.2.2. Health professionals and other professionals in the private sector: compulsory allocation of facilities*

During the pandemic, based on a joint decision of the Ministers of Finance and Health, it was possible to order the compulsory disposal of private hospital beds, clinics, intensive care units, hotels, private housing facilities, other public property or legal entities under public law to the State to cover public health emergencies associated with the treatment of COVID-19 patients if these needs could not be met through other means.<sup>57</sup>

Countries with fragile health care systems have suffered tremendously from the consequences of the pandemic. In fact, state interventions in these countries aim to achieve effective access to health care for the entire population. However, as health care systems are not in a position to accommodate the needs of excessive numbers of patients, strict limitations

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of Law 3986/2011, and b) for the shareholders of the Share Fund of Civil Servants (M.T.P.Y.), a contribution of 2 per cent according to the provision of Article 27 of P.D. 422/1981, as in force.

56. According to Article 12 of Law 4693/2020, replacing the second article of the Legislative Content Act of 25/2/2020 on "Urgent measures to avoid and limit the spread of coronary artery disease" (A '42), as ratified by Article 1 of Law 4682/2020 (A' 76), (paragraph 1). Ratification of the 21 May 2020 amendment of 3 June 2019 Individual Donation Agreement for Project V of 6 September 2018. Donation Agreement between the Foundation "Stavros S. Niarchos Public Benefit Foundation" and the Greek State for the strengthening and upgrading of infrastructure in the health care sector, ratified by Law 4564/2018 (A '170) and other provisions (Contributions over 60 per cent COOPERATION) (Government Gazette 116, issue A 'of 17/6/2020).

57. According to Article 14 of Law 4693/2020 (Issues of forced space allocation) replacing the fourth article of the Legislative Content Act of 25/2/2020 "Urgent measures to prevent and limit the spread of coronavirus", as ratified by Article 1 of Law 4682/2020.

are imposed so that the spread of the virus can be contained. In addition to strict lockdowns, the Greek government had authority to order private health facilities to be placed under public regulation. What is lacking and is the result of massive cuts in public spending and major underinvestment in hospitals and public health care facilities is not necessarily institutional capacities, but staff capacity, i.e. human capital required for the increased need of patient care during the pandemic.

At this point, it is worth noting that many health professionals (such as nurses) in both the public and private sectors voluntarily contributed to the health care system and moved to the most affected regions in Greece on their own accord to support and help their colleagues in the “battle” against COVID-19.<sup>58</sup>

#### 4.2.3. *Limitation of physical contact between patients and doctors*

The electronic prescription system became fully intangible during the pandemic. This measure was adopted to limit physical contact between patients and doctors and to help patients by derogating from all previous regulations regarding intangible prescriptions<sup>59</sup>.

Intangible prescriptions and intangible referrals are exclusively circulated and filled electronically in the primary health care system<sup>60</sup> operated and managed by H.D.I.K.A. A.E. The patient can log in to the primary health care system<sup>61</sup> using a password, or by using the codes of the General Secretariat of Information Systems of Public Administration of the Ministry of Digital Government (taxisnet) to declare electronically that he/she needs to fill his/her drug prescription. He/she can also state how

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58. The voluntarism of health professionals was promoted by the State’s special voluntary employment programme for adult citizens in public health facilities for the treatment of COVID-19 (Act of Legislative Content of 30 March 2020, Article 35).

59. Article 36 of the Act of Legislative Content of of 20 March 2020 “Urgent measures to address the consequences of the risk of the spread of coronavirus COVID-19, to support society and entrepreneurship and to ensure the smooth operation of the market and public administration”: 1. For a period of two months from the entry into force of this measure due to the risk of the further spread of coronavirus COVID-19 and to limit the physical contacts between patients and doctors and to help patients, by way of derogation from all regulations on intangible prescriptions, intangible prescriptions are carried out in accordance with this provision.

60. Website: <https://www.e-syntagografisi.gr/p-rv/p>.

61. Website: <https://www.e-syntagografisi.gr/p-rv/p>.

he/she wants to receive the respective prescription, which he/she can order either via message (SMS) using his/her mobile phone, by entering a mobile phone number in the system, or via message (e-mail) using his/her e-mail address, and thus entering his/her e-mail address in the system.

The physical note of the doctor's prescription is not presented to the pharmacist to fill intangible prescriptions electronically. The pharmacist retrieves the intangible electronic prescription by entering the code (prescription barcode) into the Electronic Prescription System or alternatively, the individual's Social Security Registration Number (A.M.K.A.). The pharmacist can search and fill the intangible electronic prescription based on its number (prescription barcode). Once the pharmacist has filled the prescription, the individual receives a message on his/her mobile phone or e-mail address that he/she shared, with the details of his/her prescription.

To fill intangible electronic prescriptions based on the individual's A.M.K.A., the pharmacist simply enters the individual's A.M.K.A. into the Electronic Prescription System, after he/she has requested an intangible prescription, and can look for his/her pending electronic prescriptions. The system sends the individual a code (a one-time password) with a message to his/her mobile phone or to his/her e-mail address which he/she entered. The individual forwards the code to the pharmacist, who then enters it into the Electronic Prescription System and thus gains access to the individual's pending prescriptions. Once the pharmacist fills the prescription, the individual receives a message on his/her mobile phone or e-mail address, with the details of his/her prescription.<sup>62</sup>

#### 4.2.3.1. *Limitation of physical contact between patients and pharmacists*

The law specifies the procedure for delivering medicines to vulnerable groups, persons with disabilities and those in self-isolation at home.<sup>63</sup> Specifically, it is provided that for a period of four months from the entry into force of this regulation and if the immediate risk of spread of COVID-19 continues, to ensure the continuation of delivery of medications to vulnerable groups, as well as to patients who have to quarantine. Pursuant to the Legislative Content Act of 25 February 2020 (paragraph 15), *it is possi-*

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62. See analytically A. Tsetoura, "Social rights in the new technological reality: e-Government, ICT and personal data", Social Security Law 4/2020, pp. 663 et seq.

63. Article 51 of Law 4683/2020.

*ble to send medicines from the pharmacies of EOPYY<sup>64</sup> to the insured patients, on the same day, through a certified courier company (paragraph 1).*

## 5. Special category of migrant vulnerability

In this section, we focus on the category of migrants in Greece severely affected by the coronavirus due to restrictions of movement between countries (in addition to restrictions to the movement between different regions within the same country). This category is characterised by the element of cross-border movement and the seasonal character of the activities they perform and the order “(not) to move”. The precarious labour status of such persons plays a role as well. Due to the extraordinary circumstances, free movement was in essence prohibited or discouraged in the context of an atypical agreement between European countries, in addition to internal limitations of movements within each country (lockdowns).

The predominance of Mediterranean crops implies intense demand for seasonal labour and the requirement for large numbers of workers during the limited harvest period.<sup>65</sup> The farming sector in Greece (like in Italy and Spain) is characterised by a marked presence of small and medium-sized family businesses, which provides for higher employment rates.<sup>66</sup> The increasing weight of non-family, irregular labour explains the high and rising relative share of migrant workers.<sup>67</sup> Geographical proximity has determined the development of circular migration and recruitment in agriculture of Albanian labourers in Greece.<sup>68</sup>

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64. EOPYY is the National Organisation for the Provision of Health Services, which is the central procurer of health services, negotiator of health care provision contracts, and administers health insurance contributions.

65. Alessandra Corrado, with contributions from Francesco Saverio Caruso; Martina Lo Cascio, Michele Nori; Letizia Palumbo; Anna Triandafyllidou, *Is Italian agriculture a ‘pull factor’ of irregular migration -and, if so, why?*, European University Institute – Open Society European Policy Foundation, 2018, p. 23.

66. Alessandra Corrado with contributions from Francesco Saverio Caruso; Martina Lo Cascio, Michele Nori; Letizia Palumbo; Anna Triandafyllidou, *Is Italian agriculture a ‘pull factor’ of irregular migration -and, if so, why?*, European University Institute – Open Society European Policy Foundation, 2018, p. 23.

67. *Ibid.*

68. Labrianidis L., Sykas T., *Geographical proximity and immigrant labour in agriculture: Albanian immigrants in the Greek countryside*. *Sociologia Ruralis*, 2009, Vol. 49(4), pp. 394–414.



Migrants in Greece are estimated to comprise 90 per cent of total wage labour in agriculture.<sup>69</sup> In the Greek context of economic recession, migrant labourers – especially Albanians, Bulgarians and Romanians – increased their geographical mobility between different rural areas in response to their precarious position, labour insecurity, and low socio-economic status. Asian migrants have also moved from urban to rural areas for short-term employment.<sup>70</sup> In April 2016, the law was amended<sup>71</sup> so that agricultural employers in regions where seasonal work is available, and that have already been approved, may recruit irregular third-country nationals or asylum seekers who already reside in Greece, thus providing them with a temporary, six-month work permit. This amendment provides for the use of labour vouchers (*ergosima*) for insurance payments and wages to facilitate employers' use of regular employment for irregular migrants.<sup>72</sup>

As agricultural activities require physical movement, which was impossible during the lockdown, the socio-economic status of persons whose income mostly depends on seasonal farming has deteriorated. At the same time, the farmers who would have employed the migrant seasonal workers have also been negatively affected due to the lack of necessary labour. This is particularly the case for olive farmers and this is why a special measure was adopted, which is discussed in the next section.

### ***5.1. Employment of third-country nationals in agriculture***

The validity of work permits<sup>73</sup> issued<sup>74</sup> was automatically extended for a period of six months from their expiration date, subject to:

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69. Papadopoulos A.G., In what way is Greek family farming defying the economic crisis?, *Agriregionieuropa*, 2015, No. 43.

70. Papadopoulos, A.G., Transnational Immigration in rural Greece: Analysing the Different Mobilities of Albanian Immigrants. In: Hedberg C., do Carmo R.M. (eds.), *Translocal Ruralism: Mobility and Connectivity in European Rural Spaces*, Springer, Dordrecht, 2012, pp. 163–183. Papadopoulos A. G., Fratsea L. M., Appraisal of Migrant Labour in Intensive Agricultural Systems: The Case of Manolada Strawberries (Greece). In: Corrado A., de Castro C., Perotta D. (eds.) *Migration and Agriculture: Mobility and Change in the Mediterranean Area*, Routledge, London, 2016, pp. 128–144.

71. Article 13a Law 4251/2014.

72. Papadopoulos A. G., Fratsea L. M., Temporary Migrant Workers in Greek Agriculture, e-paper Heinrich Böll Foundation, 2017.

73. According to Law 4690/2020 (Article 24, paragraph 1).

a) Submitting an official statement from the employer to the competent police authority that he/she will continue to employ the third-country national, if, as designated in case g of para. 2 of Article 1 from 25 February 2020 Act of Legislative Content, as ratified by Article 1 of Law 4682/2020 and in the decisions issued by authorisation of the circumstance of para. 4 of the same Article, the conclusion of the employment contract in a timely manner is impossible, (b) issuing a decision postponing removal from the relevant police authority due to the objective inability to conclude a contract by the employer, as reflected in the official statement.

Until 30 June 2020, for the submission of the request provided in Article 13a of Law 4251/2014, the following applied: a) The competent authority for filing and issuing the relevant approvals of the request is the relevant police address of the employer's place of residence; b) The supporting documents that accompany the relevant application are:

ba) Single crop declaration or single declaration breeding of Article 9 of Law 3877/2010; bb) Official statement from the employer that he/she will employ the specific third-country national for at least 20 days due to an emergency situation and the impossibility of concluding a legal employment contract to address the employer's needs.

c) The decision to postpone the removal entails the right to employment exclusively in rural areas and is administered only once.<sup>75</sup>

## ***5.2. Transfer of a third-country national for employment in the agricultural sector***

An employer who wishes to hire a third-country national, who is exempt from the visa requirement in accordance with paragraph 4 of Article 5 of Law 4251/2014 (AD 80), could submit, up to 30 June 2020, by way of derogation from the current legislation, an application to the competent Aliens Service and Immigration Office of the decentralised administration of his/her place of residence, to hire him/her for employment in the seasonal rural economy.<sup>76</sup>

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74. Pursuant to Article 13a of Law 4251/2014.

75. According to Law 4690/2020, Article 24, paragraph 2.

76. According to Law 4690/2020, Article 42, paragraph 1.

The application, which must contain details and the citizenship of the third-country national to be employed, is sent either via courier service or via e-mail and must be accompanied by: a) Payment (code 2113) and proof of payment of EUR 100 for each third-country national who will be working for the employer, which is collected in favour of the State and is not refundable, b) official statement of the employer that: ba) he/she will employ the specific third-country national for an employment period of at least 20 days from the date of entry into Greek territory; bb) will pay all of the required insurance contributions; bc) will bear the estimated costs, in accordance with the conditions for the application of para. 3 of Article 80 of Law 3386/2005; bd) will fulfil all his/her obligations, as derived from the existing provisions of labour law for the conclusion of an employment contract, which is to be concluded in a timely manner; (be) will provide adequate accommodation in accordance with the relevant legislation; c) Single declaration of cultivation or single declaration of breeding in accordance with Article 9 of Law 3877/2010 (AD 160).

The decentralised administrations, if the necessary conditions are met, will issue within two working days, the approval of the applicants' status and send it to the competent passport control services of the Greek Police, so the third-country national can enter the country, subject to Article 4 of Law 4251/2014 for reasons related to public order and security of the country (Law 4690/2020 Article 42, para. 2). The fulfilment of the conditions of paras. 1 and 2 grants the third-country national the right to work in Greece as a seasonal worker for the duration of his/her stay, without needing a visa to enter the country (Law 4690/2020 Article 42, para. 3).

### ***5.3. Extension of national visas and entry of third-country nationals***

The validity of national entry visas, granted to third-country nationals in accordance with the provisions of Law 4251/2014 and which expired after 11 March 2020 or on 31 August 2020, were automatically extended until 30 September 2020.<sup>77</sup> During the validity of the automatic extension period, third-country nationals enjoyed all the rights and obligations arising from the corresponding entry visa they were granted. If a third-country national holding a national visa left the Greek territory during the period

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77. According to Article 47 of Law 4690/2020.

of automatic extension, the visa automatically ceased to be valid from the date of departure from Greek territory.

#### ***5.4. Farmers and urgent temporary financial support***

A special measure of support for farmers in sectors hit particularly hard by the effects of COVID-19 was adopted.<sup>78</sup> The aim of the measure was to ensure the continuation of the farmers' activity especially in the olive oil sector, which has been severely affected by the COVID-19 pandemic. Beneficiaries of the assistance include the main occupational farmers based on the Register of Farmers and Agricultural Holdings (MAAE) until the end of submission of their tax return for the year 2020 (income for the year 2019), who are in legal possession of eligible land. The period for submission of applications by interested parties was set from 17 November 2020 to 27 November 2020 on the special electronic platform developed for this purpose and in particular on the website 'Measure 21' - extraordinary temporary support for farmers in the olive oil sector hit particularly hard by the effects of the COVID-19 pandemic.

### **6. Concluding remarks**

It is worth noting that the management of the health crisis as well as the economic and social consequences have become a national priority. States have been affected in different ways by this pandemic, and the responses to the crisis have therefore been adapted to the territorial economic and cultural conditions of each region.

A pan-European coordinated crisis management could not be achieved for two reasons. The first is the emergency character of the measures adopted and the variation of implementation of these emergency measures in different legal orders. The second reason relates to the financial management of the consequences of the emergency measures, from resources for financing the suspension of employment contracts, the closure of businesses, the substitution of social security contributions and the additional needs of the health care system. All of these elements are subject to national sovereignty, but public finances and national budget deficits are under the surveillance of the European Union, especially for those countries that are part of the eurozone.

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78. See Ministerial Decision No. 2850 of 23 October 2020.

The coordination of policies in the wake of the emergency caused by the pandemic is essential. It does not suffice to adopt measures to contain the spread of the virus (such as self-isolation, social distancing, lockdowns) if these are not combined with supplementing measures that enhance and support the national health care system, the economy and labour and social protection.

A very analytical legal framework has been provided since the beginning of the coronavirus crisis to deal with the extraordinary circumstances. This framework is continually being renewed and reinforced, focusing particularly on the retention of jobs and workers' social security rights. However, there may still be certain groups of persons for whom more comprehensive rather than emergency measures are necessary. In any case, the focus of the measures has been the protection of public health and the continuation of health coverage through different means while at same time, the availability of health professionals is being assured.



# A Brief Critique of the Labour Law Measures Adopted in the Context of the Coronavirus Pandemic in Greece

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Ioannis SKANDALIS\*

## 1. Introduction

Greece was one of the first countries to adopt restrictive measures at an early stage of the COVID-19 outbreak.<sup>1</sup> Numerous labour law measures have been adopted through consecutive Legislative Acts (henceforth LA(s)), as well as through Ministerial Decisions (οικ.),<sup>2</sup> some of which have been further elaborated in administrative guidelines.

The main objectives of these measures in brief are:<sup>3</sup>

- The reduction of labour costs of businesses that are non-operational during the coronavirus lockdown and the subsequent automatic suspension of employment contracts; the legislative measures introduced the possibility for enterprises impacted by COVID-19 to suspend all or a specific number of employment contracts.

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\* Law School of the National and Kapodistrian University of Athens, Greece.

1. The outbreak of COVID-19 was declared a Public Health Emergency of International Concern by the World Health Organization on 30 January 2020.
2. To adopt the analysed measures, the Greek government made use of an extraordinary procedure, namely a fast-track legislative process that authorises the executive power to legislate in cases of emergency, see Effrosyni Bakirtzi, 'COVID-19 and Labour Law: Greece', 13 Italian Labour Law e-Journal Special Issue 1, 2020, <https://doi.org/10.6092/issn.1561-8048/10785> (accessed 19 June 2020). This procedure was followed for the adoption of Legislative Acts (LAs) on the basis of Article 44 paragraph 1 of the Greek Constitution. The specific details of application were subsequently elaborated in relevant Ministerial Decisions. The possibility for such elaboration in Ministerial Decisions was provided in the text of the LAs.
3. For an analysis, see I. Skandalis, "Labour Law measures adopted in response to Covid-19 in Greece" in E. Hondius, M. Santos Silva, A. Nicolussi, P. Salvador Coderch, C. Wendehorst and F. Zoll (eds.), *Coronavirus and the Law in Europe*, Intersentia, Cambridge, 2020.

- At the same time, the adopted measures aim to support the retention of jobs by establishing the prohibition of dismissal (e.g. especially during the suspension period).
- Moreover, a basic income has been introduced by the government for employees, whose employment contracts have been suspended (i.e. an ad hoc state benefit).
- Finally, the measures aim to inject some flexibility into enterprises that continue to operate (e.g. the possibility of employers to unilaterally impose teleworking or the reduction of working hours by introducing the "Co-operation mechanism").

The present paper is structured as follows: the second section refers to the applicable state benefits and social security contributions to review the dynamic relationship between labour and social security law within the context of the adopted measures. The third section presents a brief critique of the adopted measures, and section 4 concludes.

## 2. State benefits and social security contributions

Within the scope of the urgent measures adopted by the Greek government to mitigate the impact of the COVID-19 pandemic, employees, whose employment contracts have been suspended, are entitled to a special purpose compensation (an ad hoc state benefit) amounting to EUR 534 per month. For the month of November 2020, the benefit was increased to EUR 800. Hence, Greece did not follow the legislative approach taken by other countries, where governments have introduced temporary wage subsidies (e.g. in the UK, 80 per cent of employees' wages are subsidised with a cap).<sup>4</sup>

Additionally, the Greek government pledged to cover 100 per cent of employees' social security contributions (i.e. full social security coverage on the basis of their contractual salary) for those employees whose employment contracts have been suspended. In this regard, the Greek government ensured full social security rights for affected employees. Hence, the Greek legislator's intention was to provide compensation to employees for loss of income due to the suspension of their employment contracts, thereby ensuring that their social security status remains unscathed.

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4. In the UK, workers on temporary leave (furloughed workers) are entitled to 80 per cent compensation of their wages by the state, up to a monthly cap of GBP 2,500, see Chartered Institute of Personnel and Development official website <https://www.cipd.co.uk/knowledge/fundamentals/emp-law/employees/furlough>, (accessed 19 June 2020).



One relevant issue that emerged was the social security status of employees during the preliminary stage of adoption of the “Co-operation mechanism”. The mechanism, referred to as “Co-operation”, aimed to maintain full-time employment and was introduced in Article 31 of Law 4690/2020.<sup>5</sup> The duration of this mechanism was to initially last from 15 June 2020 to 15 October 2020, and following subsequent renewals, has been extended until 30 June 2021.<sup>6</sup> This mechanism is available to all enterprises that have experienced a specified loss of revenue. If an enterprise is eligible to participate in said mechanism based on its financial figures, the employer has the possibility of reducing the weekly working hours of all or some of the employees by up to 50 per cent, without, however, converting their employment contracts into part-time ones.<sup>7</sup> Employees included in the mechanism continue receiving their wages by their employer for their reduced working hours, and are additionally entitled to financial support provided by the Greek government equal to 60 per cent of their net remuneration for the hours they do not perform any work (i.e. 60 per cent of their missing income). If the employee’s net earnings are below the minimum statutory wage, the difference is compensated by the Greek state.

Initially, the coverage of the social security contributions of employees participating in the Co-operation mechanism corresponded to their reduced income. However, from July 2020 onwards, the coverage of social security contributions by the government was extended to comprise employees’ full wages.<sup>8</sup> In this sense, the general objective of safeguarding employees’ social security status in the wake of COVID-19 has been fulfilled in the case of the “Co-operation” mechanism.

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5. See also Ministerial Decisions 22804/Δ1.7772 of 12/6/2020 and οικ. 23103/478 of 13/6/2020.

6. Art. 31 of Law 4690/2020, οικ. 23103/478 of 13/6/2020, Circular οικ. 26400/605, Law 4693/2020, Circular 39/2020 EFKA, Art. 283 Law 4738/2020, Art. 112 Law 4764/2020, Ministerial Decision 51083/2612/2020, as well as Art. 105 of Law 4790/2021.

7. This system resembles the “short-time work” arrangement adopted in Germany in the context of COVID-19, see: A. Sullivan, ‘Short-time work: A vital tool in Germany’s economic armory against coronavirus’ *DW* (30 March 2020) <https://www.dw.com/en/short-time-work-a-vital-tool-in-germanys-economic-armory-against-coronavirus/a-52952657> (accessed 19 June 2020).

8. Employers pay social security contributions for the work that is performed (i.e. for the reduced working hours); the government covers the rest of the social security contributions (i.e. corresponding to the employees’ missing wages).

### 3. Brief critique of the adopted measures

The labour law regime was inadequate to address the implications of COVID-19 for the Greek labour market. In this regard, the suspension of employment contracts in itself could by no means safeguard an acceptable living standard for affected employees. The underlying rationale of social security law has therefore been applied in the form of awarding state benefits to employees affected by COVID-19. A combination of labour law measures (e.g. the suspension of employment contracts) with a social security tool (i.e. the ad hoc state benefit) has been applied to respond to the COVID-19 crisis. Within the context of a brief critique of the adopted measures, the following points can be made:

Firstly, as mentioned above, the Greek government did not follow the approach of other European countries that subsidise part of the employees' lost wages, but opted instead to provide a flat rate benefit to all employees affected by COVID-19. The rationale behind granting a specified amount in the form of a state benefit to employees whose employment contracts have been suspended, could only be inferred implicitly, since there is no formal reference as to how the amount of this state benefit was determined, e.g. which specific needs were taken into consideration in the calculation, etc. It is also worth noting that the amount of said benefit is less than the minimum wage, which on 1 February 2019 was set at EUR 650 for full-time employees.<sup>9</sup>

Secondly, the conditions for the granting of said benefit have, to some extent, been characterised by a lack of consistency.<sup>10</sup> For example, employees who lost their job (either through dismissal or resignation) between 1 March and 20 March 2020, were entitled to the state benefit. Moreover, an extension of two additional months was granted for individuals who were already receiving unemployment benefits if the benefits were about to expire. The rationale behind these measures was clearly to provide financial support for employees who lost their job during COVID-19, given their very limited prospects of finding al-

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9. Ministerial Decision 4241/127 of 30/01/2019 and Article 103 of Law 4172/2013, see D. Zerdelis, *Labour Law: Individual Labour Relations*, Sakkoulas, 2019, pp. 796-797 (in Greek).

10. For an analysis, see I. Skandalis, "Labour Law measures adopted in response to Covid-19 in Greece" in E. Hondius, M. Santos Silva, A. Nicolussi, P. Salvador Coderch, C. Wendehorst and F. Zoll (eds.), *Coronavirus and the Law in Europe*, Intersentia, Cambridge, 2020.

ternative employment during the current economic crisis. It was reasonable to award this benefit to employees who had been dismissed before 20 March 2020, the date on which a prohibition of dismissals was introduced (at least for those businesses implementing employment contract suspensions). However, limiting this benefit to only those who lost their job after 1 March 2020 appears rather arbitrary. Let us take the example of an employee who lost his or her employment prior to 1 March, and who at that time did not qualify for regular unemployment benefits. Such an employee would face an extremely difficult situation, since he/she would neither be eligible to receive any state benefits, nor would he/she have good prospects of finding a new job. The special provisions introduced for the period after 1 March 2020 should also apply to such cases, either by extending the ad hoc state benefit to these unemployed persons or by granting them unemployment benefits for a few months without setting any preconditions.<sup>11</sup>

Finally, some peculiar cases have emerged as a result of the procedure applied in granting of the ad hoc state benefit, including the lack of differentiation between full-time and part-time employees regarding the corresponding state benefit amount. Thus, some part-time employees have found themselves in a better financial position during the suspension of their employment contract, because the amount of state benefit they receive is higher than their regular salary.

#### 4. Concluding remarks

The special labour law regime in response to the COVID-19 crisis has now lasted for more than a year since the outbreak of the pandemic. The measures should thus be interpreted within the wider context of Greek labour law.

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11. This issue has been partially covered by future measures, e.g. it has been provided that seasonal employees, who were employed full- or part time during the year 2019 and who have received regular unemployment benefit, lasting at least three (3) months and five (5) days, during the period from September 2019 until February 2020, are entitled to receive financial remuneration equal to their last monthly unemployment benefit for June, July and August 2020 on condition they are still registered with OAED (Article 33 of Law 4690/2020, οικ. 23102/477 of 12/6/2020, as amended by οικ. 27039/617 of 3/7/2020 and οικ. 33294/817 of 19/08/2020 & οικ. 25480/755 of 24/6/2020 & οικ. 27963/853 of 8/7/2020 & 28700/1559/2020).

This is relevant, in particular, for teleworking, which, according to empirical studies conducted in the Greek labour market,<sup>12</sup> has been the most widespread measure implemented by both public and private undertakings that have remained operational, with very positive outcomes. As stipulated in the drafting of the applicable measures, deviations from the Greek labour law regime that usually applies to telework provide for the employer's discretion to unilaterally impose this form of work organisation within the scope of managerial prerogative (i.e. without the employee's agreement).<sup>13</sup> In this regard, although the generally applicable regulations on teleworking provide that the related costs (e.g. telecommunications equipment) should, in principle, be covered by the employer,<sup>14</sup> this provision has not been adhered to during coronavirus, as – according to employees' trade unions – employers are not even covering a fraction of the related costs (e.g. internet costs). This issue definitely must be clarified within the context of the next COVID-19-related labour law measures, to firmly establish that such costs must be borne by the employer.<sup>15</sup>

On a final note, the social partners did not participate in the initial drafting of the emergency measures, which could be considered reasonable given the urgency of these regulations. However, the social partners' exclusion has continued in the later stages of the drafting of these measures. In this regard, and given that the extraordinary measures in response to COVID-19 have now lasted for more than one year, it is time for the so-

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12. For relevant data, see SEPE official website <http://www.sepe.gr/gr/research-studies/article/15603201/8-stis-10-ellinikes-etaireies-strafikan-stin-tilergasia-logo-koronoiou/> (accessed 19 June 2020).

13. Through subsequent extensions, the possibility of unilateral imposition of telework was extended until 31 May 2021 (Art. 4 para 2, LA of 11/03/2020, Art. 235 of Law 4727/2020, Ministerial Decision 40000/1269 of 2/10/2020 Ministerial Decision 20788/610 & οικ. 26308/768 of 30/6/2020 & 30742/1002 of 28/7/2020 & 36124/1194/2020, Ministerial Decision οικ. 48690/1476 of 25/11/2020, 52241/1567 of 17/12/2020, 3813/102 of 27/01/2021, 4012/111 of 27/01/2021, 23182/2021).

14. Article 5 para. 3 of Law 3846/2010. See also Article 7 Framework Agreement on Telework, which was annexed as Annex-B to the National General Collective Employment Agreement of 2006-2007 and is binding for all employers and employees in Greece. See also K. Papadimitriou, *Individual Labour Law*, Nomiki Vivliothiki, 2021, pp. 141-142 (in Greek).

15. I. Skandalis, "The working time in tele-work", *Chronicles of Private Law* 2020, p. 499-512 (in Greek).

cial partners to assume a more prominent role in the drafting of subsequent COVID-19 labour law regulations, as well as in the planning of Greece's post-COVID labour market landscape. Such participation is crucial to ensure that all future measures are truly suitable in light of the particularities of each specific sector of activity.<sup>16</sup>

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16. I. Skandalis, "Labour Law measures adopted in response to Covid-19 in Greece" in E. Hondius, M. Santos Silva, A. Nicolussi, P. Salvador Coderch, C. Wendehorst and F. Zoll (eds.), *Coronavirus and the Law in Europe*, Intersentia, Cambridge, 2020.



# **Social Security in Times of Corona from a Comparative Law Perspective, Country Report: Hungary**

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Éva LUKÁCS GELLÉRNÉ\*

## **1. Introduction**

The first case of COVID-19 in Hungary was reported in January 2020. By the end of that month, the 'Operative Corps', jointly led by the Minister of the Interior and the Minister of Human Resources, was established to head the national response to the coronavirus pandemic.<sup>1</sup> The Operative Corps was and continues to be (January 2021) in charge of developing the necessary medical and epidemiological measures to protect the population and to coordinate the activities of other state bodies.<sup>2</sup>

As a result of the increasing number of infections in both Hungary and Europe, the government declared a state of emergency on 11 March 2020.<sup>3</sup> It was lifted in mid-June 2020, but the 'Epidemiological alert' remained in place, authorising the government to uphold restrictions, especially regarding mass events during the summer.<sup>4</sup> Due to the rapid spread of the virus, travel restrictions were imposed at the end of August, and the state of emergency was reintroduced in November and continues to remain in force, coupled with stay-at-home orders, a social distancing protocol and the closure of schools and certain service providers, e.g. in the

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\* ELTE University, Faculty of Law, Hungary.

1. 1012/2020. (I. 31.) Government Decision on the Establishment of the Operative Corps responsible for the Prevention of the Coronavirus Epidemic.
2. The members of the Operative Corps are the National Chief Medical Officer, directors of the police, the Counterterrorism Centre, the National Ambulance Service, the National Healthcare Service Center, the National Directorate of Disaster Management, the National Directorate-General for Aliens Policing and the South Pest Central Hospital.
3. 40/2020. (III. 11.) Government Decree declaring a state of emergency.
4. 283/2020. (VI. 17.) Government Decree on the introduction of the Epidemiological Alert.

accommodation and food services sector and indoor sport and entertainment facilities.<sup>5</sup>

According to national statistics, a total of 12,432 people in Hungary had died of COVID-19 by 31 January 2021. The vast majority were aged 80+ years.<sup>6</sup>

Task forces have been created to develop measures with the aim of mitigating the negative consequences and secondary effects of COVID-19. The government has passed extraordinary measures to deal with the economic and social impact of the virus,<sup>7</sup> focusing specifically on employment. The unemployment rate has increased despite these efforts and state interventions: the average number of unemployed persons between September and November 2020 was 204,000, an increase of 40,000 persons compared to the same period in 2019.<sup>8</sup> The employment rate has not changed significantly, however, and still stands at 70.2 per cent of the economically productive population (15-64 years), but between September and November 2020, the average number of employed persons was 4,476,000, which is 41,000 fewer than during the same period of the previous year.<sup>9</sup>

According to the Hungarian Chamber of Commerce and Industry,<sup>10</sup> 'employment' in the statistical sense does not necessarily allude to traditional, full-time employment, but also includes people who are on paid or unpaid leave, and those whose employment status has changed from full-

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5. 478/2020. (XI. 3.) Government Decree declaring a state of emergency.

6. <https://www.worldometers.info/coronavirus/country/hungary/> (accessed on 30 January 2021).

7. 140/2020. (IV. 21.) Government Decree on tax relief to mitigate the negative economic effects of the COVID pandemic within the framework of the Action Plan on Protecting the Economy and 484/2020. (XI. 10.) Government Decree on the second wave of measures applicable during the state of emergency.

8. <http://www.ksh.hu/docs/hun/xftp/gyor/mun/mun2011.html> Data of the Hungarian Central Statistical Office, (accessed on 10 January 2021).

9. <https://www.ksh.hu/docs/hun/xftp/gyor/fog/fog2011.html> Data of the Hungarian Central Statistical Office, (accessed on 10 January 2021).

