



THE EU'S PANDEMIC RESPONSE



How the Union's response to COVID-19 set new precedents for fiscal and industrial policy, strengthened health institutions and weakened European democracy

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Think Tank EUROPA is an independent think tank focusing on Europe based in Copenhagen. Through policy-oriented and evidence-based analyses, we strive to ensure that European affairs become more visible in national policy debates. The think tank was established in 2013 by the Central Organisation of Industrial Employees in Denmark (CO-industri) and the Confederation of Danish Industry (Dansk Industri) with the goal of strengthening public debates on Europe. Since January 2020, Think Tank EUROPA has had a strategic partnership with the European Council on Foreign Relations (ECFR).

INTRODUCTION

As 2019 came to an end, the EU was convinced it had put a decade of crises behind it. In her inaugural speech as Commission President, Ursula von der Leyen on November 27, 2019, called for “a fresh start for Europe.” The chaos of Brexit, refugee crisis and conflicts in the eurozone meant that “in the last years, we had to focus on the here-and-now, managing crises after emergency, fighting to keep our unity and solidarity intact,” as she told the European Parliament in Strasbourg.¹ Only four months later, the COVID-19 pandemic hit Europe and provoked what Angela Merkel called the “gravest crisis in the history of the European Union.”² More than 1.1 million people in the EU died of the virus according to official figures from December 2022, but it might in fact have caused as much as 1.7 million excess deaths as estimated by The Economist.³ It seems the pandemic was hardly over before the war in Ukraine, the energy crisis and high inflation ravaged Europe in 2022.

While Europe still struggles to manage the unfolding crises in early 2023, it is time to take stock of the EU's response to the pandemic. The challenge in January 2023 to find a common position on people travelling to Europe from China, where infections are surging, underscores how disagreements on pandemic management are still in place. With only limited competences on health, the EU was woefully unprepared in 2020 to deal with a health crisis to the extent that many Europeans expected it to. COVID-19 forced the EU into uncharted waters because it had far-reaching consequences for several of the Union's core competences. Among the sources interviewed for this report, there was nonetheless a broad consensus that the EU's response for the most part was adequate. But Europe cannot assume that future health crises will be similar. In 2020 the EU was saved by the fact that member states acted in solidarity. This might not be the case in the next event. **Reflection is needed on what the EU has learned, how the pandemic response changed the EU and what shortcomings are yet to be sufficiently addressed. That is the purpose of this report.**

Across four chapters we explore the lasting marks that COVID-19 left on the EU and what new political conflicts and questions they raise. The human and economic catastrophes looming in early 2020 provoked first and foremost an unprecedented effort to save lives at a national level and, at the European level, a race to rescue the economy. We deal with the immediate economic response in chapter 1 (MONEY). Later during the pandemic followed a concerted push to transform the institutional architecture of EU health policy, which we study in chapter 2 (INSTITUTIONS), as well as efforts to entrench ad hoc measures taken to protect the single market, described in chapter 3 (INDUSTRY). Finally, in chapter 4 (DEMOCRACY), we discuss the challenges posed to European democracy by the entirety of the crisis response, which are exacerbated by the growing sense that crisis management has become a permanent feature of European politics. All national initiatives as well as some aspects of the EU's response such as social policy and geopolitics lie beyond the scope of this report.

1 ec.europa.eu/commission/presscorner/detail/en/SPEECH_19_6408 European Commission 2019

2 [bundesregierung.de/breg-de/suche/pressekonferenz-von-bundestkanzlerin-merkel-und-praesident-macron-am-21-juli-2020-1770170](https://www.bundesregierung.de/breg-de/suche/pressekonferenz-von-bundestkanzlerin-merkel-und-praesident-macron-am-21-juli-2020-1770170) Die Bundesregierung 2020

3 [economist.com/graphic-detail/coronavirus-excess-deaths-estimates](https://www.economist.com/graphic-detail/coronavirus-excess-deaths-estimates) The Economist 2022

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The key arguments of the report can be summarized as follows:

