

Coronavirus pandemic in the EU – Fundamental Rights Implications

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1 Measures taken by government/public authorities impacting on specific freedoms

1.1 Emergency laws/states of emergency

- Legal framework and court ruling

A 'health state of emergency' was initially declared on 23 March to deal with the Covid-19 outbreak,¹ and was extended until 10 July 2020.² On 11 July a new law came into effect defining the conditions for lifting this legal framework and organising a transition period. This law contained several restrictions on civil liberties which remain applicable after the end of the health state of emergency. More precisely, the law provided that the Prime Minister could retain the possibility of regulating gatherings, movement and access to means of transport, as well as temporarily closing establishments receiving the public. The relevant authorities were also allowed to extend the retention period for data collected by the information systems implemented to tackle the epidemic.³ In the overseas departments of Mayotte and French Guiana, where the virus was actively circulating, the health state of emergency was maintained until 17 September 2020.⁴

The law which prepares for the end of the health state of emergency was brought before the Constitutional Council by more than sixty senators, who contested Article 1 of the law. In its decision of 9 July 2020, the Constitutional Council found the provisions of this article of the law to conform with the Constitution and established the interpretation of these provisions. Concerning the possibility given to the Prime Minister to regulate or prohibit the movement of people and vehicles under certain conditions, it noted that such measures can only be pronounced for the period from 11 July to 30 October 2020 in areas where the active circulation of the virus has been observed, and cannot prohibit people from leaving their homes. As regards the possibility given to the Prime Minister to order the temporary closure of certain categories of establishment open to the public, the Constitutional Council ruled that the provisional closure measure only applies to places or establishments which are accessible to the public. It does not concern living quarters or parts of such establishments which are not intended to accommodate the public. As for the regulation of gatherings, meetings or activities which take place on public roads and in places open to the public, the Council pointed out that the law did not authorise the Prime Minister to replace the declaratory system which applies to the organisation of demonstrations on the public highway by a system of prior authorization from the Prime Minister. In addition, the Constitutional Council stressed that all these regulatory measures can only be based on grounds relating to the interest of public health and solely for purposes of combating the spread of the Covid-19 epidemic. They must be strictly proportionate to the health risks incurred and appropriate to the circumstances of time and place.

¹ France, Emergency Law No. 2020-290 of 23 March 2020 to deal with the Covid-19 epidemic, available at: <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000041746313&dateTexte=20200507>

² France, Law No. 2020-546 of 11 May 2020 organising the end of the health state of emergency, available at: <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000041865244&dateTexte=20200519>

³ France, Law No. 2020-856 of 9 July 2020 extending the health state of emergency and supplementing its provisions, available at:

<https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042101318?r=MKyvM6sgBA>

France, Decree No. 2020-860 of 10 July 2020 prescribing the general measures necessary to deal with the Covid-19 epidemic in areas which are leaving the health state of emergency and in those where it has been extended, available at: <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000042105897/2020-07-28/>

⁴ France, Decree No. 2020-1143 of 16 September 2020 bringing an end to the health state of emergency in Mayotte and Guiana, available at: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042334569>

They are terminated without delay when they are no longer needed and may be the subject of an interim suspension or interim relief before an administrative judge. For all of these reasons, the contested provisions were found to be in accordance with the Constitution.⁵

On 17 October 2020, a health state of emergency was reinstated in France due to a 'sudden and spectacular acceleration in the spread of the coronavirus', as explained by the Government.⁶ Based on the public health code,⁷ Decree No. 2020-1257 indicates that the Covid-19 epidemic constitutes a health crisis, which, by its nature and its seriousness, endangers the health of the population and therefore justifies a health state of emergency being declared so that measures which are strictly proportionate to the health risks incurred, and appropriate to the circumstances, can be taken.⁸ This regime can involve restrictions on the freedom of movement of individuals but also requisitions of goods and services, or even price control measures.⁹ The extension of these regulations was under discussion in Parliament at the end of October.¹⁰

In this context, new lockdown measures have been put in place at the national level to deal with the Covid-19 pandemic, which will apply from 30 October until at least 1 December 2020.¹¹

- **Concerns**

Concerns arose over the new declaration of the health state of emergency. As Parliament was preparing to discuss the extension of this regime over one month, the Public Defender of Rights, in a press article of 23 October, suggested 'getting out of the diktat of emergency'. She underlined in particular that between health constraints and economic imperatives, 'little room has been left for the defence of rights and freedoms' which are nevertheless the foundation of France's democratic republic. She therefore called for an 'increase in tools for democratic and judicial control over the scope and consequences of measures taken in emergency, the insensitive sustainability of which is clearly a risk'.¹²

In the same vein, the NGO '*Ligue des droits de l'Homme*' outlined, in a press release issued on 16 October, that this special regime leads to the 'enactment of coercive measures that restrict freedoms or rights, attesting to a purely punitive government approach and a distrust of the population'. It also

⁵ France, Constitutional Council, Decision No. 2020-803 DC, 9 July 2020, available at: <https://www.conseil-constitutionnel.fr/decision/2020/2020803DC.htm>

⁶ France, Government, 'Press conference on the application of measures to tackle Covid-19', 15 October 2020, available at: <https://www.gouvernement.fr/partage/11776-conference-de-presse-sur-l-application-des-mesures-contre-la-covid-19>

⁷ Article L. 3131-13 of the Public Health Code, available at: https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006072665/LEGISCTA000041747458?etatTexte=VIGUEUR&etatTexte=VIGUEUR_DIFF

⁸ France, Decree No. 2020-1257 of 14 October 2020 declaring the health state of emergency, available at: https://www.legifrance.gouv.fr/download/pdf?id=J73mcZW2Cgy6sN6aIInr9_00OY2r1ad3LaVVmnStGvQ

⁹ France, Legal and administrative information department (DILA), 'Health state of emergency: entry into force from Saturday 17 October 2020', 16 October 2020, available at: <https://www.vie-publique.fr/en-bref/276698-etat-durgence-sanitaire-partir-du-samedi-17-octobre-2020>

¹⁰ France, Senate, 'Draft law authorising the extension of the health state of emergency and various management measures for the health crisis', 24 October 2020, available at: <https://www.senat.fr/leg/pj120-074.html>

¹¹ France, President of the Republic, 'Address to the nation', 28 October 2020, available at: <https://www.elysee.fr/emmanuel-macron/2020/10/28/adresse-aux-francais-28-octobre>

¹² France, Public Defender of Rights, 'A democratic debate on the suitable nature of health measures would promote social cohesion', 23 October 2020, available at: <https://defenseurdesdroits.fr/fr/a-la-une/2020/10/claire-hedon-lexistence-dun-debat-democratique-de-fond-sur-le-caractere-adapte-des>

stressed that freedom must remain the guiding principle in all circumstances, and police restrictions an exception.¹³

1.2 Freedom of movement

- **Going out and travelling within the country under curfew**

A curfew came into force on 17 October in the Ile-de-France region and eight urban areas (Grenoble, Lille, Lyon, Aix-Marseille, Montpellier, Rouen, Saint-Etienne and Toulouse), before being extended on 22 October to 38 additional Departments. In total, 54 mainland Departments and one overseas Department (French Polynesia) had been under curfew from midnight on 23 October 2020, which affected nearly 46 million people. Going out and travelling was banned between 9:00 p.m. and 6:00 a.m. The criteria used to choose which cities would be under curfew were the following: an infection incidence of more than 250 per 100,000 inhabitants, an incidence of infections in elderly people greater than 100, occupancy rates of intensive care beds greater than 30%, and a trend which will lead to capacity being overrun by 50% in the coming weeks.¹⁴

- **Exceptions**

Some exceptions were made for medical reasons, such as care that could not be provided remotely, for work or university, trips by plane or train, urgent reasons, assistance to vulnerable persons or childcare, transporting people with disabilities, judicial or administrative summons, participation in public work of general interest upon the request of an administrative authority, visiting a dependent relative, or taking a pet out for a walk in the area near the home.¹⁵ In these cases, people are required to carry a form stating their reasons for being out. These forms are valid for one hour and are available on the Ministry of the Interior website, on a smartphone, and on paper. Forms for leaving the home for work reasons have to be accompanied by a signed form from the employer.¹⁶

- **Penalties**

Violations of these rules enacted by Decree No. 2020-1262 are punished by a fine of €135 and up to €3,750 in the event of a repeat offence.¹⁷

