

The use of collective performance agreements to respond to the COVID-19 crisis

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1. Background

This case study explores the role that a recently introduced tool in French labour law, the collective performance agreement (*accord de performance collective*, APC), played in the COVID-19 crisis, by analysing two concrete examples. This type of collective agreement was one of the tools used by companies to react to the COVID-19 crisis and illustrates, as such, the way in which a certain number of companies in the broader aviation sector were able to react to the Covid crisis, through a process which is part of social dialogue but deviates from “classical” practices and has a considerable impact on the salary and employment conditions of the concerned employees.

The study focuses on the analysis of two particularly significant cases: the collective performance agreements concluded, in the midst of the COVID-19 crisis, within the Servair and Derichebourg groups. The context, implementation, actors and reactions to these agreements will be analysed. The choice of these two groups was guided by the conclusion within them of an APC, but also by the fact that they are representative of two important trends in the airline industry:

- the phenomenon of outsourcing linked to the break-up of the airline model¹.
- the importance of subcontracting in the organization and management of the workforce in this sector².

In the same vein as many of the APCs concluded in the airline industry or in other sectors during the pandemic, the two collective agreement we analyse in this Case Study aim at reducing labour costs, either by a straight reduction of wages or by increasing working hours without compensation.

The two companies involved are situated in the broader aviation industry. While they are situated at the margins of what was analysed in previous WPs, this allows us to provide a more complete picture of said industry.

The **Servair group** (a subsidiary of the Air France-KLM group) is the French leader in airline assistance activities, particularly in the field of air catering, i.e. the preparation, boarding and processing of services on board of aircrafts. In November 2020, it concluded a collective performance agreement³ in its 4 different establishments at the Roissy Charles de Gaulle airport site, as well as in its establishment located in the overseas department of La Réunion. This agreement entails⁴:

¹ LM. BARNIER and P. ROZENBLATT (1995), *Ceux qui croyaient au ciel - Enjeux et conflits à Air France*, Syllepse.

² J-P. DURAND (2012), *La Chaîne invisible, Travailler aujourd'hui : flux tendu et servitude volontaire*, Seuil.

³ The same group also negotiated two other collective agreements during the pandemic: an agreement on long-term partial activity (APLD, see our WP4 report) and an agreement on collective bargaining termination (RCC).

⁴ Collective performance agreement – Servair 2020, 24 November 2020.

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- An increased of working time from 35 hours to 35 hours 27 minutes, resulting in the loss of 2 days of “reduced working time”.
- The elimination of 2 days of conventional seniority leave.
- A wage freeze.
- The suspension of all salary increase measures, including seniority-related pay increases.
- The reduction of the 13^e month bonus (by 40% in 2020, 60% in 2021 and 50% in 2022) and the 14^e month bonus (by 60% in 2021 and 50% in 2022).
- Measures to increase internal flexibility, by allowing mobility to jobs of “as much as possible” of the same classification.
- A series of measures aimed at reducing the payroll by 10%: reduction of the subsidy for the purchase of airline tickets by employees, reduction in the number of days covered during sick leave, etc.

The **Derichebourg Aeronautics Services** group is one of the main service providers in the aeronautics industry in France, and in particular a subcontractor for Airbus. It was in this group that one of the first collective performance agreements of the COVID era was concluded, notably in June 2020. An alternative was offered to the trade unions: an immediate collective dismissal, resulting in 700 job losses, or an APC. The resulting negotiations took place in extremely tense conditions, until the APC agreement was signed on June 12 by *Force Ouvrière*, the majority trade union in the group. In return for management abandoning the collective dismissal, the APC entailed⁵:

- The elimination of meal and transport allowances (partially compensated by the allocation of meal vouchers) for all employees.
- Measures Facilitating geographic mobility of workers.
- The suppression of the 13^e month in 2020 for those whose gross monthly salary exceeds 2.5 times the French minimum wage, i.e. 3,848.55 euros gross.

These measures had far reaching consequences for the employees, as for certain categories the wage cut could reach 500 euros per month, or 20% of their salary. Also because of this, 163 of the company's 1,600 employees chose to refuse the agreement, resulting in their dismissal.

