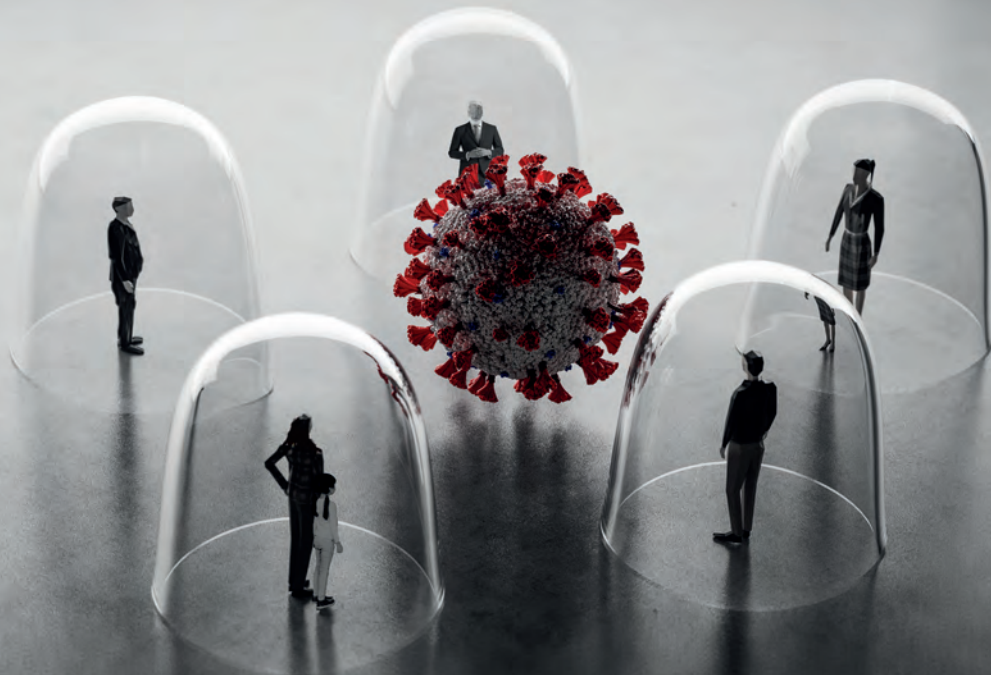


Anna Moskal · Aleksandra Sobarnia
Szymon Pazera · Zuzanna Kopania

THE EUROPEAN UNION IN LIGHT OF THE COVID-19 PANDEMIC —

A FAILURE OF EUROPEAN INTEGRATION OR
A CHANCE FOR CLOSER COOPERATION AMONG MEMBER STATES?



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Cracow 2021

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ZUZANNA KOPANIA

IV. Critical Perspective on the Reactions to the COVID-19 Pandemic in the European Union

1. Actions Taken by Member States

Strict restrictions on rights and freedoms of European citizens during the COVID-19 pandemic were a novelty for many, but their implementation was crucial in combating the rapidly spreading coronavirus. The first reactions of the Member States were marked by chaos, panic and lack of coordination. Despite taking different approaches to fighting the spread of the virus and initially choosing to make decisions unilaterally, the Member States soon realized that they needed each other. They needed to learn from each other's experiences in order to share – at the beginning in a very limited scope – resources, and to fight the virus side by side. In this subchapter, various actions taken by selected representative Member States will be presented. The authors chose them in such a manner as to show the enormity of the variety of activities, the pace and manner of their implementation, legality, evaluation, compliance with EU recommendations, etc.

In Austria, no state of emergency was introduced as the reaction to the COVID-19 pandemic, because there is simply no constitutional basis for it. The use of the federal President's ordinances was also not permissible during the pandemic due to the fact that not all constitutional conditions were met.⁵⁶² The first legislative measures to counteract SARS-CoV-2 at the federal level were based on the epidemic law (*Bundesgesetz über die Verhütung und Bekämpfung übertragbarer*

⁵⁶² P. Czarny, "Ograniczenia praw i wolności w okresie pandemii COVID-19 w Republice Austrii [Restrictions on the Exercise of Freedoms and Rights during the COVID-19 Pandemic in the Republic of Austria]," in: K. Dobrzaniecki, B. Przywora (eds.), *Ograniczenia praw i wolności...*, p. 18.

*Krankheiten*⁵⁶³). In most cases, it regulates quite precisely which diseases could be subject to specific preventive measures, but it also allows for the extension of this catalogue.⁵⁶⁴ It is important to note that SARS (*Schweres Akutes respiratorisches Syndrom*) has already been on the list since SARS epidemic in 2003. The government of Austria acted fast and effectively. Only three days after the first case of COVID-19 was reported, which happened on 25 February 2020, the Federal Minister of Social Affairs, Health and Consumer Protection issued an ordinance which stated that preventive measures provided for in the law on epidemics in the scope of limiting the activity of entrepreneurs could also be applied in the case of SARS-CoV-2 infection. A key legislative point occurred on 15 March 2020 when a day after a draft was formally submitted, the National Council and the Federal Council considered, voted on and enacted a federal law on temporary measures to prevent the spread of COVID-19 (*Bundesgesetz betreffend vorläufige Maßnahmen zur Verhinderung der Verbreitung von COVID-19*). The fact that it only took two days (14 May was a Saturday and 15 May was a Sunday) shows that Austria was under great time pressure to introduce restrictions. The law contained two essential mandates for the federal Minister of Health. Firstly, in order to prevent the spread of coronavirus he was now allowed to restrict access to certain sites (both for a specific and a non-specific period of time). Secondly, the Minister could, under the same condition that it had to be done to prevent the spread of the infection, prohibit access to the permanent premises of enterprises or only to certain premises for the purpose of purchasing goods and services. The Minister's ordinance could specify the number of people allowed and time of admission to the facilities exempt from the ban. Violation of the introduced bans could result in the imposition of an administrative penalty of up to 3,600 euro. It is important to note that the law was assumed to be of a temporary nature, and it was to expire on 31 December 2020.⁵⁶⁵ Currently, the act is comprehensive and allows for implementing rules concerning: the access to and movement around premises of enterprises, workplaces, specific places (including public places), the use of means of transport and restrictions on leaving home as sanitary measures preventing the spread of COVID-19. The temporary nature of the law has been maintained, but it will expire on 30 June 2021. However, the federal government may extend the duration of this law if necessary due to the epidemic situation, but no longer than until 31 December 2021.⁵⁶⁶

In total, more than 50 regulations were issued in Austria in response to the COVID-19 pandemic, the vast majority of them amending the existing provisions, and about 300 regulations were issued.⁵⁶⁷ All this resulted in a large number

⁵⁶³ Also known as: *Epidemiegesetz*.

⁵⁶⁴ P. Czarny, "Ograniczenia praw..." p. 18.

⁵⁶⁵ *Ibid.*, pp. 19–20.

⁵⁶⁶ *Ibid.*, p. 21.

⁵⁶⁷ *Coronavirus in Österreich – Rechtliche Grundlagen*, oesterreich.gv.at, at <https://www.oesterreich.gv.at/themen/coronavirus_in_oesterreich/Rechtliche-Grundlagen.html>, 20 June 2021.

of constitutional complaints to the Constitutional Tribunal. In Austria, the legal acts on counteracting the spread of COVID-19 were assessed by the Constitutional Tribunal relatively early – in July 2020.⁵⁶⁸ The only thing that the Tribunal found inconsistent with the Constitution was the limit of space available to customers (400 m²), on which the admissibility of conducting commercial and service activities was dependent. It should be emphasized that the Tribunal, pursuant to Article 140 Section 7 of The Federal Constitution banned the application of the provisions of the ordinance that were inconsistent with the law to the actual situations that arose at the time when it was in force, which is a rather exceptional situation in Austria. The Constitutional Tribunal later continued this line of jurisprudence and found that a number of specific restrictions introduced in various periods of the “fight against the pandemic” (e.g. the ban on parties and other events involving more than ten people) were either unconstitutional or the Minister of Health did not sufficiently demonstrate that the specific shape of the restrictions was indeed necessary to prevent the spread of COVID.⁵⁶⁹ In Austria, *necessitas non habet legem* (which means necessity has no law) was not used in connection with the COVID-19 pandemic, but efforts were made to maintain the standards of the constitutional rule of law at that time.⁵⁷⁰

Adhering to EU policies, Austria lifted its travel ban on 16 June 2020 along with 15 other Member States,⁵⁷¹ and later was eager to take part in the European Commission’s economic aid initiatives, especially in NextGenerationEU, where Austria submitted a national recovery and resilience plan under the European Union’s Recovery and Resilience Facility. It includes measures for an overall amount of 4.5 billion euros.⁵⁷² Austria’s government worked with the European Commission to provide the Western Balkans with COVID-19 vaccines and called it “an act of European solidarity and an investment in the health and security of the whole region.”⁵⁷³ Austrian Chancellor Sebastian Kurz praised the EU for taking the initiative so early to procure vaccines for the EU and expressed his doubts in whether or not the EU is ready for future dangerous mutations. He also stated that since European Medicines Agency was slow to approve vaccines and there

⁵⁶⁸ In Austria, individual constitutional complaints are admissible, which may be filed (without exhausting the legal route) by any person who claims that his or her rights have been directly violated due to constitutional contravention of a federal or national law (or a regulation inconsistent with the law), provided that the relevant acts’ legal effects have exerted independent legal effects on it without issuing a court ruling or an administrative decision.

⁵⁶⁹ P. Czarny, “Ograniczenia praw...,” pp. 25–26.

⁵⁷⁰ Ibid., p. 27.

⁵⁷¹ International Monetary Fund, *Policy Responses to Covid-19*, at <<https://www.imf.org/en/Topics/imf-and-covid19/Policy-Responses-to-COVID-19>>, 20 June 2021.

⁵⁷² International Labour Organization, *COVID-19 Country Policy Responses – Austria*, at <<https://www.ilo.org/global/topics/coronavirus/regional-country/country-responses/lang--en/index.htm>>, 20 June 2021.

⁵⁷³ *The European Commission and Austria Secure COVID-19 Vaccines for the Western Balkans*, Reliefweb, 20 April 2021, at <<https://reliefweb.int/report/world/european-commission-and-austria-secure-covid-19-vaccines-western-balkans>>, 20 June 2021.

were production and delivery issues, then he hoped that in the future Austria would not have to be dependent solely on the EU as regards “second-generation” vaccines.⁵⁷⁴

The Constitution of the Kingdom of Belgium, referred to as the “peacetime constitution” (*une Constitution de temps de paix*), does not recognize an institution of a state of emergency. Article 187 of the Constitution states “The Constitution may not be suspended, either in whole or in part.”⁵⁷⁵ This provision is treated as an expression of attachment to the idea of constitutionalism understood as the absolute binding of constitutional organs with constitutional norms, even in extraordinary situations.⁵⁷⁶ Neither the *raison d'état* nor *salus populi* may constitute grounds for suspending the functioning of public institutions and constitutional rights. In emergency situations, it is possible to appeal to the doctrine developed in the case law and the institutions of the executive delegation of “special competence” (*les pouvoirs spéciaux*) by Parliament.⁵⁷⁷ The first emergency measures at the federal level were introduced under a ministerial decree on 13 March 2020. The regulation prohibited cultural, social, sports and entertainment activities, both in the private and public dimension, and religious ceremonies (except for funerals and activities in the circle of relatives). It has also suspended school education and partially restricted trade on Saturdays and Sundays.⁵⁷⁸ Only five days later, more restrictions were introduced, and later on 23 March a new ministerial decree⁵⁷⁹ repealed the previous one (which introduced limited hours for stores and night shops, compulsory work from home, travel ban on non-essential travel from Belgium)⁵⁸⁰ and introduced the most restrictive preventive measures, such as closing stores (with the exception of grocery stores, pet food stores, pharmacies, bookstores and gas stations), introducing social distancing of at least 1.5 metres, as well as shutting down event and catering businesses. However, hotel

⁵⁷⁴ *Coronavirus: Austria and Denmark Break Ranks With EU on Vaccines*, DW, 2 March 2021, at <<https://www.dw.com/en/coronavirus-austria-and-denmark-break-ranks-with-eu-on-vaccines/a-56747054>>, 20 June 2021.

⁵⁷⁵ The Belgian Constitution, Article 187, p. 77, at <https://www.dekamer.be/kvvcr/pdf_sec/tions/publications/constitution/GrondwetUK.pdf>, 20 June 2021.

⁵⁷⁶ S. Van Drooghenbroeck, “L'article 187 de la Constitution,” *Revue Belge de Droit Constitutionnel*, no. 3 (2006), pp. 293–297.