- **Court ruling**

The Association for the defence of constitutional rights (ADELICO) and several individuals have asked the Council of State to suspend this curfew or to limit its scope by restricting the hours and providing new grounds for exemptions. In a decision of 23 October, the court recalled that while the administrative authorities may take measures to prevent or limit the effects of the epidemic in order

¹³ France, Ligue des droits de l'Homme, 'The permanent health crisis state of emergency', 16 October 2020, available at: <https://www.ldh-france.org/letat-durgence-sanitaire-permanent/>

¹⁴ France, Government, 'Curfew', 19 October 2020, available at: <https://www.gouvernement.fr/info-coronavirus/couvre-feu>

¹⁵ France, Decree No. 2020-1262 of 16 October 2020 prescribing the general measures necessary to deal with the Covid-19 epidemic within the framework of the health state of emergency, Article 51, available at: <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000042430554/2020-10-27/>

¹⁶ France, Government, 'Coronavirus Information', 19 October 2020, available at: <https://www.gouvernement.fr/info-coronavirus>

¹⁷ France, Government, 'Curfew', 19 October 2020, available at: <https://www.gouvernement.fr/info-coronavirus/couvre-feu>

to protect the health of the population, these measures must be necessary, appropriate and proportionate to the objective pursued. It continued by noting that infection occurs mostly in private places and that a curfew seems to have shown its effectiveness in limiting the spread of the virus when it was implemented in French Guiana last March. The judge also recalled that the measure was accompanied by numerous exceptions and was limited in time to the duration of the health state of emergency. Finally, the court underlined the difficulty of varying the hours according to the geographical areas concerned, and the obligation for the Prime Minister and prefects to bring a prompt end to the restrictions as soon as they are no longer strictly necessary. On the basis of these arguments, the Council of State concluded that the provision requiring prefects to impose a curfew did not clearly violate any fundamental rights.¹⁸

- **Going out and travel within the country during lockdown**

The French authorities imposed new lockdown measures from 30 October until 1 December 2020. As provided for by Decree No. 2020-1310, throughout this period people are permitted to leave their homes under certain circumstances such as for work, judicial, administrative or urgent family reasons, taking children to school, medical appointments, for people with disabilities and their companions, for shopping or exercise for one hour within a 1km radius of the home. People are required to carry a form stating the reason for leaving the home (available on the Ministry of the Interior website).¹⁹ Trips to another region of France are banned.²⁰ A fixed fine of €135 will be applied in the event of non-compliance with these rules. This can rise to a €3,750 fine and a maximum penalty of six-month's in prison in cases of repeat offending.²¹

- **Travel from a Member State or a country in the European area**

In accordance with the recommendations of the European Commission, France lifted all traffic restrictions at its European borders (land, air and sea) on 15 June 2020. Since that date, people from countries in the European area²² can enter France without restrictions related to tackling Covid-19.²³

- **Travel from countries outside the European area**

For countries where the circulation of the virus is low, travellers are no longer subject to restrictions on their entry into France. The list of countries is regularly updated - at least every 15 days - in conjunction with European partners, taking into account the recommendation of the Council of the European Union, the evolution of the health situation and the respect for reciprocity.

For countries in which the virus is still very actively circulating, the following categories of travellers are authorised to enter France:

¹⁸ France, Council of State (*Conseil d'État*), Decision No. 445430, 23 October 2020, available at: <https://www.conseil-etat.fr/actualites/actualites/le-juge-des-referes-du-conseil-d-etat-refuse-de-suspendre-le-decret-prescriptif-aux-prefets-de-certains-departements-d-instaurer-un-couvre-feu?fbclid=IwAR34djM7kerkCIbIPVIX0QM61PsKTTIjm0sDYBJhg7BhEOzPWMI-id1M3Uo>

¹⁹ France, Ministry of the Interior, 'Outdoors form', 29 October 2020, available at: <https://www.interieur.gouv.fr/Actualites/L-actu-du-Ministere/Attestations-de-deplacement>

²⁰ Decree No. 2020-1310 of 29 October 2020, available at: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042475143>

²¹ France, Ministry of the Interior, 'Outdoors form', 29 October 2020, available at: <https://www.interieur.gouv.fr/Actualites/L-actu-du-Ministere/Attestations-de-deplacement>

²² Member States of the European Union and Andorra, Iceland, Liechtenstein, Monaco, Norway, San Marino, Switzerland and the Vatican.

²³ France, Ministry of the Interior, 'FAQs on the implementation of border health controls', 24 July 2020, available at: <https://www.interieur.gouv.fr/Actualites/L-actu-du-Ministere/FAQ-sur-la-mise-en-oeuvre-des-contrôles-sanitaires-aux-frontieres>

- French nationals, travelling with their spouse and children.
- European Union nationals and nationals from Andorra, the United Kingdom, Iceland, Liechtenstein, Monaco, Norway, San Marino, Switzerland, and the Vatican, whose primary residence is in France or who are travelling through France to reach their country of origin or of primary residence, travelling with their spouse and children.
- Third country nationals who are holders of a French or European residence permit or valid long-stay visa, with primary residence in France, or in transit through France to their residence in the European Union or its assimilated countries.
- Third country nationals in transit for less than 24 hours in an international zone.
- Holders of an official passport
- Foreign nationals employed by diplomatic or consular bodies or international organisations whose headquarters or offices are located in France, along with their spouse and children, or foreign nationals staying in France on an assignment on behalf of their home country.
- Foreign healthcare workers to help tackle Covid-19 or who are recruited as interns to assist.
- Foreign flight and cargo personnel as part of a crew or travelling as passengers to their departure base.
- Foreign nationals responsible for the international carriage of goods.
- Drivers or crew members of a passenger train or bus.
- Crew members or personnel working on a merchant or fishing ship.
- Students with long-term visas (VLS) or short-term visas (VCS) to study or do an internship ('Examination/test' short-stay visa not included), or coming for less than 90 days from a country exempted from short-term visas, or minors attending school who carry proof of residence in France.
- Teachers or researchers employed or invited by a French educational institution or research laboratory who are travelling for teaching or research purposes.
- Third Country nationals with a long stay skills visa (*passport talent*) or corporate transfer visa, travelling with their spouse and children.
- Foreign nationals coming to France for medical care in a public or private hospital.²⁴

The list of countries in which the virus is still actively circulating is determined in conjunction with France's European partners, taking into account the recommendation of the Council of the European Union, the evolution of the health situation and respect for reciprocity. The list is regularly updated, - at least every two weeks, according to the Government²⁵ - and is available on the national regulations site as well as on the French Ministry of Europe and Foreign Affairs website.²⁶ Travellers from these countries must carry certain documents while traveling, which are also available on the French Ministry of the Interior website:

- A sworn statement stating that they are not showing symptoms of Covid-19 and that they are unaware of having been in contact with a confirmed case of Covid-19 in the fourteen days preceding the flight;

²⁴ France, Ministry of the Interior, 'Travel certificate', 25 September 2020, available at: <https://www.interieur.gouv.fr/Actualites/L-actu-du-Ministere/Attestation-de-deplacement-et-de-voyage>

²⁵ France, Ministry of the Interior, 'Traveler information', 24 July 2020, available at: <https://www.interieur.gouv.fr/Actualites/L-actu-du-Ministere/FAQ-sur-la-mise-en-oeuvre-des-controles-sanitaires-aux-frontieres>

²⁶ France, Ministry of Europe and Foreign Affairs, 'Advice by country / destination', available at: <https://www.diplomatie.gouv.fr/fr/conseils-aux-voyageurs/conseils-par-pays-destination/>

- A certificate for exceptional travel to mainland France from third countries.²⁷

During the reporting period, the result of a virus screening test is also required for travellers aged 11 or over coming from certain countries where the virus is very actively circulating, and in which it is possible to do tests within 72 hours of departure (list updated every two weeks). For travellers aged 11 or over coming from countries where it is difficult or impossible to test within 72 hours of departure, specific health reception is set up, before the border control point, organised by the Regional Health Agency.²⁸

Incoming travellers showing Covid-19 symptoms will have to observe quarantine or, if needed, be placed and kept in isolation by the relevant Prefect in a bid to stop the spread of the coronavirus. These measures may take place, based on the preference of the persons concerned, at their home or in suitable accommodation. The initial duration may not exceed fourteen days and may be renewed within the limit of a maximum duration of one month.²⁹

1.3 Freedom of assembly

During the current health crisis, restrictions on freedom of assembly and association impacting on both private and public life have been judged necessary by the national authorities in the interests of public safety, for the protection of health.