10. Poór József–Balogh Gábor–Dajnoki Krisztina–Karoliny Mártonné–Kun András István–Szabó Szilvia (eds.) *Koronavírus válság – kihívások és HR válaszok* (Challenges and HR's response to the coronavirus), Hungarian Chamber of Commerce and Industry (MKIK) Budapest, 1 October 2020. [https://mkik.hu/ckfinder/files/KoronaHR\\_kutata%CC%81si-jelente%CC%81s.pdf](https://mkik.hu/ckfinder/files/KoronaHR_kutata%CC%81si-jelente%CC%81s.pdf).



time to part-time employment, telework or on-call work. It is anticipated that the pandemic will cause a tangible decline in overall employment indicators, though the different sectors of the economy have not been equally affected.<sup>11</sup>

The pandemic's social implications, i.e. the number of applications for social assistance benefits, and whether their average number in 2020 exceeded those of 2019, is still unclear. Social assistance benefits are provided by the local governments, and statistical data is collected until March the following year, that is, the annual data for 2020 will only be available in June 2021. Results from small-scale surveys (1,000 respondents) are, however, available. According to a survey published by TÁRKI,<sup>12</sup> 32 per cent of the Hungarian population aged 18-54 years reported a significant loss of income since the outbreak of the pandemic.<sup>13</sup> According to COVID-19 survey results of the European Parliament, loss of income (not necessarily significant, but nonetheless a loss) was reported by nearly half of the respondents.<sup>14</sup> Local surveys have also been conducted, e.g. in the VIIIth district of Budapest,<sup>15</sup> in which over half of the respondents (51 per cent) stated that their household income had deteriorated due to the pandemic. These surveys reflect the individual perceptions of a very small number of people. The findings will be compared with the general macro-

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11. Tóth Arnold – Szabó Szilvia – Kálmán Botond – Poór József (2021), A foglalkoztatottság alakulása a Magyar gazdaság szektoraiban a COVID-19 járvány következtében (Status of employment in the different sectors of the Hungarian economy as a result of COVID-19), Új Munkaügyi Szemle, 2021/1, p. 4.

12. Tóth István György–Hudácskó Szilvia (2020), A koronavírus-járvány társadalmi hatásai a közvélemény-kutatások tükrében (Societal effects of the coronavirus according to surveys) In.: Társadalmi Riport 2020, szerk.: Kolosi Tamás, Szelényi Iván, Tóth István György, Budapest, 553-572. The TÁRKI COVID2020 survey was representative and included 878 persons.

13. Ibid., pp. 559-560.

14. Kantar (2020): Uncertainty/EU/Hope. Public Opinion in the EU in Time of Covid-19. Wave 1. Brussels, European Parliament. The survey included 1,043 persons in Hungary.

15. Hungyadi Bulcsú – Molnár Csaba (2020), A koronavírus járvány gazdasági és társadalmi következményei Józsefvárosban (The economic and social consequences of the coronavirus epidemic in Józsefváros), <http://library.fes.de/pdf-files/bueros/budapest/16522.pdf>. The survey is based on 600 interviews with randomly chosen individuals.

economic data on social expenditure for the year 2020, which are not yet available in full detail.

Statistical data on the social implications of COVID-19 in Hungary are scarce because data collection is carried out at the local level while data processing takes place at the central level. At the macro level, public expenditure increased by HUF 1239 billion in the first half of 2020 compared to 2019; approximately 80 per cent of this upsurge was related to COVID-19.<sup>16</sup> By the end of September 2020, corona-related public expenditure totalled HUF 1130 billion, which included, among others, direct costs in the health care sector (vaccinations, public procurement, wage support for health care workers), financial support for public service providers, wage subsidies and social assistance benefits.

## 2. Social assistance measures during the COVID-19 crisis

The Hungarian social protection system consists of sub-systems that correspond to the general European categories, i.e. the sub-systems aim to provide protection against the risk of sickness, invalidity, unemployment, old age and families and individuals in need.<sup>17</sup> The classic distinction between social security and social assistance is applied, with the former referring to contribution-based and universal benefits, and the latter to means-tested benefits.

COVID-19 has necessitated the introduction of extraordinary measures in the social protection system to prevent the marginalisation of people with low income and/or who have young children. The measures mostly focus on families, disabled persons and individuals in need; no extraordinary measures for unemployment have been introduced. The distortions on the labour market caused by the COVID-19 crisis have been addressed with other means, namely tax reliefs and deferrals of social security contributions as well as wage supplement schemes.<sup>18</sup> We focus here on (i) family

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16. <https://www.ksh.hu/docs/hun/xftp/gyor/krm/krm2006.html> (Hungarian Central Statistical Office).

17. For more details, see European Commission (2013), 'Your social security rights in Hungary'. ([https://ec.europa.eu/employment\\_social/empl\\_portal/SSRinEU/Your%20social%20security%20rights%20in%20Hungary\\_en.pdf](https://ec.europa.eu/employment_social/empl_portal/SSRinEU/Your%20social%20security%20rights%20in%20Hungary_en.pdf)).

18. ÁSZ report, Epidemic situation and the labour market – State Audit Office of Hungary, 30 September 2020 ([https://www.asz.hu/storage/files/files/elemzesek/2020/jarvanyhelyzet\\_munkaeropiac\\_2020\\_09\\_30.pdf?ctid=1296](https://www.asz.hu/storage/files/files/elemzesek/2020/jarvanyhelyzet_munkaeropiac_2020_09_30.pdf?ctid=1296)).

benefits; (ii) rehabilitation and disability benefits, and (iii) social assistance and child protection benefits.

### **2.1. Family benefits**

The Hungarian family support system has gradually expanded based on the long-standing traditional form of cash benefits.<sup>19</sup> Over the last decades, several radical reforms have been made; family policy, in particular, has evolved into one of the country's flagship initiatives in the last 10 years. The underlying objective is to provide the necessary means to individuals and couples to have their desired number of children. Family policy must also, however, focus specifically on underprivileged and disadvantaged families, because "*the two most important institutions and scenes for the reproduction of poverty are the education system and the family*".<sup>20</sup>

Several types of benefits are not linked to the individual's employment status or income level. All mothers, for example, are eligible for "maternity allowance", which is a one-off payment of approximately EUR 200 when a child is born. Additionally, all parents are entitled to a monthly family allowance (EUR 35 per month). Families can furthermore claim child care allowance (GYES), which is provided unconditionally to all mothers until the child turns three. The amount of child care allowance is equal to the minimum amount of old-age pension, which is approximately EUR 90 per month. Child raising support (GYET) is the continuation of GYES for parents or grandparents raising three children, if the youngest is under the age of 8 years.<sup>21</sup>

A qualifying period applies to certain benefits. If the mother had at least 365 days of social security coverage in the two years leading up to childbirth, she is eligible for the infant care fee (CSED) for 168 days, amounting to 70 per cent of the wages earned prior to the date of childbirth; no cap applies. From Day 169 following childbirth until the child turns two, CSED is replaced by the child care benefit (GYED). This benefit amounts to 70 per cent of the wages earned by the mother prior to childbirth, but is capped at

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19. SPÉDER Zsolt, MURINKÓ Lívía and SZ. OLÁH Lívía: Cash support vs. tax incentives: The differential impact of policy interventions on third births in contemporary Hungary, *74 Population Studies*, 2020. No. 1. 39–54.

20. RÁCZ Andrea: Social exclusion in Hungary from a child perspective. *6 International Journal of Child, Youth and Family Studies*, 2015. No. 3. 459.

21. All these benefits are included and regulated in Act LXXXIV of 1998 on support for families.

EUR 700 per month.<sup>22</sup> Eligibility for GYED has been expanded in recent years. In 2014, the requirement of a qualifying period was lifted, while as of 1 of January 2020, grandparents, who have not yet retired, may also be eligible for GYED if they are caring for their grandchild. The legal regime's objective is to prevent poverty and parents' inactivity trap. Finally, from 1 of January 2020 onwards, all mothers who are caring for at least four children, or who have cared for four or more children in the past, are fully exempt from paying personal income tax until they retire.<sup>23</sup>

During the first wave of COVID-19, the government extended the payment of certain family benefits that would have expired between 1 March – 30 June 2020 for families with small children. Entitlements to child care allowance (GYES), child raising support (GYET) and child care benefit (GYED) that expired during the emergency period were extended until 30 June 2020.<sup>24</sup>

According to data collected by the Hungarian State Treasury, over 30,000 families benefitted from the extension of GYES/ GYET (see Table 1. GYES/GYET). GYES and GYET are paid out to around 180,000 parents monthly, with the extension supporting approximately 2 per cent of parents and 14 per cent of those already receiving benefits for small children. The transitory regime prohibited an overlap of benefits, i.e. no other additional benefits or allowances could be claimed by the family during the extended eligibility period.

Around 105,000 parents, on average, were receiving the contribution-based benefit GYED, but there is no concrete data on the number of extensions during the first wave of COVID-19. The author's estimation is that around 10 per cent of child care benefits were due to expire in the period between March and June 2020, i.e. the extension likely covered approximately 10,000 families.

Accordingly, about 40,000 families with small children benefitted from the extension of child care allowances during the first wave of COVID-19. No similar measures have been passed during the second wave.

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22. Both benefits 'csecsemőgondozási díj' and 'gyermekgondozási díj' can be found in Act LXXXIII of 1997 on mandatory health insurance.

23. Act CXVII of 1995 on personal income tax, section 29/D.

24. Original extension rule: 59/2020. (III. 23.) Government Decree on extending entitlement to certain maternity and family benefits, and the end of extension: Article 71, Act LVII of 2020 on the termination of the state of emergency as of 18 June 2020.

**Table 1.** Extension of child care benefits during the COVID-19 crisis.

Prolongation of benefits until June 2020				
Categories	Expiring benefits	Successful prolongation	New cases based on successful prolongation	Value of benefits in HUF
<b>CSP, FOT, VSZJ</b>	<b>729</b>	<b>719</b>	<b>719</b>	<b>16 632 592 Ft</b>
-----> SCSP	354		347	7 044 100 Ft
-----> FOT,VSZJ	375		372	9 588 492 Ft
<b>CSP, ICSP ÖSSZESEN</b>	<b>6710</b>	<b>6435</b>	<b>6725</b>	<b>66 613 600 Ft</b>
-----> CSP, ICSP	3357		3405	33 774 700 Ft
-----> CSP, ICSP 2.kör	2344		2338	23 116 700 Ft
-----> CSP, ICSP 3.kör	1009		982	9 722 200 Ft
Tanulói	484	<b>471</b>	481	<b>7 650 300 Ft</b>
GYES, GYET	4054	<b>4002</b>	4002	<b>114 598 500 Ft</b>
GYESGYET_Máj31-es	18830	<b>18757</b>	18757	<b>536 968 500 Ft</b>
GYES Extra 57000	1726	<b>1616</b>	1617	<b>43 974 550 Ft</b>
GYES Extra 85000	46	<b>46</b>	49	<b>1 328 100 Ft</b>
Number of cases TOTAL		<b>31327</b>		<b>771 133 550 Ft</b>

Source: Hungarian State Treasury (September 2020).

## 2.2. Rehabilitation and disability benefits

Hungary's rehabilitation system was restructured in 2011, with more emphasis being placed on rehabilitation and on restoring work capacity,<sup>25</sup> which in principle corresponded with the trends in other European countries, especially Germany.<sup>26</sup>

Two types of benefits are available for individuals with reduced working capacity: 1) rehabilitation benefits, and 2) disability benefits. Individuals whose capacity for work is determined in a work capability assessment to be maximum 60 per cent (i.e. a reduction of work capacity of 40 per cent or more); who were insured for at least 1,095 days over a 5-year period, 2,555 days over a 10-year period or 3,650 days over a 15-

25. Dr. Kovács Gábor (2019), A rokkantság, megváltozott munkaképesség, rehabilitációs ellátások változása Magyarországon 1990 és 2015 között (Changes in disability, reduced working ability and rehabilitation benefits in Hungary between 1990 and 2015), Orvosi Hetilap, Vol. 160. Supplementum 1, pp. 29-36. <http://real.mtak.hu/94720/> (accessed on 20 December 2020).

26. Stamatia Devetzi (2015), Reducing social costs by the rehabilitation system in Germany: Rehabilitation, Prevention and the Role of Employers, Social Cohesion and Development 2015 10 (1), pp. 21-28.

year period prior to submitting their claim; are not pursuing any gainful activity; and are not receiving any regular cash benefits are eligible for rehabilitation benefits.<sup>27</sup>

That is, individuals who can be rehabilitated are entitled to rehabilitation benefits. The benefit is provided throughout the person's rehabilitation period for a maximum of three years. If rehabilitation is not likely (i.e. the individual's capacity for work is assessed to be 40 per cent or lower), or if the person cannot be rehabilitated (his or her capacity for work is 30 per cent or less), or if he or she will be reaching retirement age within the next five years, the individual is eligible for disability benefits. The total number of persons who had a reduced capacity for work and received financial support amounted to 315,000 persons in 2019, out of which only 28,000 persons were being rehabilitated.<sup>28</sup>

The eligibility period for *rehabilitation benefits* was extended until 1 September 2020 during the first wave of COVID-19.<sup>29</sup> These provisions were re-introduced in December 2020 following the declaration of the second state of emergency. Rehabilitation benefits will only be terminated on the last day of the second month following the end of the state of emergency,<sup>30</sup> which will be in place until at least the end of February 2021, i.e. rehabilitation benefits will be paid out until at least the end of April 2021. Hence, the claimants' livelihood is secured, but rehabilitation is not always possible due to the social distancing rules in place.

A key benefit for severely disabled persons is disability allowance (FOT).<sup>31</sup> A severely disabled person refers to an individual who is mentally or physically severely disabled, or is visually or hearing impaired.<sup>32</sup> Approximately 110,000 persons (monthly average number) receive FOT.<sup>33</sup> In

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27. Act CXCI of 2011 on benefits for persons with reduced capacity to work.

28. KSH (Hungarian Central Statistical Office), *Nyugdíjak és egyéb ellátások (Pensions and other benefits)*, 2019, p. 4.

29. Act LVIII of 2020 on the Transitional Period.

30. 556/2020. (XII. 4.) Government Decree on measures related to social assistance benefits and child protection benefits during the State of Emergency.

31. Act XXVI of 1998 on the rights of persons with disabilities and ensuring their equal opportunities.

32. 141/2000. (VIII. 9.) Government Decree on qualification of severe disability.

33. [https://www.ksh.hu/docs/hun/xstadat/xstadat\\_eves/i\\_fsg006.html](https://www.ksh.hu/docs/hun/xstadat/xstadat_eves/i_fsg006.html) Data of the Hungarian Central Statistical Office, (accessed on 10 January 2021).

contrast to rehabilitation benefits, which are paid out to individuals who have reasonable prospects of restoring their working capacity and health, FOT recipients are usually permanently incapacitated for work. Expiry of FOT eligibility is uncommon. However, according to Table 1 (line FOT), the extension of FOT benefits that were set to expire between March and June 2020 comprised 372 persons during the first wave of the pandemic.

### ***2.3. Social assistance benefits and child protection benefits***

The system of social assistance benefits was established by Act III of 1993 on Social Services and Benefits. It regulates cash benefits, in-kind social benefits and social assistance services. The state, local governments, NGOs and churches are the most important providers of social protection schemes for persons and children in need in Hungary.<sup>34</sup>

During the first COVID-19 wave, the first and foremost priority in terms of social assistance was the extension of eligibility, as in the case of family benefits. Any social assistance and child protection benefits<sup>35</sup> that would have expired during the first state of emergency were extended until 31 August 2020.

The mandatory review of cash and in-kind social assistance benefits had been scheduled to take place during the state of emergency and was postponed to 30 June 2020. Finally, the period of eligibility was extended to 31 August 2020 for those entitled to financial assistance for prescription medications.<sup>36</sup> The assistance for prescription medications is part of the social assistance scheme and only those who cannot cover the costs of their own medications are eligible for this support. The maximum monthly amount of such assistance is HUF 12,000 (EUR 35); the precise amount is determined in an administrative decision of the local government. Each beneficiary receives a plastic card that can be used in any Hungarian pharmacy up to his or her set ceiling.

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34. Hoffman István – Gellérné Lukács Éva (2020), *Bevezetés a társadalombiztosítási és szociális jogba* (Introduction to social insurance and social assistance law), ELTE Eötvös Kiadó, Budapest.

35. Act III of 1993 on Social Services and Social Benefits contains these benefits.

36. It is called '*közgyógyellátás*' in Hungarian, which is translated as entitlement to public health care, but in fact, it is a monthly cash support that can only be used in pharmacies to buy the necessary medicines.

These provisions were reintroduced in December 2020 after the second state of emergency was declared, and a new reasonable deadline has been agreed.<sup>37</sup> Accordingly, the reviews of cash and in-kind social assistance benefits shall be completed by the end of the second month following the month in which the state of emergency ceases. Entitlement to social assistance benefits and to financial support for prescription medications that expires during a state of emergency has been extended for an additional 90 days from the date of the end of the state of emergency.<sup>38</sup> As the current state of emergency will be in place until at least the end of February, these benefits will continue to be paid out until the end of May 2021.

### 3. Social security contributions and social security tax

During the first wave of COVID-19, employers were required to continue paying social security contributions for employees who had taken unpaid leave.<sup>39</sup>

When an employee takes unpaid leave, his or her social insurance contributions are suspended. The same applies to self-employed persons, i.e. their social insurance contributions are suspended during the suspension of their activities.<sup>40</sup> An employee or self-employed person is usually required to cover his or her social security contributions in full during periods of unpaid leave. Social security contributions are compulsory for all Hungarian residents. They entitle the contributor to in-kind health care benefits only. The monthly contribution rate was HUF 7,710 (EUR 20) in 2019 and was raised to HUF 8,000 (EUR 25) per month in 2021.

During the first COVID-19 wave, employers were ordered to pay the employee's social security contribution rate; as of 1 May 2020, employers were required to pay the health care contribution of any employee who was on unpaid leave due to the state of emergency. This obligation continued until the sixtieth day after the end of the state of emergency,<sup>41</sup>

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37. Article 1 of 556/2020. (XII. 4.) Government Decree.

38. Articles 1-4 of 556/2020. (XII. 4.) Government Decree.

39. Article 20 of 140/2020. (IV. 21.) Government Decree.

40. Main cases of suspension: unpaid leave, unjustified absence from work, exemption from the obligation to perform work, except if the employee receives his/her wage during the exemption period.

41. Article 40 of Act LVII of 2020 on the termination of the state of emergency.



which was declared on 18 June 2020, i.e. employers had to cover the health care contribution of employees on unpaid leave until 18 August 2020. When the state of emergency was re-introduced on 3 November 2020, no similar obligation was imposed on employers.

Tax relief provisions were adopted in the form of payroll tax relief<sup>42</sup> for employers in certain sectors, who employ natural persons; for self-employed persons, and for persons working for an undertaking as a member.<sup>43</sup> The economic sectors included, among others, were: the accommodation and food services industry; sports and entertainment services; the production of film, videos and movies; travel agencies; passenger transport; gambling; the production of newspapers and periodicals; and the organisation of conferences and other events. Employers, self-employed persons and persons working as members of undertakings were exempt from paying payroll taxes from March to June 2020.

During the second wave of the coronavirus, the payroll tax relief was re-introduced for the period November 2020 to February 2021 for those same economic sectors.<sup>44</sup> These measures aim to protect jobs and to support employers to prevent redundancies.

Last but not least, an economy protection action plan was adopted by the government in the spring of 2020 to mitigate the economic crisis caused by the coronavirus, with a focus on job retention and job creation.<sup>45</sup> Employers could apply for wage subsidies between 16 April and 31 August 2020 if they were able to demonstrate that jobs were at risk due to the pandemic. Consequently, 70 per cent of employers' wage costs were subsidised by the state for a period of three months. During the first wave of COVID-19, the wage subsidy programme contributed to the retention of nearly 270,000 jobs, but the State Audit Office emphasised: "*...the majority of employers considered the crisis to be temporary and treated it as such; at the cost of significant financial sacrifices, it therefore retained part of the workforce. State aid in this provided assistance. However, with the strengthening of a possible second wave, the decline can no longer be con-*

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42. Act LII of 2018 on social contribution tax. This is a solidarity tax paid by the employer on top of the employee's wages, and is also paid by self-employed persons and members of undertakings.

43. Article 34 of Act LVII of 2020 on the termination of the state of emergency.

44. Article 5 (4) of 485/2020. (XI. 10.) Government Decree.

45. 105/2020 (IV. 10.) Government Decree.

sidered temporary, therefore, further redundancy waves may occur".<sup>46</sup> During the second COVID-19 wave, the so-called sectoral wage subsidy was introduced. The targeted sectors are the tourism and accommodation industries. Until 8 February 2021, employers can apply for wage subsidies; the programme aims to protect approximately 100,000 workers.

#### 4. Mobile workers and COVID

Hungary is and has always been a defender of free movement, which is a symbol of European unity and identity. "*The freedom of movement of persons cannot be restricted, and the requirements laid down in the Treaty, the secondary legislation and the case-law shall be observed everywhere*".<sup>47</sup>

On a global scale, Hungary cannot be considered a typical receiving or sending country in terms of labour mobility. On one hand, the volume of labour mobility and its ratio to the population is significantly lower than in large host or sending countries; on the other hand, the global migration and mobility trends have only had a minimal effect on Hungary.<sup>48</sup>

Hungary's special situation as regards emigration can be attributed to past historic events, and is concentrated in the Carpathian Basin.<sup>49</sup> The majority of Hungarian emigrants in Europe live in Austria, where approximately 120,000 Hungarians work, followed by Germany and the United Kingdom.

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46. ÁSZ report, Epidemic situation and labour market – State Audit Office of Hungary, 30 September 2020.

47. Éva Lukács Gellérné (2011), Free Movement of Persons – a Synthesis, In: Somssich, Réka; Szabados, Tamás (szerk.) Central and Eastern European Countries After and Before the Accession, Budapest, ELTE Állam- és Jogtudományi Kar, pp. 51-84. p. 52 [https://www.ajk.elte.hu/file/JM\\_Lukacs\\_PersonsFreeMovement.pdf](https://www.ajk.elte.hu/file/JM_Lukacs_PersonsFreeMovement.pdf) (accessed on 20 January 2021).

48. Kincses Áron – Gellérné Lukács Éva (2020), Jó kormányzás és tényalapú migrációs politikák, Kutatási Összefoglaló (Research summary), In: Smuk, Péter (szerk.) Társadalmi fenntarthatóság, Budapest, Ludovika Egyetemi Kiadó, page 1063, <https://tudasportal.uni-nke.hu/tudastar-reszletek?id=123456789/16198> (accessed on 15 January 2021) and Sándor Illés (2015): Circular human mobility in Hungary. Migration Letters, 12, 2. pp. 152-161.

49. Áron Kincses (2020), Hungarian International Migrations in the Carpathian Basin, 2011-2017, Corvinus Journal of Sociology and Social Policy, Vol. 11 (2020) 1, 23-49. <http://real.mtak.hu/114524/1/391-2094-1-PB%20%281%29.pdf> (accessed on 20 January 2021).

The volume of remittances to Hungary confirms the economic significance of cross-border workers, i.e. remittances make up a substantial part of Hungary's GDP.<sup>50</sup> On the other hand, the brain drain phenomenon represents a continuous challenge for Hungarian policy makers and stakeholders.

The number of immigrants to Hungary has remained static in recent years. Two-thirds of immigrants living in Hungary arrived from neighbouring countries in the Carpathian Basin, i.e. short-distance mobility is characteristic for immigrants residing in Hungary, and local networks are in place.<sup>51</sup> The ratio of EU mobile workers is very low.

A gradual increase of returnees to Hungary has been observed since 2011 onwards. While only 2,443 Hungarians returned to Hungary in 2011, this number reached 23,172 Hungarians in 2019, i.e. there was an almost tenfold increase in returnees within an 8-year period. Between 2011 and 2019, a total of 125,851 people returned to Hungary, nearly 60 per cent (58.69 per cent) of those who had left during that same period. The number of returnees exceeded that of emigrants for the first time in 2019, when 1,272 more Hungarians returned than left the country.<sup>52</sup>

COVID-19 has fundamentally impacted cross-border movements within the EU. Hungary has experienced higher return mobility. The volume and effect of the crisis cannot be factually substantiated, as no detailed statistics are available. No horizontal measures have been put in place either, meaning that no measures have been adopted to catalyse return migration, to support returning mobile persons or to intervene in any other way.

#### ***4.1. Mainstreaming families, housing support***

As it has already been highlighted above, family policy is of utmost priority in Hungary. During the first and second COVID-19 waves, not only

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50. Szegedi László (2020), Az Európai Unióból Magyarországra érkező hazautalások szerepe és jelentősége (The role and effect of remittances from the EU to Hungary), In Smuk, Péter (szerk.) Társadalmi fenntarthatóság, Budapest, Ludovika Egyetemi Kiadó, p1245-1284, p1156. <https://tudasportal.uni-nke.hu/tudastar-reszletek?id=123456789/16198> (accessed on 15 January 2021).

51. Kincses Áron – Gellénné Lukács Éva (2020) p. 1068.

52. Gyeney Laura (2020), Mobilitási trendek Európában, különös tekintettel Magyarország helyzetére, In Smuk, Péter (szerk.) Társadalmi fenntarthatóság, Budapest, Ludovika Egyetemi Kiadó, pp. 1074-1184, p. 1156. <https://tudasportal.uni-nke.hu/tudastar-reszletek?id=123456789/16198> (accessed on 15 January 2021).

did the government extend benefit eligibility, but it also announced several new or renewed measures related to cash benefits and housing for families. The mainstreaming of family policies might induce young couples currently living and working in other EU Member States to return to Hungary.<sup>53</sup> The Institute for Families and Demography (KINCS) is a key player in this process. It proposes policy actions and carries out surveys with the aim of assisting Hungarian families and examines measures from the perspective of mobile workers.<sup>54</sup>

The infant care fee (CSED) will, as of 1 July 2021, be raised from the currently 70 per cent wage base rate to 100 per cent of the employee's previous wages.<sup>55</sup> This measure will put mothers with newborns into a more favourable financial position, as the tax rate for the infant care fee is lower than for wages.

The number of people who rent homes in Hungary is very low, i.e. the majority are home owners. In 2015 and 2016, the government introduced a housing allowance scheme for families (CSOK), which is provided to those who want to either purchase or build a house/flat, or who want to increase their property size.<sup>56</sup> The amount of the subsidy depends on the claimant's number of children.

Families that are raising three or more children, or *that plan to raise at least three children in the future* (including the children they already have) are entitled to a one-off in-cash support of approximately EUR 30,000 to purchase a new house or flat. In addition, they are eligible for a EUR 45,000 residential loan at a state-subsidised interest rate. Since 2018, the housing allowance covers families with two children as well. By 2016, 134,000 CSOK contracts had already been concluded, amounting to HUF 321 billion.<sup>57</sup> Every second CSOK contract is concluded by parents who

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53. Fűrész Tünde – Molnár Balázs: A családbarát Magyarország építésének első évtizede az Európai Unióban (The first decade of family friendly Hungary in the EU). Kapocs, 2020/3-4. 3-11.o KINCS, Budapest 2020.

54. [www.koppmariaintezet.hu](http://www.koppmariaintezet.hu) (accessed on 15 January 2021).

55. Article 41 (1) b) of Act LXIII of 1997 on mandatory health insurance.

56. Government Decree 16/2016. (II. 10.) on the state subsidy for building and purchasing a new flat and Government Decree 17/2016. (II. 10.) on subsidy for purchasing and enlarging used flat.

57. <http://www.ksh.hu/docs/hun/xftp/idoszaki/lakashitel/20201/index.html> (Hungarian Central Statistical Office – loan situation in the first half of 2020).

plan on having another child in the future, hence, the birth-promoting effect of CSOK is very significant for Hungary,<sup>58</sup> in addition to the housing market stimulus effect.

The state has further bolstered CSOK during COVID-19. As of 1 January 2021, families building a two generation house by constructing a separate flat in the attic of the house will be eligible for the full CSOK subsidy amount (EUR 32,260). The 4 per cent tax for purchasing a house/flat will be abolished for CSOK properties. The VAT of newly built houses will be reduced by 22 per cent (from 27 per cent to 5 per cent), and the state will reimburse the remaining 5 per cent VAT for families that purchase their homes through the CSOK housing programme.

## 5. Conclusions

During the first wave of COVID-19 in Hungary, a wide range of measures were introduced by the government. The period covered by these measures was March – June 2020. The social policy measures focused primarily on extending the eligibility period of beneficiaries. The expiry of benefits and deadlines for reviews of eligibility for disability and social assistance benefits were extended until at least the end of June (or until the end of August in the case of rehabilitation benefits). The extension of family benefits for families with small children (both social insurance contribution-based and universal benefits) covered approximately 40,000 families (households). Data on social assistance benefits are not yet available on a national scale. During the second COVID-19 wave, the same benefits were extended, with the exception of family benefits, and reasonable expiry dates following the end of the emergency have been set.

Secondly, during the first wave of COVID-19, employers assumed additional burdens and were required to pay social insurance contributions for employees who had taken unpaid leave; this obligation was not reintroduced during the second wave.

Thirdly, certain employers, self-employed persons and persons working as members of undertakings in economic sectors hit hard by the imposition of social distancing measures, thus resulting in closures or severe losses of income were exempt from paying payroll taxes for their employ-

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58. Béres Orsolya – Papházi Tibor: Családi Otthonteremtési Kedvezményben (CSOK) részesülő családok szocio-demográfiai jellemzői (Socio-demographic characteristics of families receiving CSOK), Kapocs 2019/1-2. KINCS, Budapest 2019.

ees. Moreover, wage subsidies protected the jobs of nearly 270,000 workers during the first COVID-19 wave. Wage subsidies have also been made available during the second wave, and it is expected that around 100,000 workers will benefit from the sectoral wage subsidy programme.

The following table summarises the target areas of interventions, also indicating the timeframe and legal category of the respective period.

**Table 2.** Compiled by the author (2021).

Period	Legal situation	Main target areas
11 March 2020 - 17 June 2020	State of emergency	Protective measures targeting social assistance, family and rehabilitation benefits and employees' wages and contributions
18 June 2020 - 3 November 2020	Epidemiological alert	Protective measures targeting employees' wages and contributions
4 November 2020 - January 2021 and ongoing	State of emergency	Protective measures targeting social assistance and rehabilitation benefits, employees' wages and contributions and housing benefits

Finally, no special measures were introduced for mobile workers in response to COVID-19. The expansion of Hungarian family policy measures might evolve into a strong incentive for young people and young couples currently living and working in other EU Member States or elsewhere in the world to return to Hungary.

Further research will be necessary to explore the mental and emotional consequences of COVID-19 and the changes in the labour market and in social security, as this article only paints an outline of the most important policy interventions in Hungary and their measurable effects.

Finally, the author wishes to express her gratitude to the organisers of the online conference "Social security in times of corona from a comparative law perspective: The case of migrant workers and other vulnerable groups (of workers)" and to Hochschule Fulda, to Aristotle University of Thessaloniki and to DAAD for their support.

# **Income support in Italy during the pandemic: an adaptive and fragmented approach in the context of continuity**

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Edoardo ALES\*

## **1. Background**

Italy was the first EU Member State to be hit particularly hard by the pandemic, which – despite China’s experience serving as a stark warning – caught the national authorities completely off guard. From being a last resort, a nationwide lockdown became the government’s only option on Monday, 9 March 2020. Italy closed down for three full months and people were confined to their homes; the only activities residents could engage in was walking their dog and queuing to buy food. Working from home became the rule in the service and education sector. Industrial activities, with a few exceptions related to the production of essential goods, came to a standstill. It was the first time since World War II that the State – a democratic State – denied its citizens the right to work and the freedom to conduct a business – but for good reason, one could argue, namely to protect public health. Between December 2019 and March 2020, however, no public authority – neither national nor regional – took the threats COVID-19 posed or its potential to spread so rapidly in our globalized and interconnected world, seriously. We now know that an anti-pandemic plan had actually existed in Italy on paper since 2010.

Active policy measures were introduced as early as 17 March 2020, when the government adopted Decree Law No. 18, which was eventually enacted as Act 24 No. 27 in April 2020. Decree Law No. 18 was the first of several measures passed in the wake of the pandemic. The unpredictable political situation has slowed the entire process. The government’s response clearly demonstrates that both the executive and legislator mostly improvised and did not, in the face of uncertainty, follow a strategy focused on the present or future, when the true dimensions of the pandemic’s detrimental social and economic impacts will be felt.

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\* University of Naples “Parthenope”, Italy.

It may sound cynical, but one could argue that the spread of the virus across the EU was a decisive factor in gaining support for a national strategy based on income and revenue support programmes financed from public debt. Without the suspension of the Maastricht criteria, such support measures would have been unthinkable and any discussion on a recovery plan would have been off the table. The COVID-19 pandemic necessitated and has allowed for an unprecedented degree of solidarity at supranational level, despite the initial hesitation of more 'frugal' Member States.

To deal with employment and the labour market situation, the Italian legislator primarily relied on an already existing instrument introduced through collective bargaining in 1941 and enacted into law in 1945: the Earnings Integration Fund (EIF). The EIF provides income support to workers whose working time has been reduced (even to zero) on grounds not attributable to either the employer or the employee (Ordinary EIF), as was the case, for example, during and immediately after World War II.

Over the years, the scope of application of EIF has been extended from an objective and subjective perspective. As regards the former, restructuring of undertakings has been added (Extraordinary EIF); as for the latter, the EIF now covers the employees in a large number of sectors, including construction and agriculture. However, seasonal activities, such as tourism and catering, sport and leisure are excluded from the scope of EIF application.

By definition, the EIF provides in-work benefits that exclusively apply to existing employment relationships. That is, self-employed persons, regardless of their sector of activity, are excluded from EIF. Undertakings that fall within the scope of EIF's application pay a basic contribution rate and an additional amount in case of use.

More recently, the Italian legislator introduced means-tested, anti-poverty schemes targeting families in need. One such initiative was the "Inclusion Income" (*Reddito di Inclusione*) scheme of 2017, which was replaced in 2019 by the "Citizenship Income" (*Reddito di Cittadinanza*) scheme. The scheme provides income support that is conditional on the beneficiary's labour market activation, i.e. on him or her accepting a suitable job offer proposed by the Employment Services. Both schemes are financed from public funds.

This contribution reviews how the pandemic's social and economic consequences have been addressed by the government by adapting or supplementing already existing instruments.



To support employment retention in undertakings, a combination of EIF assistance, a prohibition of dismissals, suspension of contribution payments and the extension of fixed-term contracts was used to prevent a rise in unemployment. The payment of unemployment benefits for those already drawing on them was extended (para. 2).

Employees working in sectors excluded from the EIF as well as self-employed persons received financial support; the amount was determined by the legislator on a monthly basis. Moreover, the "Last Resort Income" (*Reddito di Ultima Istanza*), an income support scheme (para. 3), was introduced.

Income support was also introduced for cross-border workers whose activity was suspended due to the pandemic (para. 4).