⁵⁷⁷ A. Krzyniecki-Arndt, “Ograniczenia praw i wolności w okresie pandemii COVID-19 w Królestwie Belgii [Restrictions on the Exercise of Freedoms and Rights during the COVID-19 Pandemic in the Kingdom of Belgium],” in: K. Dobrzański, B. Przywora (eds.), *Ograniczenia praw i wolności...*, p. 38.

⁵⁷⁸ *Arrêté ministériel du 13 mars 2020 portant des mesures d'urgence pour limiter la propagation du coronavirus COVID-19*, 14 March 2020, at <https://www.etaamb.be/fr/erratum-du-13-mars-2020_n2020030330.html>, 20 June 2021.

⁵⁷⁹ *Arrêté ministériel du 23 mars 2020 portant des mesures d'urgence pour limiter la propagation du coronavirus COVID-19*, eJustice, 23 March 2020, at <<http://www.ejustice.just.fgov.be/eli/arrete/2020/03/23/2020030347/moniteur>>, 20 June 2021.

⁵⁸⁰ *Arrêté ministériel du 18 mars 2020 portant des mesures d'urgence pour limiter la propagation du coronavirus COVID-19*, eJustice, 18 March 2020, at <<http://www.ejustice.just.fgov.be/eli/arrete/2020/03/18/2020030331/moniteur>>, 20 June 2021.

restaurants and hotels could remain open, and meal deliveries were allowed. The number of people in large-format stores was limited to one customer per 10 m², they were also expected to do their shopping in no more than 30 minutes and, if possible, individually. A ban on staying in public places was introduced, with the exception of travelling on business (including travel to the workplace), going to post offices and shops and other institutions open under the regulation, leaving home in order to use ATMs related to access to healthcare, and caring for the elderly, minors, people with disabilities and people in difficult situations. Pursuant to the regulation it was also allowed to stroll in the company of family members living in the same household, as well as to perform physical activity, either individually or in the company of a person who was either a family member living in the same household, or a friend (always the same one), on the condition of keeping social distance. Classes and extra-curricular activities were suspended at all levels of education, and colleges and universities were obliged to provide distance education only. All enterprises and institutions that were not deemed necessary to meet the basic needs of the nation and the population were obliged to introduce remote work for all workers, as long as the nature of their work allowed it. For the remaining employees, a requirement was introduced to organize work in conditions that guaranteed the respecting of the social distancing requirements or – if not possible – to close the workplace.⁵⁸¹ Official government website announced that “these decisions are again the result of strong cooperation between the levels of competence, which is essential for the proper management of the current crisis”.⁵⁸²

The country’s relationship with the EU during the pandemic has had its ups and downs with Belgium criticising some Member States for export bans on medical equipment at the beginning of the pandemic, claiming that it was against the spirit of the EU.⁵⁸³ On 1 December 2020, the European Commission disbursed 2 billion euros to Belgium under the SURE instrument. All in all, Belgium will receive 7.8 billion euros under this instrument.⁵⁸⁴ Belgium and the EU disagreed for months on the ban on non-essential travel within the EU that Belgium

⁵⁸¹ *Ministerieel besluit houdende dringende maatregelen om de verspreiding van het coronavirus COVID-19 te beperken*, eJustice, 23 March 2020, at <http://www.ejustice.just.fgov.be/cgi/article_body.pl?language=nl&caller=summary&pub_date=2020-03-23&numac=2020030347%0D%0A#top>, 20 June 2021.

⁵⁸² *Coronavirus: Reinforced Measures*, Belgium.be, 24 March 2020, at <https://www.belgium.be/en/news/2020/coronavirus_reinforced_measures>, 20 June 2021.

⁵⁸³ S. Pornschlegel, *Europe versus Coronavirus – Belgium: Successful Crisis Management Despite Political Fragility*, Institut Montaigne, 2 June 2020, at <institutmontaigne.org/en/blog/europe-versus-coronavirus-belgium-successful-crisis-management-despite-political-fragility>, 20 June 2021.

⁵⁸⁴ International Labour Organization, *Country Policy Responses – Belgium*, 4 May 2021, at <<https://www.ilo.org/global/topics/coronavirus/regional-country/country-responses/lang--en/in dex.htm#BE>>, 20 June 2021.

imposed on its citizens.⁵⁸⁵ On January 2021, Belgian authorities along with several other Member States received a letter from the European Commission saying that it would be possible to protect the health of the public by having less restrictive measures rather than a total ban, and asking Belgium to suspend the ban on 2 March 2021.⁵⁸⁶ The ban was eventually lifted on 19 April.⁵⁸⁷

The introduced preventive measures meant serious limitation of rights and freedoms of citizens, especially the freedom of movement (Article 12 of the Constitution), freedom of assembly (Article 26 of the Constitution), freedom of worship and public practice of it (Article 19 of the Constitution) and the right to education (Article 24 of the Constitution). They also constituted an interference with private and family life as protected under Article 22 of the Constitution.⁵⁸⁸ Royal Decree of 9 April 2020 introduced regulations regarding the suspension of the running of limitation periods, including the limitation of prosecution and time limits for the effective bringing of an appeal (with the exception of time limits for lodging an appeal), an objection to a judgment or a cassation appeal in criminal cases, and suspension of public hearings, except for hearings in criminal cases. In civil cases, if neither of the parties objected, the courts were principally expected to give their rulings without holding a hearing.⁵⁸⁹ Therefore, there has also been a partial restriction on the right to a fair trial (under Article 13 of the Constitution).

While at that time the restrictions seemed to be justified to protect citizens against a new and unknown virus, they are now being questioned as to their legitimacy, specificity of the law and proportionality. The Council of State referring to the European Convention on Human Rights, indicated that the right to a fair trial, the right to respect for private and family life, freedom of thought, conscience and religion, freedom of expression, freedom of assembly and association may only be subject to limitations prescribed by law and necessary in a democratic society.⁵⁹⁰ The closest equivalent of the state of emergency in Belgium is a legal regime of extraordinary powers vested by the government on the basis of statutory delegation. The statutory delegation has clearly defined time limits, precisely defines the objectives for which the competences are exercised, and provides for

⁵⁸⁵ *EU Continues to Pressure Belgium to Put an End to Travel Ban*, Shengenvaisainfo News, 22 March 2021, at <<https://www.schengenvaisainfo.com/news/eu-continues-to-pressure-belgium-to-put-an-end-to-travel-ban/>>, 20 June 2021.

⁵⁸⁶ *Belgium Rejects Proposal to Suspend Non-Essential Travel Ban*, Shengenvaisainfo News, 3 March 2021, last modified 7 June, at <<https://www.schengenvaisainfo.com/news/belgium-rejects-proposal-to-suspend-non-essential-travel-ban/>>, last modified 20 June 2021.

⁵⁸⁷ *Belgium's Coronavirus Rules at a Glance*, Politico, 19 October 2020, at <<https://www.politico.eu/article/belgium-coronavirus-lockdown-rules-restrictions-overview/>>, 20 June 2021.

⁵⁸⁸ A. Krzynówek-Arndt, "Ograniczenia praw...", p. 48.

⁵⁸⁹ *Arrêté royal n° 2 du 9 avril 2020 concernant la prorogation des délais de prescription et les autres délais pour ester en justice ainsi que la prorogation des délais de procédure et la procédure écrite devant les cours et tribunaux* *Moniteur belge*, 9 avril 2020), eJustice, 9 April 2020, at <<http://www.ejustice.just.fgov.be/eli/arrete/2020/04/09/2020030581/moniteur>>, 20 June 2021.

⁵⁹⁰ C.E., section de législation, avis 67.142/AG du 25 mars 2020 sur une proposition de loi habilitant le Roi à prendre des mesures de lutte contre la propagation du coronavirus COVID-19.

the adoption of legislation in the parliamentary procedure within a specified time frame. Meanwhile, the most important restrictions were introduced by ministerial ordinances, which were not replaced by royal decrees issued on the basis of statutory delegated extraordinary powers.⁵⁹¹

In Czechia, a state of emergency (*nouzový stav*) was declared on 12 March 2020.⁵⁹² The announcement was made pursuant to a resolution of the Government of Czechia. It was initially introduced for a period of 30 days. However, due to the development of the pandemic itself, the period was extended twice – initially until 30 April 2020 and then, under another resolution of the Government of Czechia, until 17 May 2020. On 13 March 2020, the government adopted eight more resolutions, including four very important to the protection of the right to health: on guaranteeing the provision of care in social welfare centres during the state of emergency, on crisis measures in relation to the prohibition of presence in selected institutions and marketplaces, on crisis measures relating to the quarantine obligation in the event of return from risk zones, and on crisis measures relating to the ban on entry of foreigners into the territory of the Czech Republic and departure of Czech citizens abroad. On 14 March 2020, the government adopted a resolution restricting retail sales and catering activities. From 15 March to 18 September 2020, the government issued 33 resolutions, including ones concerning: the aid shield in connection with COVID-19, the order to cover the mouth and nose in public spaces, limiting the movement of people and introducing shopping hours for seniors.⁵⁹³

Not too long after the pandemic had begun in Czech Republic, on 23 April 2020, the Municipal Court in Prague issued a judgment in the case against the Ministry of Health of Czechia. The court examined the allegation that the restrictions on rights and freedoms introduced by the Minister of Health (and earlier also by the government) were consistent with the Constitution and laws. The basis was a dispute of a competence nature, that is, whether the authority at the level of the Ministry of Health is competent to issue relevant legal acts limiting civil rights and freedoms, or the competence is exclusive to the Government of Czechia. The Court finally assumed that some of the ordinances issued by the Minister of Health had exceeded the competences.⁵⁹⁴ However, the Court emphasised that at the moment of issuing the judgment, it fully understood how the decisions that have been hurriedly made were crucial to protect the country's citizens.⁵⁹⁵

⁵⁹¹ A. Krzynówek-Arndt, "Ograniczenia praw...", p. 48.

⁵⁹² *Resolution of the Government of the Czech Republic of 12 March 2020*, No. 194; 69/2020 Sb., 12 March 2020, at <https://www.randls.com/wp-content/uploads/194_120320_Usnesení-vlady-k-vyhlášení-nouzového-stavu_EN.pdf>, 20 June 2021.

⁵⁹³ M. Žába, "Ograniczenia praw i wolności w okresie pandemii COVID-19 w Republice Czeskiej [Restrictions on the Exercise of Freedoms and Rights during the COVID-19 Pandemic in the Czech Republic]," in: K. Dobraniecki, B. Przywora (eds.) *Ograniczenia praw i wolności...*, p. 134.

⁵⁹⁴ Justification to the judgment of the Municipal Court in Prague of 23/04/2020, sp. 14 A 41/2020.

⁵⁹⁵ M. Žába, "Ograniczenia praw...", pp. 130–133.

At the beginning of the pandemic, Peter Ludwig and Aneta Kernová from Czechia created a video encouraging people across Europe to wear face masks during the global pandemic in order to slow down the spread of the coronavirus. It promoted wearing masks as a prosocial activity that protects everyone.⁵⁹⁶ In October 2020, it was one of the first countries to receive ventilators from RescEU.⁵⁹⁷ In November 2020, after months of travel restrictions, Czechia decided to implement the EU's recommendation and allowed for the epidemiological rules for Czech citizens travelling abroad and for foreign nationals coming to the Czech Republic to be governed by the "international traffic light system".⁵⁹⁸

The measures introduced by the government to counter the COVID-19 pandemic affected the rights and freedoms guaranteed by the Charter of Fundamental Rights and Freedoms⁵⁹⁹ to a varying extent. Actions of the authorities which came into force gradually interfered with such rights and freedoms as freedom of movement and residence (Article 14 of the Charter), the right to participate in religious practices and rituals (Article 16 of the Charter), the right to education (Article 33 of the Charter), freedom of assembly (Article 19 of the Charter), the right to freely pursue economic activity (Article 26 of the Charter) and personal freedom (Article 8 of the Charter), in particular when it comes to detaining persons in health care institutions without their consent. The measures that were taken due to the development of the pandemic did not arouse widespread opposition among the public. The exceptions were the ordinances of the Ministry of Health of the Czech Republic, which preceded the resolutions of the government several times. Governments' actions were mostly considered as justified, and when assessing the measures in terms of their legality, proportionality, rationality, economic effects, appropriate time for their introduction, it can be concluded that the government tried to act with due diligence.⁶⁰⁰

On 11 March 2020, Danish authorities announced strict restrictions on the freedom of entry into the country. The Kingdom of Denmark has been open to the movement of people between the Nordic countries for decades, and also belongs to the visa-free zone (Schengen Area). As a consequence of those restrictions, the control of the movement of people across Danish borders was restored. The principle was adopted that the list of strict restrictions was subject to weekly updates, carried out every Thursday by 4:00 p.m. in order to be implemented on

⁵⁹⁶ Czech Universities, *Czech Video Inspires the World to Wear Face Masks During the Global Pandemic*, 6 April 2020, at <<https://www.czechuniversities.com/article/czech-video-inspires-the-world-to-wear-face-masks-during-the-global-pandemic>>, 20 June 2021.