These two cases are emblematic illustrations of the mobilization of this new type of agreement (the APC) as an instrument to manage the consequences of the crisis and are particularly revealing of the contours of crisis social dialogue in the broader aviation industry.

Before analysing the specific situations from the point of view of the social actors involved, a quick overview of this legal tool is in order. Collective performance agreements (APCs) were introduced by Ordinance No. 2017-1385 of September 22, 2017, finalised by the ratification law of March 29, 2018, and came into force on 1 January 2018. They replaced the previous instrument dedicated to a similar aim, known as “competitiveness agreements”. The goal of the legislator with this reform was to simplify and harmonise both “the conditions for recourse and the content of the agreements” and the “legal regime for the termination of the employment contract in the event of the employee's refusal

⁵ Agreement of collective performance and for the preservation of employment of Derichebourg aeronautics services, 12 June 2020.

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of the resulting changes to his or her contract”⁶ (our translation). The particularity of the collective performance agreement is that it replaces the contrary and incompatible clauses of the employment contract⁷ – something which was previously impossible under French labour law - including the “contractual basis” (remuneration, working hours, place of work) which the employer could not modify without the employee's agreement. Employees have the possibility to refuse this agreement, but they will then be dismissed “for a specific reason that constitutes a real and serious cause” (our translation), and without benefiting from the reinforced accompanying measures provided for in the context of an economic dismissal. This *sui generis* dismissal regime (neither economic nor personal dismissal - which, once again, did not exist previously in French law) aims to prevent any judicial challenge to the dismissal since it is “justified” from the outset. Moreover, to conclude an APC, the company does not need to justify economic difficulties, nor does it have to commit to maintaining employment. It only must justify that the agreement is concluded in order to meet the “operational needs of the company” and to preserve or develop employment.

These agreements thus give companies the possibility to implement reorganizations, without having to worry about pre-existing employment contracts, and thus to change working conditions in a potentially lasting way, since the effects of an APC are not limited in time. Because they can be deployed both in periods of good economic health of the company and in periods of economic difficulties, without having to specify the nature of these difficulties, the collective performance agreements have been described as the “Swiss Army knife” of company restructuring. The pandemic period clearly belonged to the latter situation, so that the use of APCs can be seen as a crisis management tool.

The two agreements studied were concluded respectively in June and November 2020. Therefore, they were signed after the first lockdown, which took place in France in the Spring of 2020, but before Covid's vaccines had been made available, since the first vaccination campaign took place in France in the first quarter of 2021. These agreements have been concluded in groups that have been hit hard by the drop in orders affecting their main clients, or the decline in activity following the health crisis and its economic consequences. As detailed in previous WPs, air transport activity was severely affected by the COVID-19 pandemic, as well as by the measures taken at all levels to fight against the spread of the virus. These agreements were presented as a response to the effects of the pandemic, including reduced activity and lockdowns. However, various characteristics of this type of agreement call into question such a role and suggest that the crisis was also used as a pretext to implement, through this tool, structural reorganizations that had been planned for a long time or that had much longer-lasting effects than the pandemic alone. We will come back to this in our conclusion.

Section II: Relevant Actors

Public authorities play no role in the implementation process of collective performance agreements, unlike other types of reorganisation agreements. Indeed, in the case of job protection plans (by way of collective agreement or unilateral plan of the employer), or agreements on collective bargaining, the administration (the Regional Directorates of Economy, Employment, Labour, and Solidarity - or

⁶ Under the terms of the *loi d'habilitation à prendre par ordonnances les mesures pour le renforcement du dialogue social* (L. No. 2017-1340).

⁷ Art. L. 2254-2. Labour Code.

“DREETS”) plays a role of control and validation of agreements. This is not the case for collective performance agreements. The actors involved are therefore essentially employers, employees, and trade unions.

Here we will the role played by each of these actors in the conclusion and subsequent implementation of the two collective performance agreements. It is important to highlight that in both cases the employees concerned are not flight personnel but ground staff. As for the scope of the collective agreements studied, the agreement concluded at Servair concerns the entire scope of the group, and therefore its employees, as does the agreement concluded at Derichebourg (all employees of the company "Derichebourg Aeronautics Services"). Finally, in both cases, the trade union organisations played a “reactive” role, the agreements being proposed by the company management.