Families in need are covered by a supplement to the "Citizenship Income", namely the "Emergency Income" (*Reddito di Emergenza*) scheme (para. 5).

Undertakings that have had to shut down due to the lockdown measures may benefit from partial reimbursement for loss of revenue (para. 6).

## 2. Employment in undertakings

Efforts have been undertaken to mitigate the effects of the COVID-19 crisis, with a focus on employment retention in undertakings, and entail a combination of (a) EIF financial assistance, (b) prohibition of dismissals, (c) suspension of contribution payments, and (d) extension of fixed-term contracts to prevent a rise in unemployment. Moreover, the payment of unemployment benefits for those already drawing on such benefits has been extended (e).

### 2.1. COVID-19 EIF

According to Article 19 of Decree Law No. 18 of 2020, it was anticipated that undertakings may be required to substantially reduce or possibly even suspend their activities altogether due to the COVID-19 crisis, and may have to consequently cut the working time of their employees. In such cases, employers can apply for the Ordinary EIF for up to 9 weeks to cover the wages of part of or of their entire workforce, without fulfilling any further conditions as usually required by the applicable regulations. The COVID-19 EIF period is not included in the calculation of the maximum duration of the Ordinary EIF as specified in the law. COVID-19 EIF benefits may be granted within the boundaries of available resources.

The initial 9-week period has been extended several times to cope with the continued crisis. Since August 2020, however, undertakings that have been covered by the COVID-19 EIF have had to contribute to its financing in inverse proportion to their loss of revenue in 2020. Employers whose revenue has declined by 20 per cent or more, that established their operations after 1 January 2019 or that have had to suspend or reduce their activity due to the crisis are exempt from paying social security contributions.

## ***2.2. Prohibition of dismissals***

The 60-day prohibition of individual or collective dismissals on economic grounds is strictly linked to the introduction of the COVID-19 EIF as stipulated in Article 46 of Decree Law No. 18 of 2020. This prohibition was extended to 5 months in Article 80 of Decree Law 19 May 2020, No. 34, enacted as Act No. 77 of 2020, which also allows for a waiver of dismissals between 23 February and 17 March 2020 in case the employer applied for the COVID-19 EIF.

On the other hand, Article 14 of Decree Law 14 August 2020, No. 104, enacted as Act No. 106 of 2020, limits the application of this prohibition to employers who did not take full advantage of both COVID-19 EIF periods and the suspension of contribution payments provided by the same decree law (see below). This confirms the legislator's preference for in-work benefits over terminations of employment contracts. This does not apply to dismissals following the closure of an undertaking that is in liquidation and whose activity, in any form, will be continued.

The legislator's preference to prevent dismissals is reiterated in Article 60 of Decree Law No. 104 of 2020, which allows regions, autonomous provinces, local authorities and chambers of commerce to provide wage compensation of up to 80 per cent – using their own resources – for a maximum period of 12 months to undertakings facing economic difficulties due to COVID-19.

## ***2.3. Suspension of contribution payments***

As an alternative to the extension of the COVID-19 EIF established in Article 1 of Decree Law No. 104 of 2020, undertakings that have already made use of the 9-week period stipulated in Decree Law No. 18 of 2020, may suspend contribution payments for up to 4 months between August and December 2020. The prohibition of dismissals applies in those cases.

#### ***2.4. Extension of fixed-term contracts***

To prevent a rise in unemployment, Article 19-*bis* of Decree Law No. 18 of 2020 derogates from the regulation on fixed-term contracts – also in case of temporary agency workers – allowing for an extension beyond the limits usually provided in the legislation in force (12 months). This derogation is confirmed in Decree Law No. 34 of 2020. However, Decree Law No. 104 of 2020 limits extensions of fixed-term contracts to 24 months, but excludes contracts concluded with temporary agency workers if they were hired by the temporary work agency under an open-ended employment contract.

#### ***2.5. Unemployment benefits***

With a view to supporting unemployed persons who were receiving income support benefits (NAsPI and DISCOLL), which were set to expire during the crisis period, and considering that new employment opportunities are currently scarce, the legislator introduced a 4-month extension for those who are not eligible for other income support instruments (see below).

This combination of intervention measures has prevented an increase in unemployment by ‘freezing’ any changes to the situation of employed persons or persons covered by an unemployment scheme. Clearly, these emergency measures cannot continue indefinitely, also because of constitutional aspects linked to the guarantee of the freedom to conduct a business. Sooner or later, the prohibition of dismissals will end, and undertakings will be facing the global economic crisis triggered by the pandemic; mass redundancies are anticipated. At the time of writing, there were no structural measures in sight to cope with the aftereffects of the crisis.

### **3. Employees working in sectors excluded from the EIF and self-employed persons**

As already mentioned above, some economic sectors are excluded from the EIF as are self-employed persons.

In Decree Law No. 18 of 2020, the legislator attempted to provide a comprehensive solution by introducing the “Last Resort Income” (LRI) (Article 44, modified by Article 78 of Decree Law No. 34 of 2020 and by Article 13 of Decree Law No. 104 of 2020). In fact, the LRI Fund, established by INPS (the National Social Security Institute) provides a flat fee to employees and self-employed persons whose activities or employment relation-

ships have been terminated, decreased or suspended as a result of the COVID-19 crisis. The legislator assigned the Ministries of Social Affairs and Finance to specify the conditions for entitlement in an inter-ministerial decree. The decree focuses on professionals, including lawyers, accountants, engineers, architects, etc., who are not in an employment relationship, have not yet reached pensionable age and are insured by their respective professional fund. The monthly allowance, which was initially set at EUR 600, has now been increased to EUR 1,000 per month.

The narrow scope of application of the LRI has been supplemented with a fragmented set of provisions introduced by Decree Law No. 18 of 2020, which have been replicated and integrated in each subsequent decree law.

Self-employed persons includes: a) professionals who are self-employed and have a VAT number, are not insured by their respective professional fund, and have not yet reached pensionable age; b) self-employed persons without a VAT number, who performed occasional self-employed contracts between 1 January 2019 and 23 February 2020; c) coordinated self-employed persons, who are insured by the relevant INPS fund, and have not yet reached pensionable age; d) coordinated self-employed persons in the sport sector, who are insured by the relevant INPS fund; e) self-employed persons who are insured by the INPS General Mandatory Scheme, but have not yet reached pensionable age; f) itinerant traders, hawkers and peddlers, with a VAT number and an income in 2019 that exceeded EUR 5,000.

Employees covered by this scheme includes: a) seasonal workers; b) fixed-term agricultural workers; c) cultural workers; d) on-call workers who were employed for at least 30 days between 1 January 2019 and 31 January 2020; e) domestic workers, who were employed for more than 10 hours per week; and f) seafarers.

Allowances range from a minimum of EUR 500 per month for domestic workers to a maximum of EUR 1,000 per month for self-employed persons. They are provided on a monthly basis and are included in several decree laws that have been adopted during the crisis. In principle, they are not cumulative with other allowances the beneficiary might be entitled to, unless the latter is of a higher amount than the former. In that case, the more substantial allowance will be paid out to the beneficiary.

Allowances are awarded by INPS following submission of the claimant's application, and are approved within the boundaries of available re-

sources specified in each decree law. INPS is in charge of monitoring budget allocation and adherence to the rules and regulations, and of keeping the Ministries of Social Affairs and of Finance up to date. If the amount of allowances paid out threatens to exceed the available budget, the payments will be halted immediately.

#### 4. Cross-border workers

An important provision has been introduced in Article 103-*bis* of Decree Law No. 34 of 2020 for cross-border workers within the meaning of Regulation No. 883/2004/EC and of the agreement between the EU Member States and Switzerland of 1999. The notion of cross-border worker includes anyone who works in a third country bound to Italy by a bilateral agreement. Article 103-*bis* provides financial support in the amount of EUR 6 million for cross-border employees or self-employed persons who have had to involuntarily cease their activity due to the outbreak of the crisis on 23 February 2020, and who are not entitled to any allowance or benefit provided by ordinary or emergency legislation. The legislator delegated the details of the regulations on income support to be specified in an inter-ministerial decree. Unfortunately, at the time of writing, the decree had not yet been published.

#### 5. Families in need

Families in need as a result of COVID-19 may be eligible for Emergency Income (EI) as provided for in Article 82 of Decree Law No. 34 of 2020 and supplemented by Article 23 of Decree Law No. 104 of 2020 and Article 14 of Decree Law No. 137 of 2020. Unlike the Citizenship Income scheme, EI is an income support measure only, which is not made conditional on the beneficiary's labour market activation. On the other hand, the legislator, well aware of how difficult it is to find a job in the current situation, has suspended any conditionality on the granting of the Citizenship Income. Therefore, the differences between EI and the Citizenship Income scheme have become blurred.

Eligibility for EI requires families to meet the following requirements at the time of application: a) residence in Italy, verified for the family member applying for the EI; b) a family income, as defined by law, that in April 2020 did not exceed EUR 840; c) movable assets, as defined by law, that do not exceed EUR 10,000, increased by EUR 5,000 for each additional

family member living in the applicant's household, up to a maximum of EUR 20,000, or EUR 25,000 if one of the family members is severely disabled or if a dependent requires care; d) an indicator of equivalent economic situation (ISEE) below EUR 15,000.

The following factors preclude eligibility for EI: a) when a family member is entitled to one of the benefits or allowances mentioned above or to the LRI; b) entitled to a direct or survivor's pension (excluding the invalidity benefit); c) employed and earning a monthly wage that exceeds EUR 840; d) entitled to the Citizenship Income or a Citizenship Pension scheme.

Individuals who are imprisoned, in long-term hospital care or live in a public-funded retirement home are not entitled to EI. If the aforementioned conditions apply to one of the claimant's family members, he or she shall not be included in the verification process for EI eligibility.

INPS is in charge of reviewing whether the entitlement requirements are met and to award the EI allowance. The maximum monthly amount is EUR 840.

As is the case with the other allowances and benefits mentioned above, the EI allowance is awarded by INPS following submission of the claimant's application, and is approved within the boundaries of available resources determined by the legislator in each decree law. INPS is in charge of monitoring budget allocation and adherence to the rules and regulations, and of keeping the Ministries of Social Affairs and of Finance up to date. If the amount of allowances paid out threatens to exceed the available budget, the payments will be halted immediately.

The fact that the monthly household may not exceed the amount provided by the EI allowance (EUR 840) confirms that the EI is targeted at low-income families that are barely above the poverty threshold.

## **6. Undertakings that have temporarily shut down**

Although not traditionally considered a social security measure, financial support that does not need to be repaid, and that is being provided to undertakings that have had to temporarily shut down due to lockdown measures or that have been hit hard by the economic crisis triggered by the pandemic, is also worth mentioning. Initially implemented as a recovery instrument following the first complete lockdown, financial support has also been widely provided during the second wave of the pandemic, i.e. since October 2020, when the Italian government adopted a 'zones' strategy. This strategy, which classifies regions by colour (white, yellow,

orange and red) according to the severity of infection rates, targeted businesses that usually host large groups of people, such as restaurants, bars, leisure centres, ski resorts, etc. In addition to individual allowances for workers, the legislator has also provided financial support to entrepreneurs, who are either legal or physical persons, if their revenue has decreased by two-thirds.

The amount of financial support, which does not need to be repaid, is calculated as a percentage (15 per cent or 10 per cent of the level of revenue) of the difference between the revenue earned in 2020 and that earned in 2019 during the same month. Clearly, this is not the amount entrepreneurs were expecting to have to depend on to survive the crisis.

## 7. Conclusion

It is difficult to draw an unbiased conclusion, having been personally affected by the harsh measures adopted by the Italian government to mitigate the unprecedented crisis in our globalized world. On the one hand, the fact that no preventive measure had been adopted to deal with the possibility of a pandemic must be emphasised. This forced the government to react under pressure, without the necessary means to guarantee the exercise of the right to health, to work and to the freedom to conduct a business. The government's actions can be excused for the first wave of the pandemic, but not for the second, which had been predicted by numerous experts. Very few measures were taken over the summer to prepare for the autumn/winter wave. Instead, a wait and see approach was taken to respond to the virus ad hoc, which is confirmed by the monthly adoption of decree laws, which, by definition, are emergency instruments.

The Italian government has taken an adaptive and fragmented approach, which highlights the advantages and disadvantages of Italy's income support system. From this perspective, EIF has proven a reliable tool, above all when supplemented by a prohibition of dismissals and the possibility of extending fixed-term contracts. On the other hand, the limited scope of EIF application represents a weakness of the system, requiring the provision of a multitude of allowances and benefits, which the Italian legislator has not been able to systematise. Furthermore, the amount of financial support has not met the beneficiaries' expectations and needs, many of who are now at risk of poverty. The same can be said about the financial support (which does not need to be repaid) for un-

dertakings which had to shut down due to the lockdown measures, resulting in a winter of discontent and with social, economic and political consequences, the scope of which cannot yet be predicted.



# Social security in the Netherlands in times of corona

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Frans PENNING<sup>\*</sup>

## 1. Introduction

Just like other countries, the coronavirus has hit the Netherlands hard. Measures were introduced in March 2020 in an effort to avoid overburdening the health care system, and includes business and store closures, cancelations of cultural events, etc. The suppliers of businesses no longer had any work. The export of goods and services to other countries came to a halt as well. The impacts of the crisis are unprecedented and devastating. The measures were partially lifted in June 2020, but by October 2020, in response to the second wave of COVID-19, large parts of the economy were again scaled back or shut down.

Soon after the initial measures were introduced in March 2020, the government acknowledged that the existing social security regulations were inadequate to cope with the effects of the lockdown. Since it was the government that decided to 'close down' the economy, and considering that compliance with the rules was crucial to beat the virus, and that without support, the impact of this shock on the economy would be amplified even further, the government presented a far-reaching financial package to support companies. It has been extended and revised over time.

The schemes were developed following intense consultations with the social partners; modifications to the schemes were discussed with them as well; however, the government took the final decision and ultimately bears responsibility for the schemes.

Because of the temporary nature of the schemes, it is not necessary or useful to discuss the details of each scheme. Some of the schemes are presented here to detail how the economic challenges have been dealt with up to 1 January 2021. The schemes also shed light on why the use of social security benefits was not as prevalent as one might expect, given

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<sup>\*</sup> Utrecht University, the Netherlands.

the gravity of the crisis, and why the existing Dutch social security schemes have not yet been revised.

Section 2 discusses the job support scheme supporting companies in retaining their employees and preventing unemployment; Section 3 reviews the support scheme for the self-employed, and Section 4 presents the scheme for flexible workers. Section 5 deals with the position of frontier workers, and Section 6 concludes.

## **2. Job support scheme to help businesses retain their workers (NOW)**

### ***2.1. Overview***

Under the *Tijdelijke Noodmaatregel Overbrugging voor Werkgelegenheid* (NOW – Temporary emergency scheme to retain employment), extensive wage subsidies have been paid out to companies to offset some of their revenue losses. The aims to help companies bridge the crisis without having to dismiss workers. This scheme replaced other previously existing schemes, such as the short-time work scheme.

As a consequence of this scheme, unemployment has risen less than expected (it increased from 2.9 per cent in February 2020 to 4.6 per cent in July 2020). The number of bankruptcies has also remained low, in fact, it is considerably lower than usual. However, once these measures are scaled back or expire, and when companies have to adjust to the new circumstances, a considerable increase in unemployment can be expected.

NOW was introduced in March 2020 as a swift and large-scale scheme. It has been revised several times, with conditions being modified and gradually tightening over time. The scheme is expected to remain in place until 1 July 2021.

### ***2.2. Eligibility criteria for employers***

Within the scope of the first NOW scheme, NOW1, which was in force until 1 June 2020, a maximum of 90 per cent of employers' total wage costs were subsidised, if they expected their revenue to decrease by at least 20 per cent over a 3-month period (employers could choose which three months) as a result of the coronavirus crisis.

All employers, including industrial and commercial enterprises, sports clubs, churches, etc., which had earned a revenue for at least one month

prior to March 2020, were eligible for the scheme.<sup>1</sup> There were no additional requirements as regards the causes for the reduction in revenue, i.e. it could be attributable to several causes, including business closings to mitigate the spread of the virus and inability to implement the required measures (such as keeping a 1.5 meter distance). Businesses that remained open, but experienced revenue losses, were also eligible. Foreign employers qualified as well if they employed workers who are covered by social insurance in the Netherlands.

One important condition for eligibility to the first NOW scheme was that beneficiary employers were prohibited from dismissing workers for economic reasons.

Following the expiry of the initial subsidy period, employers were required to provide information on their actual revenue losses and support this information with financial statements. If the necessary conditions of eligibility were not fulfilled, the administrative authority, UWV, could reduce, suspend or reclaim the subsidy paid out. This was the case, for instance, if the employer had requested authorisation to dismiss employees for economic reasons. If this request was granted, the subsidy was reduced accordingly: the wages of the dismissed worker(s) were deducted from the sum of the subsidy.

Moreover, if a lower total sum of wages was paid compared to those paid in January 2020, the amount of the subsidy was also reduced accordingly.

### *2.3. Wage subsidy for eligible employees*

Subsidies under the NOW scheme are payable to workers with either a permanent or a flexible contract; employers are required to continue paying –to the extent possible– their workers' full wages. The NOW subsidy can only be used for the payment of wages.

The subsidy can also be requested for employees for whom there is no obligation to provide a minimum number of working hours and to pay wages, e.g. for workers with zero-hour contracts. Temporary work agencies can also apply for a subsidy for the workers they employ. If the employer to whom a temporary agency worker has been posted no longer requires that worker's services, the temporary work agency has the possi-

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1. A special calculation applies to the calculation of revenue of a company that was established after 1 January 2019.

bility to continue employing him or her and apply for the wage subsidy. The same applies to pay-roll companies. The wages for trainees as well as for platform workers are covered by the scheme as well, if the individuals are employed by the platform.

Since the scheme on short-time working has been repealed, workers have the right to their full wage, as long as they are employed, also if they only work partially. That is, even if the employer does not receive the NOW subsidy, the employees' wages may not be reduced, despite no work being available.

The employment relationship continues under such conditions and consequently, no unemployment benefits are paid, although the worker continues to acquire unemployment benefit rights.

#### ***2.4. Amount of subsidy***

The amount of the subsidy depends on the scale of the employer's revenue losses. For instance, if the employer's revenues declined by 100 per cent, the subsidy amounts to 90 per cent of total wage costs. If the loss is 50 per cent, the subsidy covers 45 per cent of total wage costs; if the reduction in revenue is 25 per cent, the subsidy amounts to 90 per cent of that figure, i.e. 22.5 per cent of the total costs of all employees' wages. The sum of all wages is usually calculated on the basis of the first month of the respective year, i.e. January 2020 (for each employee, not more than EUR 9,538 of that month is included in the calculation of his or her total wages). The subsidy is not increased even if the sum of total wages is higher during the corona period than in the reference period.

If the revenue losses are lower than initially estimated after the subsidy period ends, the amount is increased in accordance with the employer's actual revenue.

#### ***2.5. NOW2 and NOW3***

NOW2 was introduced in July 2020, followed by NOW3 in October 2020. The latter requires higher revenue losses for employers to qualify for the subsidy. Initially, the reduction in revenue to be eligible for NOW3 was 30 per cent. However, when the lockdown measures were tightened in December 2020, the threshold was set at 20 per cent for the period up to 1 April 2021. Thereafter, only employers who experience revenue losses of at

least 30 per cent will qualify for the subsidy, unless the rules are modified again at a later stage.

Under NOW3, the ban on dismissals of employees on economic grounds no longer applies. It is now anticipated that the crisis will require companies to restructure, and terminations will therefore no longer be prohibited. Meanwhile, the general rules on collective dismissals (the implementation of EC Directive on collective redundancies) remain applicable.

Connected with this new approach of consenting to corporate restructurings is the requirement that employers must encourage and support employees in upgrading their skills, e.g. by participating in trainings, to remain employable. Employers should allow employees to participate in such activities during working hours and/or reimburse the costs for these activities. Employers also have the obligation to help workers at risk of unemployment to find new work. If they fail to do so, the subsidy amount will be reduced by 5 per cent. That is, if an employer plans to dismiss a worker on economic grounds, the administrative authority (UWV) will have to be notified about the measures implemented to support the employee(s), otherwise, the subsidy will be reduced.

Employers are also eligible for the subsidy even if they already received support under the previous schemes NOW1 and NOW2. Employers who have not yet applied for wage subsidies under the earlier NOW schemes are eligible to apply for NOW3.

The subsidy rate under NOW3 gradually decreases every three months: from 80 per cent, to 70 per cent, and ultimately 60 per cent of all wage costs.

## ***2.6 Data***

In the first three months following the outbreak of COVID-19, NOW covered 2.6 million workers (in total, there are about 8.3 million employees in the Netherlands). It was primarily used in the hospitality industry, retail and the commercial service sector. Of the businesses that received wage subsidies, 67 per cent had fewer than ten workers, 27 per cent had 10 to 50 workers and 6 per cent had at least 50 workers. The scheme was thus particularly relevant for small and medium sized businesses.<sup>2</sup>

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2. Parliamentary Papers 2019–2020, 35 420, No. 40.

### 3. Support scheme for the self-employed (Tozo)

#### 3.1. Overview

The *Tijdelijke overbruggingsregeling zelfstandig ondernemers (Tozo - Temporary bridging scheme for the self-employed)* is one of the measures introduced to support entrepreneurs during the coronavirus crisis.<sup>3</sup> The scheme is targeted at self-employed persons, including solo self-employed individuals.

It consists of two components. - A cost-of-living benefit to supplement the income of self-employed persons whose earnings fall below the social minimum.

- A loan for the self-employed person's enterprise in case of insufficient cash flow to settle invoices.

The scheme is administered by the municipality the self-employed person resides in.

It is designed in such a way to be easily administered, which was crucial in view of the large number of applications. Its purpose is to help the self-employed bridge the crisis. The benefits are therefore paid out quickly, without prior testing of the self-employed person's actual income conditions. If the eligibility criteria for this benefit are not met (see section 3.2.1), the funds received will have to be reimbursed. The government has acknowledged that some persons or companies will not be able to return the undue benefits or loans received, which will have a negative impact on public finance, a risk the government has accepted as part of the crisis measures.

The scheme is based on the already existing *Besluit bijstandverlening zelfstandigen* (Regulation on public assistance for the self-employed). The eligibility conditions for support under the temporary scheme have been relaxed considerably compared to the regular public assistance scheme, e.g. no means test on assets applies. It was initially envisaged that, as of 1 October 2020, a means test on assets (in this case restricted to available assets) would apply. Due to the additional measures introduced in view of the second wave of corona, this test has been postponed until 1 July 2021, i.e. to when the termination of the scheme is envisaged. Once the special scheme expires, the self-employed will have to resort to *Besluit Bijstandsverlening zelfstandigen* (general public assistance scheme).

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3. *Staatsblad* (Official Journal 2020, 118).

## ***3.2. The cost of living benefit***

### *3.2.1. Eligibility criteria*

#### *Financial eligibility*

To be eligible for the Tozo benefit, the household income must have fallen below the social minimum as a consequence of the coronavirus crisis. The income support benefit for cost-of-living does not have to be returned, unless the self-employed person earns an income above the social minimum at a later point. The applicable social minimum depends on the individual's age and household income, the same criteria that apply to the general Dutch minimum income support scheme. There are different levels of social minimum. On 1 July 2020:

- the social minimum for a single person over the age of 21 years is EUR 1,059 per month;
- for married (or cohabiting) persons, the social minimum is EUR 1,512 per month. These are net amounts.

Different rates apply to those under the age of 21 years and for persons above retirement age. The Tozo benefit supplements the household income up to the established minimum income level.

Applicants for the cost-of-living benefit must be between 18 years and retirement age. The applicant must be Dutch or married to/ cohabiting with a Dutch national.

When applying for the cost-of-living benefit, an estimate of the household income in the coming months must be made. It may, of course, be difficult to give an accurate estimate. If the estimate provided was incorrect, the applicant must inform the municipality as soon as possible.

Students who are also entrepreneurs are not eligible if they are under 27 years of age and are entitled to apply for study grants.

If both partners of a household work in the same company, only one of them can apply for the Tozo benefit.

#### *Living in the Netherlands*

One eligibility criteria for the cost-of-living benefit is that the claimant must reside in the Netherlands. Following discussions in Parliament, individuals who reside in the Netherlands<sup>4</sup>, but whose company is located in

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4. Letter of 18 November 2020 to the President of the First Chamber (Senate) of the Netherlands.

another EU or EEA Member State or Switzerland, are also eligible. Parliament remained critical of the residence requirement, as it excludes self-employed persons whose company is located in the Netherlands, but who do not live there. However, the government refused to extend the scheme to this group. The Secretary of State argued that Tozo is a public assistance benefit, and consequently, Regulation 883/2004 is not applicable and this benefit therefore does not have to be exported. It is not an unemployment benefit, either, as it is payable regardless of the cause of the applicant's adverse financial situation.<sup>5</sup>

Initially, the European Commission considered this benefit to be an unemployment benefit, since it provides coverage against the risk of involuntary unemployment and provides a cost-of-living benefit.<sup>6</sup> From a letter of the Dutch Minister of Social Affairs, it appears that the Commission considered this benefit to be a form of social assistance. The letter itself was not attached, hence the arguments for this position are unclear.

When evaluating the situation, it seems that the *Cuyper* judgment<sup>7</sup> is particularly relevant. In this judgment, the European Court of Justice asserted that the purpose and object, as well as the basis on which a benefit is calculated and the applicable eligibility requirements are relevant to qualify a benefit. Since the allowance dealt with in *Cuyper* provided financial assistance to the workers concerned following an involuntary loss of employment despite still having the capacity for work, it was considered to be an unemployment benefit. A benefit provided to an individual following loss of employment, which he or she is no longer eligible for once his or her situation of unemployment ceases as a result of him or her engaging in paid employment, must be regarded as constituting an unemployment benefit. The fact that an unemployed person in a situation such as that of Mr De Cuyper is exempt from the requirement to register as a job-seeker, and consequently from the requirement of being available for work, in no way influenced the allowance's fundamental characteristics.

Tozo is intended as compensation for involuntary loss of work. The fact that individuals who fall ill, particularly as a result of corona, are also eligible does not seem to be relevant; the purpose of this scheme is to provide unemployment assistance. Since there is an enforceable right to this bene-

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5. Answers to Parliamentary questions, No. 2020Z14956.

6. Answers of Commissioner Schmit, P-004040-2020.

7. ECJ, C-406/04, ECLI:EU:C:2006:491.



fit, and the benefit is not listed as a special non-contributory benefit in Annex X, it should qualify as an unemployment benefit. In this case, Article 65 of Regulation 883/2004 applies, which states that a person, who is partially or intermittently unemployed and who resided in a Member State other than the competent Member State during his or her last activity as an employed or self-employed person, shall make him- or herself available to the employer or to the employment services in the competent Member State. The Dutch government did not, however, follow this argument.

According to the Dutch Minister of Social Affairs, there are about 2,500 self-employed living in Belgium, who have a company in the Netherlands. There are around 1,000 self-employed living in Germany with a business in the Netherlands. These individuals seem to be most affected by the exclusion, but the Minister realised that if he decides to 'export' the Tozo benefit, it cannot be limited exclusively to these two countries.

The applicable Belgian scheme for the self-employed (*Overbruggingsrecht voor zelfstandigen* - Bridging measure for the self-employed) does not entail any residence requirements. Claimants must be socially insured in Belgium. Since persons who work in the Netherlands are not insured in Belgium, they are excluded on the basis of this criterion. There is a traditional reason why coordination is necessary: conflicting rules in different countries means that people will fall through the gaps.

Such self-employed persons can claim social assistance in Belgium; whether they qualify, however, depends on whether they meet the test on household income and available assets.

Self-employed persons who live in Germany and who have established a business in the Netherlands can apply for social assistance (*Arbeitslosengeld II*) in case of revenue losses. Individuals who resided in Germany for a short period only (i.e. less than five years) may be excluded from social assistance. Whether this is the case or not seems to vary from municipality to municipality.

#### *Minimum number of working hours in 2019*

Furthermore, the so-called 'working hours condition' must be satisfied for the year 2019. The applicant must have worked at least 1,225 hours in his or her enterprise.

If the self-employed person applies for the cost-of-living benefit, the income of his or her partner is taken into account to calculate the amount of the supplement. If the household income lies above the social minimum, the self-employed person is not entitled to this benefit.

### *Reimbursement*

If the benefit amount received exceeds the applicable threshold, the self-employed person must return the excess amount; in case the claimant's income is lower, the benefit amount will be supplemented. If incorrect information was knowingly submitted, the benefit amount will be reclaimed and a fine imposed.

### *3.2.2. Business loan*

Several of the conditions that apply to the cost-of-living benefit also apply to business loans which are meant to resolve short-term cash flow problems due to the coronavirus crisis.

The applicant must be Dutch or must be married to/cohabiting with a Dutch national, and at least 18 years of age. Different from the cost-of-living benefit, individuals who are above retirement age are also eligible for this benefit. The business loan cannot be applied for if the company is located abroad. If the company is based in the Netherlands, the business loan is payable, even if the applicant lives abroad, i.e. in another EU or EEA Member State or Switzerland.

Another requirement is that the company was established before 17 March 2020 (the date the lockdown was announced) and was registered with the Chamber of Commerce and is still economically active, unless the coronavirus crisis is preventing the continuation of activity.

The maximum business loan amount is EUR 10,157. A higher loan amount can be applied for under the regular *Besluit bijstandverlening zelfstandigen*. Self-employed entrepreneurs can apply for this loan even if their household income is above the social minimum.

If a self-employed person decides to close down his or her business, another specific scheme applies on the basis of *Besluit bijstandverlening zelfstandigen*.

If both partners of a household work in the same company, only one of them can apply for the business loan. If each has his or her own company, both can apply for a business loan for their company.

This scheme excludes freelancers who are not registered with the Chamber of Commerce. They can claim a benefit under the regular *Besluit bijstandverlening zelfstandigen*, but if registration with the Chamber is a precondition for working for the established company, the claim will be rejected.

### 3.2.3. Data

It is estimated that 374,000 self-employed persons claimed Tozo; over 90 per cent are small and medium businesses.

## 4. The Temporary Bridging Scheme for Flexible Workers (TOFA)

### 4.1. Overview

At the onset of the coronavirus crisis (March/April 2020), Parliament acknowledged that flexible workers who had just started working faced an unexpected gap in protection.<sup>8</sup> Consequently, a temporary scheme was introduced, *Tijdelijke Overbruggingsregeling voor Flexibele Arbeidskrachten* (TOFA - Temporary bridging scheme for flexible workers). This scheme covered those who had started working shortly before the start of the lockdown, and were therefore unable to meet the eligibility criteria<sup>9</sup> for unemployment benefits, but might also be excluded from social assistance, for instance, based on total household income. Because of this specific reason, the scheme was short-lived; at the end of June 2020, no further applications for this benefit were accepted.

### 4.2. Personal scope

The objective of this benefit was to provide a general scheme that could be easily administered and thus quickly paid out, considering that the applicants had no other source of income. On account of this objective, the government tolerated the disadvantages of this approach, namely that each applicant received the same amount, regardless of his or her prior income, and that the benefit amount might even be higher than the individual's actual income loss. It was acknowledged that abuse could not be excluded and was therefore accepted in order to provide a solution for flexible workers.

In 2019, 545,000 persons in the Netherlands worked as on-call workers and there were 266,000 temporary agency workers.<sup>10</sup> It was assumed that a maximum of one-third of this group of 545,000 did not qualify for unemployment benefits. Of those not eligible for unemployment benefits, 53

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8. Parliamentary Papers II 2019/2020 35 430, No. 15.

9. Namely, having worked for 26 weeks during the period immediately preceding the first day of unemployment.

10. CBS Statline for 2019.

per cent were students who still lived at home, 9 per cent were students living on their own, and 38 per cent belonged to other categories. This latter group comprises about 133,000 persons.

Individuals who are not entitled to unemployment benefits can claim public assistance, which is only awarded if specific conditions are fulfilled (with regard to total household income and available assets). According to data provided by the government, a considerable share of flexible workers do not have any savings and/or a partner preventing them from claiming social assistance.

This group, according to the Ministry's estimates, includes migrant workers, who have lost their jobs and returned to their country of origin. The scheme is aimed at workers with an on-call or temporary work agency contract, who do not meet the eligibility conditions for unemployment benefits and whose total assets or total household income (based on their partner's income) disqualifies them from eligibility for social assistance.

#### *4.3. Eligibility criteria*

Due to the necessity to develop a simple scheme, the personal scope of flexible workers was not defined. Instead, the scheme targets workers whose income has been cut by at least half and who are not eligible for any other benefit. This group includes workers with a zero-hour contract, temporary agency workers and students with a part-time job. Persons who just started working and who, for instance, were dismissed during the probation period, are also eligible.

The scheme's eligibility requirements were that the applicant had to be at least 18 years of age on 1 April 2020 and that he or she had not yet reached retirement age. The applicant's wage in February 2020 must have been at least EUR 400,<sup>11</sup> at least EUR 1 in March, and maximum EUR 550 in April. In addition, the wages earned in April must have been at least 50 per cent of those earned in February, and no other benefit may have been received in April. One final condition was that the applicant depended on TOFA for his or her cost of living.

The benefit was payable to persons registered as employees under the social security scheme. Consequently, platform workers who were not registered as employees were not eligible for this benefit. The main reason for

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11. The scheme is limited to persons working a substantial amount of time (calculated on the basis of 12 hours a week at minimum wage level).

this was an administrative one – they were not registered with the administrative authority UWV.

In this context, the reason for unemployment is irrelevant. For instance, on-call workers who have been ordered to quarantine because a person in their household has contracted COVID could apply for TOFA.

TOFA, according to the Ministry, was exportable to EU Member States.

#### **4.4. Benefit amount**

The gross amount of the TOFA benefit was EUR 1,650 (i.e. EUR 550 per month, for March, April and May). The scheme was temporary (three months in total) and was not extended. The duration of this benefit was the same as the minimum duration of unemployment benefits. Since the minimum period for unemployment benefits was not extended, neither was TOFA.<sup>12</sup>

The benefit amount was based on the average wage of an on-call worker, who usually earns an average of EUR 825 gross per month; TOFA provided compensation of (roughly) 70 per cent of such a worker's monthly wages.