- **Gatherings, meetings or activities on the public highway or in a place open to the public**

Gatherings, meetings or activities bringing together more than ten people in one place were banned until 16 October, and since that date they have been limited to six people.³⁰ There are some exceptions to this restriction, for:

²⁷ France, Ministry of the Interior, 'Travel certificate', 25 September 2020, available at: <https://www.interieur.gouv.fr/Actualites/L-actu-du-Ministere/Attestation-de-deplacement-et-de-voyage>

²⁸ France, Decree No. 2020-911 of 27 July 2020 amending Decree No. 2020-860 of 10 July 2020, available at: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042157820/>

Decree No. 2020-1262 of 16 October 2020, available at: <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000042430554/2020-10-27/>

Decree No. 2020-1310 of 29 October 2020, available at: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042475143>

²⁹ France, Decree No. 2020-860 of 10 July 2020 prescribing the general measures necessary to deal with the Covid-19 epidemic in the territories exiting the health state of emergency and in those where it has been extended, available at: <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000042105897/2020-07-28/>

This law was repealed and replaced by Decree No. 2020-1262 of 16 October 2020 prescribing the general measures necessary to deal with the Covid-19 epidemic within the framework of the health state of emergency, available at: <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000042430554/2020-10-19/>

A new Decree No. 2020-1310, prescribing the general measures necessary to deal with the covid-19 epidemic in the context of the health state of emergency, was adopted on 29 October 2020, available at: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042475143>

³⁰ France, Decree No. 2020-860 of 10 July 2020, available at: <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000042105897/2020-07-28/>

Decree No. 2020-1262 of 16 October 2020, available at: <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000042430554/2020-10-27/>

This law was amended by Decree No. 2020-1294 of 23 October 2020, available at: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042459641>

Decree No. 2020-1310 of 29 October 2020, available at: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042475143>

- Gatherings, meetings or activities for work;
- Passenger transport services;
- Establishments receiving the public;
- Funeral ceremonies (within the limit of 30 people from 30 October);
- Guided tours (exception valid until 30 October);
- Public ceremonies, precedence, civil and military honours (exception valid from 24 October).³¹

The Prefect of the Department may, though, prohibit or restrict them when local circumstances justify this.³²

During the reporting period, processions, parades and demonstrations on the public highway have to be declared to the Prefect of the Department and may be authorised if the conditions for their organisation are capable of guaranteeing compliance with the social distancing and hygiene measures.³³ As a result, some demonstrations have been banned in France at the local level. For example, despite a ban on the event, several groups ('Yellow vests', anti-masks, activists of the #BlackLivesMatter cause and 'black blocks') gathered in Lyon on 17 October 2020. As reported by some media, clashes took place in the centre of the city.³⁴ On 12 September, a 'Yellow vests' national day of mobilisation, the Paris Police Prefecture also banned demonstrations planned in some specific areas of the capital. In total, 2,500 people demonstrated, and 275 people were arrested, according to information provided to the press by the Paris prosecutor's office.³⁵

In all cases, any gathering, meeting or activity on public roads or in a place open to the public has to be organised under conditions such as to ensure strict compliance with the hygiene measures and social distancing, including physical distancing of at least one metre between two people, known as

³¹ France, Decree No. 2020-860 of 10 July 2020, available at: <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000042105897/2020-07-28/>

France, Decree No. 2020-1262 of 16 October 2020, available at: <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000042430554/2020-10-19/>

France, Decree No. 2020-1310 of 29 October 2020, available at: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042475143>

³² France, Decree No. 2020-860 of 10 July 2020, available at: <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000042105897/2020-07-28/>

France, Decree No. 2020-1262 of 16 October 2020, available at: <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000042430554/2020-10-19/>

France, Decree No. 2020-1310 of 29 October 2020, available at: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042475143>

³³ France, Decree No. 2020-860 of 10 July 2020, available at: <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000042105897/2020-07-28/>

France, Decree No. 2020-1262 of 16 October 2020, available at: <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000042430554/2020-10-27/>

Decree No. 2020-1310 of 29 October 2020, available at: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042475143>

France, Homeland Security Code, Articles L211-2 and L211-3, available at: https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000025503132/LEGISCTA000025505131/2020-06-16/#LEGISCTA000025508382

³⁴ France, Actu, 'Lyon - Banned demonstrations, mortar fire against the police who responded with tear gas', 17 October 2020, available at: https://actu.fr/auvergne-rhone-alpes/lyon_69123/lyon-manifestations-interdites-tirs-de-mortiers-contre-la-police-qui-replique-par-des-lacrymogenes_36865893.html

³⁵ France, Le Monde, 'Modest attendance and tensions for the 'yellow vests' mobilization day', 12 September 2020, available at: https://www.lemonde.fr/societe/article/2020/09/12/manifestations-de-gilets-jaunes-des-mesures-preventives-et-68-interpellations-a-paris_6051929_3224.html

'barrier measures', which were adopted in the past and remain valid throughout the reporting period.³⁶

- **Gatherings, meetings or activities in private places**

Although private gatherings are not banned, during his speech on 14 October, the President of the Republic invited people all over the country to adopt a 'rule of six', limiting the number of people not belonging to the same household in the same gathering to six, in order to tackle the 'second wave' of the virus. He also recommended 'wearing a mask as often as possible, including when with family or friends'.³⁷

- **Events bringing together more than 5,000 people**

No event bringing together more than 5,000 people, including public demonstrations and parades, could take place on the territory of the Republic prior to 30 October. The Department Prefect could grant some exceptions after assessing the risk factors, and in particular: the health situation of the areas concerned, and measures implemented by the organiser both to ensure compliance with barrier gestures and to prevent the risk of the virus spreading at the event in question.³⁸ This provision was not repeated in the decree of 29 October which set out the general measures necessary to deal with the Covid-19 epidemic during the health state of emergency.³⁹

2 Implications of Covid-19 and containment measures on specific social rights

2.1 Work

2.1.1 Health protection in the workplace

Applicable since 1 September 2020, a national protocol aims to ensure the health and safety of company employees in the face of the Covid-19 epidemic. This law introduces several objectives for the resumption and continuation of activity in companies and establishments: assess the risks of exposure to the virus; implement preventive measures aimed at eliminating risks at source; reduce as far as possible exposure which cannot be avoided; give priority to collective protection measures.⁴⁰

³⁶ France, Decree No. 2020-1262 of 16 October 2020, available at: <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000042430554/2020-10-27/>

Decree No. 2020-1310 of 29 October 2020, available at: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042475143>

³⁷ France, President of the Republic, 'COVID 19: President Emmanuel Macron interview', 14 October 2020, available at: <https://www.elysee.fr/emmanuel-macron/2020/10/14/covid-19-interview>

³⁸ France, Decree No. 2020-1035 of 13 August 2020 modifying decree No. 2020-860 of 10 July, available at: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042234234/> ; France, Decree No. 2020-1262 of 16 October 2020, available at: <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000042430554/2020-10-27/>

³⁹ Decree No. 2020-1310 of 29 October 2020, available at: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042475143>

⁴⁰ France, Ministry of Labour, 'National protocol to ensure the health and safety of employees in companies in the face of the Covid-19 epidemic', 21 August 2020, available at: https://www.manchegouv.fr/content/download/45947/322408/file/protocole-national-sante-securite-en-entreprise_31_aout_2020.pdf

Regarding employee protection in the workplace, the protocol recalls the need to respect all the hygiene and physical distancing rules. It outlines that these measures play an essential role in minimising the infection risk by removing circumstances for exposure. It also makes the wearing of a mask in all shared and closed spaces obligatory. Two cases may be subject to an exemption: when employees work alone in their office; when employees are often required to perform more intense physical efforts than average.