2.1 Servair (subsidiary of the Air France-KLM group)

At the 26 May 2020 meeting of the Central Works Council, the Servair’s management gave a presentation on the activity of the group's companies. It announced a plan to “reduce company costs by 170 million euros, of which 80 million euros concern the payroll” (our translation), i.e., a third of the payroll, equivalent to 1,800 job cuts. She also indicated that, to achieve this result, “Servair's guarantees - maintaining employment, collective agreements and transport activities - can no longer be confirmed today” (our translation) and after detailing a number of measures, she added that “to date, the objective is to reduce the company's costs and size. The question of infrastructure overcapacity has been raised. The closure of one or more centres is being considered, but discussions will take place, and nothing is set in stone.”⁸

On 26 June 2020, a first draft agreement focusing on the restructuring process was proposed by the management to the trade unions. It provided for the conclusion of a collective contractual termination and a collective performance agreement. This was rejected by trade unions. The management then proposed a second draft setting out the conditions for negotiation, this time leading to a collective contractual termination agreement by 31 July 2020 at the latest, and to a long-term partial activity agreement (known as APLD) by 1 October 2020. However, the management still threatened a collective dismissal: “However, if the measures and actions put in place prove insufficient to achieve the essential savings sought by the announced deadlines, the company would be forced to undertake immediate forced departures and at the same time the denunciation of the company agreements constituting our social base”⁹. The CGT (representing 22% of the votes in elections for workers’ representatives) and the UNSA (27%) still refused to sign. On 3 July 2020, the management denounced in a press release the unions that refused to sign, explaining that in the absence of agreements allowing job cuts, it would have no other solution than move on with the collective dismissals plan.

Nevertheless, a new agreement on the process was signed, although under questionable conditions on 13 July 2020. Indeed, the negotiations were organised under irregular conditions. Several trade unions reported that they were blackmailed into signing the agreement. A management document mentions in particular “that the refusal to sign the agreement on process puts the company and its employees in danger and that it would be the position of a radical trade union organisation that would

⁸ Minutes of the meeting of the Central works council (CCE) of 26 May 2020.

⁹ Agreement on process, 10 July 2020.

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have caused the process to fail”¹⁰. Moreover, the company’s management pointed out that if the negotiations were to fail, it would proceed with the collective dismissal, then spin off one of the establishments, and denounce the collective agreements relating to working hours, classifications and salaries. The CGT and UNSA unions challenged this agreement in court, and the court suspended it on the grounds of a manifestly unlawful disturbance constituted by “the very existence of a collective agreement concluded through an unfair negotiation”¹¹.

In July, the management stated in a press release that the solution to the crisis consisted of the signing of two agreements: one for a collective bargaining agreement (known as the “RCC”), the other relating to long-term partial activity (the APLD), explaining once again that if such agreements were not signed, the solution would be a collective dismissal. Following this statement, the RCC was indeed signed, but, contrary to the forecasts of the agreement on process and of the said announcements, instead of the agreement relating to the APLD, the management set up very rapid negotiations for the signature of a collective performance agreement (APC). This will be concluded on 24 November 2020. It was not until May 2021 that the APLD was finally signed, providing for the State to cover 65% of the wages of employees placed on partial unemployment.

This negotiation process has therefore given rise to litigation, on two occasions. The CGT and UNSA trade unions went to court the first time and had the agreement on process annulled, and then a second time to challenge the collective performance agreement. This was based on the unfairness of the negotiations on the collective performance agreement, the lack of correspondence between its actual content and the purpose assigned to it in the preamble, and finally the misuse of the collective performance agreement instrument.

2.2 Derichebourg

The case of the APC signed at Derichebourg has the merit of “actively” involving another actor: the employees themselves.