#### **4.5. Data**

UWV received around 17,000 applications, of which 7,500 were approved. About 9,000 applications were rejected, predominantly because the applicants' income had been higher than EUR 550 in April 2020 or because their income in February 2020 was below EUR 400.<sup>13</sup>

### **5. Effects on Frontier Workers**

For persons not residing in the country in which they work, the social security coordination rules are relevant for determining in which country contributions must be paid. As the share of income earned and/or the number of hours worked in the country of residence plays a relevant role, these workers could be affected by coronavirus measures in case they are required to, or want to work in their home country for more than one day a week.

The conflict of laws rules are covered in Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the

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12. Parliamentary Papers 2019–2020, 35 420, No. 40.

13. These figures are not yet final.

coordination of social security systems.<sup>14</sup> This is sometimes referred to as the 'Basis Regulation'. In addition, the so-called Implementing Regulation is also of relevance, i.e. Regulation 987/2009 of the European Parliament and of the Council specifying the procedure to implement Regulation (EC) No. 883/2004 on the coordination of social security systems.<sup>15</sup> Article 13(1) of the Basis Regulation provides that a person who usually performs an activity as an employed person in two or more Member States shall be subject to the legislation of the Member State of residence, if he or she carries out a substantial part of his or her activity in that Member State. Due to the coronavirus measures, a frontier worker may have to work from home and would then be considered to be simultaneously working in two countries (the reference period for assessing these particular shares is the prospective 12 months). The Implementing Regulation stipulates criteria on how to interpret the term 'substantial'. Article 14 provides that the share of activity performed in a Member State is in no event 'substantial' if it is less than 25 per cent of all of the activities carried out by the worker in terms of turnover, working time, remuneration or income from work.

Note that the criterion of substantial work applies to the country of residence. The provision on substantial work does not provide detailed rules and only outlines when work is *not* substantial; moreover, it mentions alternative methods for defining 'substantial' work.

Since the Council apparently could not reach consensus on precise criteria, it leaves this issue up to the Member States to define when an activity is to be considered substantial and when it is not based on the mentioned criteria.

If the worker does not perform a substantial part of his or her activity in the Member State of residence and is employed by a single undertaking, the social security laws of the Member State in which the registered office or place of business of the undertaking or employer is located, apply.

Suppose that a frontier worker works at his or her employer's premises full time, or in any case, does not work at home for more than one day a week. The work performed in his or her country of residence is thus not substantial, and the social security legislation of the state in which his or her employer is registered applies. However, if this worker is required to

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14. Regulation 883/2004 was published in [2004] *OJ L* 166/1.

15. Regulation 987/2009 was published in [2009] *OJ L* 284.

work from home as a result of lockdown measures, the applicable legislation might change.

Such an adjustment was deemed undesirable, as a change in applicable legislation is associated with a great deal of administrative work, and may result in a mismatch of the applicable tax or social security law and collective labour agreement. Therefore, the administrative authorities in the Netherlands, Belgium and Germany agreed that working from home during the lockdown did not affect the applicable legislation. As seen above, Article 14 of the Implementing Regulation gives the power to the competent authorities to define 'substantial work', and they have apparently interpreted this article as allowing them to disregard working at home. This measure was introduced very soon after the lockdown was announced in March 2020.<sup>16</sup>

Any changes in work patterns is relevant for the applicable tax law as well. According to the respective bilateral tax treaties between the Netherlands and Belgium and Germany, tax is levied proportionally by the countries in which the work is performed. This means the applicable tax legislation is divided. If the worker, for instance, works in the Netherlands three days a week and in Germany two days a week, 60 per cent of his or her income is subject to Dutch taxation and 40 per cent to German taxation.

Since countries' tax and social security systems may differ significantly, being subject to taxation in one country and to social security in another can have a considerable impact on the individual's income.<sup>17</sup>

A swift response was taken in this regard as well: the Dutch authorities agreed with the respective Belgian and German tax authorities (on the basis of the bilateral tax treaties between the countries) to continue applying the initially applicable taxation system.<sup>18</sup>

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16. <https://pers.svb.nl/coronavirus-en-wonen-of-werken-over-de-grens-de-sociale-verzekering-verandert-niet/>.

17. For example, Frans Pennings, 'Barriers to free movement due to mismatches of cross border tax and social security instruments', in: K. Barana (ed.), *Studia z Zakresu Prawa Pracy i Polityki Społecznej*. Krakow: Wydawnictwo Uniwersytetu Jagiellońskiego, Vol. 25, pp. 307-322; B. Spiegel (ed.), K. Daxkobler, G. Strban & A.P. van der Mei, *Analytical report 2014: The relationship between social security coordination and taxation law*, FreSsco, Brussels: European Commission, 2015.

18. Stcrt. [Official Journal Netherlands] 2020, 21381; Stcrt. 2020, 25956.

At the time of writing, these rules still applied. A debate is currently underway among frontier worker organisations whether working from home several days a week will become a permanent phenomenon, and whether tax and social security legislation will have to be adjusted accordingly.<sup>19</sup> Since the Coordination Regulation provides that substantial work 'is in no event substantial if it is less than 25 per cent', there is no obstacle to raising this threshold to, for instance, 40 per cent or 50 per cent.

## 6. Conclusions

The NOW scheme was a relatively generous one, and covered flexible workers as well, even though employers could have easily dismissed them. As the wage subsidy did not cover all expenses of companies, employers still had the possibility to dismiss these workers; indeed, the unemployment figures grew during the first eight months of 2020.

While regular employees enjoyed relative 'safety' during the first period of the crisis, the position of the self-employed attracted considerable attention, and the scheme for the self-employed was subject to discussions and criticism. The question arose why it was not possible for self-employed persons to cover a couple of months of their costs without public support. After all, they are entrepreneurs. This discussion became part of a much broader issue in the Netherlands, i.e. the distinction between employed and self-employed persons. Are persons who cannot fend for themselves really self-employed? It is uncertain where this discussion will lead; it may become part of the programme of the government that will enter office after the March 2021 elections.

### *Who is excluded from coverage?*

Employees are only indirectly covered by NOW. If they are covered by the scheme, their employment contract is retained, i.e. their working hours are not reduced to short-time working. The eligibility conditions did not exclude the wage costs of specific groups, i.e. the wage costs of temporary agency and on-call workers were subsidised as well. Any conditions related to dismissals only applied to persons for whom permission for dis-

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19. The Members of Parliament have published a proposal to give workers the right to work at home (*Voorstel van wet van de leden Van Weyenberg en Smeulders tot wijziging van de Wet flexibel werken in verband met het bevorderen van flexibel werken naar arbeidsplaats*). At the time of completion of this paper, it was still subject to debate.



missal was required, namely those whose contract could not be terminated without such prior permission. Persons on probation, on-call workers or temporary agency workers could still be dismissed or simply not called for work.

Migrant workers employed by firms in the Netherlands are not treated differently from Dutch workers. If they moved back home to another EU Member State, they were eligible for the special TOFA scheme.

Frontier workers were not subject to any changes in the applicable legislation. The flexibility exemplified in this regard is substantial. The lockdown measures may result in long-term changes to the places where work is performed, which may have an impact on the conflict of laws rules for persons who partly work at home.

Protection for the self-employed targeted those with a low or no income. Those excluded from the scheme were persons with small enterprises (working less than 1,225 hours annually), those who had only recently started working and those living outside the Netherlands.

Most of the measures introduced in the Netherlands targeted businesses and the self-employed, which is a unique aspect of the response to this crisis. Currently, no unemployment or short-time benefits are paid to employees of enterprises that receive the subsidy, and the schemes were not modified or adapted to the actual situation. Some groups have, nonetheless, been affected; the unemployment rate has risen and mostly includes persons with a short employment record. Employees with a permanent contract have mostly not been dismissed since dismissals were discouraged by NOW. This situation will change in 2021, however, when NOW is scaled back and eventually comes to an end.



## Social security in Poland in times of corona

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Leszek MITRUS<sup>\*</sup>

### 1. Introductory remarks

Labour protection and social security have a strong constitutional basis in Poland. Article 24 of the Constitution of the Republic of Poland of 2 April 1997<sup>1</sup> stipulates that work shall be protected by the Republic of Poland. The State shall exercise supervision over the conditions of work. Article 67 of the Constitution states that a citizen shall have the right to social security whenever incapacitated for work by reason of sickness or invalidism as well as having attained retirement age. The scope and forms of social security shall be specified by statute (item 1). A citizen who is involuntarily without work and has no other means of support shall have the right to social security, the scope of which shall be specified by statute (item 2). The constitutional right to social security should be implemented by the legislator, who develops the statutory social security system, determines its rules and guarantees its operation. Although under the Constitution the right to social security seems to be relatively narrow, statutory regulations have much broader scope of application. Polish social security system is based mainly on social insurance model and reparation system ("pay as you go"), although in recent years numerous non-contributory benefits have been introduced, especially several lump sum family benefits<sup>2</sup>.

Covid-19 pandemic constitutes a major challenge for national labour law and social security system. Protection of public health and fighting negative economic effects of the pandemic suddenly became urgent pri-

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<sup>\*</sup> Chair of Labour Law and Social Policy, Jagiellonian University in Kraków, Poland.

1. Journal of Laws 1997, No 78, item 483 with further amendments. The English version of the Constitution is available at [www.sejm.gov.pl/prawo/konst/angielski/kon1.htm](http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm). (last accessed on 11.02.2021).
2. See also K. Ślebzak, *The right to social security in the Constitution of the Republic of Poland*, "Praca i Zabezpieczenie Społeczne" 12/2019, p. 8 and following.

orities. The first Covid-related legislative measures were taken very quickly soon after the outbreak of the pandemic. On 2 March 2020, the Law on special measures to prevent, mitigate and fight COVID-19, other infectious diseases and crisis situations caused by them, was enacted.<sup>3</sup> This so-called “anti-crisis shield” has been subject to numerous amendments. Its provisions cover inter alia labour law and social security issues, albeit to a limited extent only. Some social security ordinances issued by the Council of Ministers (i.e. the Cabinet) or by specific ministries are also of relevance. For example, the Ordinance of the Council of Ministers of 19 January 2021 on support for individuals involved in economic activities who have been impacted by the COVID-19 pandemic<sup>4</sup> provides detailed rules on public subsidies, social security benefits and exemptions from the duty to pay social security contributions.

A state of epidemic threat was declared for an indefinite period through the Ordinance of the Minister for Health of 20 March 2020, announcing an epidemic status in the territory of the Republic of Poland<sup>5</sup>. Several economic sectors were closed, many individuals had to quarantine or self-isolate, the option of working remotely was introduced, and schools and universities moved to online learning. The lockdown necessitated an adjustment of social protection to the new circumstances, as well as the protection of jobs to prevent a potential rise in unemployment<sup>6</sup>.

## 2. The labour market situation and precarious work in Poland

Unfortunately, precarious work was not uncommon in Poland even before the outbreak of the pandemic. The most widespread forms of paid work performance are employment contract and self-employment, and also civil law contracts on rendering services. Certainly, “traditional” em-

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3. Consolidated text: Journal of Laws 2020, item 1842, with further amendments.

4. Journal of Laws 2021, item 152. The ordinance took effect on 1 February 2021.

5. Journal of Laws 2020, item 491 with further amendments. The epidemic threat status was introduced earlier by the Ordinance of the Minister of Health of 13 March 2020, Journal of Laws 2020, item 433 (repealed). In extraordinary situations, Art. 228 of the Constitution provides the basis for introducing, i.a., a state of emergency or a state of natural disaster. However, none of these constitutional measures were taken.

6. For an analysis of preliminary COVID-related measures, see I. Florczak, *COVID-19 and Labour Law: Poland*, “Italian Labour Law e-Journal”, Special Issue 1, Vol. 13 (2020), p. 1 and following.

ployment contract should be a point of reference for the situation of Polish labour market. Article 22 § 1 of the Labour Code (hereinafter: LC)<sup>7</sup> provides that by establishing an employment relationship, an employee commits to perform specific work for the benefit and under the instructions of the employer, and the employer commits to employ the employee in exchange for remuneration. An employment contract is a 'personalised' relationship.<sup>8</sup> Employees are entitled to the full range of labour and social security rights.<sup>9</sup>

Self-employment is regulated in the Entrepreneurs' Law of 6 March 2018,<sup>10</sup> although the notion of self-employment activity is not expressly used. Article 3 of the Law stipulates that economic activity is organised, profit-gaining activity carried out in one's own name and without interruption. According to Art. 4 of the Law, an entrepreneur shall refer to a natural person, a legal person, or an organisational unit that is not a legal person and is endowed with legal capacity under a separate statute. Subject to some exceptions, self-employment activity must be registered in the National Court Register or in the Central Register and Information on Economic Activity, administered by the Ministry of Economic Development. A natural person who pursues an economic activity on a small scale is not required to register, and is not considered to be an entrepreneur. The basic condition for applicability of this provision is that the monthly revenue does not exceed half of the statutory minimum wage. Moreover, the Entrepreneurs' Law includes certain exemptions from the duty for new entrepreneurs to pay social security contributions. Alongside genuine self-employment, bogus self-employment does occur in practice.

Civil law contracts are quite common in Poland and are regrettably often disguised employment relationships. Even if civil law contractors have

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7. The Law of 26 June 1974 of Labour Code, consolidated text in Journal of Laws 2020, item 1320. For the English version, see: *The Labour Code. Kodeks pracy*, translation by A. Jamroz, C.H. Beck, 6<sup>th</sup> edition, Warsaw 2019.

8. The Labour Code definition is not exhaustive. For an extensive analysis, see L. Mitrus, *The Concept of 'Employee': The Position in Poland*, (in:) B. Waas, G. H. van Voss (Eds.) *Restatement of Labour Law in Europe. Volume I. The Concept of Employee*, Hart Publishing, Oxford and Portland, Oregon, 2017, p. 525 and following.

9. Employees are mandatorily covered by retirement, invalidity, sickness and accidents at work schemes.

10. Consolidated text: Journal of Laws 2019, item 1292 with further amendments.

the same duties as employees, they are not entitled to all labour rights, for example, they are not protected against dismissal and do not enjoy the statutory right to holiday leave. The Civil Code (hereinafter: CC)<sup>11</sup> establishes a legal framework for their work performance. The most widespread type of civil law contract are mandate contracts, or –to be more specific– unnamed civil law contracts to which the provisions on mandate apply. Article 734 CC sets down that by entering a contract of mandate, the mandatary commits to performing a specified legal action for the mandator. According to Art. 750 CC, the provisions on mandate shall apply accordingly to contracts on the performance of services not regulated in other provisions.

Two other civil law contracts for rendering services should be mentioned, namely contracts for a specific assignment and contracts of agency. According to Art. 627 CC, by entering a contract for a specific assignment, the contractor commits to completing a specified assignment or task, and the client commits to paying him or her the agreed remuneration. Article 758 CC stipulates that by entering a contract of agency, the agent that accepts the mandate commits to acting as an intermediary against remuneration within the scope of the activities of his or her enterprise, and concludes contracts between the principal (enterprise) and his or her own clients or concludes such contracts in the principal's name. The agent may conclude contracts in the name of the principal and may only assume such responsibility for the latter if he or she has authorisation to do so. These two types of contract are not very common in comparison to mandate contracts.

It is not uncommon in practice for long-term work to be performed on the basis of a civil law contract, particularly if it represents the contractor's basic source of income. This phenomenon, to a large extent, is the result of a liberal approach by state institutions –including the labour inspectorate and jurisprudence– towards work performed under a civil law contract or within the scope of self-employment.<sup>12</sup>

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11. The Law of 26 April 1964 Civil Code, consolidated text in Journal of Laws 2019, item 1145. For English version, see: *The Civil Code. Kodeks cywilny*, translation by E. Kucharska, C.H. Beck, 4<sup>th</sup> edition, Warsaw 2019.

12. Ł. Pisarczyk, U. Torbus, *Precarious work in Poland: how to tackle the abuse of atypical forms of employment?*, (in:) J. Kenner, I. Florczak, M. Otto (Eds.), *Precarious work. The Challenge for Labour Law in Europe*, Cheltenham, UK, Northampton, MA, USA, 2019, p. 140.

In recent years, protection for civil law contractors has been expanded, e.g. in terms of equal treatment, social insurance coverage<sup>13</sup> and certain parental rights. The majority of rights granted to specific groups of civil law contractors, however, entail minimum statutory wage, as well as the right to unionise and to bargain collectively. It seems that instead of introducing far-reaching improvements, e.g. the presumption of the existence of an employment contract, the legislator has implicitly accepted the precarious situation of civil law contractors.<sup>14</sup> Statutory acceptance of “civil law employment” represents a source of theoretical confusion about the labour market’s pathology instead of instituting a clear differentiation between employment and genuine self-employment (i.e. entrepreneurship).<sup>15</sup>

To summarise: in Poland, a binary model of labour market organisation prevails. Employees are protected by labour law and social security regulations. At the same time, workers who perform economically dependent work outside an employment relationship are only entitled to limited social rights. They often find themselves in precarious work situations. Individuals who are not employees but perform work under a civil law contract or are bogusly self-employed, are a particularly vulnerable group of workers. The COVID-19 pandemic has further emphasised the differences in the status of various groups of wage earners. In dealing with the effects of the pandemic, the legislator had to take the deep segmentation of the labour market into account, and attempt to include all labour market participants in COVID-19 relief measures, especially with regard to job protection measures.

### 3. Amendments to the sickness scheme

The sickness scheme is regulated in the Law of 25 June 1999 on social insurance benefits in case of sickness and maternity leave.<sup>16</sup> One of

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13. Civil law contractors (except for those who are party to a contract to perform a specific assignment) are mandatorily covered by retirement, invalidity and accidents at work schemes. The sickness scheme, on the other hand, is voluntary. The social security contributions paid by civil law contractors are lower than regular employee contributions.

14. See, e.g. A. Sobczyk, *Podmiotowość pracy i towarowość usług. Analiza prawna*, Kraków 2018, p. 191 and following.

15. A. Sobczyk, *Podmiotowość pracy i towarowość usług. Analiza prawna*, Kraków 2018, p. 33 and following.

16. Consolidated text: Journal of Laws 2020, item 870, with further amendments.

the standard benefits provided under this scheme is care allowance. The insured person is entitled to this allowance for the duration of a period during which he or she provides care for a family member. Care allowance is granted when an insured person is released from work to care for a healthy child under the age of 8 years when the nursery school, kindergarten, school, etc. has unexpectedly closed; the parent who usually cares for the child is not able to care for the child due to sickness, childbirth or hospitalisation; or the day carer or nanny falls ill. A different age limit applies to a sick child (14 years of age) and to a child with a disability (18 years of age). Care allowance is provided for a maximum period of 60 days per calendar year when the insured person cares for a healthy child up to the age of 8 years, for a sick child up to the age of 14 years, including a disabled child; 14 days per year when the insured person provides care for a sick family member; and 30 days in other specific situations. In principle, care allowance amounts to 80 per cent of the employee's previous income.

Due to the temporary closure of schools and the move to online learning, the first version of the anti-crisis shield introduced an additional care allowance. According to Art. 4 of the anti-crisis shield, this additional care allowance is provided in case of closure of nursery schools, kindergartens, schools, etc., or if the nanny or day carer cannot care for the child due to COVID-19. Additional care allowance is provided to insured persons or public servants who are released from work or service. This benefit can also be provided to farmers covered by the farmers insurance scheme (Art. 4a of the anti-crisis shield). That is, additional care allowance basically targets individuals who have had to interrupt their work performance to stay at home to care for a child who cannot attend school, kindergarten or nursery school.

Additional care allowance was introduced on 8 March 2020, i.e. shortly following the outbreak of the pandemic in Poland.<sup>17</sup> Since entitlement to this benefit was connected with the closure of childcare facilities and the move to online learning, it was subject to temporary limitations from the outset, but has been extended numerous times. Under the Ordinance of the Council of Ministers of 12 February 2021, eligibility to care allowance to mitigate the impact of COVID-19<sup>18</sup> was extended until 14 February

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17. In Poland, the first patient with COVID-19 was diagnosed on 4 March 2020.

18. Journal of Laws 2021, item 287.



2021. Whether this benefit will be extended again depends on whether online learning will continue or whether schools will re-open and traditional classes can resume.

Further modifications of the sickness scheme were introduced by an amendment to the anti-crisis shield of 28 October 2020.<sup>19</sup> The new Art. 4ea and Art. 4g of the anti-crisis shield raised the amount of sickness pay for individuals employed in assisted living facilities, as well as medical staff working in hospitals. For the period of the pandemic, these groups are entitled to sickness pay or benefits that amount to 100 per cent – instead of the standard 80 per cent – of their previous income in case they fall sick, have to quarantine or self-isolate.<sup>20</sup> Moreover, the above-mentioned amendment of 28 October 2020 clarified the issue of remote working during mandatory self-isolation or quarantine. According to Art. 3 of the anti-crisis shield, the employer can instruct employees to perform the work agreed in the employment contract outside their normal workplace for a limited time to fight COVID-19. The employer can request employees to work remotely if they possess the relevant skills and technical possibilities to do so, and if the type of work can actually be carried out remotely. In practice, remote working implies that the employee performs his or her work at home. The new Arts. 4h – 4hb of the anti-crisis shield stipulate that employees and other employed persons (e.g. civil law contractors) can perform their work in exchange for remuneration remotely with the employer's consent during a mandatory period of self-isolation or quarantine. Only if the employee does *not* perform any work remotely during his or her period of self-isolation or quarantine, then he or she has the right to sickness pay or sickness benefit. Sickness pay or benefits amount to 80 per cent of the employee's previous income.

The sickness scheme has thus only been slightly modified. The additional care allowance provides support to parents or carers who have to interrupt their paid activity to care for a child that cannot attend school, kindergarten or nursery school. In practice, care allowance has been ex-

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19. Journal of Laws 2020, item 2112.

20. Under Polish law, in case of sickness, the employer provides sickness pay for a period of 33 days or 14 days (for employees above the age of 50 years) per calendar year, and only after this period does the Social Security Institution step in to pay the individual's sickness benefit.

tended to cover any COVID-related situations. There are no other benefits that provide support or assistance for families impacted by the pandemic's negative effects.

The amendment of sickness pay has a very limited scope of application. Those individuals who are directly involved in fighting COVID-19 are entitled to 100 per cent instead of 80 per cent of their previous income if they fall sick or have to quarantine. This seems to be a very small "reward" for their dedication and their greater than average exposure to health risks.

#### **4. Public subsidies for employers who have introduced economic stoppage or have reduced their employees' working time**

Special public subsidies are provided to employers who have had to adapt their business operations to the pandemic. Article 15g of the anti-crisis shield covers entrepreneurs as well as other entities, e.g. non-government organisations or local government institutions, that are facing corona-related economic difficulties. Such entities can apply for public subsidies for the purpose of job retention and to partly cover employees' wages if economic stoppage is temporarily introduced or if employees' working time has to be reduced. Financial assistance is provided to entrepreneurs who have experienced a loss of revenue as a result of the COVID-19 crisis.<sup>21</sup>

The financial support is provided by the Fund of Guaranteed Employee Claims. Employers can also receive financial assistance to pay their share of social security contributions. It should be noted that Art. 15g of the anti-crisis shield introduces a very broad notion of "employee". The personal scope of its application covers not only employees within the meaning of the Labour Code, but also certain civil law contractors, especially those who perform work under a mandate contract or another unnamed contract to which provisions on mandate apply accordingly. This legal solution reflects the abovementioned complexity of the national labour market and the co-existence of various legal forms of work.

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21. The loss of revenue refers to a 15 per cent reduction in sales of goods or services within two months after 1 January 2020 in comparison with the equivalent period in the previous year; or 25 per cent within a given month after 1 January 2020 in comparison with the equivalent period in the previous year.

An employer who decides to introduce work stoppage or temporarily suspend business operations<sup>22</sup> or to reduce the employees' working time<sup>23</sup> must conclude a collective agreement with the trade union(s) or – in case there is no trade union – with another *ad hoc* employee representative body. During the economic stoppage, the employer shall pay the employees reduced wages up to 50 per cent of their regular wage, but not less than the statutory minimum wage. The employer can submit a request to the regional employment office for co-financing of employees' wages from the Fund of Guaranteed Employee Claims. The subsidy amounts to 50 per cent of the minimum statutory wage. No co-financing is available, however, if the employee's income in the previous month exceeded 300 per cent of the average monthly income, as determined by the Central Statistical Office.

Employees' working time can be reduced by up to 50 per cent of their regular working hours, but their wages cannot be less than the statutory minimum wage. The wages can be co-financed by the Fund of Guaranteed Employee Benefits by up to 50 per cent of the minimum statutory wage, but no more than up to 40 per cent of the average monthly income, as determined by the Central Statistical Office. The employer is only eligible to receive the financial support provided for in Art. 15g of the anti-crisis shield if no other public assistance was received for the respective employees. It is prohibited to dismiss employees during this period for reasons not directly related to the person of the employee.<sup>24</sup>

Thus, the basic underlying notion of Art. 15g of the anti-crisis law is to allow the employer and the employee representatives to adapt the establishment's business operations and the employment conditions. It should be noted that the social partners' involvement is mandatory for introducing work stoppage or for reducing the employees' working time. Subsequently, the employer can apply for public subsidies to cover part of its share of social security contributions and the employees' wages. Collective

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22. "Economic stoppage" refers to a period of non-performance of work for reasons unrelated to the employee, who is prepared to work.

23. "Reduced working time" is the reduction of working time introduced by the employer for reasons unrelated to the employee, but by no more than half of the employee's regular working hours.

24. See also Ł. Pisarczyk, *Prawo pracy wobec kryzysu*, „Państwo i Prawo” 12/2020, p. 82 and following.

redundancies are not permitted. In other words, the employee's situation deteriorates, but he or she has the chance of keeping his or her job through public financial support. Social security insurance only plays a minor role in this regard; the objective of this measure is to provide public financial support to cover a share of the employer's social security contributions. The abovementioned measures are subject to 3-month temporal limitation. This public financial support scheme should be evaluated positively. However, taking into account the duration of the pandemic, it is doubtful whether such subsidies can provide any major or continued relief for employers facing severe economic difficulties.

### 5. Compensation for interruption of services

Another COVID-19 measure is the compensation for interruption of services, introduced in the amendment of the anti-crisis shield of 31 March 2020.<sup>25</sup> According to Art. 15zq, this benefit covers individuals who perform an economic activity within the scope of the Entrepreneur's Law outside the agriculture sector (i.e. self-employed persons), as well as civil law contractors, who are party to an agency contract, a mandate contract, another contract to which the provisions on mandate apply, or a contract for a specific assignment<sup>26</sup>. Both Polish nationals and foreign nationals who legally reside in Poland are entitled to compensation for interruption of services. The right to this benefit arises if, as a consequence of the COVID-19 pandemic, a person's self-employment activities have been interrupted, or his or her contract has been terminated by the party that initially hired the civil law contractor.

Self-employed persons are entitled to the benefit if they started their activities before 1 April 2020, and have not suspended them, but have registered a loss of revenue of at least 15 per cent in comparison with the previous month; or whose activities were suspended after 31 January 2020. Civil law contractors have the right to compensation for interruption of services if their contract was concluded before 1 April 2020, and their income in the previous month was not higher than 300 per cent of the av-

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25. Journal of Laws 2020, item 568.

26. The latter implies that the person accepting the order commits to performing a specific task in exchange for remuneration. Unlike other civil law contracts, a contract for a specific assignment is not covered by social security insurance, hence there is no duty to pay contributions, and no right to social insurance benefits exists.

verage monthly income, as determined by the Central Statistical Office, and if he or she is not covered by any other form of social insurance scheme. Compensation for interruption of services can be granted for a maximum of three months. Eligible individuals can apply for the benefit during the period of the pandemic, up to three months after the pandemic has ended. The Social Security Institution is responsible for this compensation scheme. In case of a negative decision, the individual can lodge a claim to the labour and social security court.

In principle, compensation for interruption of services is 80 per cent of the minimum statutory wage. However, if the individual is party to several civil law contracts, and his or her total income in the previous month was less than 50 per cent of the statutory minimum wage, the amount of compensation for interruption of services will amount to the sum of that income. A special solution applies to self-employed persons who enjoy certain tax allowances. The amount of compensation for interruption of services in that case is 50 per cent of the statutory minimum wage.

As already mentioned, compensation for interruption of services can be granted for a maximum of three months. This period is quite short. Therefore, the amendment of the anti-crisis shield of 9 December 2020<sup>27</sup> introduced new Arts. 15zs<sup>1</sup> – 15zs<sup>3</sup> providing additional benefits in case of interruption of services for individuals who perform specific activities (e.g. artists or persons who work in the tourism sector), provided that their revenue for a given month is lower than 75 per cent of the revenue earned in the respective calendar month of the previous year. This additional compensation for interruption of services is also subject to a 3-month temporal limitation. This period, however, can be extended by the Government's ordinance.

In other words, compensation for interruption of services covers individuals who perform paid work outside an employment contract (i.e. self-employed persons and civil law contractors), and who have been negatively impacted by the lockdown. This is a new non-contributory and legally enforceable benefit under Polish law. In principle, it is a flat fee benefit financed by the state budget. Civil law contractors are eligible for this benefit, provided that their income in the previous month was not higher than 300 per cent of the average monthly income. That is, at least to a certain extent, compensation for interruption of services. It is a

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27. Journal of Laws 2020, item 2255.

means-tested benefit, subject to income threshold conditions. There is no requirement for contributions to have been paid, but the Social Security Institution (which manages social insurance schemes) is in charge of granting this benefit.<sup>28</sup>

Moreover, in the periods March–May 2020 and July–September 2020, self-employed persons could apply for exemptions from the duty to pay social security contributions. Certain categories can also apply for this exemption from November 2020 onwards.

The underlying objective of compensation for interruption of services is to provide temporary income support to individuals who are in a particularly vulnerable situation and who have been severely impacted by the consequences of the COVID-19 pandemic. The right to this benefit is subject to temporal limitations. Although the original regulations have been modified in the meantime, it seems that compensation for interruption of services, despite being combined with exemptions from the duty to pay social security contributions, constitutes an *ad hoc* measure and cannot effectively offset the negative consequences of the lockdown.

## 6. Public subsidies for enterprises

Anti-corona regulations provide public subsidies to enterprises that have been hit particularly hard by the economic crisis. Article 15zzb of the anti-crisis shield stipulates that the local district head (pol. *Starosta*, i.e. local government representative) can conclude an agreement with enterprises, as defined in Art. 4 item 1 or 2 of the Entrepreneur's Law, on subsidies to cover a share of the wages and social security contributions for employees and civil law contractors. Entrepreneur who have registered a COVID-related loss of revenue are eligible for this benefit.<sup>29</sup> Depending on the extent of the loss of revenue, the public subsidy can range between 50 per cent, 70 per cent or 80 per cent of the employees' wages and social security contributions.

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28. For further analysis, see also J. Szyjewska – Bagińska, "Świadczenie postojowe jako element techniki socjalnego wsparcia w zabezpieczeniu społecznym, Ubezpieczenia społeczne. Teoria i praktyka" 3/2020, p. 8 and following.

29. The loss of revenue refers to the reduction of sales of commodities or services within a 2-month period after 31 December 2019, as indicated by the entrepreneur, in comparison to the respective period in the previous year.

These subsidies can be provided to micro-, small- and medium-enterprises. Under the Entrepreneur's Law, a "micro-enterprise" is an enterprise that employs less than 10 employees, a "small enterprise" employs less than 50 employees, and a "medium enterprise" has less than 250 employees. The public subsidies are only granted for a maximum period of three months. Within this period, the entrepreneur is required to retain the level of employment, i.e. employees may not be dismissed during this period. In case of dismissals, the entrepreneur must repay the subsidies.

Under Art. 15zzc of the anti-crisis shield, the local district head can also conclude an agreement with the entrepreneur on public subsidies if it is a natural person and does not employ employees (in practice, the article refers to self-employed persons), who has registered a corona-related loss of revenue. The amount of subsidy depends on the actual loss of revenue. The subsidy can be granted for a period of three months and aims to co-finance the performance of economic activities.

Article 15zdd provides that the local district head can also grant micro-enterprises a one-time loan to cover the costs of their economic activities, up to PLN 5,000 (i.e. around EUR 1,200). The loan must be repaid within one year, with the possibility of a 3-month extension. The loan can also be cancelled if the micro-enterprise continues its activities for at least three months. According to Art. 15zdda of the anti-crisis shield, such a loan can also be granted to non-government organisations or institutions involved in voluntary work.

## **7. COVID-related solidarity allowance within the framework of the unemployment scheme**

The unemployment scheme is regulated in the Law of 20 April 2004 on the promotion of employment and the organisation of the labour market.<sup>30</sup> The Law covers the following areas: labour market policy, labour market institutions, public employment services and their structure, commercial employment agencies, various means to fight unemployment, the notion and the status of an unemployed person and of a job-seeker, unemployment benefits, Polish nationals taking up jobs abroad

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30. Consolidated text: Journal of Laws 2020, item 1409 with further amendments.

and the employment of foreigners in Poland, as well as the Labour Fund which finances benefits for unemployed persons.<sup>31</sup>

The most important among the passive means of fighting unemployment is the unemployment benefit. According to Art. 71 of the Law, an unemployed person is entitled to unemployment benefit when there is no offer of another suitable job or any other form of activity, e.g. a placement, vocational education, or intervention. The individual must have been employed in the 18-month period preceding registration as unemployed, or must have performed other gainful work for a period of at least 365 days, and must have earned an income equivalent to at least the statutory minimum wage. The period of employment preceding the registration as unemployed does not need to have been continuous.