This protocol was updated on 16 October. Employers were strongly encouraged to implement working from home. As such, in areas concerned by the curfew and within the framework of local social dialogue, employers had to set a minimum number of days per week for working from home, when this was possible. In parallel, employers were asked to adapt the hours for being present in order to smooth flows during peak hours.⁴¹

In view of the current nationwide lockdown, this law was updated again on 29 October 2020. Working from home has become 'the rule for all activities that allow this'. Work carried out from home is increased to 100% for employees who can perform all of their tasks from there. In other cases, the organisation of work must reduce trips between home and work, as well as the number of social interactions.⁴²

The National Commission for Information Technology and Liberties (the independent French Data Protection Authority) had published recommendations to help secure the personal data of workers working from home.⁴³ The institution proposed mainly to:

- Produce a safety charter for working from home;
- Equip all employees' computers with at least a firewall, an anti-virus program and a tool to block access to malicious sites;
- Set up a VPN to avoid direct exposure of services on the internet;
- Use protocols guaranteeing the confidentiality and authentication of the recipient server;
- Apply the latest security patches to the equipment and software used;
- Implement two-stage authentication mechanisms on remotely accessible services to limit the risk of intrusions;
- Regularly check the access logs for suspicious behaviour for remotely accessible services;
- Not make unsecured server interfaces directly accessible.⁴⁴

2.1.2 Rights related to employment and working conditions

The national generalised lockdown measure between 17 March and 11 May 2020 has had significant consequences on the economic activities of workers, ranging from the loss of income to lay-offs,

⁴¹ France, Ministry of Labour, 'Evolution of the national protocol in companies to ensure the health and safety of employees in the face of the Covid-19 epidemic', 16 October 2020, available at: <https://travail-emploi.gouv.fr/IMG/pdf/protocole-national-sante-securite-en-entreprise.pdf>

⁴² France, Ministry of Labour, 'National protocol to ensure the health and safety of employees in companies in the face of the Covid-19 epidemic', 29 October 2020, available at: <https://travail-emploi.gouv.fr/IMG/pdf/protocole-national-sante-securite-en-entreprise.pdf>

⁴³ France, National Commission for Information Technology and Liberties (CNIL), 'Advice from the CNIL for setting up homeworking', 12 May 2020, available at: <https://www.cnil.fr/fr/les-conseils-de-la-cnil-pour-mettre-en-place-du-teletravail>

⁴⁴ France, National Commission for Information Technology and Liberties (CNIL), 'Advice from the CNIL for setting up homeworking', 12 May 2020, available at: <https://www.cnil.fr/fr/les-conseils-de-la-cnil-pour-mettre-en-place-du-teletravail>

challenging the effectiveness of some social rights. In addition, various local public measures have produced similar effects. In response, the French Government introduced new measures and renewed others to alleviate the negative impact on employees and employers.

- **Long-term partial activity system**

A long-term partial activity system put in place in July allows a reduction in working time up to a maximum of 40% of non-working hours, subject to a company or branch agreement, for 6 to 24 months, validated by the administration and including commitments on employment and training. During non-working hours, the employee may receive 84% of their net salary (or 70% of the gross salary), calculated from a maximum salary of 4.5 times the minimum wage.⁴⁵

The Labour Minister announced on 10 September that this measure will be maintained 'until next summer'. This system allows, if necessary, 'for a reduction in activity and then for employees to take advantage of time not worked for training, so that the company keeps jobs', she stated. It is more advantageous than classic partial unemployment, which is limited to a period of six months.⁴⁶

- **Partial activity system**

Widely used from the start of lockdown in mid-March to avoid layoffs, the partial activity system (or partial unemployment) concerned 1.3 million employees in the private sector in August, according to the latest data made public by the Ministry of Labour.⁴⁷ Since 1 June, the State has been reimbursing 85% of partial unemployment salaries to employers. This means that out of the 70% of the salary paid to the employee when not working, the employer is reimbursed an amount equal to 60% of the gross remuneration. The compensation paid to the employee is unchanged: during partial activity, they receive 70% of their gross salary (approximately 84% of the net salary).⁴⁸

The activity of companies in the sectors of events, culture, travel and accommodation companies, as well as sport, has been strongly impacted by the health crisis.⁴⁹ This has been affected further with the new restrictions to which they are subject, for example the closure of sports halls. In consequence, the Labour Minister announced on 30 September that the coverage of partial activity by the State and 'Unédic' (an association responsible for managing unemployment insurance) for all companies in these sectors throughout France would be 100% until 31 December 2020 (i.e. 100% of

⁴⁵ France, Decree No. 2020-926 of 28 July 2020 relating to the partial activity system in the event of a lasting reduction in activity, available at: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042169955/>

⁴⁶ France, Ouest France, 'Coronavirus - Long-term partial unemployment maintained until next summer', 10 October 2020, available at: <https://www.ouest-france.fr/economie/emploi/chomage/coronavirus-le-chomage-partiel-de-longue-duree-maintenu-jusqu-a-l-ete-prochain-6968149>

⁴⁷ France, France TV Info, 'Covid-19: the sudden discovery of partial unemployment', 22 October 2020, available at: https://www.francetvinfo.fr/replay-radio/c-est-mon-boulot/covid-19-la-decouverte-brutale-du-chomage-partiel_4132955.html

⁴⁸ France, Decree No. 2020-810 of 29 June 2020 on the temporary change of the hourly rate for the partial activity allowance, available at: <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000042056541/2020-10-24/>
This law was amended by Decree No. 2020-1170 of 25 September 2020, available at: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042364929>

⁴⁹ France, Ministry of Labour, '100% support for partial activity by the State for companies in the events, culture, travel and accommodation and sport sectors', 30 September 2020, available at: <https://travail-emploi.gouv.fr/actualites/presse/communiqués-de-presse/article/prise-en-charge-a-100-de-l-activite-partielle-par-l-etat-pour-les-entreprises>

the net salary for employees with the minimum wage, and approximately 84% of the net salary within the limit of 4.5 times the minimum wage).⁵⁰

Concerning the criteria for the placement in partial unemployment of vulnerable people who are at risk of developing a serious form of infection with the Covid-19 virus, the decree of 29 August restricted the eligibility for this partial unemployment scheme to four situations (cancer; immunosuppression; being 65 years of age or older and have diabetes associated with obesity; dialysis or severe chronic kidney disease).⁵¹ The 'National League Against Obesity' as well as several individuals questioned the legality of this decree and asked for its suspension before the Council of State. In its judgement of 15 October, France's highest administrative court recalled that, while the law of 25 April 2020⁵² leaves the Prime Minister broad discretion to define the criteria according to which a person must be considered as vulnerable, such criteria must be relevant with regard to the purpose of the measure and be consistent with each other. Thus, the court found that the Government did not sufficiently justify the consistency of the new criteria chosen, in particular the fact that diabetes or obesity were only taken into consideration for persons over 65 years old. The judge therefore pronounced the suspension of the provisions in question and, in the absence of a new decision by the Prime Minister, the criteria applied by the previous decree of 5 May 2020⁵³ apply again.⁵⁴

2.1.3 Differing measures at the local level

At the local level, before the national lockdown of 30 October, certain areas fell under particular regulations due to the evolution of the health situation. The public authorities had sometimes decreed security measures leading to the closure or opening-time restrictions of certain establishments. For example, the total closure of bars and restaurants was imposed on 27 September in Marseille and Aix-en-Provence for a period of two weeks⁵⁵. To fight against the spread of the Covid-19 pandemic, a curfew was also put in place from 17 October in several French towns between 9 p.m. and 6 a.m. As a result, various professional activities have been severely affected, especially in the hotel, catering (cafes, restaurants) and culture (theatre, cinema, musical events, etc.) sectors.

Further legal measures have been taken to assist and support the labour force in the areas concerned and to minimise the impact of the coronavirus crisis.