⁵⁹⁷ European Commission, *Timeline of EU Action*, at <https://ec.europa.eu/info/live-work-travel-eu/coronavirus-response/timeline-eu-action_en>, 20 June 2021.

⁵⁹⁸ Government of the Czech Republic, *Measures Adopted by the Czech Government Against the Coronavirus*, 12 July 2021, at <<https://www.vlada.cz/en/media-centrum/aktualne/measures-adopted-by-the-czech-government-against-coronavirus-180545/>>, 20 June 2021.

⁵⁹⁹ Authors refer to Charter of Fundamental Rights and Freedoms (*Listina Základních Práv a Svobod*) adopted on 16 December 1992.

⁶⁰⁰ M. Žaba, "Ograniczenia praw..." pp. 139–140.

the following Saturday (00:00). Interestingly, the two autonomous territories of Denmark, Greenland and the Faroe Islands, were governed by separate rules, according to the epidemic situation there.⁶⁰¹ On 13 March 2020, a partial lockdown was introduced. In the case of factories operating in the public sector that did not require continuous work it was recommended to keep employees at home for a period of two weeks or switch (if possible) to a remote working system. As regards private sector, the government called for applying similar solutions. Secondary schools, universities, libraries and cultural institutions were closed by a government order until further notice. The Danish society, which has a high degree of social trust in the authorities and persons performing public functions, “withdrew” children from schools and pre-school care institutions within 24 hours from the announcement by the government of its intention to close schools and kindergartens (for which the government’s plans allocated a period of four days). Such behaviour indicated a quick understanding of the seriousness of the situation and a sense of responsibility expressed in concern not only for one’s own health, but also for other people relying on close contacts in educational or pre-school care centres. Seniors citizens (due to their higher sensitivity to the life-threatening illness) were recommended to be isolated, especially from their grandchildren. City authorities were obliged to maintain places of care for children who could not be provided care by their parents or guardians.⁶⁰²

In March 2020, a system of testing people suspected of having crossed paths with the infected was launched. It was similar to the one used in South Korea.⁶⁰³ At the same time, the Ministry of Health developed guidelines to focus attention of hospitals dedicated to combating COVID-19 on people with breathing difficulties and shortness of breath. The result was a significant underestimation of the number of cases. According to the guidelines of the Ministry of Health, people with no clear symptoms of the disease and weak symptoms had to remain in home isolation while maintaining telephone contact with their general practitioners. Each of Denmark’s five regions was obliged by a government order to establish isolation sites for a minimum of 1000 people.⁶⁰⁴

On 18 March 2020, restrictions on assemblies were introduced pursuant to the provisions of the Epidemic Act. The number of their participants was limited to ten. Former recommendations regarding the risks for people gathering in shopping centres, showrooms and other places of easy access have been replaced with bans. Failure to comply with the ban resulted in the imposition of a financial penalty of up to 1500 Danish krone. At the end of March, testing of individuals

⁶⁰¹ M. Grzybowski, “Ograniczenia praw i wolności obywatelskich w okresie pandemii COVID-19 w Królestwie Danii,” in: K. Dobraniecki, B. Przywora (eds.), *Ograniczenia praw i wolności...*, p. 143.

⁶⁰² Ibid., p. 149.

⁶⁰³ See: T. Cheshire, *Coronavirus: How South Korea’s Track and Trace System Has Kept Death Count Below 500*, Sky News, 13 October 2020, at <<https://news.sky.com/story/coronavirus-how-south-koreas-track-and-trace-system-has-kept-death-count-below-500-12103124>>, 20 June 2021.

⁶⁰⁴ Ibid., p. 152.

suspected of a contact with infected people intensified. Local authorities took new initiatives to allow immediate testing of the inhabitants of their communities. Due to the threat of a pandemic and its consequences for all citizens and residents of the state, it was possible to acquire the consensus of 12 political parties represented in the Folketing to quickly amend the statutory regulations. It significantly expanded the regulatory powers of the government and the central administration bodies, while focusing the responsibility for the medical dimension of combating the pandemic in the Ministry of Health and the competent central authority, and for the implementation of (also by force) restrictions and limitations – in the Ministry of Justice and in the newly established central special body (in fact operating from July 2020 in an institutional link with the Ministry of Justice).⁶⁰⁵

The decision to reintroduce border control and the related regulations were notified to the European Commission in accordance with the requirements of Article 25 of the Schengen Borders Code.⁶⁰⁶ Given the large number of immigrant communities residing in Denmark, regulatory acts limiting the number of participants in public gatherings and access to public means of transport, and the principles of keeping distance in these vehicles, at stations and stops, as well as in shops and publicly accessible service establishments were shared with the public, not only in Danish and English, but also in the languages of all larger national communities of immigrants.⁶⁰⁷

After finding a mutated strain of COVID-19 in five different mink farms, Danish officials decided to kill 17 million minks because they were thought to be hosts of a mutated version of COVID-19 that could seriously threaten the efficacy of any future vaccines. Before that, Denmark had been world's largest producer of mink pelts and the industry itself brought the country 1.3 billion dollars in exports.⁶⁰⁸ Eventually, it turned out that the government had no legal basis to order the killing and in January 2021 decided to give mink farmers up to 19 billion Danish krone to recoup the losses (Financial Times counted that an average farmer would receive DKR 2.7 to 4.1 million for the dead animals, about DKR 7.6 million for loss of future earnings and about DKR 1.3 million for capital costs such as those of buildings and equipment). Additionally, they had to exhume the mass graves after swollen mink corpses came to the surface and threatened drinking water supplies.⁶⁰⁹

⁶⁰⁵ Ibid., p. 152–158.

⁶⁰⁶ Justits Ministerie, *Letter From the Minister of Justice to EU Commissioner Johansson of 13 March 2020*, at <<https://www.ft.dk/samling/20191/almdel/REU/bilag/305/2163329/index.htm>>, 20 June 2021; Official Journal of the European Union, *Article 25 SBC*, 13 April 2006, at <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32006R0562&from=EN>>, 20 June 2021.

⁶⁰⁷ Ibid., p. 159.

⁶⁰⁸ G. Carbonaro, *How Do You Kill 17m Mink Sick With a COVID-19 Mutation?*, CGTN, at <<https://newseu.cgtn.com/news/2020-11-06/How-do-you-kill-17m-mink-sick-with-a-COVID-19-mutation--Vb9hjGXbwI/index.html>>, 20 June 2021.

⁶⁰⁹ R. Milne, *Denmark Offers Mink Farmers More than \$3bn in Covid Compensation*, Financial Times, at <<https://www.ft.com/content/624f65b5-cd3e-45a1-b7f4-eeacff4f74fd>>, 20 June 2021.

Since the sunset clause on the Epidemic Act expired on 1 March 2021, the Parliament adopted a new, permanent Epidemic Act. It includes parliamentary oversight and veto for a number of the most intervening steps the government could take, and ensures automatic judicial review of measures resembling retention. Even though the new Epidemic Act may raise certain concerns as it has no expiry date and seems to introduce a permanent state of emergency, Denmark's fight with the pandemic is perceived well, and the officials responsible for it are said to have passed a test.⁶¹⁰ However, according to Kristin Cedervall Lauts, this experience proves that the country has to reform its crisis management and reinforce the separation of powers.⁶¹¹

Denmark's long standing travel bans provoked a stern response and disapproval from the European Commission, which sent a letter to the Danish government asking for the ban to be lifted.⁶¹² In March 2021 YouGov's latest Eurotrack survey showed that 50% of Danes thought the EU did not perform well in the vaccine rollout and only 34% perceived it positively, and 80% of Danes believe that their government did well during the pandemic.⁶¹³ Denmark's approach to the pandemic is considered socially inclusive and promoting social solidarity. Its government worked with labour and industry to compensate those affected by the lockdown and created a politically united front.⁶¹⁴

Since 2014, France has had a plan called ORSAN. The ORSAN plan (*Organisation de la Réponse du système de Santé en situation sanitaire exceptionnelles*) is an emergency plan that includes emergency procedures based on the crisis type, protocols for individual crisis units, and available tools.⁶¹⁵ It actually consists of multiple "white plans" (*plans blancs*) that have been prepared for each French hospital for whenever there is a risk of an increased need for healthcare or a serious disruption to its work. On 13 February, 2020 ORSAN was activated (using

⁶¹⁰ K. Cederwall Lauts, *The Eternal Emergency? Denmark's Legal Response to COVID-19 in Review*, Verfassungsblog, 22 March 2021, at <<https://verfassungsblog.de/the-eternal-emergency-denmarks-legal-response-to-covid-19-in-review/>>, 20 June 2021.

⁶¹¹ Ibid.

⁶¹² E. Sánchez Nicolás, *Brussels: Six EU States Travel Restrictions Went 'Too Far'*, EUobserver, 24 February 2021, at <<https://euobserver.com/coronavirus/151031>>, 20 June 2021.

⁶¹³ J. Conner, *Eurotrack: How Well Have Governments Handled Coronavirus?*, YouGov, 30 March 2021, at <<https://yougov.co.uk/topics/politics/articles-reports/2021/03/30/eurotrack-how-well-have-governments-handled-corona>>, 20 June 2021.

⁶¹⁴ D. Ornston, *Learning from Denmark's Socially Inclusive Approach to COVID-19*, Policy Options Politiques, 26 June 2020, at <<https://policyoptions.irpp.org/magazines/june-2020/learning-from-denmarks-socially-inclusive-approach-to-covid/>>, 20 June 2021.

⁶¹⁵ ORSAN plan has five categories: Orsan Amavi (to deal with a massive influx of uncontaminated victims), Orsan Clim (to manage a massive influx of patients following a natural climate disaster), Orsan Epi-Vac (to manage a national epidemic or pandemic, including exceptional vaccination campaigns), Orsan Bio (to manage a known or emerging biological risk), Orsan NRC (to deal with nuclear, radiological or chemical risks); *Everything You Need To Know About a Hospital Emergency Procedures Plan*, AlarmTILT, at <<https://www.alarmtilt.com/en/studies-case/1256-everything-you-need-to-know-about-a-hospital-emergency-procedures-plan>>, 20 June 2021.

a scenario called REB) for SARS-CoV-2 pandemic. Its primary goals are to ensure the continuity of healthcare while limiting the spread of the virus. The plan was divided into four following stages:

- First – the virus does not spread to the population as a whole and its spread can still be stopped.
- Second – focusing on the territorial limitation of the spread of the virus, with an emphasis on the availability of outpatient and inpatient procedures, as well as the protection of people at high risk (with emphasis on those operating in communities such as nursing homes).
- Third – limiting viral transmission and actively combating the consequences of a pandemic.
- Fourth – returning to normal, pre-pandemic, life.⁶¹⁶

Under the ORSAN plan, health care professionals were mobilized through reorganising current working staff, increasing volunteer capacity, mobilizing the “health reserve” of retired and student health professionals, and the requisition of new staff wherever possible.⁶¹⁷

Initially, the government implemented only less severe measures once infections began to rapidly rise and most actions came in the form of recommendations for safe practices. Unfortunately, they were largely ignored,⁶¹⁸ so between 10 March and 17 March 2020 the country went into complete lockdown. Thousands of police officers were patrolling the streets. Unlike any other country, in France, police officers issued fines up to 135 euro if people did not have written declarations that justified their reasons for being out of their homes. Additionally, at the beginning of March, there was a non-binding recommendation on self-quarantining for 14 days after arriving in France but eventually the borders were closed on 17 March.⁶¹⁹

In support of phase one of the ORSAN plan, on 11 May the Pasteur Institute created a “COVID-score” website where everyone could calculate their risk of severe complications or dying from COVID-19, based on statistics for risk factors such as age, size, weight, and sex.⁶²⁰ On 1 June 2020, the Stop-COVID mobile app was released. The app uses Bluetooth technology and its use is completely voluntary but it did spark debates on data protection. The app warns users that they have crossed paths with someone who has tested positive for COVID-19 in the two previous weeks. One week after its launch, 1.4 million people downloaded it,

⁶¹⁶ P. Szewdo, L. Helińska, J. Woźniak, “Ograniczenia praw i wolności w okresie pandemii COVID-19 we Francji. [Restrictions on the Exercise of Citizens’ Rights and Freedoms in France during the COVID-19 Pandemic],” in: K. Dobraniecki, B. Przywora (eds.), *Ograniczenia praw i wolności...*, pp. 166–168.