Derichebourg had been hit hard by the drop in orders affecting its client Airbus after COVID-19 crisis and its economic consequences. The management took this opportunity to propose a collective performance agreement for signature, with significant pay cuts, on the background of a threat of a layoff plan¹². “When we warned in May that the agreement was going to happen, colleagues found it hard to believe us. We are there, and it hurts” (our translation), explained Ph. Faucard, UNSA union delegate for the company -opposed to the agreement¹³. He gave several examples of employees forced to take a second job to maintain their standard of living or forced to sell their second car when the two members of the couple do not work in the same place. “I might as well tell you that the atmosphere is bad,” continued the union leader, “the work is not getting done, and the team leaders

¹⁰ CAP’INFO of 03 July 2020.

¹¹ Order of the Court of Bobigny, 22 January 2021.

¹² Marina Angel, *Menace d’un vaste plan social chez Derichebourg, sous-traitant d’Airbus*, Usine Nouvelle, 11 May 2020 - <https://www.usinenouvelle.com/article/covid-19-menace-d-un-vaste-plan-social-chez-derichebourg-sous-traitant-d-airbus.N963221>.

¹³ Dan Israël, *Les APC, outil anti-licenciements ou chantage à l’emploi ?*, Mediapart, 27 September 2020, <https://www.mediapart.fr/journal/economie/270920/les-apc-outil-anti-licenciements-ou-chantage-l-emploi>.

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know very well what the employees are going through, they don't put the pressure on to get the production going"¹⁴ (our translation).

The representative of a different trade union (*Force Ouvrière*, FO) who signed the agreement pointed out that the company had lost 50% of its turnover in a very short time, and that the employer had undertaken not to make any redundancies until the end of the year, i.e., the remaining 6 months. "The situation is clear: there is a drop in workload at Airbus which impacts subcontractors," summarised J.-M. Moreau, assistant secretary of FO DAS¹⁵. "Today, 45% of the company's workforce is working, the others are on partial activity. At best, 55% will be at work in September. So, we must find a solution for those who are not going to return to work. The redundancies plan is not going to start tomorrow, and the HR director did not say that she was going to abolish the 13th month. So yes, we at FO voted for this collective performance agreement because we are ready to negotiate. This is a global crisis; we want to save as many jobs as possible. But this agreement is not yet signed..." (our translation)¹⁶.

Predictably, negotiations on the APC were tense. On 11 May 2020 the agreement on the principle of negotiating a collective performance agreement was voted by the majority union FO but rejected by the other trade unions: CFE/CGC, UNSA and the National Union of Civil Aviation Ground Mechanics (SNMSAC). In a press release, the SNMSAC stated that activating this agreement would result in a "triple penalty for the company's staff": lower salaries, the obligation to resign for the employees most affected, and, ultimately, a redundancy plan despite these sacrifices.

But it is above all the argument of the drop in activity to justify redundancies that was not accepted easily in the negotiations. The company announces a turnover of 149 million euros on its website (only 125 million on the *societe.com* website). And in the previous September, it had posted a net profit of 5.8million€, an increase of 6.6% on the previous year. And, since the beginning of the crisis, all the employees who had been put on partial activity were fully covered, at 84% of their salary, by the State.

The consequences of the APC working conditions were not only very significant wage losses, but also massive departures, with more than 660 workers leaving the company. These workers were either dismissed for refusing to sign the agreement (160 employees) or for resigning following the conditions imposed by the agreement (around 500 employees resigned after the one-month withdrawal period provided for by the APC, realising that they could not afford such a loss of salary).

As mentioned before, the Derichebourg case highlights the role played by another actor: the employees themselves. Indeed, the negotiation of the APC at Derichebourg gave rise to several strikes. The first lasted four days and took place in June 2020, during the negotiations. The second took place in October 2020, during salary negotiations¹⁷. It lasted more than two weeks. On the occasion of these different strikes, spontaneous collectives of employees opposed to the agreement were formed, organising outside the trade union structures.

¹⁴ Ibidem.

¹⁵ Emmanuel Riondé, *Le plan social d'un sous-traitant d'Airbus inquiète Toulouse pour son avenir*, Mediapart, 15 May 2020 - <https://www.mediapart.fr/journal/france/150520/le-plan-social-d-un-sous-traitant-d-airbus-inquiete-toulouse-pour-son-avenir> .