⁵⁰ France, Ministry of Labour, '100% support for partial activity by the State for companies in events, culture, travel and accommodation companies and sport', 30 September 2020, available at: <https://travail-emploi.gouv.fr/actualites/presse/communiqués-de-presse/article/prise-en-charge-a-100-de-l-activite-partielle-par-l-etat-pour-les-entreprises>

⁵¹ France, Decree No. 2020-1098 of 29 August 2020, available at: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042284852/>

⁵² France, Law No. 2020-473 of 25 April 2020, available at: <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000041820860&categorieLien=id>

⁵³ France, Decree No. 2020-521 of 5 May 2020, available at: <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000041849680&categorieLien=id>

⁵⁴ France, Council of State, Decision No. 444425, 444916, 444919, 445029, 445030, 15 October 2020, available at: <https://www.conseil-etat.fr/actualites/actualites/suspension-des-nouveaux-criteres-de-vulnerabilite-au-covid-19-ouvrant-droit-au-chomage-partiel>

⁵⁵ France, Decree No. 0180 of 27 September 2020, available at: <https://www.bouches-du-rhone.gouv.fr/content/download/38774/220435/file/Arrêté%20préfectoral%20du%20dimanche%2027%20septembre%202020.pdf> ;

- **Strengthening the solidarity fund**

Notably, it is provided that for businesses closed administratively, the solidarity fund covers the loss of year-on-year monthly turnover of up to €10,000 during the closure period. For other companies which show a loss of turnover of over 80%, the solidarity fund covers the loss of turnover up to €10,000 euros within the limit of 60% of that turnover.⁵⁶

- **Social security tax exemption**

In addition, 'very small' and 'small and medium' enterprises which are closed administratively or subject to opening-time restrictions, with a loss of turnover of over 50%, are able to benefit from an exemption from social security taxes during the period of closure or restriction.⁵⁷

- **Postponement of tax and social payment deadlines**

Companies can ask their business tax service (SIE) to request payment deadlines for their direct taxes. This system is aimed at companies affected by an interruption or restriction of their activity linked to a closure measure in curfew areas, or when their financial situation justifies such. Requests are considered on a case-by-case basis.

In parallel, a postponement of social tax payments is granted to companies whose 'URSSAF' (Social Security and Family Benefits Contributions Collections Unions) due date is on 5 or 15 November, without any penalty or late payment increase. Deferred payments will give rise to clearance plans of up to 36 months which will be offered to companies after the lifting of activity restriction measures. This support measure concerns:

- Employers who experience an interruption or restriction in their activity linked to a closure measure in curfew areas, including cafes, restaurants, sports halls, clubs, as well as theatres and cinemas in curfew zones.
- Employers outside these areas who continue to be affected by closure measures. This is particularly the case with nightclubs.⁵⁸

- **New deadlines for loans guaranteed by the State**

Furthermore, the French President announced on 14 October 'new deadlines' for loans guaranteed by the State: 'We can delay the start of repayments by one year and stagger it over 5 years with very preferential rates'. As regards areas where the curfew was imposed, the President proposed the start of local consultations 'for all the trades which are concerned'; they should lead to specific and localised support measures.⁵⁹

⁵⁶ France, Ministry of Labour, 'Strengthening of the support system for companies impacted by the new restrictions on receiving the public', 25 September 2020, available at: <https://travail-emploi.gouv.fr/actualites/presse/communiqués-de-presse/article/renforcement-du-dispositif-de-soutien-aux-entreprises-impactees-par-les>

⁵⁷ France, Ministry of Labour, 'Strengthening of the support system for companies impacted by the new restrictions on receiving the public', 25 September 2020, available at: <https://travail-emploi.gouv.fr/actualites/presse/communiqués-de-presse/article/renforcement-du-dispositif-de-soutien-aux-entreprises-impactees-par-les>

⁵⁸ France, Ministry of the Economy, 'Strengthening of support measures following new health restrictions', 20 October 2020, available at: <https://www.economie.gouv.fr/covid19-soutien-entreprises/nouvelles-mesures-soutien-couvre-feu>

⁵⁹ France, President of the Republic, 'COVID 19: President Emmanuel Macron interview', 14 October 2020, available at: <https://www.elysee.fr/emmanuel-macron/2020/10/14/covid-19-interview>

- **Financial support**

The President of the Republic also announced the introduction of a new 'exceptional aid'. Persons who are recipients of the active solidarity income (RSA) or personal housing assistance (APL) will receive a one-off payment of €150 plus €100 per dependent child. 150 euros will be paid to the 400,000 young people who receive personal housing assistance and to scholarship students. The aids will automatically be allocated at the end of November 2020 to eligible recipients without any necessary action on their part.⁶⁰

- **Partial activity system**

Finally, the French President assured that partial unemployment covered at 100% would be reactivated 'for all sectors affected by the curfew' (hotels, cafes, restaurants, tourism, events, culture and sport).⁶¹

2.1.4 Measures related to the new lockdown

The nationwide lockdown imposed on 30 October in France has led to several changes in the field of work. Shops defined as 'non-essential' and establishments open to the public, such as bars and restaurants, are closed from that date. On the contrary, public service counters remain open. Factories, farms and construction sites continue to operate.⁶² While there is not any explicit definition of 'essential sectors', the decree of 29 October provided a list of establishments that may 'continue to receive the public' including food shops, wholesale stores, petrol stations and garages, pharmacies, opticians, car rental centres, computer shops, construction materials suppliers, and financial establishments.⁶³

To alleviate the negative impact on employers and employees several measures have been announced. According to the President's announcements on 28 October, it was indicated that the State will continue to provide massive aid to businesses of up to 50 employees which are administratively closed or remain open but are affected long-term by the crisis in the tourism, events, culture, sport and related sectors, covering up to €10,000 per month for loss in turnover. Employees and employers will continue to benefit from partial unemployment. For all the other companies with less than 50 employees which can remain open but suffer a loss of more than 50% of their turnover, assistance from the solidarity fund of up to € 1,500 per month will be restored.⁶⁴ Cash measures for charges and rents will be planned. A special plan will be announced for the self-employed, traders,

⁶⁰ France, President of the Republic, 'COVID 19: President Emmanuel Macron interview', 14 October 2020, available at: <https://www.elysee.fr/emmanuel-macron/2020/10/14/covid-19-interview>

⁶¹ France, President of the Republic, 'COVID 19: President Emmanuel Macron interview', 14 October 2020, available at: <https://www.elysee.fr/emmanuel-macron/2020/10/14/covid-19-interview>

⁶² France, President of the Republic, 'Address to the nation', 28 October 2020, available at: <https://www.elysee.fr/emmanuel-macron/2020/10/28/adresse-aux-francais-28-octobre>

⁶³ Decree No. 2020-1310 of 29 October 2020, available at: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042475143>

⁶⁴ France, Ministry of Economy, 'Reconfinement: measures for companies', 30 October 2020, available at: <https://www.economie.gouv.fr/bruno-le-maire-presente-mesures-urgence-economiques>

and very small and medium-sized enterprises.⁶⁵ The Prime Minister also specified that an additional €20 billion to finance these support and accompanying measures would be released.⁶⁶

2.2 Education

2.2.1 Measures related to opening/closure of schools

After lockdown and summer vacation, the need for a return to school, face-to-face teaching and school life was considered imperative by national authorities for all students. Therefore, the persistence of the Covid-19 pandemic did not disrupt the start of school in September.⁶⁷ According to the Ministry of National Education, the goal of the 2020 school year is to receive all students in a comfortable setting which is conducive to learning and resuming school life. It is also a question of using all the necessary means to allow for the upgrading of the students who suffered the most from the lockdown period of spring.⁶⁸

From the start of the school year, a procedure to protect staff and pupils was determined in conjunction with the Ministry of Health. This ranges from the isolation of anyone presenting symptoms suggestive of Covid-19 to the identification of potential risk contact. The procedure also set out the conditions for the temporary closure of classes and schools whenever this is justified.⁶⁹ As a result, more than 2,100 classes and 81 establishments were closed in France on 16 September, as indicated by the Minister of Education to the press.⁷⁰

Since 22 September, the health protocol has been relaxed in nursery and elementary schools following the opinion of the High Council for Public Health.⁷¹ The new regulations provide that when a child tests positive for Covid-19, the other students in the class can continue to attend school and will no longer be considered as contact cases. In parallel, a primary school teacher (for whom the mask is compulsory) will no longer be considered as a contact case and will not need to self-isolate for 7 days even if they have worked with an unmasked student testing positive for Covid-19. On the contrary, the protocol will be applied when there are at least three confirmed cases in the same class

⁶⁵ France, President of the Republic, 'Address to the nation', 28 October 2020, available at: <https://www.elysee.fr/emmanuel-macron/2020/10/28/adresse-aux-francais-28-octobre>

⁶⁶ France, Government, 'Speech by Prime Minister Jean Castex to the National Assembly', 29 October 2020, available at: <https://www.gouvernement.fr/partage/11832-discours-de-m-jean-castex-premier-ministre-devant-l-assemblee-nationale>