⁶¹⁷ Z. Desson et al., “An Analysis of the Policy Responses to the COVID-19 Pandemic in France, Belgium, and Canada,” *Health Policy and Technology*, vol. 9, no. 4 (2020), p. 443.

⁶¹⁸ *Ibid.*, pp. 437–438.

⁶¹⁹ *Ibid.*

⁶²⁰ Pasteur Institute, *Covid-score*, at <<http://www.covid-score.fr/>>, 20 June 2021.

representing only 2% of the French population. By mid-June, the number of daily cases has reduced and the country started to open up.⁶²¹

It is important to emphasise that when on 23 March 2020 the French parliament adopted the law on the introduction of a state of emergency, it thus gave the government extensive authority to respond to the development of the epidemic by restricting constitutional rights and freedoms. Hence, the decrees issued by the Prime Minister after the entry into force of the law in question had an appropriate legal basis.⁶²² The adopted solutions balanced between the need to stop the spread of the virus on the one hand, and the need to ensure the functioning of the economic life on the other hand. The main EU values, such as respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, were also not violated.⁶²³

In Spain, the first measures were adopted as a result of actions by regional and local administrations. On 14 March 2020, under Royal Decree 463/2020, the Council of Ministers announced a state of alert that was supposed to last 15 days and was imposed in order to manage the sanitary crisis caused by COVID-19. The state of alert has been later extended six times by successive royal decrees.⁶²⁴ The state of emergency was in force from 14 to 20 June 2020. However, on 28 April, a national plan was announced. It consisted of four phases of a gradual recovery from the crisis. The entire country was also divided into areas within which the scope of the preparedness for fighting the pandemic was assessed.⁶²⁵

According to the general rule established in accordance with the applicable regulations, especially royal decrees, in Spain no one could leave their home for any purpose other than performing the few activities indicated as permitted during that period. This measure was unlike any other in other Member States, where for most of the time, freedom of movement was not restricted. Sick or not, people had to stay in their homes.⁶²⁶ Other limitations included the activity of retail premises and establishments, hotels and restaurants, as well as closing all schools and other in-person learning facilities.⁶²⁷

Initially, each autonomous community was responsible for the management of health services in each territory with the help from national authorities in re-

⁶²¹ Z. Desson et al., "An analysis...", pp. 441–442.

⁶²² P. Szwedo, L. Helińska, J. Woźniak, "Ograniczenia praw...", p. 196.

⁶²³ Ibid., pp. 197–198.

⁶²⁴ M. Osuchowska, "Ograniczenia praw i wolności obywatelskich w okresie pandemii COVID-19 w Królestwie Hiszpanii [Restrictions on the Exercise of Freedoms and Rights during the COVID-19 Pandemic in Kingdom of Spain]," in: K. Dobraniecki, B. Przywora (eds.), *Ograniczenia praw i wolności...*, p. 209.

⁶²⁵ Ibid., p. 211.

⁶²⁶ Ibid.

⁶²⁷ *Spain's Response to Covid-19: Emergency Measures; Gradual Relaxation*, International Financial Law Review, 4 June 2020, at <<https://www.iflr.com/article/b1lxmrrfr4gkfs/spains-response-to-covid19-emergency-measures-gradual-relaxation>>, 20 June 2021.

gard to supplying material resources related to combating the COVID19 outbreak (which was later criticized due to supposed lack of experience in purchasing healthcare material by the Ministry of Health and lack of proper coordination with the territorial administrations). Additionally, at the beginning of the pandemic there was a shortage of healthcare professionals and infrastructure. In order to support the National Health System, the government decided to increase its capacity with 52,000 health care professionals (including final year students and retired health care professionals). The General Council of Official Medical Professional Colleges responded to these measures with an opposing statement and expressed doctors' worries of having people working in healthcare workforce before completing their medical degrees. They also pointed out the lack of participation of health care professionals in the development of the public health measures, which was perceived as a proof that national and subnational authorities are not coordinating their work properly. Additionally, due to lack of personal protective equipment and the fact that the maximum bed and intensive care capacity has been exceeded in many territories, territorial administrations enabled temporary hospitals in hotel buildings and other public and private establishments. In response to the lack of sufficient medical equipment, a wave of innovation and solidarity was triggered among businesses, including those not specialized in medical equipment. An example of this corporative solidarity was the auto manufacturer SEAT, which generously helped the country by developing new prototypes of ventilators to counteract the shortage of these devices.⁶²⁸

On 7 July 2020, Royal Decree-Law 26/2020 introduced, *inter alia*, provisions that the directives of the European Union Aviation Safety Agency and ECDC were mandatory for airport operators, companies operating at airports, airlines and all users of airports. This decision proves that Spain was looking up to European Union's officials and united decisions. When considering reopening for tourism in June 2020, the country also notably followed several communications published by the European Commission.⁶²⁹

Those first reactions and measures are viewed negatively,⁶³⁰ but it should be remembered that Spain was one of the first countries to have clusters of COVID-19 cases reported, so it did not have that many other strategies, experiences or plans

⁶²⁸ U.A. Viguria, N. Casamitjana, "Early Interventions and Impact of COVID-19 in Spain," *International Journal of Environmental Research and Public Health*, vol. 18, no. 8 (2021), pp. 3–5.

⁶²⁹ Such as: European Commission Communication, "Tourism and transport in 2020 and beyond" (COM (2020 550 final); European Commission Communication, "Towards a phased and coordinated approach for restoring freedom of movement and lifting internal border controls" (2020/C 169/03); European Commission Communication, "Guidelines on the progressive restoration of transport services and connectivity" (2020/C 169/02); EU Recommendation 2020/648 on vouchers offered to passengers and travellers as an alternative to reimbursement for cancelled package travel and transport services in the context of the COVID-19 pandemic; European Commission Communication, "EU Guidance for the progressive resumption of tourism services and for health protocols in hospitality establishments" (2020/C 169/01).

⁶³⁰ M. Osuchowska, "Ograniczenia praw...", pp. 218–219.

to draw upon. Once the European Union started creating directions and recommendations, Spanish officials followed them adapting them to the country's specific needs. On 1 April 2020, as one of the first Member States, Spain signed a joint declaration aimed at emphasizing the importance of respecting EU values, in particular the rule of law during the COVID-19 pandemic. However, when it comes to introducing those regulations, both the matter and form of their preparation went beyond the constitutional regulations. The principle of proportionality is also questioned, which is reflected in numerous lawsuits filed by citizens, although this is not the only allegation raised in the complaints. There has also been a visible lack of a coherent concept of economic support.⁶³¹

The Netherlands introduced the first restrictions on 9 March 2020, when citizens were asked to stay in their homes if possible and to keep social distance. Three days later, on 12 March, so-called "intelligent lockdown measures"⁶³² were introduced. Their main objective was to protect people and prevent the spread of the virus while keeping the economy running. The intelligent lockdown measures included cancellation of events attended by more than 100 people, limited visits to the elderly and other vulnerable people, and promoted working at home whenever possible. Soon churches cancelled their services, universities switched to online teaching and many shops temporarily closed. Further measures were announced at press conferences held by the government on a regular basis. Following restrictions included closing nursery homes to visitors, limiting the number of funeral attendees to 30, prohibiting gatherings of more than two people (not counting the household members), and closing some recreation areas and beaches. Only necessary businesses, shops and public transportation were allowed to continue their operations but they had to obey health and social distancing regulations. Restaurants and bars had to close as well but were allowed to deliver their food.⁶³³

The government quickly developed and presented an economic plan for the COVID-19 crisis. On 31 March, in order to maintain jobs, companies with low turnover for three months (provided that all staff remained in their jobs) could apply for a compensations of 90% of wages. Moreover, those who were self-employed at the time could receive social benefit allowances for three months, companies that were hit by the lockdown measures could receive an extra subsidy of 4,000 euro, and start-up companies could borrow up to 2 million euro. Furthermore, contract workers received a social benefit allowance of 600 euro for three months and a national airline KLM received a 1 billion euro loan and state's guarantees for another 2.4 billion euro loans.⁶³⁴

⁶³¹ Ibid.

⁶³² See: A. Schippers, *The Netherlands: an 'Intelligent Lockdown'*, University of Sheffield, at <<https://www.sheffield.ac.uk/social-sciences/research/centres/ihuman/disability-and-covid-19-global-impacts/netherlands-intelligent-lockdown>>, 20 June 2021.

⁶³³ G. Antonides, E. van Leeuwen, *Covid-19 Crisis in the Netherlands: 'Only together we can control Corona'*, Mind & Society, at <<https://link.springer.com/content/pdf/10.1007/s11299-020-00257-x.pdf>>, 20 June 2021.

⁶³⁴ Ibid.

Due to the outbreak of the COVID-19 pandemic, the judicial procedure had to adapt to the new conditions. As a result, the courts principally work remotely whenever it is possible. From 17 March to 16 April 2020, only very urgent cases were conducted online (usually via Skype) or by telephone in the courts. Such cases may include cases relating to pre-trial detention, family supervision, and cases relating to the detention of immigrants. From 7 April to 10 May 2020, apart from very urgent cases, most cases were also settled online or by phone. A new general (not particular) law on COVID-19 was discussed for many months, one that would “anchor” the measures applied in law (*Tijdelijke wet maatregelen COVID-19*) and it entered into force on 1 December 2020. According to the new regulations, mayors are now required to make many decisions after consultation with the municipal health services.⁶³⁵ The act also introduces the concept of a safe distance that people are to keep from each other when they are outside. This distance is determined in agreement with the National Institute for Health and Environment (in Dutch: *Rijksinstituut voor Volksgezondheid en Milieu*, also known as RIVM). Also, it is generally forbidden to gather in larger groups, but the details are to be determined by an ordinance. However, this does not apply to religious assemblies, meetings of the States General, elections, meetings of city councils, etc. The act also stipulates that the conditions under which mass events may be organized shall be determined by way of a ministerial order. Further, it introduces the possibility of introducing regulations on general public hygiene rules and the use of generally accessible facilities, and it is to define the distance to be kept from the others.⁶³⁶ Since October 2020, restaurants and bars have been closed, and in December a new lockdown was introduced for a month.⁶³⁷

On 23 January 2021, the government introduced 9 pm – 4:30 am curfew as a proportional measure to tackle the COVID-19 crisis. A group called *Viruswaarheid* (*Virustruth*) appealed that decision to the court. On 26 February, The Hague Court of Appeal decided that the curfew’s limitation of constitutional freedoms “is justified.”⁶³⁸ This ruling overturned a judge’s decision made earlier that month that the government overstepped its legal powers.⁶³⁹

⁶³⁵ *Wet publieke gezondheid*, Overheid.nl, at <https://wetten.overheid.nl/BWBR0024705/2021-06-01#HoofdstukV_Paragraaf3_Artikel30>, 20 June 2021.

⁶³⁶ G. Krawiec, “Ograniczenia praw i wolności obywatelskich w okresie pandemii COVID-19 w Królestwie Niderlandów [Restrictions of Freedoms and Rights during the COVID-19 Pandemic in Kingdom of the Netherlands],” in: K. Dobraniecki, B. Przywora (eds.), *Ograniczenia praw i wolności...*, p. 235.

⁶³⁷ Government of the Netherlands, *Lockdown in Order to Minimise Contact between People*, 14 December 2020, at <<https://www.government.nl/latest/news/2020/12/14/lockdown-in-order-to-minimise-contact-between-people>>, 20 June 2021.

⁶³⁸ *Hague Court of Appeal’s Ruling on C/09/607056 / KG ZA 21-118*, Rechtspraak, at <<https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:GHDHA:2021:285&showbutton=true&keyword=ECLI%3aNL%3aGHDHA%3a2021%3a285>>, 20 June 2021.

⁶³⁹ *Dutch Appeals Court Says Coronavirus Curfew Was Right Move*, Reuters, 26 February 2021, at <<https://www.reuters.com/world/europe/dutch-appeals-court-says-coronavirus-curfew-was-right-move-2021-02-26/>>, 20 June 2021.