- 1 **MONEY: COVID-19 will have lasting impacts on health spending and has moved the goalposts for financing public investments through common debt in the EU.** New path dependencies arise from the elevated budget for health policy and the Next Generation EU rescue package. **Yet the pandemic response is unlikely to cause the creation of a fully-fledged European Health Union with more competences in this policy area** because member states still have a strong preference for national measures on health policy. While the EU's ability to act on health-related issues increased during the pandemic, member states are clearly not ready to delegate to the Commission the responsibility of keeping their populations alive. Read more in chapter 1.
- 2 **INSTITUTIONS: The EU is still neglecting to finance the institutional structures that ensure adequate preparedness for a future health crisis.** Although it has strengthened the mandates of health agencies and established a new unit in the Commission, the EU is so far failing to back them with sufficient and reliable funds to fulfil their obligations. **As a result of the war in Ukraine, the political momentum behind reforms has already stalled.** Europe's common response to health crises remains vulnerable to emergent solidarity from individual member states. Read more in chapter 2.
- 3 **INDUSTRY:** Early efforts to protect the single market were accompanied by wide-ranging measures to enable the crisis response of European businesses. **Learnings from the pandemic response have shaped and emboldened the Commission's thinking behind the recently proposed Single Market Emergency Instrument that seeks to institutionalize ad hoc measures taken during the pandemic – and which proves that the Commission intends to increase its competences to intervene in the market during crises.** The advancement of enabling measures to boost European industry will likely continue to raise principled debates on questions such as ownership, fair competition and taxation of extraordinary profits. Read more in chapter 3.
- 4 **DEMOCRACY: The increased use of article 122 since 2020 and the fact that the European Council has taken on a central role in EU's crisis management pose challenges to the European Parliament's role in the institutional architecture.** On top of that the EU will be challenged to find an effective approach to disinformation that balances respect for European values with the increasing desire to deal with harmful content. Read more in chapter 4.

This report is the conclusion of a two-year project at Think Tank EUROPA on the EU's pandemic response, financed by the Novo Nordisk Foundation (NNF20SA0065656). For purposes of research and to develop the arguments, we have interviewed employees at the Commission's DG GROW, DG HERA, DG SANTE and Commissioners' Cabinets, members of the European Parliament with seats at the Special Committee on the COVID-19 pandemic (COVI), national public authorities, scientific researchers and peers of the think tank environment. A huge thank you to everyone who participated and offered their help. We would also like to thank in particular our former colleague Maja Kluger Dionigi who led the two-year project during its first 14 months and laid an invaluable foundation for the final work.³

³ See Dionigi 2021; Dionigi 2022

1. MONEY: A Lasting Imprint of COVID-19?

Key points

- COVID-19 transformed EU health policy in funding, powers and ambition. The elevated budget agreed in 2020 will have a lasting impact on health policy in the EU by locking in new precedents for future health spending.
- It is unlikely that the pandemic response will lead to a fully-fledged European Health Union with a new division of competences. EU health policy remains constrained by the same structural forces in place before COVID-19, in particular a strong preference among member states for national measures on health policy as evidenced by the fraught negotiations on the EU4Health program in 2020.
- The NGEU has moved the goalposts for financing public investments through common debt in the EU. At the same time the recovery fund also cements a national logic as it does not contain any cross-border spending elements, and it remains uncertain if it will set a new precedent for financing grants and transfers within the Union through common borrowing.

In 2019, the idea of elevating the EU's health policy would have seemed a long shot to most observers of European politics. Funds allocated for health in the seven-year budget cycle from 2014-2020 amounted to a meager €450 million, less than 0.05 percent of a budget close to €1 trillion. The issue barely figured in Jean-Claude Juncker's Commission and neither was health among Ursula von der Leyen's political priorities when she took office in November 2019.⁴ Her new Commission originally planned to devote just €413 million to health for the next seven years.⁵