The amount of the unemployment benefit is not conditional on the individual's previous income, but is a fixed amount. In 2020, this amount was PLN 831 (approximately EUR 200) for the first three months of unemployment, and PLN 652 (approximately EUR 160) for subsequent months. Depending on the unemployed person's situation, he or she is eligible to receive unemployment benefits for 6 or 12 months. Entitlement to unemployment benefit is lost sooner if the unemployed person declines a suitable job offer or other gainful work or any forms of occupational development. In practice, only a small share of unemployed persons are entitled to this benefit. Moreover, the unemployment benefit does not cover the cost of living, even at the subsistence level, and unemployed persons are often forced to rely on welfare. Thus, even before the pandemic, financial support for unemployed persons was inadequate.

Taking into account the grave situation of unemployed persons, the legislator enacted the Law of 19 June 2020 on a solidarity allowance to mitigate the negative effects of COVID-19.<sup>32</sup> The Law provides financial support for those employees who lost their source of income due to the COVID-related economic crisis. Polish nationals as well as EU and third-country nationals who reside in Poland are entitled to this allowance. The solidarity allowance can be granted to those individuals who were covered by social insurance for at least 60 days on the basis of an employment re-

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31. For an analysis of the unemployment scheme, see, e.g. L. Mitrus, in: Z. Hajn, L. Mitrus, *Labour Law in Poland*, 2nd edition, Wolters Kluwer, Alphen aan den Rijn 2019, p. 214 and following.

32. Journal of Laws 2020, item 1068.



lationship, and whose employment contract was terminated by the employer after 15 March 2020, or if their fixed-term employment contract expired. The allowance amounts to PLN 1,400 per month (around EUR 330), and was provided from June to August 2020. Within this period, the right to “regular” unemployment benefit was suspended.

The solidarity allowance constitutes an additional unemployment benefit for those employees who lost their job as a result of the COVID-19 pandemic. In practice, the period of the right to financial public support has been extended. The Law on the solidarity allowance also raised the amount of the regular unemployment benefit. Since 1 September 2020, it is PLN 1,200 (around EUR 285) for the first three months, and PLN 942 (around EUR 220) for subsequent months. In 2021, the amount of unemployment benefit has not been adjusted.

## 8. Final remarks

The anti-corona measures in Poland focus on providing public financial support to protect jobs and to co-finance the costs of economic activities. Employers have been given more flexibility, and can – in agreement with the employee representatives – temporarily introduce work stoppage or reduce employees’ working time. They can receive public support to cover part of their employees’ wages and social security contributions. Additional measures include public subsidies for enterprises – including self-employed persons – so they can continue carrying out their economic activities. To a large extent, labour law and social security measures are inter-related. The latter only constitutes a small part of public assistance and mainly comes in the form of exemptions from the duty to pay social security contributions.

A further measure is a new benefit in the form of compensation for interruption of services provided to self-employed persons or civil law contractors whose business activities have been interrupted or have declined. This benefit aims to replace at least a part of the loss of revenue registered due to the COVID-19 crisis. The sickness and unemployment schemes have, to some extent, been amended. A new additional care allowance and a new solidarity allowance were introduced.

The coronavirus regulations are extremely complex. It is difficult to apply them in practice, which represents a major obstacle, especially for micro- or small enterprises. The anti-corona measures are furthermore subject to temporal limitations. In practice, they provide short-term fi-

nancial relief but do not effectively mitigate the pandemic's negative economic consequences. Both Polish nationals and foreign nationals, who reside and work in Poland, are covered by the anti-corona measures. No specific measures were introduced for foreign nationals, with the exception of some automatic extensions of residence and work permits for third-country nationals. The legislative measures reflect the complexity of the labour market situation, i.e. they target employees, self-employed persons and civil law contractors. The latter group was particularly vulnerable even before the outbreak of the pandemic, and is still in a very precarious situation.

In short: the Polish social security system has not undergone any substantial changes. In fact, social security measures are only a small part of the COVID-19 legislation. It seems that there is no comprehensive strategy on how to effectively cope with the COVID-related challenges. The long-term effects of the pandemic on social security remain to be seen.

# **Vulnerable groups: can the Spanish social security system guarantee their protection in times of corona?**

## **Financial implications for the welfare state**

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Cristina SÁNCHEZ-RODAS NAVARRO\*

### **1. Introduction<sup>1</sup>**

The COVID pandemic has caused human tragedy, including illness and death, pushed hospitals and bed capacity to the limits, changed our family life and social interactions, and caused a worldwide economic crisis,<sup>2</sup> in addition to many other undesirable and adverse effects. The pandemic has also produced a boom in teleworking, at least in those activities where its implementation is feasible. This notwithstanding, a significant increase in Spain's unemployment rate has not been prevented.

The year 2020 ended in Spain with a decrease of 360,105 (-1.8 per cent) contributors to the social security system, the largest annual decline since 2012. The economic crisis resulting from the paralysis of productive activity owing to the pandemic has undoubtedly affected those segments of the population the most who are at risk, namely people working in the informal economy and job seekers.

The pandemic has also dramatically increased the number of those whose income lies below the poverty line.

This paper focuses on the legislative reforms devised in Spain in the wake of the pandemic to respond to the needs of two particularly vulnerable groups: the unemployed<sup>3</sup> and people at risk of social exclusion.

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\* University of Sevilla, Spain.

1. Research carried out within the scope of the projects financed by MINECO "La Seguridad Social Internacional y Comunitaria: conflictos de leyes y protección Social" (DER2017-83040-C4-3-R) and Red de Excelencia "La Protección Social y la Coordinación de Sistemas de Seguridad Social en la Unión Europea e Iberoamérica: Los desafíos del Brexit y el pilar Europeo de Derechos Sociales (RED2018-102508-T).
2. Yue Lin; "China's Social Security system and labor protection under the Covid-19 pandemic". E-Revista Internacional de la Protección Social" No. 1/2020; pp. 15-28.
3. José Antonio González Martínez; "Medidas excepcionales en materia de Seguridad Social durante el COVID-19". E-Revista Internacional de la Protección Social No. 1/2020; pp. 136-175.

## 2. Covid and unemployment

The most important legal instrument supporting employment stability and preventing mass dismissals is the “employment regulation procedure”<sup>4</sup>, which allows suspensions of contracts and reductions in working hours, with the peculiarity that employers are exempt from paying social security contributions for their workers,<sup>5</sup> including the unemployment contribution rate. In case of reductions in working hours, social security contributions are only due for services actually performed by employees. On account of these measures, companies have been able to mitigate the pandemic’s economic impact. As an extraordinary measure, Article 35 of Royal Decree Law 11/2020 provides for the possibility to request deferments of social security debt under exceptional conditions.

In accordance with the current legislation, workers who are covered by these “employment regulation procedures” are entitled to contributory unemployment benefits, even if they do not fulfil the eligibility criteria for the minimum period of contributory employment. Furthermore, the unemployment benefit amounts received during this period will not be counted for the purpose of calculating the employee’s maximum benefit amount.

During the period of applicability of the extraordinary public health measures adopted by the authorities to fight COVID-19, applications for unemployment compensation beyond the maximum benefit amount outside the legally prescribed period will not result in the reduction of the entitlement period for the corresponding benefit.

The total number of unemployed persons in December 2020 was 3,888,137 persons, of which nearly two million were women. In Spain, which has always had one of the highest youth jobless rates in the EU, unemployment among young people under the age of 25 years increased by 47.1 per cent in 2020, compared to 20.8 per cent unemployment among persons aged 25 years and up.

It should be noted that workers covered by the “employment regulation procedures” (approximately 755,000 persons on 31 December 2020) are *not* included in the unemployment figures. Nor does the government

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4. Expediente de regulación de empleo: ERTE.

5. Enterprises with less than 50 employees are entitled to a bonus of 100 per cent of social contributions and 75 per cent if the number of employees exceeds this threshold.

include the self-employed who are receiving benefits for cessation of activity. If all of these individuals were added, Spain's actual unemployment rate would exceed 30 per cent.

### 3. Unemployment measures to fight the covid pandemic

In accordance with Spanish legislation, unemployment compensation includes a cash benefit for full or partial unemployment and payment by the Public Employment Services of the employer's social security contributions.

Since the government announced the state of emergency on 14 March 2020, a battery of legal measures has been enacted to fight unemployment caused by the COVID-19 health crisis. These measures are regulated in Royal Decree Law 8/2020, Royal Decree Law 11/2020, Royal Decree Law 17/2020, Royal Decree Law 24/2020 and Royal Decree Law 30/2020. These provisions were exclusively promulgated by the government –not by Parliament– on the basis of Article 86 of the Spanish Constitution, which stipulates that “in cases of extraordinary and urgent need, the Government may issue temporary legislative provisions...”<sup>6</sup>

The objectives and features of the new unemployment provisions are as follows:

- to stabilise employment and prevent the destruction of jobs;
- temporary validity, depending on the development of the pandemic;
- duration of receipt of cash benefits will not be reduced in case of late submission of application;
- unemployment benefits have been extended to workers whose contracts were terminated during their probation period after 9

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6. Article 86.1 Spanish Constitution: “...in cases of extraordinary and urgent need, the Government may issue temporary legislative provisions which shall take the form of decree-laws and which may not affect the regulation of the basic State institutions, the rights, duties and liberties contained in Title 1, the system of the Autonomous Communities, or the General Electoral Law. 2. The decree-laws must be submitted forthwith to the Congress of Deputies, which must be summoned for this purpose if not already in session. They must be debated and voted upon in their entirety within thirty days after their promulgation. Congress must expressly declare itself in favour of ratification or repeal within said period of time, for which purpose the Standing Orders shall establish a special summary procedure. 3. During the period established in the foregoing clause, their passage through the Cortes may be the same as for Government bills, by means of the emergency procedure”.

March 2020, regardless of the reason for the termination, as well as to those workers who voluntarily terminated their employment contract after 1 March 2020, because they had a firm job offer with another company that ultimately did not enter into the contract due to the COVID-19 crisis.

The extensive legislation adopted since the state of emergency was declared has resulted in around 30 different unemployment benefit schemes. Yet nearly 1.3 million unemployed persons are not covered by them. Legislative diffusion has made the system far too complex. Moreover, the Spanish administration does not have sufficient human resources to process the many submissions received, and many applicants have had to wait months to receive help.

### ***3.1. Special contributory unemployment benefits introduced due to the current extraordinary circumstances***

#### ***3.1.1. Measures for unemployed workers whose contracts have been suspended or whose working hours have been temporarily reduced***

- Recognition of the right to contributory unemployment benefits, even if the worker has not yet accumulated the required minimum contribution period;
- the (temporary) period during which unemployment compensations is received due to the extraordinary circumstances caused by the pandemic will not be included for the purposes of calculating the worker's maximum duration of unemployment insurance;
- the cash benefit amount shall replace 70 per cent of the employee's average wages<sup>7</sup> earned during his or her last 180 days of contributions or during the period immediately prior to the situation of unemployment;
- the duration of the benefit shall be extended until the end of the period of suspension of the employment contract or the temporary reduction of working hours.

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7. The "regulatory base" for unemployment compensation is used to calculate the total amount of this benefit, while the State Public Employment Service uses the "contingency contribution base" to determine the payment of contributions during the period of unemployment compensation.

### *3.1.2. Intermittent permanent workers*

If the worker's activity has been suspended and he or she has over 360 days of contributions, he or she is entitled to unemployment compensation. If the worker becomes involuntarily unemployed again and re-applies for unemployment benefits, he or she will be put back on the payroll for a maximum of 90 days.

If the worker's activity has been suspended or if he or she has not been able to return to work and has not accumulated the required minimum contribution period, the worker is entitled to a contributory benefit that will be paid until the worker can return to work (for a maximum of 90 days).

The current period of extraordinary measures does not imply a reduction in future eligibility for the corresponding unemployment benefits.

### *3.1.3. Extraordinary contributory unemployment benefit for bullfighting professionals who are not entitled to other unemployment benefits*

Bullfighting professionals who apply are eligible for the extraordinary contributory unemployment benefit, provided that they do not have access to ordinary unemployment benefits. Those workers included in the census referred to in Article 13.2.a) of Royal Decree Law 2621/1986 on 31 December 2019 are eligible beneficiaries.

Entitlement to this subsidy was established on 6 November 2020, provided that the application was submitted before the deadline. If the application was submitted after the deadline, entitlement to the benefit commenced on the day following submission of the application.

Entitlement to the unemployment benefit regulated in this article shall cease on 31 January 2021.

The termination of this benefit does not, however, denote an exhaustion of contributory unemployment benefits as regulated in the consolidated text of the General Law on Social Security.

To determine the benefit amount, the applicable minimum contribution base for common contingencies is used as the regulatory base, corresponding to Group 7 of the professional categories of the general social security system.

### ***3.2. Extraordinary measures for unemployment assistance***

#### ***3.2.1. Exceptional unemployment allowance for domestic employees***

Persons integrated in the special system for domestic employees within the general social security system can benefit from this exceptional unemployment subsidy in case of suspension or reduction of activity.

Requirements: registration with the social security system prior to the entry into force of Royal Decree Law 463/2020 declaring the state of emergency in response to COVID-19, and being in one of two situations:

- temporary cessation of the provision of services in one or more homes, in full or in part, through no fault of their own, as a result of the COVID-19 health crisis to reduce the risk of contagion;
- their employment contract has ended for reasons beyond the worker's control as a result of the COVID-19 health crisis.

In both situations, the causal events must have occurred after 14 March 2020, the date Royal Decree Law 463/2020 came into force.

#### ***3.2.2. Extraordinary subsidy for public performance artists within the general social security scheme***

As a result of the health crisis caused by COVID-19, public performance artists, who are entitled to extraordinary unemployment benefits in accordance with Article 2 of Royal Decree Law 17/2020 of 5 May – which approved measures to support the cultural sector and provide tax relief to deal with the economic and social impact of COVID-19 – continue to be entitled to this unemployment benefit.

As an exceptional and temporary measure, protection for this particular group during periods of inactivity comprises unemployment compensation in addition to benefits for child birth and child care, retirement, permanent disability and death, covered by common contingencies.

#### ***3.2.3. Exceptional unemployment benefit for technical and support staff in the cultural sector***

Beneficiaries: workers who temporarily worked as technical or support staff in the cultural sector, providing services for public performance or show productions.

Among other requirements, the worker must:



- be registered as a job seeker with the Public Employment Services on the date of application for the exceptional benefit and sign the activity commitment;
- not be in full-time employment or self-employment on the date of application for the benefit or on the date of entitlement to the exceptional benefit;
- not have been the beneficiary of any other extraordinary protection measures against unemployment approved following the outbreak of the health crisis caused by COVID-19;
- have proof of a period of employment and of having contributed to the general social security scheme for at least 35 days.

#### 3.2.4. *Exceptional unemployment benefit when the temporary contract ends*

The beneficiary must meet the following requirements:

- he or she must be registered as a job seeker with the Public Employment Services and sign the activity commitment;
- he or she is not entitled to any other unemployment benefit or subsidy because he or she has not accumulated the required minimum contribution period.

Beneficiaries:

- workers with a fixed-term contract that lasted at least two months are eligible for this benefit, provided that their contract ended after 14 March 2020;
- workers whose activity involuntarily ceased after 15 March 2020 and who have been employed under a fixed-term contract for at least two months, with the obligation to pay unemployment insurance;
- workers whose income does not exceed 75 per cent of the minimum interprofessional wage, excluding the proportional part of two special payments;
- workers who do not earn the minimum income, the inclusion income, social wages or similar aid provided by any public administration;
- workers who were not working full time or were self-employed on the date of termination of the contract or on the date the exceptional benefit was introduced.

After 21 July 2020, it was no longer possible to apply for the Exceptional End of Contract Grant.

### *3.2.5. Exceptional subsidy for unemployed persons who have exhausted state aid between 14 March and 30 June*

Beneficiaries: unemployed workers who have exhausted their entitlement to contributory benefits between 14 March 2020 and 30 June 2020, and are not entitled to any other subsidy.

Workers who have exhausted their entitlement to any of the following benefits between 14 March 2020 and 30 June 2020 are eligible for the exceptional subsidy:

- unemployment compensation in any of its modalities regulated in Chapter III of Title III of the revised text of the General Law on Social Security;
- extraordinary unemployment benefit (SED);
- insufficient contribution allowance;
- active insertion rent.

The duration of the exceptional benefit is limited to 90 days and can only be claimed once.

The subsidy amount is equal to 80 per cent of the applicable public indicator of multiple effects income, and is paid out by the Public Employment Services from the month following submission of the application.

## **4. COVID-19 and self-employed workers**

Self-employed persons have been entitled to ordinary protection in case of cessation of activity (“unemployment for the self-employed”) since 2010.<sup>8</sup> This protection is provided for self-employed persons who are in a legal situation of cessation of activity. This implies full cessation of the self-employed person’s economic or professional activity and may be definitive or temporary. Such protection includes the payment of a monthly financial benefit and social security contributions for common contingencies.

As a consequence of the pandemic, new supplementary benefits have been introduced on a provisional and transitory legal basis to protect unemployed workers. The Spanish social security system has paid out EUR 289.73 million in benefits to over 355,000 self-employed workers to support them in the wake of COVID-19.

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8. Cristina Sánchez-Rodas Navarro; “Good Legal Practices in Spanish Law? Clauses governing residence and the export of Spanish Social Security benefits” in: M.T. Velasco Portro (Coord.); Good Practices in Social Law. Laborum. 2015; pp. 23-45.

#### ***4.1. Extraordinary protection in case of cessation of activity***

The beneficiaries of this allowance are all self-employed persons who have been impacted by the closure of businesses as a result of the declaration of the state of emergency or whose monthly revenue has decreased by 75 per cent compared to their monthly average in previous quarters.

Unlike the ordinary benefit provided in case of cessation of activity, a contribution period of 12 months is not required to be eligible for this particular benefit.

Requirements:

- the self-employed person must have been affiliated and registered with the social security system on the date of the declaration of the state of emergency (14 March 2020), either under the Self-Employed Scheme or, where applicable, under the Special Scheme for Sea Workers;
- in the event the self-employed person's activity has not been suspended as a result of the state of emergency, he or she must prove a loss in revenue of at least 75 per cent in the calendar month prior to the application for the benefit compared to his or her average revenue in the quarters prior to the declaration of the state of emergency;
- the self-employed person must have paid the mandatory social security taxes. If this requirement has not been fulfilled on the date of the suspension of activity or loss in revenue, the administrative body will request the applicant to pay the outstanding amount within a non-renewable period of 30 calendar days in order to be eligible for the benefit. Once the outstanding amount has been paid in full, the self-employed person acquires the right to protection.

The amount will be 70 per cent of the regular base income, calculated the same way as the ordinary benefit in case of cessation of activity.

The beneficiaries are exempt from paying social security contributions.

#### ***4.2. Extraordinary low-income benefit***

This benefit is targeted at self-employed persons who are not entitled to protection in case of cessation of activity.

Requirements: the self-employed worker may not have earned an income from self-employment in the last quarter of the financial year 2020

exceeding the minimum interprofessional wage. He or she must prove a loss in revenue in his or her self-employed activity of at least 50 per cent during the fourth quarter of 2020 compared to revenue earned in the first quarter of 2020.

The benefit amount, as a general rule, is 50 per cent of the minimum contribution base.

#### ***4.3. New support for seasonal self-employed***

Seasonal workers for the purposes of this benefit are considered self-employed workers who have performed services under the Special Regime for Self-employed Workers or the Special Regime for Sea Workers over the last two years during the months of June to December.

Requirements:

- the seasonal worker must be registered and have paid contributions to the Special Scheme for Self-employed Workers or the Special Scheme for Sea Workers as a self-employed worker for at least four months in the period June to December for the years 2018 and 2019;
- he or she was not registered as being employed under the relevant social security scheme for more than 120 days during the period 1 June 2018 to 31 July 2020;
- he or she did not carry out an activity or was not registered as employed between 1 March and 31 May 2020;
- the seasonal worker did not receive any benefit from the social security system between January and June 2020, unless it is compatible with the exercise of an activity as a self-employed person;
- he or she did not earn above EUR 23,275 in 2020;
- he or she has paid all social security taxes.

The amount is equivalent to 70 per cent of the minimum contribution base for the activity carried out within the scope of the Special Social Security Scheme for Self-employed Workers or, where applicable, of the Special Social Security Scheme for Sea Workers.

For the period during which the worker collects this benefit, he or she is exempt from paying any contributions, though he or she remains registered with the relevant social security scheme.

## 5. People at risk of social exclusion and COVID-19

Even before the outbreak of the pandemic, Spain's at-risk-of-poverty rate was already 4.4 percentage points above the EU average, and inequalities in disposable income were among the highest in the EU. Of particular concern is the fact that among the Spanish working population, the share of people in employment who are at risk of poverty is 3.4 percentage points above the EU average.<sup>9</sup>

The pandemic has undoubtedly magnified the number of people and households at risk of poverty. It is estimated that around one million families may be at risk of social exclusion.

### *5.1. Minimum vital income: a new non-contributory social security benefit*

The National Strategy for the Prevention and Fight against Poverty and Social Exclusion 2019–2023, adopted in March 2019, announced the introduction of a minimum vital income (MVI) by 2023 at the very latest.

The economic crisis caused by the pandemic, which has been particularly virulent in Spain, accelerated the Strategy's implementation through Royal Decree Law 20/2020. According to Article 4.2, the MVI qualifies as a non-contributory social security benefit.

It is a means-tested benefit.<sup>10</sup> Its primary aim is to prevent the risk of poverty and social exclusion of people who live on their own or who are cohabiting with a partner and cannot meet their basic needs.

The MVI is legally defined as a subjective right to an economic benefit that is part of the protective measures provided by the social security system, and guarantees a minimum level of income for individuals who are economically vulnerable.

It aims to ensure a real improvement in the beneficiaries' opportunities for employment and social inclusion. It functions as a protective network, with the objective of assisting vulnerable individuals in moving from a situation of exclusion to participation in society.

According to Article 7.1.a) of Royal Decree Law 20/2020, beneficiaries must not only legally reside in Spain, but they must also have resided in

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9. Commission Staff Working Document. Country Report Spain 2020. COM(2020) 150 final.

10. F. Moreno de Vega y Lomo; "La dinámica temporal del Ingreso Mínimo Vital". E-Revista Internacional de la Protección Social No. 2/2020; pp. 12-34.

the country continuously and without interruption for at least one year immediately prior to the date of submission of their application.<sup>11</sup>

Monthly amount: between EUR 462 and EUR 1,015 per household.<sup>12</sup>

At present, the MVI has not yet been inserted by the Spanish Government in Annex X of Regulation 883/2004.<sup>13</sup> Therefore, it can be considered an exportable non-contributory benefit.<sup>14</sup>

## 6. Administrative management of social measures implemented to fight the pandemic

The Public Employment Services have received a barrage of criticism with regard to their management of applications and payment of benefits and subsidies since the outbreak of the pandemic. The Public Employment Services have collapsed due to the lack of staff to process the flood of applications. This situation has caused a major delay, and it may take months before a benefit is actually paid out. In fact, Public Employment Services staff themselves have reported to the media that the processing of applications is lagging behind by up to three months as a result of the pandemic, and have highlighted the lack of resources.

The administration of the minimum vital income is equally chaotic. The number of applications for MVI has clearly overwhelmed the administration: according to the Ministry of Inclusion, Social Security and Migration, 975,000 applications have been received, of which only about 300,000 have been processed. Nearly 60 per cent of applications have been rejected by the rigid approval procedure. The administrative and procedural turmoil in no way reflects the expectations that were raised about this non-contributory benefit targeting the most disadvantaged citizens.

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11. Pepa Burriel Rodríguez-Diosdado; "Las Obligaciones de las Personas Beneficiarias del Ingreso Mínimo Vital: las Infracciones y Sanciones Previstas y su Posible Incidencia en la Coordinación de Prestaciones de la Seguridad Social a Nivel europeo". E-Revista Internacional de la Protección Social No. 20/2020; p. 97.

12. F. Jimeno Fernández; "El Ingreso Mínimo Vital en Hogares Unipersonales". E-Revista Internacional de la Protección Social" No. 2/2020; pp. 77-93.

13. Thais Guerrero Padrón; "Ingreso Mínimo Vital y nacionales británicos en España en tiempos del Brexit". E-Revista Internacional de la Protección Social No. 2/2020 pp. 60-76.

14. Cristina Sánchez-Rodas Navarro; "El Ingreso Mínimo Vital a la Luz del Derecho de la Unión Europea y de los Convenios Internacionales de Seguridad Social Vigentes en España". Cuadernos de Derecho Transnacional No. 1/2021; p. 295.

E-government poses yet another hurdle, because the unemployed and people at risk of social exclusion have to communicate with the authorities, submit applications, etc. using digital means. Not all applicants, however, possess the digital means to connect with the administration. Obviously, the digital gap affects those with less economic resources far more than it does other groups.

To make matters worse, the process of vaccinating the population has also been riddled with problems, including a lack of vaccines, politicians who are being vaccinated although they do not belong to a priority group, lack of information, etc.

## **7. Financial sustainability of the welfare state in the wake of the pandemic**

Aid, subsidies, grants, allowances and benefits to support businesses and workers cost the Spanish government over EUR 150 billion in 2020. Pending EU funds, the country's public debt will rise exponentially.

The increase in public spending caused by the pandemic is coupled with a drastic drop in revenues due to rising unemployment and falling numbers of contributors. This will raise new challenges for financing the Spanish social security system.

In response to the COVID-19 pandemic and the urgent need to address the accompanying health crisis, the scope of the European Union Solidarity Fund (EUSF) has been extended to cover major public health emergencies. Spain will receive a total of EUR 67.38 million in aid.

Spain is looking to Europe to cope with the costs of the pandemic's impacts. This support comes at a price, however: in exchange for financial assistance from the European Recovery Fund, the European Commission expects Spain to introduce specific reforms and detailed targets as well as a timetable to implement these. One of the most sensitive issues in this regard are pensions.

Member States are focusing on recovery and developing resilience plans in order to be able to be eligible for funds under the Recovery and Resilience Mechanism. Spain presented its national recovery plan "Spain Can" on 7 October 2020, which will guide implementation of the European funds (EUR 72 billion) until 2023, and mobilise 50 per cent of the resources available to Spain through the Next Generation EU instrument over the coming three years.

With growing social protest against the austerity policies imposed by the government in previous years, leading to political instability as a result

of the rise of nationalism, it is unlikely that any Spanish government in the short term will be able to cope with the “political damage” that any new attempts to substantially reform the pension system by reducing coverage and pension amounts.

Moreover, the EU does not have the power to impose any pension reforms in the Member States, much less to legislate on this issue; ultimately, the Member States take the final decision.<sup>15</sup> EU recommendations should not become an instrument that undermines Member States’ sovereign competence in social security legislation.

If the pandemic further destabilises the precarious balance between the EU’s Economic Pillar and the European Pillar of Social Rights, citizens’ disaffection with the European institutions will grow, and episodes such as Brexit may spread.

## 8. Conclusions

Teleworking has not prevented an upsurge in Spain’s unemployment rate.

The year 2020 ended with an average drop of 360,105 contributors (-1.8 per cent) to the Spanish social security system, which represents the largest annual decline since 2012.

The key legal instrument to protect employment stability and prevent mass dismissals has been the “employment regulation procedure”.

The measures adopted by the government to fight unemployment are exceptional and transitory. The fight against social exclusion, which has been exasperated by the pandemic, has, however, created a new, permanent non-contributory social security benefit: the minimum vital income (MVI).

The extensive legislative measures adopted in Spain since the state of emergency was pronounced have increased the unemployment protection system’s complexity. Moreover, the Spanish administration does not have sufficient human resources to process the many applications it receives, meaning people have to wait for months to receive any support.

Finally, financing the pandemic’s social costs will pose challenges to the development of the European Pillar of Social Rights.

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15. C. Sánchez-Rodas Navarro; “Sobre la (in)competencia de las instituciones europeas para reformar los sistemas públicos de pensiones nacionales a la luz del derecho de la UE y de los tratados internacionales”. Cuadernos de Derecho Transnacional No. 1/2018, pp. 394-412.



# **Migrant and mobile workers: can the Spanish social security system guarantee their protection in times of corona?**

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María SALAS PORRAS\*

## **1. Introduction**

Just like in a science fiction movie, the COVID-19 pandemic has shaken our lives to the core. At the personal level, our interpersonal relationships are now characterised by social distancing and isolation, leading in some cases to sadness and depression. At the political level, citizens are questioning their governments' response to and management of the pandemic. At the economic level, an unprecedented decline in the world economy is anticipated, which undoubtedly will affect industrial relationships – though we cannot yet predict the full severity of these impacts – and, consequently, social security systems around the world. Among those hit particularly hard by the negative economic context are migrant workers, because in the vast majority of cases and from a general perspective, their employment and social protection context is a far cry from that of workers who enjoy standard social security insurance and labour protection.

Taking this reality into account, it will be essential for comparative law studies – such as the ones that make up this edited book – to reflect on the social security and employment measures adopted by different countries and to highlight the best practices to provide guidance for countries.

This essay offers a general review of the social security measures adopted in Spain. It pursues two major aims: 1) to identify the components of Spain's strategy to address some of the labour protection problems caused by the pandemic; and 2) to distinguish the aforementioned measures based on the classification of migrant workers: European mobile workers, non-European workers, stateless persons and refugees and Spanish emigrants. The final section concludes the review, highlights good practices but also draws attention to possible weaknesses.

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\* Dpt. Labor Law and Social Security, University of Málaga, Spain: mariasalas@uma.es.

## 2. Main characteristics of the Spanish social security system's response to COVID-19

The pandemic, which has been qualified as a "total social fact"<sup>1</sup>, has had severe repercussions for the social, political, institutional and legal dimensions. As regards the legal dimension and specifically the protection guaranteed by the social security system, several authors describe the measures adopted by the Spanish government in this field as improvised, thoughtless, uncoordinated and disjointed.<sup>2</sup>

Due to space limitations, the 14 normative provisions – the total number of provisions approved by the Spanish government without considering their normative development – cannot be discussed here in detail, but to help the reader better understand the provisions' aims, suffice it to say that the measures focus primarily on the *recognition, contribution and compatibility* of social security benefits<sup>3</sup>, specifically of temporary disability and unemployment insurance.

In terms of recognition, a measure for "situations akin to a workplace accident" has been introduced with the purpose of providing temporary disability insurance for specific healthcare situations, such as periods of quarantine, contagion control and mobility restrictions, if the employee cannot switch to teleworking and if he/she is not entitled to any other public benefit at the time the disease was diagnosed. Pharmaceutical benefits are excluded from this particular situation.

Similarly, an extraordinary benefit has been introduced for self-employed workers in case of cessation or suspension of activity or if their earnings have declined by 75 per cent relative to their average earnings in

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1. This term was coined by Professors Monereo Pérez, José Luis y Rodríguez Iniesta, Guillermo in: "La protección social en la emergencia. Entre el ensayo, precipitación y búsqueda de soluciones en tiempos de incertidumbre: A propósito de la crisis sanitaria provocada por el COVID 19 y las medidas legales adoptadas", *Revista de Derecho de la Seguridad Social*, No. 23, segundo trimestre 2020, p. 52. They highlight some unjustified measures adopted by the government that are not related to the pandemic but have further obscured a system that is dark and complex in and of itself.

2. See the essay of José Antonio González Martínez: "Medidas excepcionales en materia de Seguridad Social durante el COVID-19", *e-Revista Internacional de la Protección Social*, vol. V, No. 1, 2020, p. 153.

3. An extensive study on this classification and the measures has been carried out by Andrés Ramón Trillo García: "Seguridad Social y COVID-19", *Revista de Derecho de la Seguridad Social*, No. 23, segundo trimestre 2020, pp. 57-174.

the preceding half-year. The benefit consists of a subsidy of 70 per cent of the self-employed worker's regular base pay. The duration of this measure has not been specified and the benefit periods will not be reduced in the future.

Some extraordinary measures have been introduced for workers belonging to different social security regimes. For example, an extraordinary subsidy in case of reduction in activity has been approved for individuals classified as domestic workers; an exceptional unemployment benefit has also been approved for workers whose temporary contract –with an initial duration of at least two months– has expired and who do not have access to any other benefit or subsidy and thus do not have an income; furthermore, extraordinary and temporary access to unemployment benefits has been granted for artists whose activities have been suspended due to the closure of establishments as a result of COVID-19.

The most important among these "recognition measures" is the so called minimum vital income (Ingreso Mínimo Vital (IMV) in Spanish)<sup>4</sup>. It is a household-based scheme, not an individual-based one, although individuals who live on their own can also apply for it – in this specific case, however, the applicant must have been living on his/her own for at least three years. This benefit is conditional on certain eligibility criteria; recipients must have been active and legally residing in Spain for at least 1 year, though some individuals are exempt from meeting this requirement, including women who are victims of gender-based violence, of sexual trafficking or of sexual exploitation. Applicants must demonstrate that they have applied for other benefits they are eligible for before submitting a request for this particular benefit (the only exception are individuals who receive the regional minimum vital income); individuals who own a commercial business are automatically excluded from the scope of this benefit. Non-working adults must be registered as job seekers, and their income must be lower than the minimum vital income by at least EUR 10 (i.e. EUR 450 for a single adult). This income threshold also includes the individual's

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4. The recent approval of this measure implies that there are only few studies on the problems it may entail or its nature, but the following are especially noteworthy: Carolina Gala Durán: "Los desafíos del nuevo Ingreso Mínimo Vital", *IUSLabor* 2/2020, pp. 1-4 and Francisco Vigo Serralvo: "Ingreso Mínimo Vital ¿subsidio o pensión?", texto accesible a través del enlace [https://www.linkedin.com/posts/departamento-dtss-uma-01404a1aa\\_jmv-subsidio-o-pension-activity-6722065523405807616-YT9J](https://www.linkedin.com/posts/departamento-dtss-uma-01404a1aa_jmv-subsidio-o-pension-activity-6722065523405807616-YT9J), (last accessed on 23 November 2020).

assets (excluding his/her primary residence and debts), which, in total, may not exceed three times the IMV amount. The benefit is compatible with other benefits and income, with the exception of certain child allowances – individuals/households who are recipients of certain child allowances do not need to formally apply for this benefit, as it is automatically included in their income transfers.