As of 20 June 2020, weddings in the Netherlands may be attended by no more than 50 people, and funerals by no more than 100 people. Schools and universities are open or partially open. Recreational, cultural and sports venues are open and events can be held. People are expected to work from home if possible and receive no more than four guests over the age of 13. Travel inside the country is allowed only if essential, however, travel abroad is allowed to a regularly updated list of countries with low rate of infection.⁶⁴⁰

The pandemic was a shock to the Dutch society and negatively affected many areas of life. Initially, there was an information chaos, and the actions taken by the government were frequently incomprehensible to ordinary people and judged by business as insufficient. Concerns have been expressed about the place and importance of the Netherlands in the “new normality” – some believe that in many areas the country will no longer count. The government’s lethargy in introducing new legal solutions was justified by the need to ensure that the new legal regulations do not violate the general principles of the constitution in the area of human rights.⁶⁴¹

At the beginning of the pandemic in the Federal Republic of Germany, due to the political system of that country, the response to the spread of SARS-CoV-2 was left to the individual states (lands). This was due to the fact that these states, based on their *Katastrophenschutzgesetzen*, had effective legal means to prevent and combat the effects of infectious diseases, including COVID-19, established in accordance with constitutional standards for the protection of human rights and respect for human dignity. The scale of the coronavirus pandemics and its effects, which went beyond the borders of the federal states as well as exceeded any initial projections, made it necessary to undertake multifaceted and nationwide measures within the entire federation. For this reason, the response to COVID-19, including interference with human rights, is currently taking place at the level of both the individual states and the federal authorities. The government eventually introduced restrictions on the freedoms of profession and economic activity, as well as restrictions on contacts or the prohibition of assembly and restrictions related to the exercise of religious freedom.

On 16 March 2020, the federal authorities introduced controls and limited passenger traffic at the borders with Austria, Denmark, France, Luxembourg and Switzerland. On the next day, the entry to Germany of people from outside the Schengen area was restricted.⁶⁴² On 10 April 2020, people returning to Germany

⁶⁴⁰ Government of the Netherlands, *Coronavirus Measures in Brief*, at <<https://www.government.nl/topics/coronavirus-covid-19/tackling-new-coronavirus-in-the-netherlands/coronavirus-measures-in-brief>>, 20 June 2021.

⁶⁴¹ G. Krawiec, “Ograniczenia praw...,” p. 243.

⁶⁴² A. Syryt, “Ograniczenia praw i wolności obywatelskich w okresie pandemii COVID-19 w Republice Federalnej Niemiec [Restrictions on the Exercise of Freedoms and Rights during the COVID-19 Pandemic in Federal Republic of Germany],” in: K. Dobraniecki, B. Przywora (eds.), *Ograniczenia praw i wolności...*, p. 319.

were obliged to undergo a compulsory fourteen-day home quarantine. The rules governing the administration and the course of quarantine were determined by the authorities of individual federal states. On 22 March 2020, bars and restaurants were closed, except for delivering food. It was allowed to open stores groceries, pharmacies, gas stations, banks, post offices and institutions providing basic needs. However, service establishments related to beauty industry, including beauty salons and hairdressing salons, were closed. From mid-April, smaller shops were gradually allowed to open (with an area of up to 800 m²), provided that they adhered to sanitary standards. Since May 2020, all stores have been opened and the decision on this matter has been left to each individual state. On the other hand, until 31 August 2020, the organization of mass events remained banned. In some lands, such as Bavaria, a curfew was introduced. The gradual lifting of travel restrictions led the lands to introduce an order to cover the mouth and nose in public transport and shops. It should be emphasized that the provisions governing the obligations in this respect are not uniform and, as in many other cases, they differ from one federal state to another.⁶⁴³ Before the COVID-19 pandemic, it was possible to use legal norms of individual federal states contained in the *Katastrophenschutzgesetz*, amend the *Infektionsschutzgesetz* and grant extensive powers to the federal government in the field of COVID-19, including those related to the possibility of suspending the application of certain legal acts.⁶⁴⁴

Compared to other countries, the Swedish legislator did not initially decide to introduce far-reaching restrictions on the public space. The main instruments used in counteracting the COVID-19 pandemic were recommendations and guidelines addressed to citizens, entrepreneurs running restaurants or organizing mass events, as well as manufacturers of medications and hygiene products. Quantitative restrictions were also introduced in regard to the possibility of gatherings and visiting people in nursing homes. Restrictions in the Kingdom of Sweden affected the right of movement, to run business, and of public gatherings. Interestingly, during the COVID-10 pandemic, Sweden did not close all schools completely. Primary schools operated under normal conditions; however, secondary schools and universities switched to distance learning.⁶⁴⁵

What is particularly outstanding and unique is the fact that in contrast to other EU's Member States, Sweden did not adopt the model of strict restrictions on the rights and freedoms of citizens in response to the COVID-19 pandemic. Legal instruments already existing in Sweden were used, supplemented with elements enabling them to function more efficiently. The initial effectiveness of the Swedish model was evident. However, it is more the result of the discipline of Swedish citizens, their mutual cooperation, keeping social distancing and adhering

⁶⁴³ Ibid., p. 320.

⁶⁴⁴ Ibid., p. 325.

⁶⁴⁵ B. Przywora, A. Wróbel, "Ograniczenia praw i wolności obywatelskich w okresie pandemii COVID-19 w Szwecji [Restrictions of Rights and Freedoms during the COVID-19 Pandemic in Sweden]," in: K. Dobraniecki, B. Przywora (eds.), *Ograniczenia praw i wolności...*, p. 357.

to the rules of hygiene. A clear example of cooperation in the fight against the COVID-19 is the attitude of Swedish teachers, who filled in the questionnaires regarding their skill sets, and some of them were delegated during the school closure to help the elderly. Special emphasis was placed on the continuous monitoring of procedures and legislation related to preventing the spread of infectious diseases. The COVID-19 pandemic did not spur the introduction of revolutionary changes in Swedish law and policies. One could say that the existing law and procedures appropriate to the COVID-19 pandemic were used. Thus, the Swedish legal system, unlike that in many Member States, did not experience an “amendment shock” at the level of acts on limiting the rights and freedoms of citizens, as well as in the scope of freezing the state economy, but only a specific subsumption of the actual state of affairs was made to the regulations.⁶⁴⁶

However, all in all, Sweden became Europe’s cautionary tale.⁶⁴⁷ After initially being a “COVID-sceptics’ safe haven” and not restricting the lives of its citizens, Sweden lost 40% more people than the United States, 12 times more than Norway and six times more than Denmark. For a population of only 10 million, these are huge numbers.⁶⁴⁸ Sweden’s 42.5% households are single-person ones, so protecting its citizens could have been a fairly easy task. Swedish virologist Lena Einhorn said that the country’s strategy was a dramatic failure.⁶⁴⁹ Sweden’s excess mortality concentrated on the elderly, where one review found lack of personal protection equipment, testing and not very well qualified staff.⁶⁵⁰

In December 2020, both King Carl XVI Gustaf and Prime Minister Stefan Lofven said that they failed the public and that Sweden’s somewhat relaxed approach was a mistake, failing to protect the elderly in care homes.⁶⁵¹ Prime Minister’s words are surprising considering that on 3 April 2020 he told a Swedish newspaper *Dagens Nyheter* that the country needed to prepare for counting the dead in thousands.⁶⁵² All along, the government’s plan was to develop herd immunity and, despite ECDC’s recommendation to wear masks, it actually recommended against wearing protective masks in public places (with the exception of places where healthcare professionals treated patients that had or could have

⁶⁴⁶ Ibid., p. 374.

⁶⁴⁷ P.S. Goodman, *Sweden Has Become the World’s Cautionary Tale*, The New York Times, 7 July 2020, at <<https://www.nytimes.com/2020/07/07/business/sweden-economy-coronavirus.html>>, 20 June 2021.

⁶⁴⁸ Ibid. Data as of 7 July 2020.

⁶⁴⁹ NewStatesman, *Sweden’s Covid-19 Failures Have Exposed the Myths of the Lockdown-Sceptics*, at <<https://www.newstatesman.com/world/europe/2020/12/sweden-s-covid-19-failures-have-exposed-myths-lockdown-sceptics>>, 20 June 2021.

⁶⁵⁰ F. Diderichsen, *How did Sweden Fail the Pandemic?*, International Journal of Health Services, at <<https://journals.sagepub.com/doi/full/10.1177/0020731421994848#>>, 20 June 2021.

⁶⁵¹ *Coronavirus: Swedish King Carl XVI Gustaf Says Coronavirus Approach ‘Has Failed,’* BBC, 17 December 2020, at <<https://www.bbc.co.uk/news/world-europe-55347021>>, 20 June 2021.

⁶⁵² K. Bjorklund, A. Ewing, *The Swedish COVID-19 Response Is a Disaster. It Shouldn’t Be a Model for the Rest of the World*, Time, 14 October 2020, at <<https://time.com/5899432/sweden-coronavirus-disaster/>>, 20 June 2021.

COVID-19). In early May 2020, the Public Health Agency estimated that by the end of May, 40% of Stockholm's population would have protective antibodies. The Agency's own study later showed that this was not the case, and by late June only 11.4% of Stockholm's population acquired the antibodies.⁶⁵³

This approach did not save Swedish economy. Its GDP fell 8.6% during the second quarter of 2020. At the same time, Denmark registered a 7.4% fall and Finland a 3.2% fall. However, Sweden's chief epidemiologists and main creator of its strategy said that the economic aspect was not taken into consideration when making a decision whether or not to impose a lockdown.⁶⁵⁴ Due to the fact that Swedish people responded to the fear of the virus by limiting their shopping, Sweden suffered a much higher death rate than neighbouring countries while not collecting any economic gains.⁶⁵⁵

Before the COVID-19 crisis, the Member States had a visible tendency to determine and fund their own priorities in public health sector in an uncoordinated and rather unilateral manner.⁶⁵⁶ As can be seen from the selected examples above, the Member States have adopted different strategies to combat COVID-19. Initially, their actions were incoherent and chaotic, very often at the expense of the freedoms and rights of EU citizens. Only with time did the policies of the Member States begin to become similar and adopt similar models due to two factors: internal, that is, the Member States learned from each other and imitated their solutions, and external – EU communications contributed to the coordination of actions. The exception was Sweden, which for almost 1.5 years stuck with its model, but finally admitted that it was a failure and both the king and the government apologized to citizens. The authors believe that despite the initially rather nationalistic and selfish attitudes of the Member States, thanks to the EU press releases and decades of integration of the Member States, gestures of solidarity began to dominate, and the policies of the Member States were more and more similar. Over time, the Member States' adherence to EU recommendations began to increase. In the future, the authors recommend that the Member States place greater trust in the EU institutions and take them into account from the very beginning in planning national strategies.

⁶⁵³ Ibid.

⁶⁵⁴ S. Baker, *Sweden's GDP Slumped 8.6% in Q2, More Sharply than its Neighbors Despite its No-Lockdown Policy*, Business Insider, 14 August 2020, at <<https://www.businessinsider.com/coronavirus-sweden-gdp-falls-8pc-in-q2-worse-nordic-neighbors-2020-8?r=US&IR=T>>, 20 June 2021.

⁶⁵⁵ P.S. Goodman, *Sweden Has Become...*

⁶⁵⁶ L. van Schaik, K.E. Jørgensen, R. van de Pas, "Loyal at Once? The EU's Global Health Awakening in the Covid-19 Pandemic," *Journal of European Integration*, vol. 42, no. 8 (2020), p. 1146.

2. Actions Taken by European Union

The pandemic itself was predictable. Moreover, it was expected and announced by many specialists throughout the last few years. Repeated warnings have been given by respected individuals and groups of experts in numerous scientific articles, reports and press releases. For instance, the prediction of global pandemic was mentioned in the Report of the “High-level Panel on the Global Response to Health Crises” in 2016.⁶⁵⁷ In 2019, the Global Preparedness Monitoring Board clearly expressed their concern that the world is not prepared for a swift, virulent respiratory pathogen pandemic.⁶⁵⁸ This was confirmed in a simulation exercise conducted in the United States of America in October 2019 that showed “major unmet global vulnerabilities and international system challenges posed by pandemics that will require new robust forms of public–private cooperation.” Around the same time, the Global Health Security Index report stated a similar warning.⁶⁵⁹

After the SARS outbreak in 2003, the European Centre for Disease Prevention and Control was established. Its role is to strengthen Europe’s defences against infectious diseases. Its core functions are surveillance, epidemic intelligence, response, scientific advice, microbiology, preparedness, public health training, international relations, and health communication.⁶⁶⁰ However, due to financial crisis in 2008 and the following financial cuts on national public health spending, the organisation was struggling with staff costs and daily expenses.⁶⁶¹ Additionally, there was a noticeable struggle in cooperation and communication between the Member States, in particular with regard to the Epidemic Intelligence Information System and the European Surveillance System. Despite introduced instruments and institutions such as the EU Decision on Serious Cross-Border Threats to Health,⁶⁶² EIT Health⁶⁶³ and the ECDC, the EU’s governance framework on public health is still a continuous work in progress.⁶⁶⁴

In 2020, everyone learnt that viruses do not care about national borders or diplomatic relations. The world went through a traumatic experience, and it has shown humanity in national and international politics. However, the first

⁶⁵⁷ *Panel Makes Recommendations on Health Crises, Health-Related SDGs*, SDG Knowledge Hub, 10 February 2016, at <<http://sdg.iisd.org/news/panel-makes-recommendations-on-health-crises-health-related-sdgs/>>, 20 June 2021.