⁶⁷ France, National Academy of Medicine, 'Press release from the Academy: For a calm and secure start of school', 31 August 2020, available at: <http://www.academie-medecine.fr/pour-une-rentree-scolaire-apaisee-et-securisee/>

⁶⁸ France, Ministry of National Education, 'Back to school 2020: practical details', September 2020, available at: <https://www.education.gouv.fr/rentree-2020-modalites-pratiques-305467>

⁶⁹ France, Ministry of National Education, 'Educational continuity plan', September 2020, available at: <https://eduscol.education.fr/cid152893/rentree-scolaire-2020-plan-de-continuite-pedagogique.html>

France, Ministry of National Education, 'School health protocol - 2020-2021 school year', 26 August 2020, available at: <https://www.education.gouv.fr/protocole-sanitaire-des-ecoles-et-etablissements-scolaires-annee-scolaire-2020-2021-305630>

⁷⁰ France, Le Parisien, 'Covid-19: more than 2,100 classes and 81 establishments closed, according to Blanquer', 16 September 2020, available at: <https://www.leparisien.fr/societe/covid-19-plus-de-2100-classes-et-81-etablissements-fermes-selon-jean-michel-blanquer-16-09-2020-8385576.php>

⁷¹ France, High Council for Public Health, 'Covid-19: Additional information on strategies to prevent the spread of SARS-CoV-2 in ECEC and schools', 17 September 2020, available at: <https://www.hcsp.fr/Explore.cgi/avisrapportsdomaine?clefr=911>

(for children not from the same family or not living in the same household).⁷² On 16 October, there were 27 schools and 293 classes closed in France.⁷³

Despite the national lockdown established on 30 October, schools remain open with reinforced health protocols. In contrast, university classes will be carried out online.⁷⁴

2.2.2 Health protection in schools

In order to ensure the health safety of all students and staff, strict rules have been enacted:

- systematic hand washing several times a day, with the provision of soap and hand sanitiser;
- the wearing of masks by all adults without exception in establishments, including outdoor area;
- the wearing of a mask by all pupils aged 11 and over in schools, including outdoor areas;
- limited mixing between classes and groups of students should be sought as far as possible;
- ventilation of the premises;
- daily cleaning and disinfection of the premises;
- training and information for staff, students and families.⁷⁵

On 29 October, a reinforced health protocol was adopted according to which masks became compulsory for children from 6 years old. It is up to parents to provide masks for their children. The ministry equips every school with 'general public' masks so that they can be provided to students who do not have them. In addition, the protocol indicates that limited mixing between pupils of different groups, classes, groups of classes or levels is required.⁷⁶

2.2.3 Countermeasures related to the right to education

Several measures have been implemented by the Government to ensure the right to education, which implies distance learning and equal opportunities for all.

- **Educational continuity plan**

An educational continuity plan has been drawn up in the event of a temporary class or school closure. In particular, three 'My Class at Home' online sites, covering class levels from 6 to 18 years old, are available free of charge to all students and teachers who wish to use them on the Ministry website.⁷⁷

⁷² France, Ministry of National Education, 'Following the opinion of the High Council for Public Health, the health arrangements for primary education are changing', 20 September 2020, available at: <https://www.education.gouv.fr/suite-l-avis-du-haut-conseil-de-la-sante-publique-les-modalites-sanitaires-pour-le-1er-degre-306144>

⁷³ France, Ministry of National Education, 'Covid19 - Update Friday 16 October 2020', available at: <https://www.education.gouv.fr/covid19-point-de-situation-du-vendredi-16-octobre-2020-306746>

⁷⁴ France, President of the Republic, 'Address to the nation', 28 October 2020, available at: <https://www.elysee.fr/emmanuel-macron/2020/10/28/adresse-aux-francais-28-octobre>

⁷⁵ France, Government, 'School', available at: <https://www.gouvernement.fr/info-coronavirus/retour-a-l-ecole>

⁷⁶ France, Ministry of National Education, 'Sanitary protocol school year 2020-2021 - Guide to the operation of schools and educational establishments in the context of Covid-19', 29 October 2020, available at: <https://www.education.gouv.fr/rentree-novembre-2020-modalites-pratiques-305467>

⁷⁷ School platform: ecole.cned.fr; College platform: college.cned.fr; High school platform: lycee.cned.fr

The guides for using virtual classes are accessible on the sites for teachers and students.⁷⁸ The Ministry of Education also provided teachers and students with a set of digital educational resources to ensure educational continuity. Among the resources available are the digital resource banks for schools (BRNE), the resources of the 'ETINCEL' platform or the resources of the educational library.⁷⁹

The Ministry of Education produced an information sheet entitled '10 Key Principles to Protect Your Students' Data' which aims to help teachers use digital technology by ensuring that their students' personal data is well protected. As indicated in this document, many educational uses today are based on the use of the personal data of students, that is to say on information that identifies them (surname, first name, contact details, biometric data, etc.). The General Data Protection Regulation (GDPR) strengthens the rights of individuals in this area.⁸⁰ The information sheet recommends the main points to adopt when teaching with digital technology while respecting the GDPR:

- Prefer the use of free software or software developed by the ministry;
- Preferably use software or applications hosted in the European Union;
- Inform the head of the establishment or the principal of the classroom use of a resource which collects personal data;
- Carefully read the information available on sites to know if personal data is collected, for what purposes, and to be vigilant that no commercial use is considered;
- Check that parents and pupils are informed of the treatment of their personal data and the possibility of exercising their rights (access, rectification, etc.);
- Limit any collection of personal data to information essential for the smooth running of the activity and then ensure that data are deleted or archived according to the regulations;
- Respect the image rights of pupils;
- Raise awareness among the students about the challenges of personal data protection;
- Create nicknames/usernames during online educational activities if the use of the student's real identity is not necessary;
- Ensure the security of the data collected, in particular through passwords and antivirus software.⁸¹

- **Partial unemployment scheme for parents**

Parents who cannot work from home can benefit from the partial unemployment scheme if their child's school is closed. This compensation is allocated to one parent per household and is retroactive from 1 September 2020. The parents concerned can thereby 'benefit from a replacement income from the first day of stopping work, and at the latest until the end of the period of isolation', specified the Ministry of Solidarity and Health in a press release.⁸²

⁷⁸ France, Ministry of National Education, 'Educational continuity plan', available at: <https://eduscol.education.fr/cid152893/rentree-scolaire-2020-plan-de-continuite-pedagogique.html>

⁷⁹ France, Ministry of Education, 'Digital learning resources', 2 October 2020, available at: <https://eduscol.education.fr/cid150648/ressources-numeriques-educatives.html>

⁸⁰ France, Ministry of Education, 'The challenges of data protection in education', August 2020, available at: <https://www.education.gouv.fr/les-enjeux-de-la-protection-des-donnees-au-sein-de-l-education-7451>

⁸¹ France, Ministry of Education, 'The challenges of data protection in education', August 2020, available at: <https://www.education.gouv.fr/les-enjeux-de-la-protection-des-donnees-au-sein-de-l-education-7451>

⁸² France, Ministry of Health, 'Covid-19: Government is committed to providing solutions for parents who have to look after their children', 9 September 2020, available at: <https://solidarites-sante.gouv.fr/actualites/presse/communiqués-de-presse/article/covid-19-le-gouvernement-s-engage-pour-apporter-des-solutions-aux-parents-qui>

- **Financial support**

The 2021 budget of the Ministry of National Education meets objectives of social justice: the general raising of standards and the reduction of inequalities. It is noted that these two imperatives are even more inseparable in the context of the current health crisis. A good command of fundamental skills - reading, writing, arithmetic, civic education - by all students at the end of elementary school remains the priority action. This year, this is reflected in a new effort for primary education, with more than 2,000 additional jobs, and by the continued duplication of classes in priority education networks, of which 60,000 students will be concerned in the large kindergarten section. The finance bill for 2021 also fulfils the public service of providing inclusive schooling, with 4,000 new jobs.⁸³

3 Negative impact on social rights for vulnerable groups including measures to address this

3.1 Homeless people

The health crisis has had serious implications on the social rights of the homeless and under-housed people. The right to housing is the most impacted and remains problematic during the reporting period. French authorities have taken several measures to provide these people with adequate emergency housing since the start of the pandemic.