In terms of contribution, albeit in the sense of exemptions for companies, some measures have been adopted deferring payment of contributions and taxes for the duration of the suspension period and if companies have had to suspend or reduce working hours (100 per cent for companies with fewer than 50 workers, 75 per cent for companies with more than 50 workers). Despite these exemptions, the contributions for these periods are considered to have effectively been paid, and all workers affected by reductions or suspensions due to COVID-19 are entitled to receive contributory unemployment benefits, even if they do not meet the minimum contribution requirements. These periods do not count against the maximum eligibility period.

In terms of compatibility, the most important measure is the introduction of the child care allowance for caretakers of minors suffering from a serious illness. Workers who receive unemployment benefits or whose activity has been suspended during the state of emergency are eligible for this benefit. This benefit has also been extended to unemployed persons who had a temporary employment contract. In addition, temporary hiring to meet the urgent needs of the agricultural sector for seasonal fruit picking has been authorised. The following individuals can be hired for such jobs: a) unemployed persons or persons whose activity has ceased; b) persons whose contract has been temporarily suspended as a result of temporary business closure for economic, technical, organisational or production-related reasons; c) migrant workers whose work permit expired between the entry into force of the state of emergency (14 March) and 30 June 2020; and d) third-country nationals aged between 18 and 21 years, who legally reside in Spain. The remuneration received for this activity is compatible with the modalities of unemployment benefits and the termination of the worker's initial activity, as well as with any other type of benefit of an economic nature or social assistance provided by an administration. It is, however, incompatible with benefits received for temporary disability, high risk pregnancy or during the worker's breastfeeding period: it is also not compatible with childbirth and childcare benefits or with a permanent disability pension.

Measures that are indirectly related to social security, but that carry important consequences for the stability of the entire system can be classified in a separate “box”. These measures target companies and self-employed workers and consist of moratoriums on payments of contributions without interest for up to six months and temporary extensions for social security debt repayment.

### 3. Specific measures addressing European mobile workers

Independently of the fact whether an employer is a ‘receiver’ or ‘sender’ of workers, general EU provisions must be applied to posted workers, cross-border workers and workers who have realised the freedom of movement or of establishment. For them, despite the different situations envisaged by the European Union,<sup>5</sup> Article 8 of Regulation 593/2008 stipulates that the law of the Member State in which the work is performed applies to the individual employment contracts – *lex loci laboris*. Consequently, if these workers cannot fulfil their contractual obligations due to the coronavirus-related restrictions, the respective Member State’s laws determine the legal consequences for the posted workers whose activity has ceased or has been suspended. In accordance with Article 7 of Regulation 492/2011, these workers must have access to the same social and financial benefits provided to the Member State’s own nationals, considering that the right of movement is limited. This continues to be the case even if the posted workers become “teleworkers”.

Consequently, and in accordance with this general principle, Spain as a receiver of European mobile workers has introduced two specific measures related to the COVID-19 crisis.

The first one is not a social security and employment measure *per se*, but has strong implications for that field. It is a measure of an administrative nature that requires residence permits of European workers and their families to be authorised within a 3-month period after expiration. An “automatic extension” of permits that expire during the state of emergency, as well as of those that expired in the three months prior to the declaration of the state of emergency has been implemented. The exten-

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5. The European Commission issued the Communication dated 30/03/2020 on the exercise of the free movement of workers during the COVID-19 outbreak. : <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020XC0330%2803%29> (accessed on 15 January 2021).

sion takes effect from the day following the permit's expiration and will be valid for six months after the end of the state of emergency (Order SND/421/2020, 18 May).

The social security and employment policies introduced by the government are related to the four categories discussed above, namely regulation, contribution, compatibility and moratoriums.

The first category refers to extraordinary measures related to unemployment protection (RD Ley 8/2020) with retrospective effect if associated with a situation caused by COVID-19, even when certain legal requirements for access to such benefits are not met.

These measures also apply to self-employed workers (RD Ley 24/2020). They are exempt from the obligation to pay contributions until the state of emergency ends. They are eligible for this extraordinary benefit if their activity has ceased; the provision on cessation of activity has been made compatible with the self-employed worker's professional activity.

Other measures entail several exceptional unemployment benefits that are compatible with the tasks carried out by seasonal or agricultural workers (RD ley 13/2020), or represent a system of compensation for the loss of income due to COVID-19 (for domestic workers, workers whose temporary contract has ended (RD ley 11/2020); for artists, professional bullfighters and workers in the cultural sector (RD ley 32/2020); and for sea workers (RD ley 24/2020)).

European workers who have realised the freedom of movement or of establishment may be eligible for the minimum vital income. In this regard, it seems important to reflect on the possible inclusion of this measured under the scope of Article 3 of Regulation 883/2004. In this sense, minimum vital income is considered work-related income<sup>6</sup>, and is treated as such by the tax system, i.e. it is not considered a tax-exempt income. Depending on the amount of this income, beneficiaries usually do not have to pay personal income tax. (The minimum taxable income for a single person is EUR 22,000; the maximum amount of the minimum vital income is EUR 12,180, i.e. far from the former figure).

In addressing this issue, the CJEU in cases C- 679/16 and C-372/18, among others, determined that the abovementioned distinction is essentially based on the constituent elements of each separate benefit, in par-

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6. For further reflections, see Prof. Carolina Gala Durán: "Los desafíos del nuevo Ingreso Mínimo Vital", *IUSLabor* 2/2020, p. 2.

ticular its purpose and the conditions under which it is granted,<sup>7</sup> and not on whether national legislation classifies it as a social security benefit. The Court has consistently held that a benefit may be regarded as a 'social security benefit' in so far as it is granted to recipients without any individual and discretionary assessment of their personal needs on the basis of a legally defined position, and provided that it relates to one of the risks expressly listed in Article 3.1 of Regulation No 883/2004. It must be borne in mind that the first condition referred to in the previous paragraph is met if a benefit is granted in light of objective criteria which, if they are met, confer entitlement to that benefit, the competent authority having no power to take account of the individual's other personal circumstances. In this regard, the Court has previously held that in relation to benefits that are either granted, rejected or whose amount is calculated on the basis of the recipient's assets, the award of such benefits does not depend on an individual assessment of the applicant's personal needs, provided that an objective, legally defined criterion gives entitlement to the benefit without the competent authority being able to take other personal circumstances into consideration. Although a recipient's assets are taken into account to determine the actual amount he/she is eligible for, it follows from Articles 7 and 8 RD Ley 20/2020 that that amount is, in essence, calculated on the basis of objective criteria applied without distinction to all recipients in accordance with their total assets.

It follows that both of the cumulative conditions referred to by the Court are met and that the LMI must therefore be regarded as a "social security benefit" in accordance with Article 3 of Regulation 883/2004. Consequently, European and third-country workers can be beneficiaries, i.e. they are entitled to the application of Regulation 883/2004, and Member States are required to include the accumulation of earlier periods of insurance in other EU Member States when calculating the amount of benefits the worker is entitled to.

#### 4. Provisions for non-European workers

The legal situation of non-European workers can be distinguished between those who possess legal residence and a work permit and those

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7. A valuable contribution to its identification has been made by Prof. Cristina Sánchez-Rodas Navarro: "La lucha contra la exclusión socio-laboral en España: 1990-2020", e-*Revista Internacional de la Protección Social*, vol. V, No. 1, 2020, pp. 5-14.

who do not. Taking this as our starting point, the measures provided for such workers in Spain diverge.

#### ***4.1. Workers legally residing in Spain***

The scope of the right to social security for third-country nationals who legally reside in Spain can be drawn from two constitutional provisions. Article 13 of the Spanish Constitution (*Constitución española* - hereafter CE), which deals with the legal position of foreigners in the Spanish social security system, refers to the provisions of international treaties and ordinary legislation on the recognition of constitutional rights. Article 41 CE requires public authorities to maintain a social security system, and though it exclusively alludes to citizens, is interpreted as tacitly including foreigners.

The legal position of non-European workers in Spain derives from national legislation, specifically from the General Law of Social Security (LGSS, its abbreviation in Spanish), specifically Article 7, and the Organic Law 4/2000 on the rights and freedoms of foreigners in Spain (LOEx henceforth), specifically Arts. 10 and 14. Moreover, *v.gr.* Decisions of the Constitutional 236/2007 and 259/2007, and Decisions of the Supreme Court of 03/18/2008 and 11/12/2008) are noteworthy as well.

The rights and duties of non-European workers in Spain are regulated in existing bilateral agreements, whose purpose is the coordination, harmonisation, integration and even the advancement of these measures. Such agreements usually contain minimum obligations that are more or less common to all of them.

On one hand is the establishment of the applicable legislation to avoid conflicts of laws by virtue of the *lex loci laboris* principle (as already mentioned for European workers).

On the other hand is the application of the principle of equal treatment of migrant workers, who are citizens of the signatory country, and which in the case of Spain implies that there is no discrimination between nationals and foreigners (ex Title I CE and Decision of the Constitutional Court 95/2000).

Third, the safeguarding of rights during the accumulation of insurance periods, as well as total insurance periods and *pro rata* periods for the times of residence in another EU country must be guaranteed. Access to benefits is usually conditional on compliance with the country's internal requirements.



Finally, bilateral agreements cover the majority of benefits (sickness benefits (either health or economic), retirement, disability and pension in death, protection from workplace accidents, family benefits and only occasionally, benefits derived from unemployment insurance).

To summarize, third-country workers who legally reside in Spain are protected by the Spanish social security system and are entitled to both contributory and non-contributory benefits "under the same conditions as Spanish citizens" (Article 14.1 LOEx). This means that to effectively access these benefits, third-country workers, just like Spaniards, must meet the relevant membership, registration and contribution requirements, without prejudice to the fact that by way of Art. 36.5 LOEx, they can access benefits that are "compatible" with their individual situation. At the same time, and according to Article 14.2 LOEx, these workers have access to other social protection mechanisms that fall under "assistance benefits", not only at the state level but at the regional or local level as well. This category of non-European workers is also entitled to the special measures adopted by Spain to mitigate the impacts of COVID-19.<sup>8</sup> That is, the four types of measures mentioned in the previous section, including the minimum vital income and the possibility of its recognition in other Member States in terms of accumulation of insurance periods correspond to Regulation 883/2004.

Consequently, and taking into account that third-country nationals must possess legal residence to benefit from the protection provided by the Spanish social security system, it should be reiterated that one of the measures introduced –albeit related to administrative law– addresses the extension of work and residence permits (Order SND/421/2020, May). The automatic extension of such permits does not only apply to those that expired during the state of emergency, but also to permits that expired three months prior to the declaration of the state of emergency. The automatic extension takes effect from the day following the permit's expiration and will be valid for six months after the end of the state of emergency. The

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8. More detailed reflections in this regard have been expressed in scientific studies, specifically by Prof. Carlos José Martínez Mateo: "El trabajador migrante ante los mercados laborales de España y Europa en la precrisis del COVID-19", *Revista de Derecho Migratorio y Extranjería*, nº 54, 2020, pp. 31-52; and Luis Ángel Triguero Martínez: "Migraciones y extranjería en tiempos pandémicos de emergencia ocupacional agraria: ¿una regulación jurídica segura y flexible?", *Revista de Derecho Migratorio y Extranjería*, No. 54, 2020, pp. 95-126.

same applies to the validity of Union citizen family cards, foreigner identity cards granted based on long-term residence, and long-term visas. If the resident foreigners are not in the national territory during the state of emergency when their permits or visas expire, they can enter Spain with a valid travel document, identity card or expired visa.

#### *4.2. Workers not legally residing in Spain*

All of these changes, however, for third-country workers who do not legally reside in Spain, and results in a significant protection gap, at least at the contributory level.

According to Spanish legislation, foreign workers without legal residence and work permits may be entitled to protection provided by “international agreements for the protection of workers” signed by Spain (Art. 36.5 LOEx), among which Convention No. 19 and Recommendation No. 25 of the ILO, of 1925, on the protection of professional contingencies, are particularly noteworthy. That is, workers who do not have a residence permit, in principle, only have the right to “basic social services and benefits” (Art. 14.3 LOEx). Basic social services and benefits can be understood as those referred to in Art. 63 LGSS, namely social assistance outside the social security system (for example, the measures provided by the Autonomous Communities within their capacities) and healthcare under the same conditions as all other Spaniards (Art. 3.ter of Law 16/2003 on the quality of the national healthcare system).

Consequently, it is not possible for foreign workers without a legal residence and work permit to receive unemployment benefits, considering that access to such benefits is conditional on a number of requirements that these workers cannot meet: ability to work (Art. 262.1 LGSS), registering as unemployed and possibility to search for a job or to accept suitable placement (Art. 266 LGSS).

These legal limitations imply that in situations such as the one caused by COVID-19, such workers are hit the hardest because they and their needs are essentially invisible.

In Spain, as has been the case in other countries, thousands of immigrants are in a weak position, especially those who are unemployed or work in the underground economy, who have lost their livelihoods without access to unemployment protection insurance or to any of the other aforementioned extraordinary measures. The increase in visible poverty on the streets, the increased need for soup kitchens and food pantries run by

organisations such as Cáritas, the Red Cross and others, has revealed the precarious conditions of life for immigrants even before the pandemic. Some of these entities have initiated a campaign promoting an extraordinary regularisation of immigrants, whose number is estimated at around 800,000, with the aim of providing them access to the future minimum income.<sup>9</sup> On the other hand, the procedures for authorising residence or work permits for immigrants have been paralysed, which will ultimately increase the number of illegal immigrants, as will the suspension of economic activities and the loss of contracts necessary to regularise or renew such permits. The high rate of unemployment and poverty has caused a reverse migratory movement back to Morocco, despite the paradox that it was one of the first countries to close its border, preventing the return of its own citizens from abroad and resulting in trafficking and an irregular return of immigrants. A similar story can be told for immigrants returning from Spain to Algeria.

Some steps have been taken towards “extraordinary regularisation”, yet only for young, unaccompanied migrants. The pandemic has prevented the usual practice in recent years of returning migrants to their country of origin when they turn 18 years of age. They now receive a work permit upon turning 18.

## 5. Stateless persons and refugees - another challenge

Stateless persons are also considered foreigners. Legislation on these individuals generally provides that “the Minister of the Interior shall recognise the condition of statelessness to foreigners who, stating that they lack nationality, meet the requirements set forth in the Convention on the Status of Stateless Persons, concluded in New York on 28 September 1954, and will issue the necessary documentation in accordance with Art. 27 of the aforementioned Convention”, so that “the status of the stateless person includes the specific regime determined in the regulation” (Art. 34.1 LOEx).

Although social security legislation does not address stateless persons per se, the law provides that long-term residence permits will be granted to individuals who are recognised as stateless persons and refugees (Art.

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9. The data has been drawn from the essay of Raquel Llorente Heras: “Impacto del COVID-19 en el mercado de trabajo: un análisis de los colectivos vulnerables”, *Instituto Universitario de Análisis Económico y Social*, Documento de Trabajo 02/2020, pp. 1-29.

148.3 f) RD 557/2011, of 20 April). Art. 9.10 of the Civil Code stipulates that the legislation of the habitual residence of individuals who lack or have an undetermined nationality shall apply to them.

The legal regime for stateless persons derives from the Convention ratified by Spain in an Instrument of 24 April 1997, which entitles them to social security benefits, provided that they are legally residing in the territory of the host State. To be eligible for such benefits, they must comply with all of the other requirements established by the applicable regulations, which in turn relates to immigration legislation.

Refugees, on the other hand, are subject to the Refugee Statute, signed in Geneva on 28 July 1951, and its Protocol, signed in New York on 31 January 1967. Law 12/2009, of 30 October, on asylum (provisionally supplemented by RD 203/1995, of 10 February, which will remain in force until its regulatory development is completed) requires equal treatment between foreigners and nationals as regards social security, and establishes that obtaining refugee status implies authorisation to reside and work in Spain (Art. 36.1 c) Law 12/2009).

The legislation on foreigners provides that “the favourable resolution of a request for asylum in Spain entails recognition of the applicant’s refugee status, who will have the right to reside in Spain and engage in work, professional and commercial activities” (Art. 34.3 LOEx), and that admission to the processing of an asylum application entails the possibility of obtaining authorisation to work (Arts. 125 and 129.1 RD 557/2011). Consequently, once these procedures have been completed, the refugee is considered a legal resident in Spain and can engage in work, professional and commercial activities, and is hence covered by the social security system, both in terms of contributory and non-contributory benefits, under the same conditions as Spanish nationals (Art. 15 RD 203/1995 and rt. 36.1 f) Law 12/2009).

As long as refugees are authorised to remain in Spain because they have requested international protection, they have the right to healthcare included in the basic common portfolio of healthcare services of the national health system regulated in Art. 8 bis of Law 16/2003, of 28 May. Likewise, applicants for international protection who have special needs will be provided with the necessary medical or other care (DA 4th RD 1192/2012, amended by RD 576/2013).

As is the case for third-country workers who legally reside in Spain, stateless persons and refugees are entitled to the same protection as

Spanish nationals and thus also to the extraordinary measures adopted in response to the COVID-19 crisis.

## 6. Spanish emigrants in third countries as forgotten citizens

According to Art. 42 of the CE, the State must ensure that the economic and social rights of Spanish workers abroad are safeguarded and must adapt its policy with their return in mind. Spanish citizens who live abroad have traditionally enjoyed some protection from the Spanish government, first at the state level and progressively at the regional level as well.

An assistance programme for pensioners was introduced by RD 728/1993, of 14 May, and its implementing regulations (such as OM 292/2006, of 10 February, accompanied by extraordinary measures related to disability and healthcare benefits in accordance with the provisions of Order TAS / 561/2006, of 24 February).

Law 40/2006, of 14 December, of the Statute of Spanish citizens abroad, developed a new basic legal framework for the economic and social rights of citizens residing abroad, and the consequent repeal of other legal provisions (as well as of the Emigration Law of 1971). According to this legal text, the General State Administration "in the terms in which it is established by law, will guarantee the right for Spaniards residing abroad who, having moved abroad for labour, economic or any other purposes, and who at the age of 65 or if they become incapacitated for work and are in a situation of need due to the lack of income or have sufficient income to cover their basic needs according to the socio-economic reality of their country of residence, shall be entitled to receive a benefit" (Art. 19 Law 40 /2006). This special "provision for reasons of necessity" is regulated in RD 8/2008, of 11 January, which does not substantially alter the content of the previous protective measure, but expressly repeals the aforementioned RD 728/1993, of 14 May, "as well as how many provisions of equal or lower rank oppose the provisions of this Royal Decree". However, the extraordinary aid regulated in Arts. 7 et seq. of Order 561/2006 intends to defray certain extraordinary expenses associated with emigration, when a lack of economic resources is proven.

The new benefit for reasons of necessity is broken down into three components or groups of benefits (Art. 1 RD 8/2008): 1) financial benefit for old age, 2) economic benefit for full disability and incapacity for all

types of work, and 3) healthcare. RD 8/2008 also provides for a benefit for returned Spaniards (Art. 25 and Art. 26).

The basic scheme of protection for Spanish emigrants does not include special measures of protection in situations such as the COVID-19 crisis, and this group is consequently also invisible.

## 7. Conclusion

The Spanish social security system's response to the COVID-19 challenges faced by mobile and migrant workers has been negligible, and workers who do not legally reside in Spain have been left without any protection at all.

Mobile and migrant workers who legally reside in Spain have the same level of protection as Spanish citizens, i.e. specific measures have been introduced to mitigate the consequences of the pandemic for them and the entire workforce, regardless of their origin. In this sense, the Spanish legislator has adopted measures that focus on four general aims: on the one hand, the measures aim to guarantee the economic subsistence of workers whose activities have ceased and who can no longer provide services, and consequently, the measures are related to recognition of new situations of necessity and the need for protection. Secondly, the measures aim to enhance these workers' employability – not only by streamlining administrative procedures such as the automatic extension of residence and work permits, but also by making entitlements to unemployment benefits compatible with the provision of services, and even creating new temporary jobs. Third, companies have been exempt from paying social security contributions, although this period continues to be regarded as a regular working period despite the suspension of activities. And finally, moratoriums have been issued for social security debt repayments.

Migrant workers who do not legally reside in Spain have been neglected, as have Spanish emigrants. For them, no provisions have been introduced since the outbreak of the pandemic, and consequently, they depend on non-contributory assistance, which, in the case of the former, is limited to basic healthcare. In the case of the latter, their protection lies in the provisions of their potentially also inexperienced destination countries.

Finally, to sum up our findings on the response of the Spanish social security system, Spain's national law may have addressed the challenges caused by the pandemic by introducing quick adaptations to existing regulations, however, the government has also initiated modifications,

some of which have proven fruitless and inadequate, that are not even directly related to the pandemic. Existing provisions had to be adapted to the new COVID-19 situation, but not all of the changes are in fact justified. Although it is impossible to arrive at objective conclusions about the impact of the new regulations because we are still in the “eye of the hurricane”, it can be expected that some of the measures will be futile and may result in mismanagement, for example the minimum vital income benefit. Among those measures that have proven successful (only for workers who legally reside in Spain) are the automatic extension of residence and work permits, as well as those related to the compatibility of unemployment benefits and temporary jobs, the recognition of unemployment benefits in cases of suspension of work or cessation of activity for self-employed workers, and the accumulation of work periods despite inactivity.





# Social security during the pandemic - the case of Sweden

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Thomas ERHAG\*

## 1. Introduction

The ongoing COVID-19 pandemic has had a substantial impact on Swedish society, and has given rise to an increased need for social protection and consequently, to growing pressure on the social security system. The social security system is a social “infrastructure” that is designed to alleviate social risks by providing financial assistance when such risks materialise. During 2020, social security has been a key instrument in distributing financial support in the wake of rising sickness absences, measures to contain the spread of infection, ease the pressure on the health care system and to provide support for the unemployed.

The pandemic’s social and economic effects called for immediate social security reforms in Sweden, many of which are of a temporary nature. Many of the reforms have been implemented through government ordinances following a COVID-19 initiated delegation of powers by Parliament to the government as an extraordinary exception to the Social Insurance Code (SFB).<sup>1</sup> The changes that have been introduced generally aim to reinforce the measures recommended by the Public Health Agency.<sup>2</sup> More specifically, the amendments have extended the scope of financial support by relaxing benefit conditionality for employees and the self-employed, including an increase in the level of benefit rates and direct support for employers by providing wage cost subsidies. Changes have also been

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\* School of Business, Economics and law, University of Gothenburg, thomas.erhag@law.gu.se.

1. Socialförsäkringsbalk (2010:110).
2. The Swedish approach consisted of recommendations without penalties and fines, and was initially aimed at preventing crowding and ensuring social distancing, yet keeping society open, see, e.g., HSLF-FS 2020:12, 16 April 2020. Anyone with symptoms was ordered to stay at home. These recommendations have been tightened over time, with the most recent revisions being introduced on 18 January 2021 (HSLF-FS 2021:3).

made to the application process for benefits, and additional funding has been allocated to local administrations to cope with the rising number of requests from claimants. This article reviews some of the key changes that have been made to the Swedish social security system in response to the pandemic.

## 2. COVID-19 and the Swedish social security system

The coronavirus (COVID-19) has put enormous pressure on the Swedish social security system. Social security represents a key component of the government's policy response to the pandemic to mitigate its social and economic consequences. It is not for me to pass judgment on whether the general strategy followed by Sweden to fight the coronavirus has been efficient or not. Clearly, Sweden (still) has a high mortality rate, its health care system is struggling to cope with the rise in COVID-19 hospitalisations and the substantial social and economic impacts.<sup>3</sup>

To address the problems the labour market currently faces, particularly the risk of mass unemployment, the Swedish government swiftly relocated resources for short-time work allowance (furloughed workers).<sup>4</sup> Sweden has an extensive and universal social security system that supports the labour market and the welfare of all residents. The infrastructure in place supports both employees and self-employed persons who are incapacitated for work or who lost their job due to the crisis, as well as a temporary wage subsidy scheme to support employers in retaining employees as well as providing compensation for income loss during the crisis period.

When the coronavirus was first detected in Sweden in early 2020, the reported number of absences from work due to sickness surged.<sup>5</sup> The *disease carrier allowance*, a benefit that is usually not widely used, was ap-

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3. For an analysis of the measures taken in the health care sector, see Ana Nordberg and Titti Mattsson, COVID-19 Pandemic in Sweden. Measures, policy approach and legal and ethical debates (2020), In *BioLaw Journal - Rivista di BioDiritto*, pp.731-739.

4. *Lag (2013:948) om stöd vid korttidsarbete*. This strategy aims to prevent layoffs and unemployment by furloughing workers, and is not part of the social security regulations, and will thus not be dealt with here. A description is provided in Caroline Johansson and Niklas Selberg, COVID-19 and Labour Law: Sweden, *Italian Labour Law e-Journal Special Issue 1*, Vol. 13 (2020) Covid-19 and Labour Law. A Global Review. Section: National Reports.

5. Data from the social insurance agency, <https://www.forsakringskassan.se/statistik/coronoaviruset-statistik>.

plied from March to May, and later during the second wave, which started in October 2020. Applications for temporary compensation of the 1-day waiting period during a sickness period have been varying from 200,000 applications per week in May 2020 to 100,000 weekly applications from September onwards. Government subsidies to employers to offset the costs of sick pay amounted to SEK 5 billion in May, but only SEK 1 billion in September. An employee's wages during the first 14 days of a sickness period are normally paid by the employer. Not surprisingly, the costs for temporary parental benefits (leave to care for a sick child) also reached record levels in March-April. According to Statistics Sweden (SCB), the unemployment rate rose during the first wave of the pandemic, which hit certain sectors especially hard,<sup>6</sup> e.g. hotels and restaurants. This sector is also characterized by having many persons in part-time or temporary/seasonal employment.<sup>7</sup>

Only few studies have analysed the effects of regulatory action taken during the pandemic. The government requested the social insurance agency (*Försäkringskassan*) to record and evaluate all measures implemented, and a first report was presented on 28 September.<sup>8</sup> This report, however, is merely a description of the agency's general efforts to safeguard the current conditions in a follow-up to COVID-19-related social security issues.<sup>9</sup>

### 3. Delegation from Parliament to government

Social security in Sweden is a state concern. All residents or employees in Sweden are covered by the social security system; social insurance is based on individual rights and ensures what has historically been perceived as a generous level of protection in case of, e.g. sickness or parental leave. However, as many of the benefits are not automatically adjusted to income levels and prices, the real value of benefits has diminished over

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6. SCB, Fortsatt ökning av arbetslösheten, Arbetskraftsundersökningarna (AKU, maj 2020) [www.scb.se](http://www.scb.se).

7. OECD policy responses to the coronavirus (covid-19). Distributional risks associated with non-standard work: Stylised facts and policy considerations, p. 4.

8. Försäkringskassan. Svar på regeringsuppdrag - Försäkringskassan ska redovisa vidtagna åtgärder för att säkerställa att det finns goda förutsättningar för långsiktiga uppföljningar av covid-19- relaterade ärenden, Version 1, FK 2020/000065.

9. See also *Försäkringskassan, Korta analyser 2020:5*.

time. The majority of risks covered by the concept of social security are regulated in statutory law, the Social Insurance Code (SFB),<sup>10</sup> that is, any amendments to social security legislation as regards the terms and conditions of benefit eligibility must be done by Parliament. Unemployment and health care are not regulated under the SFB and are generally not even considered components of the social security system. Unemployment insurance is based on the Ghent system, i.e. part of Sweden's unemployment insurance is a voluntary, income-related benefit scheme administered by independent unemployment insurance funds (*arbetslöshetskassor*), which are often closely affiliated with a trade union.<sup>11</sup>

Health care<sup>12</sup> is a universal right for all residents of Sweden and is regulated in statutory law, but is administered by the individual regions and financed by regional taxes. Some important health care services – also in relation to COVID-19 – are the responsibility of municipalities in accordance with the Social Services Act.<sup>13</sup> Last spring, things went really wrong in this part of the health care system, when there was widespread transmission of the virus at nursing homes for the elderly due to lack of equipment and training. The consequences are reflected in the number of deaths in Sweden. In total, 9,211 persons had died from COVID-19 as of 11 January 2021. Of those, 8,381 persons were aged 70+, while 4,709 of that total were persons aged 85+. Of those who have died, a total of 4,341 were residing in a nursing home, and 2,453 were receiving care at home.<sup>14</sup>

During the first wave of the pandemic, there was an identified need to provide support for certain components of the social security system and to indirectly support those segments of the labour market that have been severely affected by the pandemic's social and economic impacts. Specific health-related concerns involving vulnerable and high-risk groups in society emerged as well. The underlying objective of the delegation of powers from Parliament to the government to regulate parts of the SFB in the

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10. Socialförsäkringsbalk (2010:110).

11. Lag (1997:238) om arbetslöshetsförsäkring.

12. Hälso- och sjukvårdslag (1982:763).

13. Socialtjänstlag (2001:435).

14. Statistics from *Socialstyrelsen*, <https://www.socialstyrelsen.se/statistik-och-data/statistik/statistik-om-covid-19/statistik-over-antal-avlidna-i-covid-19/>.

event of *extreme circumstances* was thus to make decision-making more efficient.<sup>15</sup>

The Swedish Constitution (*Regeringsformen* (RF), Instrument of Government)<sup>16</sup> does not contain any rules on declaring a state of exception or of emergency during peacetime.<sup>17</sup> Sweden has, however, introduced temporary sectoral exceptions since the outbreak of the pandemic, e.g. in health care and in social security.<sup>18</sup> A delegation of powers to the government is possible because social security legislation does not fall within the exclusive competence of Parliament (RF Chapter 8 Art. 7). Such delegation changes the ordinary legislative procedure.

In 2010, fragmented social security regulations were unified when Parliament adopted the Social Insurance Code. The purpose of this reform was, among others, to retain or rather to vest regulatory powers in Parliament.<sup>19</sup> Due to the introduction of the possibility of delegation and sub-delegation, provisions on sickness benefits, the waiting period, disease carrier allowance, temporary parental benefits and the administration of benefits can be issued by the government during "extraordinary events in peacetime" or by a public agency after sub-delegation. A similar possibility of delegation is already in place for the regulation of health care during a crisis.<sup>20</sup> Such delegation has not, however, been provided for the regulation of unemployment benefits where Parliament has introduced temporary changes to statutory law combined with more specific delegations to the government.<sup>21</sup>

The swift amendments to social security legislation enacted by Parliament in the wake of COVID-19 have established that the government will cover 75 per cent of labour costs for short-term workers/ workers who

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15. Proposition 2019/20:132, SFS 2020:189, now Chapter 2 Art. 5a SFB.

16. *Regeringsformen* (1974:152).

17. See *Svensk juristtidning SvJT*, Häfte 10 2020, for an account of Nordic Constitutions and questions concerning legal actions during the pandemic.

18. Johan Hirschfelt, *Krishantering i fredstid*, *SvJT* 2020 s. 1160 f.

19. Proposition 2008/09:200, *Socialförsäkringsbalk*. p. 378 f.

20. Regulations on delegation are found in SFB, Chapter 2 Art. 5a and Chapter 27 Art. 9a, "extraordinary events in peacetime" (SFS 2020:189), a similar regulation on delegation is also found in health care legislation, *Hälso- och sjukvårdslag (2017:30)* Chapter 6 Arts. 1-2.

21. SFS 2020:217 and 218.

have been laid off (furloughed) during 2020,<sup>22</sup> and will subsidise all (employer-related) costs for sick pay, temporary compensation for the 1-day waiting period in case of sickness and other substantial subsidies for the administration of social security.

#### **4. What were the initially identified needs?**

During 2020, the Swedish government presented 12 government bills to continuously adapt the state budget to address the economic consequences of COVID-19. The amendments to social security regulations have included extending financial support by relaxing benefit conditionality for employees and the self-employed, increasing the level of benefit rates and providing direct support to employers in the form of wage costs subsidies. Amendments have also been made to the application process for benefits, and additional funding has been allocated to local administrations to cope with the increase in requests from claimants. One example of the increased pressure administrations are facing was the number of sick leave applications submitted to FK in March and April 2020; the number of applications rose by 142 per cent and 82 per cent, respectively, compared to the same period in 2019.

Aside from more general financial assistance to operational industries and businesses (employers), relief has also been targeted. In terms of social security, the focus has been on short-term benefits, allowing workers who are experiencing only mild symptoms to stay at home by providing compensation to them as well as parents for loss of income and at the same time subsidising employers' costs when their employees cannot work. Labour market support includes a scheme for short-term layoffs and temporary changes to the conditions for unemployed persons.

#### **5. Financial support for industry and businesses**

One of the most important support measures for workers and businesses in response to the COVID-19 crisis is the short-time work allowance. The Short-time Work Allowance Act<sup>23</sup> was introduced in 2013 in the aftermath of the financial crisis of 2008, but had not been imple-

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22. Lag (2013:948) om stöd vid korttidsarbete and förordning 2020:208.

23. Lag (2013:948) om stöd vid korttidsarbete.

mented before the outbreak of the pandemic.<sup>24</sup> This law is formally not part of the social security system, but is nonetheless particularly relevant because it aims to prevent terminations of employment contracts, and consequently to prevent unemployment. The law provides the option for employers to reduce employees' working time, with the government stepping in to cover a larger share of the employer's wage costs. The remainder of these costs is shared by the employee and the employer.<sup>25</sup> The government covers 75 per cent of the employer's costs in case of reduced working hours.

Additional indirect support measures have been introduced for workers and businesses with the aim of enabling them to enter a state of "hibernation" during the crisis; many tax relief measures have also been introduced. One example was an immediate but temporary reduction in social security contributions, whereby employers had to only pay pension contributions between 1 March 2020 - 30 June 2020.<sup>26</sup> In more concrete terms, this implied reduced payroll taxes; the employer's contribution normally amounts to 19.80 per cent on the employee's total payroll, of which 10.21 per cent is earmarked for old age pension.<sup>27</sup> A similar support measure for social security contributions was also provided for the self-employed. Such support to employers was limited to a maximum of 30 employees and on wages up to a maximum of SEK 25,000 per month. The government has now proposed to reduce the social security contributions for young persons between the ages of 18-23 years. The contribution rate on wages up to SEK 25,000 will be reduced to 19.73 per cent instead of the regular rate of 31.42 per cent.<sup>28</sup>

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24. Caroline Johansson and Niklas Selberg, COVID-19 and Labour Law: Sweden, Italian Labour Law e-Journal Special Issue 1, Vol. 13 (2020) Covid-19 and Labour Law. A Global Review. Section: National Reports, p. 3.