⁶⁵⁸ Global Preparedness Monitoring Board, *A World at Risk. Annual report on global preparedness for health Emergencies*, September 2019, at <https://apps.who.int/gpmb/assets/annual_report/GPMB_annualreport_2019.pdf>, 01 July 2021.

⁶⁵⁹ A. Renda, R. Castro, “Towards Stronger EU Governance of Health Threats after the COVID-19 Pandemic,” *European Journal of Risk Regulation*, vol. 11, no. 2 (2020), p. 3.

⁶⁶⁰ ECDC, *About ECDC*, at <<https://www.ecdc.europa.eu/en/about-ecdc>>, 20 June 2021.

⁶⁶¹ A. Renda, R. Castro, “Towards Stronger EU...,” p. 5.

⁶⁶² *Decision No 1082/2013/Eu of the European Parliament and of the Council of 22 October 2013 on serious cross-border threats to health and repealing Decision No 2119/98/EC*, at <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32013D1082>>, 20 June 2021.

⁶⁶³ EIT Health, *Together We Are Stronger*, at <<https://eithealth.eu/covid-19/>>, 20 June 2021.

⁶⁶⁴ A. Renda, R. Castro, “Towards Stronger EU...,” p. 5.

reactions of international organisation and states to the spread of the coronavirus were chaotic and uncoordinated, more and more actions of solidarity have been noticed in the months that followed. What is important, many of such gestures went beyond borders or disagreements. Countries, global companies, local businesses and ordinary people tried to cooperate and helped each other in the best ways they could. Before we delve into the actions taken by the EU within its borders, let us have a look at the first recommendations of World Health Organisation, which took a role of global leader in introducing policies and strategies to fight pandemic.

According to the European Solidarity Tracker, between 4 March 2020 and 30 September, there were 131 acts of solidarity. After the first outbreaks of COVID-19 in Europe, following understandable initial chaos and panic, there was a wave (or even a flood) of mutual support between the Member States, EU citizens and EU institutions. Everyone knew that no matter the politics, at that moment people needed to protect and support each other. In September 2020, in a study of 14,000 respondents from seven countries (including Poland, the United Kingdom, France, Germany, Italy, the Netherlands and the US) on the impact of the pandemic on trust, social cohesion, democracy and expectations towards the future, it was found that “the pandemic has created a new sense of togetherness, making us more aware of our shared humanity and of the living conditions of others”.⁶⁶⁵ The researchers concluded that many people feel that COVID-19 has changed us into more caring societies, and while “there is disappointment with the EU’s handling of COVID-19, majorities still see its relevance, and support European and multilateral cooperation over ‘go-it-alone’ approaches, including taking on common debt within the EU”.⁶⁶⁶

Although the EU itself does not hold a position of a Member State of the WHO, all 27 Member States are amongst the 194 Member States of the WHO. In practical terms, the Member States are coordinated to some point by the EU delegation in Geneva in voicing their concerns and goals on WHO’s matters. It is also worth mentioning that the European Commission was the main funder of WHO’s Universal Health Coverage partnership program. It is WHO’s flagship program that aims to enable social health protection and health systems strengthening worldwide. Besides, the European Commission, the European Parliament and the senior leadership of the WHO⁶⁶⁷ hold annual meetings that focus on improving communication and creating strategies which would help to achieve common goals, governance and protection.⁶⁶⁸

⁶⁶⁵ *The New Normal?*, More in Common, at <<https://www.moreincommon.com/newnormal/>>, 20 June 2021.

⁶⁶⁶ Ibid.

⁶⁶⁷ WHO’s leadership team can be seen here: World Health Organization, *WHO Headquarters Leadership Team*, at <<https://www.who.int/director-general/who-headquarters-leadership-team>>, 20 June 2021.

⁶⁶⁸ Ibid., p. 1148.

In pre-COVID-19 times, the Member States were generally not eager to share their competence in public health with the European Union. They reluctantly agreed on funding European and global health programmes, because it was considered an area of national policy. As a result, global health and potential health crises were not high on the European political agenda. This partially explains why the COVID-19 pandemic has been declared and Europe plunged into a big shock and crisis. To put it simply, in 2020 there was no comprehensive and effective EU strategy on handling huge global health crises in place. Even though some Member States (such as France, Germany and Sweden) had developed their own public health strategies, there was a visible lack of common approach on the EU level.⁶⁶⁹

The President of the European Commission, Ursula von der Leyen, and the Vice-President, Josep Borrell advocated for “global cooperation and solidarity through multilateral efforts which they view as the only effective and viable avenues”.⁶⁷⁰ They also agreed that the WHO needs to continue being able to lead the international response to pandemics, current and future.⁶⁷¹ The EU’s current efforts to uphold the WHO are commendable but it is not traditionally known to be a strong supporter of the WHO, despite its ongoing rhetoric on adhering strongly to effective multilateralism. However, for years now, the EU has neglected the WHO, both politically and structurally, especially when it comes to who and how leads the organization. In the years 2016–2017 it was accepted that the Director would be a Chinese woman, Margaret Chan (who has Chinese citizenship), replaced by Tedros Adhanom Ghebreyesus, clearly backed by Chinese officials. The amount of money spent on certain projects and efforts may end up meaning nothing if one does not have enough political influence and power. China stems its political influence from economic links with many low- and middle income countries and it invests in healthcare infrastructure and the production of medicines (including vaccines) in third-world countries through state-owned manufacturing companies.⁶⁷² Unfortunately, in its initial responsiveness to the COVID-19 outbreak, the WHO did not meet expectations. In fact, its somewhat lenient position has been widely criticised around the world.⁶⁷³

⁶⁶⁹ Ibid., p. 1149.

⁶⁷⁰ European Commission, *US announcement on breaking ties with the World Health Organisation: Statement by the President of the Commission Ursula von der Leyen and High Representative/ Vice-President Josep Borrell*, at <https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_20_983>, 20 June 2021.

⁶⁷¹ Ibid.

⁶⁷² L. van Schaik, K.E. Jørgensen, R. van de Pas, “Loyal at Once?...” p. 1151.

⁶⁷³ See: P. Beaumont, *UK and US Criticise WHO's Covid Report and Accuse China of Withholding Data*, The Guardian, 30 March 2021, at <<https://www.theguardian.com/world/2021/mar/30/who-criticises-chinas-data-sharing-as-it-releases-covid-origins-report>>, 20 June 2021; B. Altug, *WHO Criticized for ‘Contradictory’ COVID-19 Statements*, AA, 7 July 2020, at <<https://www.aa.com.tr/en/europe/who-criticized-for-contradictory-covid-19-statements/1902436>>, 20 June 2021; *WHO Criticised for Major Delays in COVID-19 Origins Investigation*, SkyNews, 15 January 2021, at <https://www.skynews.com.au/details/_6223034787001>, 20 June 2021.

In comparison to the previous decade, the pandemic has highly influenced and changed WHO as an important organisation. Although the EU had always been vocal and committed to united and multilateral efforts, it was not until the COVID-19 pandemic when the EU realised how essential effective cooperation under the WHO structure is during this and any other future pandemics. It is particularly valid in terms of obtaining actual information on the spread of the virus and on actions taken to stop it in other parts of the world. Given that infectious diseases cannot be simply stopped at national borders, global approach and cooperation are currently view as indispensable, also from the EU's perspective.⁶⁷⁴

Perhaps the most remarkable step in the direction of further integration of the Member States can be noticed in the vaccine purchasing and distribution process. The EU's reasonable concerns over strategic autonomy accelerated the developing of a common strategy. This prevented the Member States from not treating each other as competitors in vaccine rollout. It is even more admirable given the risk that the European Commission had to take. Due to its nature, a vaccine race is a highly politicised and unsure business. The European Commission was fully aware of the fact that if vaccine investments did not pay out, it would be blamed for wasting public funding, which would then contribute to general distrust in the EU and vaccine hesitancy of many European citizens.

At the moment, the EU faces a major contradiction between seeking neo-liberal macro-economic policies that impose austerity and competitiveness, and pursuing solidarity and economic and social cohesion through social and cohesion funds.⁶⁷⁵ The key part of any regional development program consists of socio-spatial redistribution aiming at reducing unevenness and socio-spatial injustices, which is inconsistent with austerity. The EU leaders need to acknowledge it. Otherwise, the European society will not be able to make any major positive changes.⁶⁷⁶

In fact, the EU actually has a tool that measures European cohesion by tracking a range of socio-economic and political variables. The EU Cohesion Monitor is an index of all the Member States and the UK, and of their readiness to work together. Its central assumption is that European cohesion is the EU's precondition to its capacity to act and that working together successfully makes it stronger.⁶⁷⁷ Indeed, cohesion is the glue that holds the Member States together. Currently, three major threats have been identified with regard to the European cohesion:

- The southern challenge – Countries that were the most affected by the crisis (such as Spain, Greece, Italy, Bulgaria, Romania, Croatia) are at risk

⁶⁷⁴ Ibid., p. 1156.

⁶⁷⁵ C. Hadjimichalis, "An Uncertain Future for the Post-Brexit, Post-COVID-19 European Union," *European Urban and Regional Studies*, vol. 28, no. 1 (2021), <https://doi.org/10.1177/0969776420968961>, pp. 8–13.

⁶⁷⁶ Ibid.

⁶⁷⁷ C. Busse et al., *EU Cohesion Monitor*, European Council on Foreign Relations, 10 December 2020, at <<https://ecfr.eu/special/eucohesionmonitor/>>, 20 June 2021.

of stagnation, rise of unemployment and veer from the wealthier Member States. Unless they feel that the EU has effectively and successfully responded to the crisis, it could eventually lead to growing frustration among their populations and scepticism towards the EU.

- The northern challenge – Some countries, such as Austria, Denmark, Finland, the Netherlands, Sweden and maybe even Germany, can simply lose patience with the Member States that constantly need bailouts or suffer from inside corruption and weak rule of law. Greece makes a perfect examples of such countries. The “northern” countries may struggle to understand their issues and eventually diverge from the EU. Thus, it is vital for economically unstable Member States to address their financial and legal problems and take this weight off the shoulders of the northern Member States.
- The central European challenge – In some countries in this region, particularly in Hungary and Poland, judicial independence, protection of minorities and media pluralism are under a great strain. The pandemic has only deepened these issues. In May 2020, Freedom House’s annual Nations in Transit report evaluated the state of democracy in Poland and Hungary. Poland was categorised as a semi-consolidated democracy and Hungary as a transitional/hybrid regime and no longer a democracy.⁶⁷⁸ If the EU turns out to be ineffective in pushing these Member States to comply with the rule of law, it might cause a major problem for the integrity of the EU and the entire region can suffer.⁶⁷⁹

In April 2020, the European Council on Foreign Relations conducted a poll across nine Member States, including Bulgaria, Denmark, France, Germany, Italy, Poland, Portugal, Spain, and Sweden. 63% of respondents agreed there was a need for more cooperation at the EU level. In Portugal (91%), Spain (80%), and Italy (77%), the numbers of approval in response to this question were exceptionally high. All in all, almost half of respondents in all nine countries disagreed with the claim that the EU had lived up to its responsibilities during the crisis, with numbers especially high in Italy (63%), France (61%), and Spain (52%). Despite this level of discontent, a majority of respondents placed their hopes in greater EU cooperation.⁶⁸⁰

A majority of the surveyed nations agreed that the Member States should share the financial burden of the crisis (70% of the respondents in Portugal, 63% in Spain,

⁶⁷⁸ Hungary ‘No Longer a Democracy’ Says Freedom House, Kafkadesk, 6 May 2020, at <<https://kafkadesk.org/2020/05/06/hungary-no-longer-a-democracy-says-freedom-house/>>, 20 June 2021.

⁶⁷⁹ C. Busse et al., *The Crisis that Made the European Union: European Cohesion in the Age of Covid*, European Council on Foreign Relations, pp. 4–5, at <<https://ecfr.eu/publication/the-crisis-that-made-the-european-union-european-cohesion-in-the-age-of-covid/>>, 20 June 2021.