Few people then expected a pandemic provoking only four months later "the gravest crisis in the history of the European Union," as proclaimed by Angela Merkel.⁶ In response the European Parliament and member states allocated more than €5 billion to the EU4Health program during 2020. **The elevated budget caused by the COVID-19 pandemic will have a lasting impact on health policy in the EU by instituting new path dependencies.** Ursula von der Leyen swiftly announced her intention to build a European Health Union, defying member states' strong preference for maintaining health as a national competence. **In the aftermath of COVID-19, the health of the European people has increasingly come to be framed as a "prerequisite for a dynamic economy stimulating growth, innovation and investment," a line of argument spearheaded by the Commission itself.⁷**

Sources interviewed for this report stress that **2020 transformed EU health policy in funding, powers and ambition. But the process was fraught with steep political hurdles and outright animosity between country leaders, demonstrating that obstacles to further integration remain.** Decisions taken at the height of the COVID-19 crisis to establish a €750 billion recovery fund, financed with common debt, were a turning point in the evolution of the EU. This outcome was, however, contingent on a precarious set of conditions that were favorable in this specific case: A breakthrough was made possible by an understanding of the crisis as an external and symmetrical shock. It demanded

4 [europarl.europa.eu/RegData/etudes/BRIE/2020/646148/EPRS_BRI\(2020\)646148_EN.pdf](http://europarl.europa.eu/RegData/etudes/BRIE/2020/646148/EPRS_BRI(2020)646148_EN.pdf) Bassot 2020

5 agenceurope.eu/en/bulletin/article/12494/5 Agence Europe 2020a

6 bundesregierung.de/breg-de/suche/pressekonferenz-von-bundeskanzlerin-merkel-und-praesident-macron-am-21-juli-2020-1770170
Die Bundesregierung 2020

7 eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0724 Official Journal of the European Union, 2020d

brave choices by individual leaders, notably Merkel's turn-around on the issue of common debt. But whether the politics of the Next Generation EU (NGEU) rescue package sets a new precedent or not is an open question.

Figure 1.1: EU Health program budgets since 2003

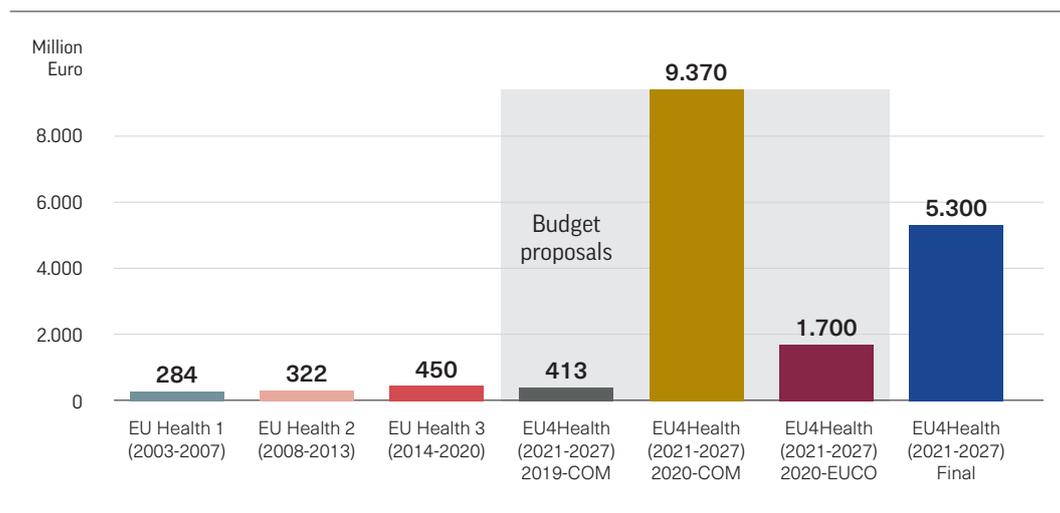


Chart: Think Tank EUROPA Source: European Commission

In spite of the elevated budget agreed in 2020, it is unlikely that European health policy will be refashioned at a more fundamental level as it is still constrained by a lack of funding and limited competences on health. The long and winding negotiations throughout 2020 only served to underline the fact that member states have always shown a preference for national competence in this area.⁸ **At heart of EU health policy remains an unresolved contradiction between the ambitions of EU institutions and the willingness of member states to endow money and delegate powers. The leap taken with the EU4Health program will thus not lead to a fully-fledged European Health Union.**