¹⁶ Ibidem.

¹⁷ Gérald Camier, *Toulouse : des salariés de Derichebourg ont débrayé cette semaine pour retrouver leur salaire d'avant crise*, 30 September 2021, <https://www.ladepeche.fr/2021/09/30/toulouse-des-salaries-de-derichebourg-ont-debraye-cette-semaine-pour-retrouver-leur-salaire-davant-crise-9822555.php> .

Section III: Industrial Relations

The collective performance agreement was introduced by the legislator in 2017 (see Section 1), but the reality of these agreements, their profile, and their uses were only determined by industrial relations practices. The conclusion of hundreds of collective agreements of this type makes it possible to answer this question. However, it is difficult to determine whether their translation into conventional practice has deviated from the idea of the legislator, since the initial legal regime is (purposely) vague. While the details of the French legal debate remain outside the scope of the present study, what is clear is that these agreements are unprecedented in French labour law, and their introduction marks an important upset in the traditional relationship between sources of working conditions (collective agreements, the employment contract) and their articulation, as well as questioning of the founding principles of dismissal law.

To provide context for the following paragraph, it is worth referring to some of the data emerging from the analysis of the “first wave” of APCs (concluded in 2018)¹⁸:

- 75% of these agreements are open-ended.
- More than half are signed by actors other than trade union delegates (members of the Social and Economic Committee, direct ratification by the employees...).
- Only 10% of the agreements include specific compensation and only 3% mention “efforts” on the part of managers or shareholders.
- In most cases, it involves making employees work more and in a more “flexible” way (37.8% of the agreements concluded in 2018 increase working hours, 19% make the organisation of working time more flexible, 30% organize one-off or permanent variations in the workplace) and for a lower wage (in at least half of the agreements, pay is reduced, or its variable part increased).
- Under the terms of Article L. 2254-2 of the French Labour Code, the agreement may be concluded “with a view to preserving or developing employment”, but also to simply meet “the needs linked to the operation of the company” (our translations). In 2018, 76% of agreements invoked the latter vague objective compared with 30% mentioning the one of preserving the employment, and 11% that of developing it.

It is interesting to see how, during the COVID-19 pandemic, the use of these agreements has changed. With the crisis, the number of collective performance agreements increased significantly. The crisis led to a significant increase in agreements: 247 APCs were concluded in the last three quarters of 2020, compared to 133 in the previous three quarters¹⁹. This 86% increase between the period preceding the first lockdown and the one following it is even more remarkable given that the total number of collective agreements only increased slightly over the same period (+8%) and even declined over the whole of 2020²⁰.

¹⁸ See H. Cavat (2020), *Les accords de performance collective – Enseignements d’une étude empirique*, Revue de droit du travail, p. 165.

¹⁹ Mathilde Pesenti, DARES Analyses n° 66, *Les accords de performance collective : quels usages durant la crise sanitaire ?*, 23 November 2021.

²⁰ Ministry of Labor (DGT, Dares), *Bilan de la négociation collective 2019, Bilans et rapports*, La documentation française, July 2020.

This increase is based on units (companies, groups, etc.) that are more experienced in social dialogue. The agreements were adapted to the crisis and were different from those concluded previously. More than half mention economic difficulties as a preamble (compared to 6% before). The proportion of fixed-term agreements increased (50% of PCAs are fixed-term, compared to only 25% pre-pandemic) and their duration is much shorter than before (the average duration of fixed-term APCs has fallen from 14 to 5 months). The issue of remuneration is more frequently raised and compensation clauses, although still in the minority, are more frequent. With the crisis, the proportion of APCs providing for a reduction in pay has increased (for example, 68% provide for a reduction in the hourly rate, compared to 7% before). Increases in working hours are still in the majority... but decreases are much more frequent (in 2018, 88% of PCAs dealing with working hours provided for an increase, whereas only 62% did so in 2020).