⁶⁸⁰ S. Dennison, P. Zerka, *Together in trauma: Europeans and the world after Covid-19*, European Council on Foreign Relations, 29 June 2020, at <https://ecfr.eu/publication/together_in_trauma_europeans_and_the_world_after_covid_19/>, 20 June 2021.

57% in Italy, 55% in Poland, 54% in Bulgaria), with some being not that confident in this statement (47% of the respondents in France, 43% in Germany, 30% in Sweden and only 24% in Denmark supported the idea of a shared financial burden).⁶⁸¹ 52% of all respondents believe that the EU should have a more unified response to global threats and challenges, and when each nation was asked on their broad attitudes towards the EU, most of them categorised themselves either as engaged Europeans or switched-off Europeans.⁶⁸²

According to the European Parliament's survey that was conducted in July and October 2020, two-thirds of European citizens thought that the EU should have more powers to deal with crises such as the COVID-19 pandemic.⁶⁸³ Ironically, the COVID-19 pandemic might have only brought those countries closer to the EU. However, some of the "northern" countries, such as Austria, Denmark, Finland, the Netherlands and Sweden, showed lower levels of support and enthusiasm when asked whether or not the EU should have bigger financial resources to address the consequences of the crisis.⁶⁸⁴ Overall, the EU actions are evaluated positively and there is a will to broaden the EU's competence in handling crises such as pandemics.

3. Recommendations of Actions Which Should Be Taken to Handle Crises in the European Union

This is not the first pandemic of the century, and researchers repeatedly warn that due to certain demographic trends (such as urbanisation, environmental degradation, climate change, persistent social and economic inequalities) as well as globalised trade and travel, it probably will not be the last one. COVID-19 exposed that at least at the current state of European health policies, the Member States are not ready for handling such threats quickly and effectively.⁶⁸⁵ In previous chapters the deficiencies of both national and the EU mechanisms were pointed out. In this subchapter, the authors share a wide range of observations and recommendations on what can be improved in order to prepare for similar crises in the future.⁶⁸⁶

⁶⁸¹ Ibid.

⁶⁸² 50% of Spanish respondents, 44% of Portuguese respondents, 38% in Denmark, 34% in Poland, 30% in Italy, 30% in Sweden, 29% in Germany, 28% in France and 24% in Bulgaria called themselves engaged Europeans. 19% of Spanish respondents, 22% of Portuguese respondents, 21% in Denmark, 22% in Poland, 20% in Italy, 21% in Sweden, 26% in Germany, 23% in France and 20% in Bulgaria called themselves switched-off Europeans. Source: Ibid.

⁶⁸³ C. Busse et al., *The Crisis...*, pp. 19–20.

⁶⁸⁴ Only a little over 50% of respondents were positive about the EU's future cooperation; C. Busse et al., *The Crisis...*, pp. 19–20.

⁶⁸⁵ D. Carroll et al., "Covid-19: The Road to Equity and Solidarity. Preventing the Next Pandemic: the Power of a Global Viral Surveillance Network," *BMJ* 2021, pp. 1–2, at <<https://www.bmj.com/content/372/bmj.n485>>, 1 July 2021.

⁶⁸⁶ Ibid.

The first recommendation worth mentioning was proposed by Dennis Carroll and his colleagues, and it is to build a surveillance system at the EU level. Apart from strengthening existing national and transnational health systems, a European surveillance system should be introduced that would cover wildlife, livestock and human populations. It could make use of already known geographical “hot spots” in order to detect as early as possible any viral transfer into human and livestock populations and stop it from spreading. It would highly enhance the EU’s ability to predict future threats and allow for prevention and early intervention.⁶⁸⁷ Latest diagnostic technologies and standardised protocols would be needed to detect early spillover in real time. Samples should be tested for many viruses from priority pandemic virus families, and other new viruses originating from wild animals. In order to ensure the maximum effectiveness of the surveillance system, the Member States should agree on safety protocols which would offer guidance on how to eliminate new pathogens from infected animals and humans as soon as they are discovered. Such a system would require setting up some governance and administrative mechanisms to cover all essential areas and ensure fluent communication flow within the system. Handling the roots of each spread instead of fighting with a pandemic when it is fully developed and difficult to stop might be the best way to be ready for potential epidemic and health crises in the future.⁶⁸⁸

The second solution is to focus on five climate-related public health areas, which include Governance, Information, Services, Determinants, and Capacity; and how they should be adjusted. At this point, some researchers believe that the COVID-19 pandemic is one of many signs indicating that the world has to urgently adjust public health care systems to the climate change and natural disasters. National public health systems were clearly overwhelmed by the quickly-spreading new virus. Even though at the moment there is no certain proof that SARS-CoV-2 is associated with climate change, experts have been worrying for decades that the global warming creates conditions (such as heat, drought, storms, and other related hazards) that support the rapid spread of such an infectious disease.⁶⁸⁹ The five climate-related areas of public health that can be adjusted to global warming and how it is changing the environment that we live in are: governance, information, services, determinants and capacity.

According to Mary Sheehan and Mary Fox, clear, allocated roles and responsibilities of international organisations and countries are essential to handle health crises.⁶⁹⁰ The response of the Member States to the COVID-19 pandemic revealed institutional confusion, even in an integrated group such as the EU. Addressing those institutional challenges while also addressing the climate change problem will require redoubling efforts to define clear modes of collaboration

⁶⁸⁷ Ibid., pp. 2–3.

⁶⁸⁸ Ibid., pp. 3–4.

⁶⁸⁹ M.C. Sheehan, M.A. Fox, “Early Warnings: The Lessons of COVID-19 for Public Health Climate Preparedness,” *International Journal of Health Services*, vol. 50, no. 3 (2020), pp. 264–270.

⁶⁹⁰ Ibid., p. 265.

among global actors and their responsibilities. This would certainly contribute to improving international public health strategies, which would be much stronger and more coordinated during future crises. They point out that one of the reason for the continuous shortages of N95 face masks is that they are needed not only in hospitals but also in the growing number of forest fires.⁶⁹¹

After the 2003 SARS outbreak, South Korea has protocols and legislation in place, and it provided transparency and quality communication between all involved actors. Korean Centres for Disease Control and Prevention quickly responded to COVID-19 with strong public messages on hand washing and social distancing, press briefings two times a day, targeted text messages to citizens, and always up-to-date online information. Better communication with the public, targeted messaging and clear protocols would highly contribute to better public emergency preparedness and resilience.⁶⁹² This is an excellent example of how a lesson can be learned from the pandemic, and South Korea should set an example for the European Union. Sheehan and Fox firmly believe that since public health agencies are responsible for carrying out a range of services to ensure population well-being, including testing, case reporting, surveillance, and contact tracing, then they need to be trained, retrained and prepared for this kind of crisis.⁶⁹³ Public health capacity is focused on technical skills, data and knowledge. However, a good leadership with skills to implement a coherent strategy that takes into account all aforementioned determinants is also necessary. Multiple universities across the globe, along with public health agency partners and citizen volunteers are developing an open database of COVID-19 policies in different countries, which should be later used by the EU to create coherent future policies.⁶⁹⁴ The EU should develop policies to repurpose existing workforce and hire new staff when needed as well as introduce high-tech tools and protocols that are ready for test and trace, especially given that they proved to be highly effective during the COVID-19 pandemic.⁶⁹⁵

According to Ralf Roloff, the EU's defence of democracy needs to go beyond the EU to its neighbouring countries and a return of positive conditionality need to be reconsidered. The EU should not tolerate any temptation of autocratic ruling within any of the Member States. One of the ways to achieve that is to link economic support out of the COVID-19 package to democratic values and the protection of civil and human rights. The Union's credibility depends strongly on democratic values.⁶⁹⁶

⁶⁹¹ Ibid., p. 265; EFI, *Why and How Forest Fires are Becoming a European Problem?*, 9 August 2018, at <<https://efi.int/news/why-and-how-forest-fires-are-becoming-european-problem-2018-08-09>>, 20 June 2021.

⁶⁹² M.C. Sheehan, M.A. Fox, "Early Warnings...", p. 266.

⁶⁹³ Ibid.

⁶⁹⁴ Ibid.

⁶⁹⁵ Ibid.

⁶⁹⁶ R. Roloff, "COVID-19...", pp. 34–35.

The EU's trade policy should be directly linked to its climate and development policies, and further progress on EU defence integration needs to be made. The EU needs to take responsibility for its own security. When it comes to economy, the EU should open a larger and broader debate on the social aspects of the market economy and of capitalism. Roloff states that the European model of a social welfare state that is currently combined with the market economy should be re-considered and adapted. However, the Member States' post-pandemic economic recovery should not take place at the expense of the green deal. He recommends it to be the heart of those programs and future initiatives.⁶⁹⁷

After COVID-19 pandemic it is clear that the EU needs to take a more proactive a stronger position in public health. In some Member States, where large parts of public health sector are privatised, it should be reconsidered in terms of future health protection and health crises management.⁶⁹⁸

According to Bisser Angelov, one of the main political consequences of the pandemic may be a reduced support for European integration.⁶⁹⁹ As the authors mentioned earlier, according to the EU's survey, this is not the case. However, the same survey found that many respondents were more likely to believe that in a crisis no one will help them than to believe that the EU and its institutions will.⁷⁰⁰ In order to avoid such developments in the future, it might be best for the EU to establish a body of experts. Its aim would be to prepare contingency plans for future crises that would detail how the EU can best serve as a platform for cooperation and recommend mutually compatible measures to each Member State.⁷⁰¹

Bisser Angelov expects the Member States to cut their defence budgets significantly in order to deal with more pressing economic issues. To minimise the negative impact of these actions, they should be coordinated at the EU level. He also believes that the Member States should compensate for each other's gaps and coordinate their actions in a complimentary way. When it comes to labour market, due to sudden popularity of working from home, the EU should invest in lifelong learning while the Member States improve their digital infrastructures and reduce potential bureaucratic burden.⁷⁰²

Sarah Wolff and Stella Ladi point out that the EU's adaptability is different across policy areas, hence it displays different degrees of capacity or necessity to change the said policy. For example, the European Green Deal may not need any major changes and it was reinforced with all major EU's institutions. Current

⁶⁹⁷ Ibid., p. 35.

⁶⁹⁸ Ibid.

⁶⁹⁹ B. Angelov, *European Integration after Covid-19*, Institute for Politics and Society, June 2020, p. 11, at <<https://www.politikaspolecnost.cz/wp-content/uploads/2020/06/European-Integration-after-Covid-19-IPPS.pdf>>, 20 June 2021.

⁷⁰⁰ S. Dennison, P. Zerka, *Together in trauma...*

⁷⁰¹ B. Angelov, *European Integration...*

⁷⁰² Ibid.

crisis tests the EU's policy adaptability as it provides a 'critical juncture' for a policy's path. It definitely showed that EU institutions acquired a bureaucratic capacity, and they managed to quickly come up with many propositions and repurpose funding when necessary. Wolff and Ladi emphasize that the EU's road towards the Recovery and Resilience Facility demonstrates that.⁷⁰³

The European Committee for Standardization (hereinafter: CEN) and the European Committee for Electrotechnical Standardization (hereinafter: CENELEC)⁷⁰⁴ identified four lessons that they have learnt from the COVID-19 pandemic. Firstly, they point out that the digital transformation needs to be fast tracked. They plan to invest more in the development of user-friendly digital platforms for the efficient, collaborative creation of standards online. They also aim to make the best use of modern technologies in order to enable virtual standards development, while increasing the speed of this development. They also see a need for more "smart mixes" between virtual and physical engagement.⁷⁰⁵ Secondly, CEN and CENELEC believe that they need to further explore the resilient business models that have worked for businesses during this pandemic thanks to adapting. They noticed openness to alternative, sustainable business models that might be crucial in future crises.⁷⁰⁶ Thirdly, they believe there is a need to enhance stakeholder, Member and policy engagement. At the beginning of the pandemic, CEN and CENELEC noticed a big increase and closeness in its engagement with policymakers and regulatory authorities. They believe that future joint endeavours between the EU institutions will foster a better mutual understating of issues of concern for each of them.⁷⁰⁷ Lastly, they believe that the crisis showed the importance of information sharing and responsive cooperation at the international level, as well as a crucial value of a strong international standardization system.⁷⁰⁸

According to the European Federation of Pharmaceutical Industries and Associations, this pandemic tested Europe's supply chains like never in the past, and before any future crisis happens, it is important to understand what caused the medicine shortages that did happen. They also believe that the dialogue between institutions, governments and pharmaceutical companies is highly important because it allowed authorities to take the decisions necessary to ensure the

⁷⁰³ S. Wolff, S. Ladi, "European Union Responses to the Covid-19 Pandemic: Adaptability in Times of Permanent Emergency," *Journal of European Integration*, vol. 42, no. 8 (2020), pp. 1034–1035.