This chapter explores the EU's pandemic response through the lens of money with a focus on those actions that may leave a significant lasting mark on the Union. The response involved a wide range of economic and monetary initiatives to one of the largest shocks to Europe since World War II. An in-depth study would examine measures such as the activation of the escape clause in the Stability and Growth Pact⁹, temporary state aid provisions¹⁰, the European Central Bank's €750 billion pandemic asset purchases¹¹, the €100 billion SURE loans¹², and Cohesion Funds redirected for the purpose of handling the pandemic¹³, to name a few. In this chapter we direct attention towards EU4Health and common debt as practiced in the NGEU instrument. Further aspects of the pandemic response related to industrial policy, such as EU's state aid rules, are described in chapter 3.

⁸ eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0724 Official Journal of the European Union, 2020d

⁹ consilium.europa.eu/en/press/press-releases/2020/03/23/statement-of-eu-ministers-of-finance-on-the-stability-and-growth-pact-in-light-of-the-covid-19-crisis/ European Council 2020a

¹⁰ ec.europa.eu/commission/presscorner/detail/en/IP_20_496 European Commission 2020a

¹¹ ecb.europa.eu/mopo/implement/pepp/html/index.en.html European Central Bank 2022

¹² economy-finance.ec.europa.eu/eu-financial-assistance/sure_en Commission 2022a

¹³ bruegel.org/event/role-cohesion-policy-fight-against-covid-19-elisa-ferreira Ferreira 2020

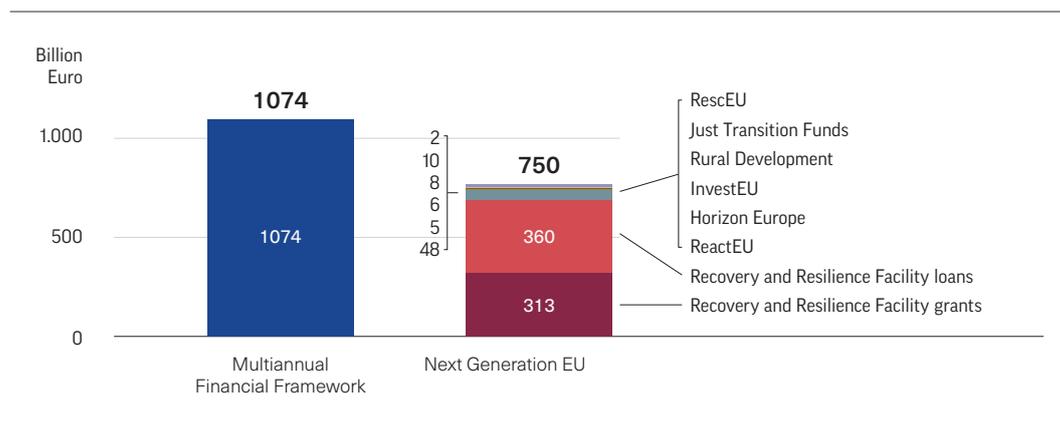
1.1 One of the Longest Summits in Union History

Over five days and four nights in the Summer of 2020, heads of state and government negotiated a financial package bundling the next seven-year Multiannual Financial Framework (MFF) and the NGEU pandemic recovery funds. Tensions occasionally ran high in the European Council as Southern leaders accused Northern neighbors of blocking an economic rescue while frugal countries blamed others for lack of responsibility. Negotiations almost broke down, with several threatening to leave the room.¹⁴ During one low point, the then Italian Prime Minister Giuseppe Conte warned his Dutch colleague Mark Rutte that “you can be a hero in your country for a day, but after a few weeks, you will be held accountable for all European citizens for blocking an adequate and effective European response.”¹⁵

The EU was split between countries favoring recovery loans like Netherlands, Austria, Denmark and Finland against those advocating for grants, in particular France, Spain and Italy, with Germany taking the decisive middle position. They also disagreed on how much money to allocate to specific goals such as climate as well as about conditions for supervision of spending, for example whether it should be linked to rule of law requirements.