Given the decline in employees' rights that this measure entails, the APC has been strongly criticized, particularly by all the main trade union confederations (CGT, FO, CFDT, etc.). But the criticism is not limited to trade unions. The report issued in July 2021 by the Committee for the Evaluation of the Ordinances of September 22, 2017 (coordinated by "France Stratégie", an organization attached to the Prime Minister's office) is particularly critical of this mechanism²¹. Questioning the "fairness of the negotiations", the report anticipates the risk of "generating a dynamic of lower social standards within a branch or a market". They warn against "potentially serious consequences for employees, particularly in the event of the use of 'bottom-up' adjustments". The report warns that "there is a risk that the APC will be nothing more than an accepted management tool in a constrained environment" (our translations). The report further warns that APCs often lack explicit objectives, or that they are just as regularly used for another framework than the one provided for by the law. For example, they are often used to harmonize company statutes following mergers or transfers, are mobilised to organize the closure of establishments, or are even used to deal with subjects that are not covered by their legal regime. The Ministry of Labour has also sought to reframe the system by pointing out in its "Questions/Answers" dedicated to APCs that these different uses of the agreement are prohibited²². On another level, an ILO report calls for the preservation of the conditions for "real judicial control" over this system, which largely escapes such control because of its legal regime²³.

It is particularly difficult to answer the question of whether the translation into practice of the mechanism created by the legislator meets the objectives that were originally set or whether, on the contrary, practice has "deviated" from these goals. During the crisis caused by the pandemic, the government clearly presented this agreement as a "crisis management tool" and a means of maintaining employment - in particular, it was presented by the Minister of Labour as the pillar of an "anti-layoff shield" alongside the APLD²⁴. If one considers that the objective of the government or the legislator was to maintain employment, then the system clearly has its limits. However, it should be stressed there is no reason to take the legislator's stated objective at face value. Indeed, if we look at actual legal regime, while "job preservation" is one of the objectives for which the law authorises the employer to negotiate an APC, it is not the only one, and the validity of the agreement is in no way

²¹ September 22, 2017 Ordinance Evaluation Committee, Interim Report, July 2021.

²² DGT, Questions/Answers on PCA, July 2020.

²³ ILO, Report of the Committee set up to examine the complaint alleging non-respect by France of the Termination of Employment Convention (No. 158), 16 February 2022.

²⁴ "This device must no longer be perceived as a downward pressure on social rights" (E. Borne, before the members of the National Assembly's Social Affairs Committee, 8 September 2020).

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conditional on the employer's commitment to maintain employment. This is precisely what distinguishes the collective performance agreement from its predecessors.

Therefore, the question of the role that this type of collective agreement can play in “managing” a “cyclical crisis” depends on the meaning given to it. What kind of crisis management is involved here? Saving the company's “competitiveness” or saving jobs? If the former is not the subject of legal analysis, it must be noted that the regime of this agreement, as well as its name, suggest that it is more oriented towards the search for competitiveness than towards the safeguarding of jobs.

These broader considerations can be put into context if one turns to the agreements which we analysed in this case study. The Derichebourg agreement seems to confirm our observations, in light of the 660 departures in the period following the agreement. The Servair agreement, in its turn, raises questions about its very claim to “preserve jobs” and this one of the elements of the ongoing legal.

Conclusion

An analysis of the collective performance agreements concluded during of the COVID-19 crisis provides lessons on the way in which social dialogue, this aspect of industrial relations, was mobilised during the pandemic when looking to situations other than the one of pilots and cabin crews, on which we focused on previous WPs.

This type of collective agreement existed long before the crisis and is not specific to it. However, the use of these agreements has evolved during the crisis (see Section 3). Indeed, a certain number of characteristic features of the agreements concluded during the pandemic show that the COVID-19 crisis was undoubtedly the catalyst for carrying out reorganisations (notably, the reduction of labour costs through the deterioration of working conditions and job cuts) that had already been planned. At least a certain windfall effect cannot be ruled out.

Here we wish to summarise the features which lead us to this conclusion.

- Open-ended agreements

The tendency of the APCs concluded during the pandemic to have a shorter duration suggests that the agreements are more cyclical in nature, and that the sacrifices required of employees are of shorter duration, while the company faces a difficult economic situation. However, the fact that more than half of the APCs remain open-ended, despite the context and the fact that they are much more offensive towards employees' working and employment conditions, tends to show the opposite. The crisis appears, at least in part or for a certain number of groups, as an opportunity to carry out reorganisations.