25. From February 2021, new rules for financial support for short-time work will enter into force and be applied retroactively from 1 December 2020. <https://tillvaxtverket.se/english/short-time-work-allowance.html>.

26. Lag 2020: om särskild beräkning av vissa avgifter för arbetsgivare. Prop. 2019/20:151 Extra ändringsbudget för 2020 – Ytterligare åtgärder på skatteområdet med anledning av coronaviruset.

27. An additional payroll tax, *allmän löneavgift*, is paid at 11.62 per cent for both employers and the self-employed.

28. Budgetproposition 2020/21:1.

The regular social security contribution rate for self-employed persons is 28.97 per cent of their business profits. To contain the economic consequences for this group, a relief measure was introduced for 2020, with the regular pension contribution rate of 10.21 per cent only applying to annual profits that exceeded SEK 100.000.

## 6. Sickness insurance

Under normal circumstances, sickness benefits are paid out when a worker is sick and incapacitated for work. Income loss during the first 14 days of sick leave is usually compensated by the employer who pays sick pay (*sjuklön*) at a level of 80 per cent of the employee's regular wages. Following this 14-day period, the employee can apply for sickness benefits from *Försäkringskassan*. The sickness benefit is paid at 77.6 per cent of the employee's wages up to a specific ceiling.<sup>29</sup> The first day of sick leave is a 1-day waiting period. A self-employed person's sickness benefits are covered by *Försäkringskassan* immediately, but the waiting period may range from 3-30 days, depending on the chosen plan. This choice also influences the level of contributions the self-employed person has to pay. The amount of benefits the self-employed person receives depends on his or her previously reported income, declared in his or her tax return.

A number of temporary changes to sickness insurance were introduced in April 2020. They were planned to remain in force retroactively from 16 March 2020 until 31 December 2020.<sup>30</sup> Additional changes were presented by the government in June<sup>31</sup> and extended in November.<sup>32</sup> The most recent decision by the government extends the measures until 30 April 2021, and reserves the necessary financial resources.<sup>33</sup> These changes were

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29. The number of insured persons with incomes above the specific ceiling was around 50 per cent in 2010 already, ISF, p. 48.

30. Proposition 2019/2020:132, Extra ändringsbudget för 2020 – Åtgärder med anledning av coronaviruset.

31. Proposition 2019/2020:187, Extra ändringsbudget för 2020 – Ersättning till riskgrupper, kapitalinsatser i statligt ägda företag och andra åtgärder med anledning av coronaviruset.

32. Proposition 2020/21:46. Extra ändringsbudget för 2020 – Förlängd rätt Prop. till ersättning för riskgrupper.

33. Proposition 2020/21:84, Extra ändringsbudget för 2021 – Förlängda Prop. ersättningar på sjukförsäkringsområdet, stöd till 2020/21:84 företag och andra åtgärder med anledning av coronaviruset p. 12.



decided by the government on the basis of the delegated powers.<sup>34</sup> In April 2020, COVID-19 was listed as a contagious disease and qualifies as a work injury if health care workers, for example, become infected at work or if persons who are otherwise treating a contagious person at work contract the coronavirus.<sup>35</sup>

One should bear in mind that the guidelines on how to treat sickness and incapacity for work has changed as well, as all employed persons are now instructed to stay at home, even if they only experience mild symptoms.<sup>36</sup> These temporary changes have been made to support the Public Health Authority's (*Folkhälsomyndigheten*) policy, i.e. the government shall assume responsibility for risks that are usually borne by the employer and/or the employee. What are the major changes that have been introduced to mitigate the effects of COVID-19?

The first day of sickness absence is usually a 1-day waiting period, for which a temporary flat benefit has now been introduced to compensate for the loss of income during the first day of sickness. A worker who has not been compensated for the 1-day waiting period can apply to FK for reimbursement; his or her lost wages are paid out as sickness benefits for one day.<sup>37</sup> Self-employed persons are also eligible for a similar flat benefit for the given waiting period of up to 14 days. The sickness benefit for self-employed persons is thus paid from the first day of reported sickness, and not once the waiting period is over.

The government has also introduced additional compensation for employers for extraordinary costs related to sick pay during the first 14 days of the employee's sick leave period. High-risk protection for excessive em-

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34. Ordinance/förordning (2020:195) om vissa sjukpenningförmåner med anledning av sjukdomen covid-19.

35. SFS 2020:1045, changing *förordning (1977:284) om arbetsskadeförsäkring och statligt personskadeskydd*. If qualified as a work injury, an employee will receive full compensation in case of incapacity for work. This amendment is permanent.

36. HSLF-FS (2020:12 konsoliderad version) Folkhälsomyndighetens föreskrifter och allmänna råd om allas ansvar att förhindra smitta av covid-19 m.m.

37. Förordning (2020:195) om vissa sjukpenningförmåner med anledning av sjukdomen covid-19. The exceptions to this ordinary regulation on sick pay described here was initially only supposed to apply until 31 December 2020, but has now been extended, *förordning 2020:1030*.

ployer sick pay costs was in place already before the pandemic.<sup>38</sup> Hence, if the employer's sick pay costs, including taxes and contributions, exceed 0,5 per cent of total wage costs, the employer will receive compensation. The now introduced temporary support measure lowers the applicable threshold and thus makes it more accessible for smaller businesses as well.

Medical certification supporting the need for leave due to illness must be provided from day 15 of the sick leave period and not on day 8 as is usually the case.<sup>39</sup> This temporary change is intended to relieve the pressure on the health care system.

Preventive sickness benefit for certain risk groups, introduced by *förordning/ordinance* (2020:582), is a temporary benefit providing for exceptions to SFB Chapter 27 (preventive sickness benefit) and SFB Chapter 46 (disease carrier allowance). It aims to provide benefits to individuals who belong to specific risk groups (i.e. persons with certain diseases). If such persons stay at home to avoid infection, but do not have the possibility to work from home, they are eligible for this particular benefit. Under normal circumstances, they would not qualify for benefits under the SFB.

The *disease carrier allowance* is a special benefit that provides income-related support to individuals who fall sick but still have the capacity for work. It is reserved for persons who, for example, have an infectious disease and experience only mild or no symptoms, but are prohibited from going to work. This benefit is calculated in the same way as the sickness benefit. Under normal circumstances, medical certification is required stating that the person as a disease carrier is not allowed to go to work. This benefit is rarely applied, but has for good reason been frequently used since March 2020.

The Public Health Authority recommends for the cohabitant of a person who has contracted COVID-19 to be presumptively considered as being sick, and are therefore not allowed to go to work. To provide compensation to such persons, the *förordning/ordinance* has now made the disease carrier's benefit more widely available to a larger group of potential beneficiaries. It is even paid out to persons at risk of infection if they are related (next of kin) and live in the same household with a person who be-

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38. Lag (1991:1047) om sjuklön, Art. 17.

39. Förordning 2020:196 om ändring i förordningen (1995:1051) om skyldigheten att lämna läkarintyg m.m. i sjukpenningärenden i vissa fall.

longs to a specific risk group.<sup>40</sup> In a 'normal' year, between 20 to 30 persons per month are recipients of this benefit, but in April, *Försäkringskassan* registered 450 recipients, and by October 2020, over 23,000 days of this allowance had been paid out to beneficiaries.

In December 2020, the government proposed important temporary changes to how incapacity for work is assessed in case of long-term sickness.<sup>41</sup> The current system is not flexible enough in times of the pandemic, as workers with a good prognosis and who are likely to return to their jobs will lose their sickness benefits. Many of these persons are also waiting for scheduled medical care, which has been postponed due to the tremendous challenges the health care system is currently facing.<sup>42</sup> Under normal circumstances, the assessment of an employee's capacity for work on day 180 not only determines whether he or she can return to his or her regular workplace/employer, but also whether the employee can work in any other available job on the labour market (SFB Chapter 27 Art. 48). This provision has been quite controversial as it implies that a person who is no longer able to work in his or her regular job can be forced to apply for another available job on the labour market and will thus be considered unemployed instead of sick, and will consequently lose his or her sickness benefits. There are negative financial consequences for an individual who is regarded as unemployed compared to being a recipient of sickness benefits. A new, more flexible system for rehabilitation of this group of workers will be introduced on 15 March 2021, but will apply immediately and retroactively from 21 December 2020.<sup>43</sup>

The number of applications for sickness benefits (from *Försäkringskassan*) rose sharply in March and April 2020, a development that is connected to the increased spread of COVID-19.<sup>44</sup> It should be noted, however, that COVID-19 has had a both direct and an indirect impact on long-

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40. Förordning (2020:582) om viss sjukpenning i förebyggande syfte och viss smittbärrpenning med anledning av sjukdomen covid-19.

41. Proposition 2020/21:78 Vissa ändrade regler inom sjukförsäkringen. Förordning 2020:711 om undantag från vissa bestämmelser om sjukpenning med anledning av sjukdomen covid-19.

42. Proposition 2020/21:1 Budgetproposition.

43. Proposition 2020/21:83 Förstärkta stöd till företag, nedsättning av arbetsgivaravgifter för unga och andra åtgärder med anledning av coronaviruset.

44. Försäkringskassan, Korta analyser 2020:5.

term sickness – indirect due to delayed or postponed medical procedures. *Försäkringskassan* reports that many have made use of the new and temporary “benefits”, reflecting the changes in people’s social security needs caused by the pandemic. One example is the temporary suspension of the 1-day waiting period to be eligible for sickness benefits, with SEK 2.5 billion having been paid out to 1.4 million persons, i.e. to nearly 25 per cent of the working population. Financial support to employers for sick pay costs has amounted to nearly SEK 15 billion.<sup>45</sup>

## 7. Family benefits

Sweden provides parental benefits so parents can stay at home to care for their child. The parental benefit is paid out for a total of 480 days per child, of which the rate for the first 390 days are compensated on the basis of the employee’s income (80 per cent of lost income, capped); the rate of compensation for the additional 90 days is 180 SEK per day. With some exceptions, the parental benefit can be used to compensate for lost income until the child turns 12 years. Complementing this scheme, parents can also make use of a temporary parental benefit when they need to stay home to care for a sick child, e.g., or if the child’s regular carer is sick. The rate of this benefit is the same as the parental benefit and also depends on the employee’s income, but is capped at a lower level than the parental benefit.

Following the outbreak of COVID-19, parents of children belonging to a risk group and parents in general faced major challenges, especially when schools started to close. The government therefore passed a *förordning/ordinance* to adopt temporary measures to introduce exceptions to the SFB for parents whose children had recently been seriously ill and when schools began to close.<sup>46</sup> The ordinance stipulates that if schools are closed, the temporary parental benefit will be made available to parents who cannot work (from home) and who would otherwise suffer loss of income. The same provision applies to parents whose children have recently been seriously ill.

The purpose of these temporary provisions is to provide increased protection for children who may be at higher risk of becoming severely ill

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45. Försäkringskassan, Korta analyser 2020:5.

46. Förordning (2020:244) om viss tillfällig föräldrapenning med anledning av sjukdomen covid-19.

from COVID-19. The ordinance proposes that parents of children who have recently been seriously ill should be entitled to a preventive temporary parental benefit if – due to the serious illness or the treatment the child has undergone for the serious illness – the child needs to be protected against infection from COVID-19.<sup>47</sup>

*Försäkringskassan* has reported that the applications for temporary parental benefits increased rapidly during March 2020, subsequently declined but rose again in autumn. There has been a significant increase in the number of applications compared to 2019, with a historical peak of applications being registered in April 2020.<sup>48</sup>

## 8. Unemployment insurance

Unemployment insurance in Sweden is voluntary. An unemployed person over the age of 20 years, who is not a member of an *arbetslöshetsskassa* (unemployment insurance fund) or does not meet the eligibility criteria, will only receive a basic flat benefit, namely a gross allowance of SEK 365 per day. Two requirements must be met to qualify for the income-related benefit. Workers who have been a member of an unemployment insurance fund for at least one year (membership requirement) and were employed for at least six months during that year (work requirement) are entitled to unemployment benefits that are calculated on the basis of his or her salary. Compensation from the unemployment insurance fund will be paid out for a maximum of 300 days, or 450 days if the unemployed person has children under the age of 18 years. During the first 200 days of unemployment, the worker's compensation amounts to maximum 80 per cent of his or her base salary. Thereafter, the compensation amounts to maximum 70 per cent of the worker's base salary. A maximum of SEK 910 per day is paid for the first 100 days. From day 101 to day 300, the maximum amount of compensation is SEK 760 per day. Unemployment benefits are only paid for a specific period of time, and the unemployed worker must actively be searching for a new job during that period. The worker's unemployment insurance fund determines the amount of compensation the worker will receive. The compensation period usually commences after a 6-day waiting period.

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47. Socialdepartementet, Promemoria 2020-06-16, S2020/05401/SF.

48. Försäkringskassan, Korta analyser 2020:5.

The maximum compensation expressed in SEK generally means that the level of protection in terms of unemployment insurance is low compared to other areas of social security. A study commissioned by the government recently described unemployment insurance as having “low coverage, complicated administration, lack of accuracy and low predictability”.<sup>49</sup> Other labour regulations and collective agreement-based solutions have been developed to complement statutory unemployment insurance, such as the Job Security Foundation and regulations on furloughs, but these are not normally available to groups most at risk in the labour market, such as hourly workers, people with fixed-term employment and the self-employed.

A number of temporary changes were made in April 2020, and were planned to be in force between 13 April 2020 until 3 January 2021.<sup>50</sup> The government has extended this period until the end of 2022 and included the costs in its budget for 2021.<sup>51</sup> Specific high-risk groups were targeted with these reforms, such as employees in sectors where work is often time-limited or persons performing work “by the hour”.<sup>52</sup> The amendments also aimed to make unemployment insurance more accessible for the self-employed.

The temporary changes introduced an increase of the income-related benefit from day 101 of unemployment onwards, namely from a maximum of SEK 760 to SEK 1,000 per day. A temporary modification of the requirement to be a member of an unemployment insurance fund and to have worked for a specific period before becoming eligible for unemployment benefits has made it easier for workers to qualify. Usually, a 12-month membership in an unemployment insurance fund is required to qualify for income-related unemployment benefits, but now a 1-month membership will count as four months (x4) of membership between March and December 2020, thus allowing members to qualify after only three months of membership. A temporary change to the required period of employment for eligibility has also been introduced to facilitate access to income-related unemployment benefits. Workers are now required to have worked at least 80 hours a month over a 6-month period or 480 hours

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49. SOU 2020:37, p. 139. *Ett nytt regelverk för arbetslöshetsförsäkringen*.

50. Proposition 2019/2020:146. Extra ändringsbudget för 2020 – Ytterligare åtgärder med anledning av coronaviruset.

51. Budgetproposition för 2021. Proposition 2020/2021:1.

52. Budgetproposition för 2021. Proposition 2020/2021:1. Utgiftsområde 14, p. 40.

for six consecutive months and for at least 50 hours per month (half-time work) thereafter over a total period of 12 months. For part-time and hourly workers, the requirement now is that they must have worked 60 hours a month over a 6-month period or 420 hours for six consecutive months and for at least 40 hours per month (half-time work) thereafter over a 12-month period to qualify for income-related unemployment benefits.

The basic allowance, which is available for those who are not eligible for income-related benefits, has temporarily been raised from SEK 365 to SEK 510 (SEK 8,030 to SEK 11,220 per month). The coverage of the income-related benefit has temporarily been expanded, and the cap is now SEK 1,200 instead of SEK 910 during the first 100 days of unemployment. Furthermore, the 6-day waiting period has been temporarily suspended.

Self-employed persons are also eligible for this benefit if their business is temporarily closed (the requirement that the business must have been operational for a 5-year period has been abolished).<sup>53</sup> The ordinary regulation requires the phasing out and shutting down of the business for the entrepreneur to be eligible to receive any benefits.

These temporary changes will, of course, not rectify the unemployment insurance scheme's defects identified by the expert committee in SOU 2020:37, but represent a temporary economic relief for those who have lost their jobs during the pandemic. The impact of the coronavirus crisis on the labour market is clearly visible in the official statistics, with an increase in unemployment since March 2020.<sup>54</sup> According to *Arbetsförmedlingen*,<sup>55</sup> 120,000 persons lost their job in 2020, a number that has probably been curbed by the high number of approved applications for short-time work permits (75,000); there are now a total of nearly 580,000 short-time workers according to Tillväxtverket.<sup>56</sup> Unemployment insurance funds have also experienced an inflow of new members since the outbreak of COVID-19.<sup>57</sup>

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53. Unemployment Insurance Act (1997:238) 36 §. SFS 2020:217.

54. Statistics Sweden (SCB), *Arbetskraftsundersökningarna* (AKU).

55. Swedish public employment service, see <https://arbetsformedlingen.se/statistik/sokstatistik>.

56. Swedish agency for economic and regional growth, see <https://tillvaxtverket.se/statistik.html>.

57. IAF, press release April 15 2020, Fler medlemmar i arbetslöshetskassorna, [www.iaf.se](http://www.iaf.se).

## 9. Existing “COVID-19-regulations” – any effects?

As already indicated, it is difficult to comment on the effects of the new and temporary changes to social security legislation during the pandemic. The temporary COVID-19 regulations have clearly made it easier for employed persons to stay at home when they have symptoms, since the economic effects of them remaining at home are not as severe now as they are during normal circumstances. Social security legislation has been adapted to meet the altered needs caused by the pandemic. The government is temporarily shouldering a higher share of the risk under the current extraordinary circumstances, especially as regards short-term benefits for employees, but also financial support for employers. We have witnessed changes to short-term benefits to address the risk of sickness, family and unemployment, as well as an increase in the number of beneficiaries. The results are reflected in the costs and transfers that have been made via the benefits regulated in social security legislation. Statistics indicate that the temporary initiatives represent an important support mechanism, and social insurance was generally used more frequently during 2020 because of COVID-19.<sup>58</sup> The measures introduced during the pandemic have cost an additional SEK 200 billion in government spending in 2020.<sup>59</sup>

### *9.1. Impacts and effect on vulnerable groups?*

As highlighted by Johansson and Selberg, short-time work allowance, which is possibly the single most important component of social protection for workers during the pandemic, was not actually developed for precarious workers.<sup>60</sup> Precarious workers, who are often self-employed, work either by the hour or are employed part time, are generally not treated favourably by the social security system, as most benefits are income-related, i.e. the amount of benefits paid out in Sweden are based on the applicant’s ex-

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58. Försäkringskassan, Korta analyser 2020:5.

59. <https://www.regeringen.se/sveriges-regering/finansdepartementet/statens-budget/ekonomiska-atgarder-med-anledning-av-covid-19/>. The 200 billion is an estimate for all action taken. One can compare this to the normal budget for social security in Sweden (excluding administration, old-age pensions and unemployment) which is around 225 billion per year. Försäkringskassan, *Socialförsäkringen i siffror 2019*.

60. Caroline Johansson and Niklas Selberg, COVID-19 and Labour Law: Sweden, Italian Labour Law e-Journal Special Issue 1, Vol. 13 (2020) Covid-19 and Labour Law. A Global Review. Section: National Reports. p. 9.



pected income. This is not advantageous for those with a short-term contract or for persons who work irregularly and have an unstable income.<sup>61</sup> Moreover, precarious workers tend to not be members of an unemployment insurance fund, leaving them without any income-related benefits in case of unemployment. As Johansson and Selberg note, precarious workers were already vulnerable *before* the COVID-19 crisis; the pandemic has only exacerbated the general circumstances of these groups.

High unemployment rates in combination with the unlikelihood of receiving any benefits, or only receiving low benefit amounts, do not incentivise precarious workers to stay at home when they experience symptoms or it might not even be an option for them, creating a challenging situation for them while at the same time turning them into a health risk for both themselves and others. The majority of workers without fixed working hours unfortunately work in the health care and care sectors. Sweden has also witnessed several COVID-19 outbreaks in nursing homes for the elderly, and the organisation of work in this segment has been identified as a possible reason. If precarious workers feel that they do not have the option to stay at home “when experiencing even mild symptoms”, the virus will quickly spread to the most vulnerable in society.

### ***9.2. Change in working conditions due to closed borders?***

Another problem arises when cross-border workers do not have the possibility to go to work. Borders have generally been open for those who commute to work across borders, but many employers have ordered their employees to work from home. Several practical problems have been identified for persons whose country of residence is Sweden but who work in Denmark or Norway. Authorities in the respective countries are working together to find pragmatic solutions to these problems.<sup>62</sup> It remains to be seen whether the sometimes “informal” and unclear legal situation for cross-border workers will cause any major problems. As long as exceptions are agreed in good faith between Member States to the benefit of the insured person, they should be in line with EU

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61. Inspektionen för socialförsäringen (ISF), Utvecklingen av socialförsäkringsförmåner sedan 1990-talet. Rapport 2014:4.

62. Information and contact information for persons in need of help is provided by, e.g. [www.grensetjensten.com](http://www.grensetjensten.com) (cooperation between Sweden and Norway) and [www.oresunddirekt.se](http://www.oresunddirekt.se) (cooperation between Sweden and Denmark).

Regulation 883/2004, Article 16. It would be preferable if these general exceptions were more clearly elaborated and made more accessible.

Cross-border workers face unique problems. One example is unemployment and the Ghent system in Sweden and Denmark. Contrary to the situation in Sweden and Denmark, the Norwegian system for unemployment is mandatory for all persons who work and reside in Norway. For a Swedish resident working in Norway, this generally means automatic affiliation with Norwegian unemployment insurance. The situation during COVID-19 differs, however, as many workers have been sent home after being laid off/furloughed. This, of course, is not the same as being unemployed; the worker does not have the duty to work and the employer does not have the duty to pay the worker his or her wages. It is unclear how such workers' average working hours will be calculated to determine whether they meet the membership criteria for Swedish income-related unemployment benefits.

The applicable legislation under EU Regulation 883/2004 is also not entirely clear. As a general rule, a person who works in another Member State must be covered by that country's social security system (Article 11.3 (a) of EU Regulation 883/2004). A person who lives in Sweden but who commutes to Denmark daily is thus normally covered by the Danish social insurance system.

A person who works in two or more EU Member States shall be covered by the social security system of the Member State in which he or she officially resides if he or she performs a substantial part of his or her work in that Member State. This situation is governed in EU Regulation 883/2004 Article 13 (1). Accordingly, a 'significant part of one's work' means at least 25 per cent of one's total working hours.

Due to the ongoing crisis, many employers on both sides of the *Öresund Strait* have decided that their employees should work from home. For border commuters in the *Öresund* region, this has meant that Swedes who usually commute to work in Denmark (and Danes who commute to work in Sweden) must now perform their work from home.

If an *Öresund* commuter who lives in Sweden and works in Denmark starts working from home and his or her working hours and/or income exceeds 25 per cent of total working time/wages, the commuter would normally be covered by the Swedish social insurance system, with an obli-

gation for the Danish employer to pay the significantly higher Swedish employer contributions. In Sweden, employers pay a payroll tax of 31,42 per cent.

Försäkringskassan and Udbetaling Danmark have agreed that social security for cross-border *Öresund* commuters should not be affected by the restrictions imposed by COVID-19. This approach has been applied to several situations that would otherwise raise problems for both employers and employees. The examples provided by the two authorities on their website relate to following situations: if the worker lives in Sweden and normally works in Denmark, his or her social insurance in Denmark is not affected by the fact that the worker has to now work from home in Sweden due to COVID-19; if the worker lives in Denmark and normally works in Sweden, his or her social insurance in Sweden is not affected by the fact that he or she has to work from home in Denmark due to COVID-19; if the worker has a valid A1 certificate to work in Sweden and Denmark, the certificate will remain valid.<sup>63</sup> All of these situations relate to the application of Articles 12 and 13 of EU Regulation 883/2004.

In fact, *Försäkringskassan* and *Udbetaling Danmark* have announced that the current social security coverage will not change during these exceptional circumstances. The exceptions do not apply if the worker voluntarily changes his or her working conditions by starting a new job with a new employer, for example, becoming self-employed or earning a salary from a limited company.<sup>64</sup>

## 10. Conclusions

This article evaluates the response of Sweden's social security system to the COVID-19 pandemic. Parliament and the government have used Swedish social security legislation as an instrument to introduce different support measures recommended by the Public Health Authority. The amendments generally focus on protecting risk groups or those who have

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63. <https://www.oresunddirekt.se/en/working-in-denmark/working-in-denmark/working-from-home-due-to-coronavirus-covid-19-does-not-affect-your-social-insurance>.

64. The information in this section is based on the Swedish *Försäkringskassan* website <https://forsakringskassan.se/privatpers/coronaviruset-det-har-galler> and the Danish *Udbetaling Danmark* (<https://www.borger.dk/danskere-i-udlandet/arbejde-i-udlandet/international-social-sikring>). There are, to my knowledge, no formal and communicated decisions on this matter.

to stay at home to protect someone who belongs to a risk group. Many of the changes have been introduced by the government through ordinances (*förordning*) after Parliament swiftly amended the SFB and delegated emergency powers to the government to be used under “extraordinary events in peacetime”. This generally also means that the new regulations are temporary and will eventually be reverted when the pandemic ends. What is less clear are the more long-term effects of the crisis on social security policy. The temporary changes have indisputably revealed areas and issues that do not only represent a temporary challenge, but are a major, broader challenge.

The legal revisions we have observed throughout 2020 are of a specific nature. The conditionality of certain benefits for employees and for the self-employed has been eased both in terms of sickness insurance and parental leave, making these benefits more accessible so workers can stay home if they experience any symptoms. Parliament has also introduced important changes to voluntary unemployment insurance, so both employees and the self-employed can more easily qualify for income-related unemployment benefits. The level of benefit rates for sickness and unemployment insurance has temporarily been increased as well. The government has provided support to employers in the form of compensation for increased wage costs for sick pay during the pandemic, and more general support for employers by partly suspending the duty to pay social security contributions.

The increased public spending targeted at certain risk groups also reveals some shortcomings of Sweden’s social security system (or at least of its development). According to Johansson and Selberg, the support measures that have been introduced to bolster the labour market have highlighted the situation of precarious workers “that face the option of either working while being ill (and contagious) or losing their entire income.”<sup>65</sup> While many of the temporary reforms will definitely help a large part of workers and self-employed persons by securing their income in case they have to stay at home, they also demonstrate the need for a more comprehensive approach to the challenges the shortcomings of the social security

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65. Caroline Johansson and Niklas Selberg, COVID-19 and Labour Law: Sweden, Italian Labour Law e-Journal Special Issue 1, Vol. 13 (2020) Covid-19 and Labour Law. A Global Review. Section: National Reports, p. 11. Their conclusion was also aimed at the rules on furloughs and the overall situation on the labour market.

system have exposed. Changes have also been made to the application process for benefits, and additional funding has been allocated to local administrations to cope with the increased requests submitted by claimants. There are alarming reports that the increased number of claims and pressure on local administrations have resulted in many unemployed persons who are left waiting for their benefits to be paid out. Even before the COVID-19 outbreak, a government report had described the unemployment insurance system as being outdated, characterised by low coverage, complicated administration, lack of accuracy and low predictability;<sup>66</sup> and a similar conclusion has been reached about the other components of social security covered by the analysis.<sup>67</sup> Social protection needs to be further expanded for precarious workers as well as for the self-employed, not only in situations of "extra-ordinary events in peacetime."

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66. SOU 2020:37 *Ett nytt regelverk för arbetslöshetsförsäkringen*.

67. ISF – Inspektionen för socialförsäkringen, *Utvecklingen av socialförsäkringsförmåner sedan 1990-talet*, Rapport 2014:4.



## **Future perspectives within the European Union context: From social security to income support**

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Angelos STERGIUO\*

### **1. Introduction**

It is unlikely that our lives will return to “normal” (i.e. pre-COVID-19) in coming years; on the contrary, we will very possibly be facing more crises and disasters. It could be argued that the pandemic is part of a wider dynamic of other social, economic and ecological crises. The common denominator of these crises is that they will profoundly influence many of today’s opportunities and behaviours for tomorrow. “Risk”, according to U. Beck, is associated with human behaviour.<sup>1</sup> At first glance, the coronavirus appears to be a health-related hazard, but it is also a socially- and economically-driven one. Most of the natural disasters that befall us today are the consequence of a specific model of development – the spread of the coronavirus, for example, is linked to dense air transport corridors, extreme environmental phenomena attributed to pollution, etc.

In the near future, we will regularly witness unforeseen events that might potentially deregulate the logic of existing protection mechanisms. We will either have to integrate these unpredictable events into our existing mechanisms or invent new mechanisms that are more “waterproof” in the face of unpredictability. We will need a very different form of protection if we are to build societies based on social justice.<sup>2</sup>

Is COVID-19 a force majeure event that requires urgent action, or is it a tectonic event that could alter the way we approach social protection?

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\* Aristotle University of Thessaloniki, Greece.

1. U. Beck, *Freiheit und Kapitalismus*, 2nd edition, 2000, Suhrkamp Verlag.
2. Simon Mair, *What will the world be like after coronavirus? Four possible futures*, <https://theconversation.com/what-will-the-world-be-like-after-coronavirus-four-possible-futures-134085>.

The economies and societies of the western world are in a state of vertigo. With 1.5 million deaths and a looming recession and contraction of the eurozone economy by 7.9 per cent during 2020, the European Commission has declared that we are facing the biggest crisis since World War II.

The responses to the coronavirus give an indication of how future income security might develop. We can use this crisis to rebuild our social insurance system by making it stronger and more considerate. The pandemic requires not only immediate urgent action, but a more permanent approach towards changing the way we view social protection. I believe that the coronavirus is a catalyst for change. "Crises" are moments of "truth" in the sense that they reveal underground currents. As a consequence of the health crisis, latent processes will rise to the surface and established myths will be debunked.

The pandemic will eventually disappear, most likely on its own. It is anticipated, however, that nothing will be the same again. What form of social insurance will emerge from this health crisis? To respond creatively (positively), we should not view COVID-19 as a threat to social security, but as an opportunity to adapt to modern stakes. Pandemics, such as war, threaten to reduce man to zero, and lead to social re-organisation. In this respect, the example of Lord Beveridge springs to mind, who, with his report in the middle of World War II (1942), revolutionised the prevailing way of building systems based on the Bismarckian model. In other words, COVID-19 is forcing us to change our logic, to institutionalise a new system of social protection, adapted to the future needs of mankind.

## **2. The impact of the pandemic on the sustainability of pension systems and the adequacy of future pensions**

The sustainability of pension systems has been one of the greatest challenges to the founding principles of social security in recent years. The dependence on social contributions could disrupt the system's financing balance due to a variety of factors. "Bismarckian" systems are extremely sensitive to demographic ageing, public debt, financial crises, technological developments, digitalisation,<sup>3</sup> etc. We now face two additional chal-

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3. P. Schoukens, Digitalisation and social security in the EU. The case of platform work: from work protection to income protection?, EJSS 2020, 434.



lenges –pandemics and climate change (which is the next big global threat) and their “spillover effect” on the sustainability of pension systems.

The pandemic has exacerbated the deficiencies of the “Bismarckian” model (professional-based system). We are heading into an uncertain world, where the Bismarckian model’s *leitmotif*, its funding by contributions as well as the reciprocal basis of the rights deriving from it, can no longer guarantee adequate and sustainable pensions. The insufficiency of social contributions endangers the long-term financing of social security systems and thus the adequacy of individual social security benefits. There is an insurmountable obstacle between sustainability and adequacy in terms of safeguarding the living standards of elderly Europeans.

We are on the verge of a radical shift. The key challenge is how to reinforce the redistributive component of social security. The antidote is to adopt a different logic that will be more redistributive to disperse the burdens of “misfortune” as fairly as possible. In recent years, the pension system’s redistributive role has been declining and it is gradually transforming into an insurance system.<sup>4</sup> In the new context, this trend needs to be reversed if we want to maintain the effectiveness of the Bismarckian system.

In Greece, public spending on pensions increased from 10.5 per cent of GDP in 2019 to 13.5 per cent in 2020. The same negative structural effects have been observed in all pension systems, such as the French one, its deficit being estimated to increase by EUR 23 billion or 1.1 per cent of GDP (Rapport annuel 2020 du Conseil d’Orientation des Retraites). Additionally, we cannot expect the reduction in revenue to be offset by the trivial reduction in expenditure linked to increased mortality from COVID-19. According to the most optimistic scenarios, it will take at least one decade for economic rate to return to pre-pandemic rates. The problem, however, is not the return to economic growth, but the shielding of the social protection system from major crises.

The problems will be equally acute for the second pillar (supplementary insurance), since, *inter alia*, no provision addresses the fate of contributions during the suspension of employment relationships. In a labour

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4. C. Arza and M. Kohli, *Pension Reform in Europe*, 2008, Routledge.

market where instability is becoming a permanent feature, and in a context of high investment instability, the question that arises is what role occupational pensions can play. The dominant approach of multi-pillar protection has its limits.

### 3. Strengthening the anti-shock mechanism

COVID-19 is a major health and economic crisis that is likely to permanently change our social protection systems. This pandemic has been a test of what protection looks like when the market economy's mechanisms are suspended<sup>5</sup> or when "working" is generally not possible. In most countries, neither the protection of work has been possible, nor has access to the Bismarckian system. Several government interventions are based on the net redistribution of income, i.e. a genuine return to national solidarity. When countries started to shut down, most states resorted to granting flat-rate compensation payments for loss of income.

In our opinion, we do not need a temporary "special crisis compensation law", but a permanent instrument of compensation that is capable of absorbing the effects of future crises. At the same time, access to protection should be available without any preconditions for certain benefits and services (e.g. sickness and unemployment benefits, health care services). The COVID-19 crisis has had a stronger impact on vulnerable population groups. Income security cannot be provided by today's and ultimately tomorrow's labour market, which is increasingly characterised by job insecurity.<sup>6</sup> Existing social security systems have not adapted to such crises because they are primarily based on standard work.