3.1.1 The right to housing

France has been experiencing increasing numbers of homeless people during recent weeks, according to a survey published on 17 September by the Federation of Solidarity Actors (FAS) and UNICEF France, focused on persons in families who have used the emergency 115 number in mainland France on 1st September.⁸⁴ The main findings of this study point out that:

- More than a thousand children slept on the streets or in makeshift shelters that night.
- Out of 5,527 people in families who dialled the emergency 115 number in mainland France that night, 2,925 were not accommodated due to a lack of emergency accommodation places or access to social housing.
- In Paris, 93% of families who made a request could not be accommodated. In the rest of France, the refusal rate due to the lack of places was 44% but it has been increasing for several weeks.⁸⁵

'These figures clearly indicate that we are facing an alarming situation', declared the director of the Federation of Solidarity Actors in a press interview. However, a positive development has to be noted:

⁸³ France, Ministry of National Education, '2021 finance bill', 28 September 2020, available at: <https://www.education.gouv.fr/projet-de-loi-de-finances-2021-306342>

⁸⁴ France, Federation of Solidarity Actors, UNICEF France, 'Analysis of accommodation requests for 115 Activity of 1 September 2020', 17 September 2020, available at: https://unicef.hosting.augure.com/Augure_UNICEF/r/ContenuEnLigne/Download?id=1BA17A4E-82C9-4066-BA4E-45C4959D977B&filename=Analyse%20activit%C3%A9%20115%20du%201er%20septembre%202020.pdf

⁸⁵ France, Federation of Solidarity Actors, UNICEF France, 'Analysis of accommodation requests for 115 Activity of 1 September 2020', 17 September 2020, available at: https://unicef.hosting.augure.com/Augure_UNICEF/r/ContenuEnLigne/Download?id=1BA17A4E-82C9-4066-BA4E-45C4959D977B&filename=Analyse%20activit%C3%A9%20115%20du%201er%20septembre%202020.pdf

'The number of refusals for emergency accommodation has decreased overall compared to the same time last year thanks to the opening of additional accommodation places in hotels since the beginning of the health crisis'.⁸⁶

This situation was magnified by the curfew established in some French Departments, which raised concerns around several issues related to homeless and under-housed people. The association 'Droit au logement' warned specifically of impact on those who are not sheltered due to the lack of accommodation places and thereby may be penalised; to those put into accommodation facilities, hotels, slums, and may be even more exposed to COVID; to the families threatened with eviction without rehousing because of the reception facilities' saturation. For these reasons, the NGO recommended in particular:

- The immediate end of evictions by starting the winter protection break on 15 October;⁸⁷
- Urgent requisitions for housing (empty buildings, offices, Airbnb, hotels, etc.);
- Budgetary measures, such as a moratorium on unpaid rents, as well as the creation of an unpaid assistance fund of €2 billion.⁸⁸

3.1.2 Measures aimed at alleviating the negative impact on homeless people

In response, the Minister in charge of Housing announced in a press release of 17 October new measures and mentioned some existing ones. The Minister affirmed, first of all, the desire of the Government to make a new effort to increase the capacity and number of accommodation places. More precisely, she announced the advanced entry into force of the winter plan, on 18 October instead of 1 November. This announcement foreshadows the opening of additional places by the Prefects in order to shelter as many people as possible. It is noted that '28,000 COVID places, already open, will be maintained', bringing the total capacity to 180,000.⁸⁹

With regard to rental evictions, it was recalled on this occasion that the circular of 2 July⁹⁰ is still in force and protects vulnerable people. It provides specifically that no exit from accommodation can be done without a housing offer, and that rental evictions with the help of the police must be accompanied by a housing or accommodation solution.

As for penalties related to the curfew, the Minister in charge of Housing, in conjunction with the Minister of the Interior, attested that clear instructions would be sent to the police so that the

⁸⁶ France, Le Parisien, 'A thousand children slept rough the day before the start of the school year', 17 September 2020, available at: <https://www.leparisien.fr/societe/un-millier-d-enfants-ont-dormi-a-la-rue-la-veille-de-la-rentree-scolaire-17-09-2020-8386449.php>

⁸⁷ The period of the 'winter protection break' is fixed each year from 1 November to 31 March: it means that during this period, public forces cannot carry out evictions.

⁸⁸ France, Droit au Logement, 'Curfew, health crisis and housing crisis: we must act!', 15 October 2020, available at: <https://www.droitaulogement.org/2020/10/communiqu%C3%A9-curfew-crise-sanitaire-et-crise-du-logement-il-faut-agir/>

⁸⁹ France, Ministry in charge of Housing, 'Curfew: Emmanuelle Wargon confirms the progress of the winter plan to 18 October and details the measures taken to protect the most disadvantaged', 17 October 2020, available at: https://solidarites-sante.gouv.fr/IMG/pdf/cp_-_emmanuelle_wargon_confirme_l_avancee_au_18_octobre_du_plan_hivernal.pdf

⁹⁰ France, Ministry in charge of Housing, 'Government mobilised to avoid a return to the streets after 10 July and promote access to long-term housing', 2 July 2020, available at: <https://www.cohesion-territoires.gouv.fr/le-gouvernement-mobilise-pour-eviter-les-remises-la-rue-apres-le-10-juillet-et-favoriser-laces-au>

situation of vulnerable people, in particular homeless people, would be assessed with discernment and would not lead to penalties.

Finally, in areas affected by the curfew, establishments and services receiving people in very vulnerable situations would benefit from an exemption to remain open after 9 p.m.⁹¹

3.2 Immigrants

The health crisis raised several challenges for immigrants in the context of COVID pandemic. Concerns have arisen especially over their right to health protection and to housing, which are intimately linked in this context, as well as over their access to essential services, including water, food and sanitation.

3.2.1 The right to health protection

The aggravation of social inequalities was highlighted in an innovative way by the publication on 5 October of a survey conducted by the NGO 'Médecins sans frontières', Epicentre and the Institut Pasteur, entitled 'Vulnerability and the prevalence of Covid-19 infections in the Ile-de-France region'. It was carried out at the end of June with 818 people, in food distribution sites, emergency shelters and workers' residences in Paris and Seine-Saint-Denis. Ninety percent of these persons were foreigners. A blood test was used to tell whether people had been infected with the COVID virus, whether they had symptoms or not.⁹²

According to the results of this survey, between 23% and 62% of people tested in emergency accommodation centres tested positive, 18% to 35% of people tested in food distribution and 82% to 94% in workers' homes.⁹³ The average rate for the general population in the Ile-de-France region was 8.82% in May, according to figures from the National Public Health Agency. An epidemiologist at Epicentre, who was in charge of the study, explained that, 'the results confirm that the circulation of the virus was particularly active in situations where people lived in the closest proximity, that is to say when people had to share rooms, showers and kitchens with several other people'.⁹⁴

This situation, and in particular the strategy of public authorities at the start of lockdown which consisted in evacuating people from informal settlements in Ile-de-France and other regions and

⁹¹ France, Ministry in charge of Housing, 'Curfew: Emmanuelle Wargon confirms the progress of the winter plan to 18 October and details the measures taken to protect the most disadvantaged', 17 October 2020, available at: https://solidarites-sante.gouv.fr/IMG/pdf/cp_-_emmanuelle_wargon_confirme_l_avancee_au_18_octobre_du_plan_hivernal.pdf

⁹² France, Médecins sans Frontières, 'High seroprevalence of SARS-CoV-2 antibodies among people living in precarious situations in Ile de France', 5 October 2020, available at: https://epicentre.msf.org/sites/default/files/2020-10/High_seroprevalence_of_SARS-CoV-2_antibodies_among_people_living_in_precarious.pdf

⁹³ A workers' residence is a special type of accommodation for vulnerable workers (in particular with low incomes), sometimes on the basis of additional sociological criteria: for example, workers under the age of twenty-five/thirty, or workers of foreign origin. The resident signs an occupancy contract with the manager of the home. (France, Legal and administrative information department (DILA), 'Home for young workers (FJT)' or 'Housing for young people': <https://www.service-public.fr/particuliers/vosdroits/F2018>; France, Legal and administrative information department (DILA), 'Home for migrant workers (FTM)': <https://www.service-public.fr/particuliers/vosdroits/F17912>)