The agreements studied are consistent with this. The agreement concluded at Derichebourg is for an indefinite period (i.e. it does not provide for an end to its application, nor, a fortiori, for the possibility of renegotiation in the event of a return to “normal” times). Although the agreement signed at Servair provides for its application for a period of one year and one month, it circumvents this limit from the outset: “at the end of the agreement, and if the level of activity forecast at the end of the agreement does not exceed 70%, the signatory parties give themselves the possibility of renewing the agreement for a further year, adapting all or part of the provisions of this agreement according to the situation”²⁵.

²⁵ Servair APC, p. 14, our translation.

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Indeed, at the end of the said period, the agreement was renewed. An amendment was then concluded on 7 June 2022, at the request of the representative trade unions that had originally signed the APC (FO, SLICA and CFE-CGC), in order to revise the reduction in the 13th and 14th month bonuses provided for in the agreement. However, this amendment excludes one of the group's establishments, the one situated in the La Réunion overseas department. For the other establishments, therefore, it provides that employees will receive, for 2022, the 13th and 14th month bonuses with a reduction of only 25% instead of the 50% initially provided for in the APC. However, there was no renegotiation on the remaining (more impactful) concessions made by employees in the agreement. Furthermore, some of the key effects of the agreement are not time-limited. For example, for all the employees in one of the plants, the mobility measures have become definitive, and the 19 employees who (so far) refused said mobility were dismissed.

- Uncertain job retention

The proportion of APCs signed during the crisis that include commitments in general, some of them only on employment, is 20% compared to 9% before the crisis²⁶. The proportion remains particularly small for agreements with such a potentially far-reaching impact on working conditions.

The collective performance agreement concluded at Servair includes no commitment to maintain employment. As for the agreement signed at Derichebourg, the employer undertakes not to lay off employees but for only 6 months, while already mentioning the potential for collective layoffs at the end of this period: “no employment contract will be terminated for economic reasons before 31/12/2020. Also, the 13th month suppressed in the APC will be taken into account in the employees' pay in the event that the company decides to implement a collective redundancies plan after the date of 31/12/2020”²⁷.

The collective performance agreement is also a powerful tool for job cuts, even though this is not its purpose. The unique feature of the APC is that it can combine changes in employment contracts and job cuts. Indeed, it is not uncommon for a certain number of employees to oppose the application of the agreement, thus exposing themselves to dismissal presented as justified and without any of the guarantees associated with collective dismissals. There are many examples of mass layoffs of employees who are resistant to the application of competitiveness agreements: 162 layoffs at Mahle Behr in Rouffach in 2013, when only 102 were envisaged before the agreement was negotiated; 157 at CDC Habitat in 2019; as well as the 163 at Derichebourg Aeronautics Services in June 2020, followed by more than 500 departures due to worsened working conditions and pay, which we detailed above.

- Lack of correspondence between the actual content of the agreement and the stated objective

The fact that the collective performance agreement is not likely to guarantee employment is sufficient proof of this. But can it contribute to it? In fact, this is undoubtedly the point on which the debate is crystallizing. Looking at the two agreements we analysed above, there are strong arguments against considering collective performance agreements claiming to “preserve jobs” as contributing to

²⁶ Mathilde PESENTI, DARES Analyses n° 66, “Les accords de performance collective : quels usages durant la crise sanitaire ?”, 23 November 2021.

²⁷ APC Derichebourg, p. 7, our translation.