⁷⁰⁴ CEN and CENELEC are recognized by the EU and the European Free Trade Association (EFTA) as European Standardization Organizations responsible for developing standards at European level (as per the EU Regulation 1025/2012). CEN, CENELEC, *Lessons Learned During the Covid-19 Pandemic*, p. 11, at <https://www.cencenelec.eu/media/CEN-CENELEC/News/Publications/lessonslearned_covid19_pandemic.pdf>, 20 June 2021.

⁷⁰⁵ *Ibid.*, pp. 4–5.

⁷⁰⁶ *Ibid.*, p. 6.

⁷⁰⁷ *Ibid.*, pp. 7–8.

⁷⁰⁸ *Ibid.*, pp. 9–10.

continuity of supply, such as ensuring that workers reach their manufacturing sites (sometimes even across closed borders), implementing green lanes or agreeing on regulatory flexibilities to fast-track certain administrative procedures.⁷⁰⁹ According to the Federation, there needs to be a harmony in regulations by the relevant authorities across the EU. Measures to allow flexible labelling when it comes to multi-language labelling (for example allowing multi-language labelling to be downloadable from the manufacturers site) should be introduced, and there should be transparency and cooperation between all of the supply chain actors. Demand surges are in most cases unpredictable, so they encourage the EU and the Member States to maintain reserve supply of targeted critical medicines.⁷¹⁰

The EU has been and will continue to be a target of disinformation, influence operations, and foreign interference. In order to fight disinformation, the European Commission should formulate tailored responses to state-sponsored disinformation in order to properly deter particular country or actor by altering their strategic calculus in a coherent and coordinated manner. The Commission should review which state-based disinformation campaigns similar to the Russian attack against the EU in March 2020 could create similar challenges in the future, and prepare for them through including their staff on joint training, red-team drills, and risk-assessment exercises. It is also time to take a look at, and actually consider long-term picture of, and anticipate potential future disinformation campaigns, as well as prepare for them. The European Commission ought to offer appropriate backing to the bodies responsible for responding to disinformation, such as EUvsDisinfo. The Member States should also support the EU's fight against disinformation on their national digital platforms. Finally, the EU should be simply more transparent and open about its actions in order to prevent the spread of disinformation in the first place.

Another perspective to consider and address concerns the long term outcomes of disasters caused by epidemics, natural disasters and any other potential crises that may occur in the EU. The most urgent ones which needs to be addressed are the future economic crises, solidarity between the Member States, and a potential decline in mental health and morals of the EU citizens. Restrictive social distancing measures that were designed to flatten the curve and reduce the number of COVID-19 cases severely impacted national economics. According to the European Council on Foreign Relations, the EU should be prepared to offer more financial support and predict the long-term effects of recovery funds on how people in each Member State will feel about the EU.⁷¹¹

⁷⁰⁹ N. Moll, *Drug Shortages: Lessons From the COVID-19 Crisis*, The European Federation of Pharmaceutical Industries and Associations, 17 December 2020, at <<https://www.efpia.eu/news-events/the-efpia-view/blog-articles/drug-shortages-lessons-from-the-covid-19-crisis/>>, 20 June 2021.

⁷¹⁰ Ibid.

⁷¹¹ C. Busse et al., *The Crisis...*, p. 29.

The Member States and institutions are dependent on each other's effectiveness and communication. The EU should enhance its awareness of what is happening at a local level in the Member States when it comes to the restrictive measures that the Member States introduce, but also in identifying which of the Member States experienced the most devastation from the COVID-19 crisis and thus may need further help and support. It should also identify the areas where it should be more proactive and act strategically.⁷¹²

Sheehan and Fox call for effective public health policy that already takes account of the determinants of health to also address social, economic and mental well-being, provide social safety nets, but also to take into account health benefits from ongoing greening initiatives.⁷¹³ It should also be highlighted that the Member States cannot be simply put in one box. Each country has its own specific weaknesses that require unique and tailored solutions. Therefore, the open dialogue and effective communication with each Member State is essential. On the other hand, national leaders should be careful with what kind of narrative on the EU they create or allow to be spread in their countries. In the southern Member States this means sending the voters a message that the EU funds are only one of the ingredients which they need in order to recover, and that they have to be accompanied by structural reforms. At the same time in the north, the message should be sent that the EU is not just an economic initiative, and that they should be treating it more than just a market. Certain governments in central and eastern Europe, such as Poland and Hungary, have to accept that being a Member State entails obligations in terms of respecting common values. Moreover, all Member States absolutely need to avoid any temptations to create a narrative that nation states are more important than European or international cooperation. The governments shall also monitor inequalities within their nations as well as fulfil the needs of their youth. Young people's political awareness and the resulting voting decisions might depend on whether they feel that the EU and their national leaders have succeeded in their response to the crisis. As regards, the current state of the COVID-19 pandemic, young Europeans have to face many challenges, from the unemployment in a time of crisis resulting from the movement, studying and meeting restrictions, to the harmful effects of the pandemic on their mental health. They have to rebalance their work and personal life in the reality of working from home. The EU and the Member States should address these challenges and steer their actions in a positive direction.⁷¹⁴

In June 2021, the European Commission drew what they called "early lessons" that should be acted on. They believe that the EU should lead efforts to design

⁷¹² K. Shaw, P. Repyeuski, *Council Recommendation for Promoting Cooperation and Solidarity Amongst the Member States: A Far Enough Step?*, European Papers, 7 June 2021, at <<https://www.europeanpapers.eu/en/europeanforum/council-recommendation-promoting-cooperation-and-solidarity-amongst-member-states>>, 20 June 2021.

⁷¹³ M.C. Sheehan, M.A. Fox, "Early Warnings...", p. 266.

⁷¹⁴ Ibid., p. 30.

a new global surveillance system based on comparable data because it will be crucial for faster detection and better responses, and announced that a new European pandemic information gathering system will be launched in 2021. By the end of 2021, the EU plans to appoint a European Chief Epidemiologist and a corresponding governance structure to ensure more clear and coordinated scientific advice that will facilitate policy decisions and public communication. As the preparedness requires constant investments, scrutiny and reviews, they plan to issue annual State of Preparedness Reports. The EU also plans to establish a framework for the activation of an EU Pandemic State of Emergency and a much needed toolbox for crisis situations, because they were not ready fast enough and easy to activate at the beginning of the COVID-19 pandemic.⁷¹⁵ By the end of 2021, the EU wants to establish the European Health Union and strengthen coordination and working methods between institutions. There is also a need for public-private partnerships and stronger supply chains, therefore, a Health Emergency Preparedness and Response Authority, a Health Important Project of Common European Interest and the EU FAB facility are to be established with the EU FAB facility's aim to ensure that the EU has a capacity to produce up to 700 million doses of vaccines per year with half of them ready in the first six months of a future pandemic. In the future, the EU wants to establish a platform for multi-centre clinical trials. It plans to support the Member States in strengthening the overall resilience of health care systems, and create pandemic preparedness partnerships with key partners. According to the European Commission, there is also a need for a more coordinated and sophisticated approach to tackling misinformation and disinformation.⁷¹⁶

Various exemplary recommendations for making changes and introducing institutional and procedural measures are presented above. They should be adopted and supported by all Member States and, to be fully effective, they have to be implemented in many different areas. The above mentioned recommendations are merely examples, but both representatives of science and the governments of the Member States and EU institutions should also analyse the strengths and weaknesses of the actions taken during the COVID-19 pandemic and learn from them lessons and recommendations for the future. These recommendations must be adopted as soon as possible in order to protect European society from a similar catastrophe. In order to be successful in future crises, cooperation between EU institutions, its Member States and citizens is necessary.

⁷¹⁵ European Commission, *Emerging Stronger From the Pandemic: Acting on the Early Lessons Learnt*, 15 June 2021, at <https://ec.europa.eu/commission/presscorner/detail/en/IP_21_2989>, 20 June 2021.

⁷¹⁶ See: *Communication From The Commission To The European Parliament, The European Council, The Council, The European Economic And Social Committee And The Committee Of The Regions on Drawing the early lessons from the COVID-19 pandemic*, at <<https://ec.europa.eu/info/sites/default/files/communication150621.pdf>>, 20 June 2021.

4. Summary

In light of economic, refugee and Brexit crises, the COVID-19 pandemic could have been the final nail in the coffin of the European Union. Instead, it should be rather identified as a “make it or break it” moment in the history of European integration. The Member States’ unilateral decisions of shutting down borders and introducing national export bans on medical supplies at the beginning of the COVID-19 pandemic in Europe could give an impression that the Member States took approach of “my country comes first” and the decades of fruitful cooperation and intensive integration mean nothing in a time of severe crisis.

The first quarter of 2020 definitely has been a heated period of uncertainty about the future of the EU.⁷¹⁷ However, as the Spanish Prime Minister, Pedro Sánchez fittingly concluded in April 2020, “Without solidarity there can be no cohesion, without cohesion there will be disaffection and the credibility of the European project will be severely damaged.”⁷¹⁸ Similarly, in May 2020, the European Commissioner for Home Affairs, Ylva Johansson followed this noble reasoning by reminding the European community that the Member States should realize that they really need each other.⁷¹⁹ Moreover, he directly claimed that “What we are seeing is not a failure of the European Union. We have a lot of difficulties, of course, but these are not new difficulties and we can manage them.”⁷²⁰ She also stated that people “should have high expectations” for cooperation between the Member States and explained that the initial desperate actions of the Member States were quite understandable because they found themselves in a novel, unprecedented and extremely severe crisis.⁷²¹ As a result, several Member States called for the European Commission to “take a stronger role, to do more, to coordinate more,” even in areas in which the Commission is not empowered to take actions.”⁷²²

Taking the above-mentioned actions and declarations into consideration, the authors have no doubts that during the COVID-19 pandemic Europeans have proven in many ways that they can lift each other up, even in a time of severe crisis. Not only did the European integration endured this difficult time in the world’s history, but it also proved the strength of European solidarity. What is more, the COVID-19 crisis contributed to strengthening cooperation between the Member States and European institutions. It has also raised crucial questions about empowering the European Union in areas which have been so far governed by the Member States. It is noteworthy that after certain institutional

⁷¹⁷ C. Busse et al., *The Crisis...*, p. 2.

⁷¹⁸ Ibid.

⁷¹⁹ *Can the EU Regain its Credibility After the Pandemic?*, DW, 7 May 2020, at <<https://www.dw.com/en/can-the-eu-regain-its-credibility-after-the-pandemic/a-53363722>>, 20 June 2021.

⁷²⁰ Ibid.

⁷²¹ Ibid.

⁷²² Ibid.

and procedural reforms in the first months of the COVID-19 pandemic, such as the RescEU common stockpile of medical supplies and the EU recovery fund with its unprecedented financial firepower, Europeans are now better prepared and more equipped for the future.⁷²³ In the authors' opinion, this indicates that closer cooperation in new areas and further progress on European integration are key elements to ensure peace, safety and sustainable development in the EU.

After all, we, as Europeans, share the same values, concerns and goals. We should support each other and work hand in hand for better future. The COVID-19 crisis proves that the EU is the most effective platform to achieve this goal and that by working together, the Member States can achieve much more and more effectively. Both the Member States and the European institutions should draw their lessons from the COVID-19 pandemic and make sure that their actions in future will be consistent, functional and well-coordinated.

⁷²³ R. Loss, *Tracking European Solidarity During Covid-19: Lessons From the First Wave*, European Council on Foreign Relations, 11 November 2020, at <<https://ecfr.eu/article/tracking-european-solidarity-during-covid-19-lessons-from-the-first-wave/>>, 20 June 2021.

This publication makes a notable contribution to the highly discussed and lively topic of European integration. It includes a brief description of the origins of the European Union, the evolution of the organisation over the last several decades, the changing visions of the future of Europe, the crises that the Member States faced in the past, and finally, the impact of the COVID-19 pandemic on the current and future level of European integration. This publication provides the reader with novel and very detailed data on the performance of the EU and its Member States during the unprecedented global pandemic. It is a must-read for those who search for the most recent information on the shape and level of European integration, the cooperation of the Member States during the COVID-19 pandemic, as well as on the level of trust given to the EU by its citizens. Additionally, this book sheds light on the Eurosceptic disinformation and fake news which have arisen in the past few years and which will continue to constitute a very controversial topic for the next few years.



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