First and foremost, the recent EU Recommendation of 8 November 2019 (2019/C 387/10) "on access to social protection for workers and the self-employed" could be used as a guideline to accommodate the mentioned domains (Article 3.2., unemployment, sickness, etc.) within the new context. According to the Recommendation, rules that govern contributions and entitlements should not prevent individuals from accruing or accessing

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5. U. Becker (Ed.), *Protecting Livelihoods in the COVID-19 crisis: Legal comparison of measures to maintain employment, the economy and social protection*, vol. 7, 2020.

6. Matsaganis, Ozdemir, Ward, Zvakou, *Non-standard employment and access to social security benefits*, European Commission, Research note 8/2015.

benefits on the basis of their type of employment relationship or labour market status (Article 9, para. 1 a). The Recommendation's "effective coverage" does not, in our opinion, only depend on an individual's professional status (regardless of employment relationship type), but also on the general situation. In other words, the minimum conditions should not prevent effective coverage of persons affected by the pandemic or other disasters.

Secondly, to cope with poverty, European countries have introduced guaranteed minimum income (GMI) schemes for citizens in need, who do not generate income from employment or other sources. The GMI is what we refer to as the social safety net.<sup>7</sup> However, the differences between the systems are significant. The minimum income schemes vary from one Member State to another in terms of generosity or form. The GMI as an exceptional anti-poverty measure has a 'fire-fighting' role. Minimum income is granted to persons in need and is means-tested. It does not aim to provide the entire population with sufficient income.

The GMI is inadequate to deal with the new crises our world is facing. The coronavirus has clearly illustrated the deficiencies of this measure. The conditions determining the eligible beneficiaries are often very narrow, and many individuals fall outside of protection. Minimum income entails very strict eligibility criteria in terms of income and property. It only covers the most deprived individuals. The GMI serves as the ultimate safety net against extreme poverty. The link between minimum income and integration in the labour market is not always possible in times of crisis. Determining beneficiaries' assets and income or verifying their willingness to work is not easy. During the pandemic, minimum income has been subject to various adjustments in many states (e.g. in Italy: certain eligibility criteria for minimum income support, RdC, have been amended).<sup>8</sup>

The weaknesses of the existing mechanisms signal that the COVID-19 pandemic is an opportunity to promote the idea of basic income<sup>9</sup>. The

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7. The Recommendation of 2019 does not apply to the provision of access to social assistance and minimum income schemes.

8. E-M. Hohnerlein, Italy: Lost in the jungle of social shock absorbers and fragmented systems, in U. Becker (Ed.), *Protecting Livelihoods in the COVID-19 crisis*, 2020, 117.

9. G. Standing (ed.), *Promoting income security as a right: Europe and North America*, Anthem Press, 2005.

adoption of a universal allowance has often been discussed among academics and several civil society organisations (BIEN). Basic income was a utopian vision in 'normal' times, but becomes a necessity in times of crisis. Such an intervention is much more than a poverty relief measure.<sup>10</sup> It is a matter of common fairness in a global "Risikogesellschaft". During the pandemic, most people have been vulnerable (e.g. due to illness or major financial losses). Guy Standing asserts that basic income allows us to recover from shocks. The unconditional character of basic income offers protection – an umbrella for everyone in any case.

Basic income is income that is granted unconditionally to everyone on an individual basis. Sometimes, the problem is not participation in the labour market, but the requirement "to stay home, stay safe" (WHO). Persons have had to quarantine or self-isolate (social distancing) because of COVID-19. The main goal of future societies will not be infinite growth and consequent job creation, but the balanced use of resources and equitable distribution of existing wealth. The provision of a basic income could be conditional on engagement in voluntary work or social participation in a broader sense (participation income according to Atkinson).<sup>11</sup>

The pandemic's impact could change the role of Europe. The EU must adopt the protection of livelihood as the guiding principle of the European economy. The development and distribution of an effective vaccine against COVID-19 represents a lasting response to the pandemic. The Commission has financed part of the costs of vaccine production from the Emergency Support Instrument. In the same vein, the EU could establish a common reporting framework to support the income of European citizens. It would be desirable for a given share of the costs required for establishing such a framework to be financed by the EU.<sup>12</sup> We must reverse the

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10. G. Standing, Europeans get it: Basic income strengthens resilience, Basic Income Earth Network (<https://basicincome.org/news/2021/01/europeans-get-it-basic-income-strengthens-resilience/>).

11. The universal allowance would eventually be accompanied by the elimination of all other welfare benefits.

12. European Commission, Coronavirus vaccines strategy (1/3/2021). Under this strategy, all Member States will have access to COVID-19 vaccines at the same time and the distribution will be carried out on a per capita basis to ensure fair access.

founding fathers' original approach to the EU: the social dimension should shape national economies and not vice versa.

Basic income could be a mechanism to promote the European project. The European Pillar of Social Rights (Principle 14) refers to the right to a minimum income for anyone who lacks sufficient resources in order to guarantee a life in dignity during all life stages. "Everyone lacking sufficient resources has the right to adequate minimum income benefits ensuring a life in dignity at all stages of life, and effective access to enabling goods and services. For those who can work, minimum income benefits should be combined with incentives to (re)integrate into the labour market". This article offers a common basis for the adoption of a universal allowance available to all members of society, including non-citizens who are entitled to permanent residence. The introduction of basic income at the European level would provide financial support to Member States hit by natural disasters and offer relief to citizens and regions suffering from the consequences.<sup>13</sup>

The EU has turned a historic corner to address the pandemic. Her "cowardly" presence has been replaced by a wide-ranging financing programme for the Member States (EUR 350 billion). At the same time, national public debt has also become European. To appreciate the significance of these changes, let us bear in mind that tough budgetary discipline has hitherto served as a "Trojan horse" for the dissolution of the welfare state in the Member States.

We are currently not only fighting against a dangerous virus, but also against a societal model. With high human costs, we will become wiser in how to conduct social policy in a future, global, risk society. Today's model will not survive in the near future. Non-adaptation will lead to barbarism, while by contrast, if we treat the pandemic as an "opportunity", we will be able to build a more humane and solidary tomorrow. The economy's focus should no longer be on infinite growth, but on the redistribution of wealth.

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13. As part of the EU's coordinated package to respond to the COVID-19 pandemic, the scope of the EU Solidarity Fund was extended by a modifying regulation adopted on 1 April 2020. The amendment expands the scope of the EUSF to include public health crises, and to allow for its mobilisation, if needed, for the hardest hit Member States.



## Social security in times of corona - comparative aspects

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Stamatia DEVETZI\*

### 1. Introduction

The COVID-19 pandemic has had a dramatic effect on Europe. The rapid spread of the new virus and the death toll from the disease necessitated the implementation of emergency measures to address the crisis – both the health crisis and its impact on peoples' livelihoods. Governments took rapid action to mitigate the economic and social impacts caused by this unprecedented situation. Social security assumed a leading role; fast-track, extraordinary legislative measures were quickly implemented in the European countries included in this publication. These measures have had far-reaching effects and continue to be adapted as the volatile situation unfolds.

When looking at the emergency social security measures adopted by Member States, the initial picture that emerges is a very fragmented one. This is not necessarily surprising since the responses to the crisis were adapted to each country's individual economic and social conditions. Moreover, Member States' social security systems differ in many respects and are built on different traditions and principles of social protection. Yet when we analyse the countries' responses to the crisis from a comparative law perspective, we also find common approaches and tendencies. We can categorise the measures adopted by the Member States to get a better picture.

States' responses and instruments can be classified as follows: (1) measures aimed at job retention or the prevention of dismissals, i.e. measures supporting employment; (2) measures facilitating access to/ increasing the level of/ extending the duration of social security benefits; and (3) the development and introduction of "ad hoc" or "new" benefits. Social security has played a leading role in all countries in terms of providing financial support to individuals, easing the pressure on health care sys-

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\* Fulda University of Applied Sciences, Germany.

tems and providing assistance to unemployed persons as well as to families.

Questions about the situation of “vulnerable groups of workers” are also identified and discussed. A closer look at the situation of migrant workers raises some pressing questions and sheds light on future challenges.

## 2. Supporting employment: Measures aimed at job retention or the prevention of dismissals

In many countries, supporting employment primarily meant **support for employers**. This included **compensation for wage costs** in some cases: for employers in the Netherlands expecting a loss of revenue of at least 20 per cent, for example, wage cost subsidies were provided under the NOW scheme (NOW – temporary emergency scheme to retain employment). In Sweden, 75 per cent of employers’ wage costs were covered by the government in case of reduced working hours and for all (employment-related) costs of sick pay. The government in Hungary subsidised 70 per cent of employers’ wage costs for a total period of three months between 16 April and 31 August 2020, if the employer could demonstrate that jobs were at risk due to the pandemic. In case of work stoppage, Polish employers could apply for co-financing of employees’ salaries from their regional employment office, with the subsidy amounting to 50 per cent of the minimum statutory wage. In Italy, the “EIF” (Earnings Integration Fund) provided wage compensation (up to 80 per cent of the employee’s gross wages)<sup>1</sup> as well as exemptions from social security contributions.<sup>2</sup>

**Exemptions from, reductions or deferrals of payment of social security contributions** are a variation of compensation or subsidy of wage costs. This was the case in Spain, where social security contributions were waived for companies with fewer than 50 employees, and companies employing more than 50 workers only had to pay 25 per cent of the contributions, while the workers’ social security contributions for these periods were considered to have effectively been paid in full. Polish employers could also apply for part of their social security contributions to be subsi-

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1. Hohnerlein, Italy: Lost in the jungle of social shock absorbers and fragmented systems, in: MPI working papers law, Protecting Livelihoods in the Covid-19 Crisis, 2020, p. 104.

2. Ales, Income support in Italy during the pandemic, in this publication, p. 83.



dised by the state. In Greece, social security contributions for employees who received "special purpose compensation" were calculated on the basis of this compensation and were fully covered by the state; in the case of seasonal workers, part of the employers' contributions (60 per cent) were subsidised by the government. Deferrals of the payment of social security contributions or an extension of deadlines for payment (without penalties) were introduced in Italy, Greece, Spain and Hungary.

One of the key measures implemented by governments were "partial unemployment schemes", often referred to as "**short-time work schemes**". These schemes allowed employers to reduce employees' working time, while employees' income losses were covered by the social security system/ unemployment benefit schemes. Job retention or wage guarantee schemes,<sup>3</sup> which provided for (partial) wage compensation financed by the government, represented a variant of such measures.<sup>4</sup> Some of these schemes existed long before 2020 and were extended or newly implemented in response to the COVID-19 crisis. This was the case in Germany ("Kurzarbeitergeld") or Italy ("EIF"), just to mention two examples. In Italy, the "EIF" instrument, which has existed since 1941/1945,<sup>5</sup> was quickly transformed into "Covid-19-EIF" and later expanded to support employers facing economic difficulties and their workers whose working time had been reduced. It included wage guarantee measures that provided compensation in case of temporary, partial or full reductions of working time. The measures were underpinned by a prohibition of dismissals as well as an extension of fixed-term contracts. In Germany, the short-time working benefit ("Kurzarbeitergeld") was granted within the framework of unemployment insurance and had already been widely used as an instrument for crisis management in the past – for example, in the aftermath of the economic crisis of 2008.<sup>6</sup> This benefit has been significantly expanded dur-

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3. ILO, Report of the Committee of Experts on the Application of Conventions and Recommendations of the ILO concerning social security measures taken at national level in response to the Covid-19 pandemic, CEACR/XCI/2020/14, p. 5.

4. For example, in Sweden, where the Short-time Allowance Act is not formally part of the social security system.

5. Introduced through a collective agreement in 1941 and enacted into law in 1945.

6. At the end of 2008, the "Kurzarbeit" instrument was expanded by the so-called "Economic Stimulus Package" ("Beschäftigung durch Wachstumstärkung", November 2008) and was reduced again by the "Law improving the chances of integration in the labour market" of 20 December 2011.

ing the coronavirus crisis. The level of allowance for employees whose working time was reduced due to the COVID-19 restrictions increased from 60/67<sup>7</sup> per cent to 80/87 per cent of the worker's former net wages; moreover, employers could apply for reimbursement<sup>8</sup> of the workers' social security contributions.<sup>9</sup>

### 3. Adapting social security systems to the crisis situation: Measures facilitating access to/increasing the level of/extending the duration of benefits

The rapid adaptation of *existing* social security benefits to the crisis situation was a common pattern in all countries examined. In many cases, support provided by the social security system entailed **relaxing benefit conditionality** or **simplifying access to benefits**. Sweden, for example, waived the waiting period for sickness benefits, meaning that employees were eligible for the benefit from their first date of absence from work due to illness, and employers' extraordinary costs were compensated by the state. The required period of employment for eligibility was also modified to facilitate access to income-related Swedish unemployment benefits. Relaxing benefit conditionality also resulted in (temporary) parental benefits becoming available to parents in Sweden who could not work from home while schools were closed. In Greece, health care insurance coverage for both employed and self-employed persons was expanded<sup>10</sup> by eliminating the precondition of specific accumulation periods. Additionally, certain prerequisites were relaxed, thus entitling seasonal workers in Greece to unemployment benefits.<sup>11</sup>

Access to **sickness benefits**, in particular, has been facilitated by modifying the conditions in favour of the beneficiary: sickness benefits were not only awarded during the crisis because of greater demand due to illness/COVID-19 cases, but also as a **means to compensate for loss of income**

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7. The rate depends on whether the beneficiary has children or not.

8. In the first half of 2021, the rate of reimbursement is 100 per cent; in the second half of 2021, this rate will decrease to 50 per cent.

9. Reinhard, Covid-19: Challenges for Germany's social security system, in this publication, p. 13.

10. For the period of 1 March 2020 to 28 February 2021.

11. The number of working days required for claiming seasonal unemployment benefit was reduced from 100 to 50 days.

associated with quarantine or **childcare responsibilities**. Extending sick leave entitlement was another means to prevent the spread of the virus by ensuring that workers could stay home.<sup>12</sup> In Sweden, the “disease carrier allowance” was introduced for an extended group of persons, and is also paid out to persons at risk of infection because they live in the same household with someone belonging to a specific risk group. In Italy, entitlement to sick pay was extended to all workers required to quarantine or stay in mandatory isolation.<sup>13</sup> In Germany, the duration of paid leave when a child falls sick was not only extended; parents were also entitled to this benefit – financed by the health care insurance system – while schools and kindergartens were closed. Similarly, an additional care allowance – provided under the sickness scheme – was introduced in Poland in case of closure of day care, schools, etc.

The **level of benefit rates** was in many cases temporarily **increased**. In Poland, the anti-crisis measures raised the amount of sickness pay for individuals employed in assisted living facilities and for medical staff working in hospitals.<sup>14</sup> The amount of regular unemployment benefit was increased as well. In Germany, as already mentioned above, the amount of short-time working benefit was also increased. Long-term unemployed persons in Greece were granted additional benefits and unemployment benefits in Sweden were increased as well.

**Extending the duration of benefits** was a widely used measure, especially regarding **unemployment benefits**. The (duration of) payment of unemployment benefits was extended in Germany,<sup>15</sup> Greece,<sup>16</sup> Italy<sup>17</sup> and Spain.<sup>18</sup> The payment of other benefits was also extended in Hun-

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12. ILO, Report of the Committee of Experts on the Application of Conventions and Recommendations of the ILO concerning social security measures taken at national level in response to the Covid-19 pandemic, CEACR/XCI/2020/14, p. 2.

13. Hohnerlein, Italy: Lost in the jungle of social shock absorbers and fragmented systems, in: MPI working papers law, Protecting Livelihoods in the Covid-19 Crisis, 2020, p. 109.

14. These groups are entitled to sickness pay in the amount of 100 per cent of their last income for the duration of the pandemic instead of the standard 80 per cent.

15. For three additional months until the end of 2020.

16. For two months from their expiration date for beneficiaries whose entitlement had expired by 31 March 2020.

17. For four months.

gary, for example, where certain family benefits were paid out until the end of June 2020; the same applies for disability and social assistance benefits.

When we take a closer look at **family benefits**, we find that the extension of their payment was widespread as was the payment of “**extra**” **family benefits** (or the “topping up” of benefits) or the introduction of special **measures to support families**. In Hungary, new measures related to cash and housing benefits for families were introduced. In Greece, a “special purpose leave”<sup>19</sup> for working parents was enacted. Italy introduced a special parental leave entitlement of up to 15 days, which was eventually extended to 30 days, with parents entitled to an allowance of 50 per cent of their previous wages or income.<sup>20</sup> In Germany, employed parents who were unable to work due to closures of childcare, school, day care centres or facilities for people with disabilities<sup>21</sup> were entitled to income replacement.<sup>22</sup>

It is also worth taking a closer look at **social assistance** or **minimum income benefits**. Access to social assistance was facilitated in many cases. In Italy, for example, low-income families became eligible for the new “Emergency Income”.<sup>23</sup> Furthermore, the conditionalities for eligibility to another Italian minimum income support measure, the “Citizenship Income”, were temporarily suspended. In Hungary, entitlement to certain

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18. Exceptional unemployment benefits for unemployed persons who had exhausted their eligibility to state assistance between 14 March and 30 June 2020 – the duration of this exceptional benefit was limited to 90 days. In addition, an exceptional unemployment benefit was paid to workers whose temporary contract ended; both benefits extended benefit eligibility in practice.

19. During which two-thirds of their wages were covered by the employer and one-third by the state.

20. Hohnerlein, Italy: Lost in the jungle of social shock absorbers and fragmented systems, in: MPI working papers law, Protecting Livelihoods in the Covid-19 Crisis, 2020, p. 108.

21. Parents have been entitled to this allowance since 19 November 2020.

22. Parents received 100 per cent of their former net wages for six weeks; for the subsequent four weeks, they were entitled to receive 67 per cent of those wages up to a ceiling of EUR 2,016. Single parents could claim this allowance for a maximum of 20 weeks.

23. If their household income did not exceed EUR 840 per month.

social assistance benefits was extended.<sup>24</sup> In Spain, the introduction of the “minimum vital income” (MVI), a measure announced in 2019,<sup>25</sup> was accelerated due to the pandemic situation and implemented in 2020. This benefit guarantees a minimum level of income for economically vulnerable persons. A cost-of-living benefit to supplement the income of self-employed persons whose income fell below the social minimum was introduced in the Netherlands. Although it is based on the already existing “Regulation on Public Assistance for the Self-employed”, the new temporary scheme significantly relaxed the eligibility criteria for this support measure by waiving the means test. In Germany, access to a special scheme of social assistance – basic income support for jobseekers (regulated in the Social Code Book II) – was also eased considerably. The groups of persons entitled to this benefit was expanded as well.<sup>26</sup> To speed up the administrative procedure, the applicant’s assets were not included in the means test.<sup>27</sup> Additionally, the real costs for rent and heating (instead of a flat rate) were reimbursed. This measure has been extended until 31 December 2021, and the German Federal Minister of Labour and Social Affairs in fact commented that he is in favour of maintaining this policy even after the pandemic ends. These measures go beyond a mere administrative simplification; in fact, they introduce a new temporary unconditional minimum income benefit.<sup>28</sup>

#### 4. Development of ad hoc or new social security benefits

The Member States did not only adapt their existing social security benefit schemes and measures to the COVID-19 situation. Another prompt intervention was the introduction of temporary ad hoc / new benefits tailored to specific groups of workers or persons particularly affected by the economic shutdown. Social security coverage was thereby also extended to a larger share of the population.

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24. Any social assistance and child care benefits that were to expire during the first state of emergency were extended until 31 August 2020.

25. The introduction of the ‘minimum vital income’ was planned to be announced by 2023 at the latest.

26. For example, solo self-employed persons, freelancers and temporary agency workers.

27. It is presumed that the individual’s assets do not exceed the threshold.

28. Becker, *The Community steps up: Changing responsibilities in Germany*, in: MPI working papers law, *Protecting Livelihoods in the Covid-19 Crisis*, 2020, p. 38.

Self-employed persons, in particular, found themselves in a very difficult situation during the crisis, primarily because of loss of income due to the economic restrictions or quarantine obligations. Governments responded swiftly to support the self-employed, not only through tax relief or loans, but also through new, temporary social security benefits. Special income support benefits were introduced in a number of countries. In some cases, these were flat-rate benefits, for example in Italy<sup>29</sup> or in Greece.<sup>30</sup> In Spain, new temporary benefits for the self-employed were based on the individual's previous income<sup>31</sup> within the scope of "extraordinary protection in case of cessation of activity".<sup>32</sup> As already mentioned above, the Netherlands introduced a new temporary income support allowance (*Tozo*)<sup>33</sup> for self-employed persons whose earnings dropped below the social minimum; a second component of this measure was a loan in case of insufficient cash flow. Poland also introduced a new non-contributory benefit, limited to a maximum of three months: compensation for interruption of services for individuals who perform work outside an employment relationship (i.e. self-employed persons and civil law contractors), and have been negatively impacted by the economic shutdown. The Polish Social Security Institution is responsible for granting this benefit.

Temporary ad hoc unemployment benefits were not only introduced for the self-employed, but also for employees whose contracts were terminated (in Poland) or suspended (in Spain and in Greece) as a consequence of the pandemic. In the Netherlands, the new temporary bridging scheme for flexible workers ("*TOFA*") included workers with zero-hours contracts, temporary agency workers and students with part-time jobs.

Ad hoc benefits or special provisions were widely introduced for specific categories of workers, including artists and seasonal or fixed-term

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29. "Last Resort Income": a monthly allowance, initially set at EUR 600, has been increased to a maximum of EUR 1,000 per month for self-employed persons.

30. EUR 400.

31. 70 per cent of the regular base income.

32. The beneficiaries of this allowance were self-employed persons who were impacted by the closure of businesses or whose monthly income had decreased by 75 per cent compared to their monthly average in previous quarters.

33. Temporary bridging scheme for the self-employed.

agricultural workers (in Spain, Greece and Italy).<sup>34</sup> The number of special provisions in Spain is particularly striking: the extended legislation adopted since the state of emergency was declared has resulted in around 30 different unemployment benefit schemes, with special provisions for separate groups such as domestic employees, technical and support staff in the cultural sector, bullfighting professionals, etc. This has further increased the complexity of Spain's unemployment protection system.<sup>35</sup>

## 5. Vulnerable groups of workers: self-employment and non-standard employment

The pandemic has accentuated the situation of those who are vulnerable or at least more vulnerable than others. This includes self-employed persons, precarious/atypical/flexible/seasonal workers, etc., in other words, persons working outside a "classic" employment relationship.

Self-employment is an important pillar of economic activity in many European countries. Social protection for the self-employed is often, however, significantly weaker than for regular employees. In most countries, access to unemployment insurance by self-employed persons is usually restricted to voluntary schemes, whereas mandatory unemployment insurance is common for the majority of regular workers.<sup>36</sup> Other forms of non-standard employment, such as short-term, seasonal or part-time work are also often inadequately protected: according to the OECD, self-employed persons or persons with temporary or part-time employment contracts are 40-50 per cent less likely than regular employees to benefit from any form of income support during periods of unemployment.<sup>37</sup>

Consequently, many of those who fall outside standard employment relationships and suffered loss of income due to the economic shutdown,

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34. In Italy, the "Last Resort Income" was not only provided to self-employed persons, but also to certain groups of employees, such as seasonal and fixed-term agricultural workers, on-call workers, cultural and domestic workers.

35. Sánchez-Rodas Navarro, Chapter Spain, in this publication, p. 138.

36. Schoukens/Weber, Unemployment insurance for the self-employed: a way forward post-corona, EISS Research Paper 2020.

37. OECD (2018), *The future of social protection: What works for non-standard workers?*, OECD Publishing, Paris, <https://doi.org/10.1787/9789264306943-en>.

quarantine measures, child care duties or health problems, found themselves in a particularly vulnerable situation, especially if they were not eligible for sickness or income protection benefits. This vulnerability was exacerbated among (self-employed) workers in the informal economy, freelancers and gig economy workers, who often do not have sufficient savings to make ends meet, even during brief out-of-work periods.<sup>38</sup>

Most countries were quick to introduce measures to provide assistance to the self-employed through both (temporary) social security benefits and income support schemes, as described above, but also by promoting business continuity: programmes including credit lines, state guarantees, tax relief, special loans or compensation for firms' fixed costs were introduced in many countries.<sup>39</sup>

Special measures were developed for specific categories of workers that fall outside standard employment relationships.<sup>40</sup> This was the case, in particular, in southern Europe (Spain, Greece, Italy), with specific provisions targeting different groups including artists, seasonal workers, domestic employees, temporary workers, etc.; the Netherlands also considered "flexible workers" a special group that needed special protection.

Additional tailor-made measures for the self-employed and for workers who fall outside standard employment relationships had to be introduced because instruments such as short-time working schemes were not available for self-employed persons or precarious workers. These workers have generally not been treated favourably by social security systems, as most benefits are income-related – their incomes are often insecure or may vary considerably.<sup>41</sup> Precarious workers were already vulnerable before the pandemic; the crisis has only exacerbated their situation.<sup>42</sup> When

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38. ILO, Report of the Committee of Experts on the Application of Conventions and Recommendations of the ILO concerning social security measures taken at national level in response to the Covid-19 pandemic, CEACR/XCI/2020/14, p. 11.

39. For an overview, see ILO Report, *op. cit.*, p. 12 and MPI working papers law, *Protecting Livelihoods in the Covid-19 Crisis*, 2020, *op.cit.*

40. In this chapter, Section 4: "Development of ad hoc or new social security benefits", p. 192-193.

41. Erhag, *Social security during the pandemic – the case of Sweden*, in this publication, p. 170.

42. Johansson and Selberg, *COVID-19 and Labour Law: Sweden, Italian Labour Law e-Journal Special Issue 1, Vol. 13 (2020) Covid-19 and Labour Law. A Global Review. Section: National Reports.* p. 9.



looking at the many different (and chaotic) measures enacted, one major challenge emerges: making social security systems more comprehensive instead of simply passing emergency measures and implementing temporary actions.<sup>43</sup> Temporary measures, in fact, do not replace the need to expand social protection for those who lack sufficient protection or are not covered.<sup>44</sup>

## 6. Migrant workers

Studies on the situation of migrant workers during the COVID-19 crisis conclude that the pandemic has had a disproportionate impact on them, that is, persons with a migratory background have so far suffered higher income losses than others.<sup>45</sup> The share of migrants who are self-employed or engaged in flexible work is also higher.<sup>46</sup> In many cases, they face specific obstacles in accessing social protection, including health care and income security, thus making them more vulnerable to the health-related and socio-economic impacts of COVID-19.<sup>47</sup>

Migrants are often at higher risk because they perform more precarious jobs and many are frontline essential workers.<sup>48</sup> Their vulnerabilities already existed before the outbreak of the crisis; however, COVID-19 has put a magnifying glass on these pre-existing problems, further illuminating the serious need for solutions.<sup>49</sup> The majority of countries included in this study responded to the crisis by introducing a variety of (temporary) measures; the question regarding migrants remains, however: how can the social security system ensure solidarity for all?

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43. See also ETUI, Spasova et al., Non-standard workers and the self-employed in the EU: social protection during the Covid-19 pandemic, March 2021, p. 46.

44. European Commission, Joint Employment Report 2021, as adopted by the Council on 9 March 2021, p. 18.

45. Walter, Social protection for migrant workers in Germany in times of corona, in this publication, p. 23.

46. Walter, op.cit.

47. ILO-Brief: Social protection for migrant workers: A necessary response to the Covid-19 crisis, 23 June 2020, p. 1.

48. Fasani and Mazza, Immigrant key workers: Their contribution to Europe's Covid-19 response, IZA Discussion Paper, 2020.

49. De Lange/Mantu/Minderhoud: Into the unknown: Covid-19 and the global mobility of migrant workers, doi:10.1017/aju.2020.62.

The pandemic has also had an impact on cross-border movements and consequently, cross-border work and the delivery of services. When taking a closer look at the situation of migrant or mobile workers in the context of social security, interesting questions arise, especially in terms of European social security law, i.e. the application of Regulation (EC) No. 883/2004 on the coordination of social security systems.<sup>50</sup>

One of these questions relates to the conflict of law-question, namely on the applicable legislation.<sup>51</sup> According to Art. 11 of Reg. 883/2004, a person who works in a given Member State is covered by that state's social security system. Someone who works in two or more EU Member States shall be covered by the social security system of the Member State in which he or she officially resides if he or she carries out a substantial part of his or her work in that particular Member State (Article 13 (1) Reg. 883/2004). A 'significant part of one's work' means at least 25 per cent of the worker's total working time.<sup>52</sup> During the pandemic, many employers instructed their employees to work from home. This meant that frontier workers between EU countries, e.g. in the Öresund region between Sweden and Denmark, but also in many other regions, such as between the Netherlands and Germany, were in many cases required to perform their work from their country of residence. The question thus arose whether this would lead to a change in the applicable social security legislation, with the law of the country of residence "suddenly" becoming applicable to such workers instead of the law of the country of employment. Governments responded swiftly: the administrative authorities in the Netherlands, Belgium and Germany, for example, agreed that working from home during the lockdown would not affect the applicable legislation.<sup>53</sup> Similarly, the Swedish and Danish governments agreed that social security laws covering cross-border Öresund commuters would not be affected by the restrictions imposed due to the pandemic. A question that might need to be addressed for the future is whether working from home several days a

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50. Published in [2004] OJ L 166/1.

51. See the chapters of Pennings (The Netherlands) and of Erhag (Sweden) in this publication.

52. Art. 14 of the Implementing Regulation – Reg. 987/2009, published in [2009] OJ L 284.

53. <https://pers.svb.nl/coronavirus-en-wonen-of-werken-over-de-grens-de-sociale-verzekering-verandert-niet/>; DVKA, Rundschreiben 2020/167, 17 March 2020.

week will become a permanent phenomenon, and whether and how social security legislation will need to be adjusted accordingly.<sup>54</sup>

Another question relating to (EU) migrants that arises is whether the temporary minimum income benefits introduced during the pandemic can be considered "social assistance" or "social security benefits" in accordance with Art. 3 Reg. 883/2004. Such differentiation is important, since social assistance benefits do not have to be 'exported' to other Member States. In other words, the question is whether a person who resides in one Member State but works in another will be entitled to the minimum income benefits from his or her country of employment (or self-employment). It is not always clear which category a benefit falls into. This is the case, for example, of the "Tozo" benefit in the Netherlands (*Tozo* – temporary bridging scheme for the self-employed), which consists of two components, a loan and a cost-of-living benefit to supplement the income of self-employed persons whose earnings fall below the social minimum. There are convincing arguments that this benefit should qualify as an unemployment benefit (as opposed to a social assistance benefit): it is intended as compensation for involuntary loss of work; there is an enforceable right to this benefit and it is not listed as a special non-contributory benefit in Annex X of the Regulation. The Dutch government did not follow these arguments, however, which means that several thousand self-employed persons who own a company in the Netherlands but reside in another EU country were excluded from this benefit.<sup>55</sup> Persons residing in Belgium, for instance, were also excluded from the Belgian scheme for the self-employed, since they were not insured in Belgium, either.<sup>56</sup> This substantiates that a crucial objective of the coordination of social security systems has not been achieved: preventing people from falling through the gaps. This is extremely problematic, not only because it contradicts the basic principles of European social security law; it also indicates that the notion of "solidarity" may be, once again, limited to national boundaries, despite the international character of this crisis.

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54. Pennings, in this publication, p. 106.

55. Pennings, *op.cit.*, p. 99.

56. Because their company is located in the Netherlands.

## 7. Concluding remarks

Social security has been a major component of Member States' response to the COVID-19 crisis. Governments – and social security systems – responded swiftly to mitigate the pandemic's social and economic impact. Looking at the different measures discussed in this publication, we find that the Member States' responses have been both creative and flexible. A broad variety of measures were implemented at a remarkable speed to safeguard the population's health and protect their incomes.

Many of the measures introduced aimed at job retention or the prevention of dismissals. Some of the governments' responses revealed that social security systems have the capacity to quickly adapt to crisis situations by implementing measures that facilitate access to, increase the level of or extend the duration of benefits within the scope of existing provisions. In other cases, social security measures were temporarily expanded by introducing ad hoc or new benefits tailored to specific groups of workers or persons who were significantly affected by the economic shutdown.

This crisis has also accentuated persistent problems, however, highlighting lacunae that have existed for some time. The social protection of certain groups of persons, such as the self-employed and persons in non-standard employment relationships, has posed a particular challenge for most countries included in this publication. Many governments responded quickly by passing tailor-made – but also temporary – measures. Nevertheless, the debate on how to improve the protection of “new forms” of employment, atypical, precarious, platform or self-employment is not new. In fact, such discussions have existed for years<sup>57</sup> and gave rise to the adoption of the Council Recommendation on “access to social protection for workers and the self-employed” in 2019.<sup>58</sup> With this Recommendation, the EU calls on Member States to provide all types of workers formal and effective access to adequate and transparent social protection. Thus, the question – or rather the challenge – for the future is how to make social security systems more inclusive, instead of simply adopting emergency and temporary measures during periods of crisis.

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57. See, for example, Principle 12 of the European Pillar of Social Rights, COM (2017) 251.

58. Council Recommendation (EU) of 8 November 2019 on access to social protection for workers and the self-employed (2019) OJ C 387/1.

The same question arises with regard to migrant workers; they, too, often face specific challenges in accessing social protection, including health care and income security. The issue of inclusive social security systems goes hand-in-hand with increased solidarity.

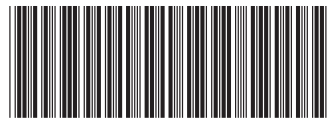
As regards frontier workers, an extraordinary situation such as the COVID-19 pandemic has brought new, interesting questions about the future to light, such as which legislation applies to persons who work from home but are actually employed in another Member State, or questions about the "social security character" of certain benefits and 'exporting' them to other Member States.

Each crisis reveals the deficits of social protection systems. Despite the social security systems' quick, creative and flexible responses to the challenges unleashed by the pandemic, fundamental questions for the future remain open and must be addressed. It remains to be seen whether the experience with COVID-19 will result in a new, improved and more inclusive design of the welfare states in Europe. The crisis has certainly provided abundant impulses for a renewed discussion on the future of the European social model.





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