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maintaining employment. Indeed, the Derichebourg agreement cites in no particular order all the objectives provided for by the law: "This agreement is concluded in order to anticipate economic difficulties, to improve the Company's competitiveness and to preserve employment" (APC Derichebourg, p. 2, our translation). In its turn, the Servair agreement is more precise: "Servair's objective is to preserve jobs. There is therefore no alternative but to act on the elements of remuneration: basic salary, seniority, additional hours, bonuses of all kinds, etc." (Servair APC, p. 4, our translation). However, it is clear that the stated objective of "preserving jobs" is entirely pursued through a strategy of labour costs reduction, and not, for instance, through the use of partial activity and the reduction of working time. Indeed, it was the partial activity scheme that had preserved all the jobs on fixed-term contracts from April to December 2020. As such, the previous wage levels and the organization of working time, which the APC modified, had not impeded the preservation of jobs for the 10 previous months of the crisis. As such, the reality of the purpose of this agreement seems closer to the aim stated in its preamble: "The objective is to reduce the wage bill by 10%" (our translation).

- Combination of the different reorganization agreements

Finally, the tendency to conclude different agreements, sometimes with different or even contradictory rationales, seems to be on the rise in large companies, and particularly in the case of the broader aviation industry. However, concluding an APC to "preserve employment", in conjunction with an agreement that already covers wages in the form of partial activity (APLD) or an agreement organising layoffs (RCC), seems contradictory. Few companies that have concluded an APC during the crisis, or indeed after the crisis, have *not* combined it with an agreement on partial activity, but also with an agreement on layoffs process or even a straight collective dismissal (Airbus, ADP, etc.). The extent of the deterioration in working conditions or the reduction in salary is often presented as depending on the number of employees inclined to leave "voluntarily". However, these combinations have the merit of highlighting the fact that it is not a question of maintaining employment but of shifting the burden of the crisis onto the employees, and thus onto the State (through the covering of wages in situations of partial activity), in order to preserve profitability and dividends, or, in some cases, to increase them.

In conclusion, the management of the crisis through "social dialogue" in the broader aviation industry, notably pursued through collective performance agreements, can be seen as a continuation of the earlier "success" of this type of agreement. Of course, the said has greatly contributed to provide opportunities strengthening both the justification for having recourse to this type of agreement and the bargaining position of companies. In the end, APCs provide a particularly powerful tool to bring about the downward flexibility of wages and working conditions in times of crisis. However, because of the open nature of their contents, and the fact that their duration is in no way linked to the actual persisting of crisis conditions, it seems difficult to see them as a "good practice" for crisis management.

Case-study evaluation

Please, evaluate your case study by using the following indicators and give a brief explanation of your evaluation

Criteria	Evaluation on a scale of 1-5 (1=minimum, 5=max)	1	2	3	4	5
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Innovation	<p>Explanation: to what degree does the topic/subject analysed in the case study deviate from existing practices and legal frameworks? Why the case study is innovative?</p> <p>The instrument used to manage the crisis in the broader aviation industry, the agreement of collective performance, was already in place before the COVID-19 pandemic. The deviation from existing practices, which can be identified in some of the content of said agreements, seems to be more a consequence of the upsetting of the balance of power between stakeholders.</p>					

Criteria	Evaluation on a scale of 1-5 (1=minimum, 5=max)	1	2	3	4	5
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Transferability	<p>Explanation: to what degree can the results/lessons learnt in the case-study be transferred along the air transport value chain? other sectors? other countries?</p> <p>The practice is dependant upon the legal framework presently provided by French labour law, so it's transferability can only be assessed in the context of a similar situation. The ability to negotiate what generally amounts to a worsening of working conditions and/or a reduction in wages seems to be connected with the existence of a crisis which creates a credible threat to employment and sufficient pressure on trade unions to sign such an agreement.</p>					

Criteria	Evaluation on a scale of 1-5 (1=minimum, 5=max)	1	2	3	4	5
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Inclusiveness	<p>Explanation: to what degree does the topic/subject analysed in the case-study see the involvement of partners and public actors?</p> <p>The practice actually <i>reduced</i> the participation of public actors in collective bargaining when compared to the traditional French industrial relations.</p>					

Criteria	Evaluation on a scale of 1-5 (1=minimum, 5=max)	1	2	3	4	5
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Covid-19 causality	<p>Explanation: to what degree is the topic/subject analysed in the case-study directly related to the Covid-19 outbreak?</p> <p>The <i>degree</i> of use of collective performance agreement is clearly linked to the COVID-19 crisis. However, the existence of the practice was visible even before the outbreak.</p>					