⁹⁴ France, Médecins sans Frontières, 'Covid-19: an epidemiological investigation reveals over-contamination in places where highly vulnerable people are grouped in Ile-de-France', 5 October 2020, available at: <https://www.msf.fr/communiqués-presse/covid-19-une-enquete-epidemiologique-revele-une-sur-contamination-dans-des-lieux-de-regroupement-de-personnes-en-grande>

sheltering them in gymnasiums, was criticised by NGOs and organisations. *Médecins sans frontières* said this plan was 'unsuitable' because it is conducive to the creation of clusters. Faced with the resurgence of the pandemic and the onset of winter, association actors are pleading for a strengthening of health systems and calling on the authorities to review their approach of 'sheltering' migrants.⁹⁵

3.2.2 Access to essential services

- **Access to food and water by migrants in Calais**

In a decree of 10 September, the Prefect of Pas-de-Calais announced a ban on 'any free distribution of drinks and foodstuffs [in about twenty streets, quays, and squares in the city centre] to put an end to disturbances to public order and limit the health risks associated with undeclared gatherings'. The authorities consider that the meals distributed by associations who are not mandated by the State are 'characterised by non-compliance with social distancing measures and constitute a nuisance. The State has mandated an association, *'La vie active'*, which provides 'four daily distributions of meals', which 'do not create disturbances to public order', as well as '38 water points 5 days a week, of which 22 are accessible 7 days a week', and water is distributed during meals. Thereby, the prefecture considers that all these services 'allow for providing migrants with sufficient humanitarian services in view of the needs of this population, and in particular with food'.⁹⁶

When referred to by several associations, such as *'Secours catholique'*, which asked for the suspension of the decree in question, the Administrative Court of Lille rejected the request.⁹⁷ On appeal, the Council of State confirmed this decision. It first observed that the State has set up water points and toilets, and is proceeding, through the association *'La vie active'*, with food and beverage distribution. It also found that the ban by the Prefect does not deprive the associations of the possibility of carrying out their mission, outside the area prohibited by the decree, including near places where migrants live. In these conditions, the Council of State, which did not rule on the justified and proportionate nature of the ban, found that there was no urgent need to order the suspension of the prefectural decree in the 48-hour period provided for in this specific procedure.⁹⁸

In this respect, the president of the National Consultative Commission on Human Rights (CNCDH), an independent administrative body whose mission is to advise public authorities on human rights related matters, addressed a letter to the Minister of the Interior to invite him to allow the associations to continue their activities in Calais.⁹⁹ The NGO *'Ligue des droits de l'Homme'* deplored

⁹⁵ France, Le Monde, 'Covid-19: proximity and accommodation conditions have generated clusters in centres', 6 October 2020, available at: https://www.lemonde.fr/planete/article/2020/10/06/covid-19-promiscuite-et-grande-precarite-accroissent-le-risque-de-surcontamination_6054928_3244.html

⁹⁶ France, Decree of 10 September 2020, available at: <https://www.pas-de-calais.gouv.fr/content/download/49220/294676/file/RAA%20-%20recueil%20spécial%20No.58%20du%2010%20septembre%202020.pdf>

⁹⁷ France, Administrative Court of Lille, Decision No. 2006511, 22 September 2020, available at: <http://lille.tribunal-administratif.fr/Actualites/Communiqués/Arrete-interdisant-la-distribution-gratuite-de-denrees-et-boissons-dans-le-centre-ville-de-Calais>

⁹⁸ France, Council of State, Decision No. 444793, 25 September 2020, available at: <https://www.conseil-etat.fr/actualites/actualites/le-juge-des-referes-refuse-de-suspendre-en-urgence-l-interdiction-de-la-distribution-de-repas-aux-migrants-dans-le-centre-ville-de-calais>

⁹⁹ France, National Consultative Commission on Human Rights, 'Letter from the President to the Minister of the Interior concerning assistance to migrants', 22 September 2020, available at: <https://www.cncdh.fr/fr/actualite/lettre-du-president-au-ministre-de-linterieur-concernant-l-assistance-aux-migrants>

that the 'State intends to sanction solidarity offered to those fleeing war, persecution and economic misery when no lasting response for reception and support is offered',¹⁰⁰ while other associations denounced the decree as 'scandalous'.¹⁰¹

The decree in question was further extended by the Pas-de-Calais prefecture on 30 September,¹⁰² and on 19 October 2020.¹⁰³ According to the prefecture, 71,811 meals were distributed by '*La vie active*' to migrants in September, an average of 2,394 meals per day. Between 1 and 13 October, 14,964 meals were distributed, or 483 per day on average.

- **Living conditions of migrants in Calais**

Following a visit in Calais on 22 and 23 September, the Public Defender of Rights criticised the 'degrading and inhumane living conditions suffered by exiles in Calais', and stressed the need to find urgent solutions. In a press release of 24 September issued on this occasion, the institution underlined that people - between 1,200 to 1,500 - 'sleep on the ground, hidden under bushes, whatever the climatic conditions, sometimes with a blanket given by associations'. It is reported that the exiles 'are driven from their camps every two days by the security forces'. The constant evacuations from the land on which they sleep 'are intended to force them to flee'. The exiles can therefore no longer rest and are 'obviously in a state of physical and mental exhaustion'.

Moreover, it is noted in this press release that 'access to food, water and hygiene under these conditions is difficult and complex'. The Public Defender of Rights observed that the hygiene conditions were 'deplorable'. The sanitary facilities 'in different places, far from living areas, are highly inadequate, with only one water point (two taps) open 24 hours a day'. In this period of health crisis linked to the COVID epidemic, populations have few masks and 'respect for barrier gestures as well as regular hand-washing are impossible'.

Finally, the situation of women and children is particularly worrying, according to the observations of the national body. The lack of specific facilities for women makes them 'particularly vulnerable to sexual exploitation and violence'. Unaccompanied minors, some of whom are only 12 or 14 years old, 'are also in danger'.¹⁰⁴

According to the information provided by the prefecture of Pas-de-Calais, more than 600 migrants were sheltered as part of an evacuation operation on 29 September. In its decree of 19 October, the Prefect also indicates that '28 showers are accessible 5 days a week on a site accessible by shuttlebus for people who wish to use them'. Exceptional measures have been taken since the beginning of the

¹⁰⁰ France, Ligue des Droits de l'Homme, 'An indignant prefectural decree against solidarity actions in Calais', 14 September 2020, available at: <https://www.ldh-france.org/un-arrete-prefectoral-indigne-contre-les-actions-de-solidarite-a-calais/>

¹⁰¹ France, Infomigrants, 'Calais: a decree prohibits associations from distributing food to migrants, humanitarians rise up', 11 September 2020, available at: <https://www.infomigrants.net/fr/post/27209/calais-un-arrete-interdit-aux-associations-de-distribuer-de-la-nourriture-aux-migrants-les-humanitaires-s-insurgent>

¹⁰² France, Decree of 30 September 2020, available at: <https://www.pas-de-calais.gouv.fr/content/download/49947/297944/file/Recueil%20spécial%20des%20actes%20administratifs%20No.66%20en%20date%20du%2030%20septembre%202020.pdf>

¹⁰³ France, Decree of 19 October 2020, available at: <https://www.pas-de-calais.gouv.fr/content/download/50934/302582/file/Recueil%20spécial%20des%20actes%20administratifs%20No.75%20en%20date%20du%2019%20octobre%202020.pdf>

¹⁰⁴ France, Public Defender of Rights, 'The Public Defender of Rights is alarmed at the degrading and inhumane living conditions exiles are subject to in Calais', 24 September 2020, available at: <https://defenseurdesdroits.fr/fr/communiqué-de-presse/2020/09/visite-de-la-defenseure-des-droits-mardi-22-et-mercredi-23-septembre-a>

health crisis, 'including health surveys, distribution of health kits and since 3 June a distribution of 3,500 masks each week for the benefit of migrants in Calais'. As regards vulnerable people and minors, it is specified that the operator mandated by the State carries out patrols from Monday to Friday from 9 a.m. to 12 p.m. then from 2 p.m. to 5 p.m. in order to:

- offer volunteers shelter in these facilities with particular attention to the most vulnerable people (family, single women, unaccompanied minors);
- identify unaccompanied minors, take charge of them, support them and offer them shelter in a specialised reception centre.¹⁰⁵

¹⁰⁵ France, Decree of 19 October 2020, available at: <https://www.pas-de-calais.gouv.fr/content/download/50934/302582/file/Recueil%20spécial%20des%20actes%20administratifs%20No.75%20en%20date%20du%2019%20octobre%202020.pdf>