On July 21, 2020, the European Council presented its deal¹⁶: €750 billion euro for the NGEU – grants and EU expenditure comprising just over half – and a budget of €1,074 billion. Paolo Gentiloni, the EU’s Commissioner for Economy, remarked this was unthinkable before the pandemic.¹⁷ Others described it as an “irretrievable change in Europe’s financial architecture”, some even calling it a Hamiltonian moment for the EU.¹⁸ One of them was then finance minister Olaf Scholz of Germany.¹⁹ This section comments on, first, the funds allocated for health and, second, the NGEU innovation of common debt.

Figure 1.2: Next Generation EU spending²⁰



Agreement by European Council on July 21, 2020. Chart: Think Tank EUROPA Source: European Commission

14 agenceurope.eu/en/bulletin/article/12531/1 Agence Europe 2020b
 15 agenceurope.eu/en/bulletin/article/12531/1 Agence Europe 2020b
 16 consilium.europa.eu/media/45109/210720-euco-final-conclusions-en.pdf European Council 2020b
 17 economist.com/briefing/2021/03/31/europes-radical-economic-response-to-covid-19 The Economist 2021
 18 economist.com/briefing/2021/03/31/europes-radical-economic-response-to-covid-19 The Economist 2021
 19 Georgiou 2021
 20 Agreement by European Council on July 21, 2020.

1.2 EU4Health as a Step Towards a European Health Union?

For advocates of a stronger EU position on health the initial deal was a bitter pill to swallow. When the Commission had first presented its proposal for a new budget, it dedicated €9.37 billion to a new health program that would strengthen EU agencies, build up strategic equipment and accelerate research.²⁰ Most of it would derive from recovery borrowing. The agreement made by the European Council in July 2020 lowered the figure to just €1.7 billion.²¹ Intense negotiations ensued during the following months. Agence Europe reported in September 2020 that “Member States are particularly concerned about keeping a tight grip on public health.”²² Yet in the end a November agreement between the European Council and the European Parliament allocated €5.3 billion for EU4Health in the MFF.

The Commission describes EU4Health as “an investment” and “one of the main instruments to pave the way to a European Health Union.”²³ Regulation 2021/522 establishing the program lays out specific objectives to achieve this goal, including better preparedness to cross-border health threats, further integration of national health systems and data as well as a goal to ensure medicinal products are available. “While Member States are responsible for their health policies,” it notes, “they should protect public health in a spirit of European solidarity.”²⁴

The six months from May to November 2020 illustrate the inherent challenges for EU health policy, especially with regards to cross-border solidarity. Today’s funds were allocated at the height of the pandemic when health was at the top of the political agenda, but even then it proved difficult to agree on a budget increase. **Contrary to the transformative rhetoric delivered by the Commission, COVID-19 has not changed member states’ preferences for national competences on health policy.** A contradiction remains between the Commission’s ambitions on health and national willingness to endow the money and delegate the powers. The majority of sources interviewed for this report expect that **the further we leave the pandemic behind, the more likely the contradiction is to be compounded as political attention shifts and momentum evaporates.**

One unknown factor is the will of European citizens. As put forward by the Commission, the rationale for the European Health Union is that “European citizens have been increasingly clear that they expect the EU to have a more active role in protecting their health, particularly in protecting them from health threats that transcend national borders.”²⁵ The conclusions from the Conference on the Future of Europe echo this sentiment. They include, among other proposals, a demand for further integration, stating: “Enhance the European Health Union using the full potential of the current framework,” and “in order to achieve necessary coordinated, long-term action at Union level, include health and healthcare among the shared competencies between the EU and the EU Member States by amending article 4 TFEU.”²⁶ A proposal to establish common minimum standards for healthcare at the EU level is also part of the report.

The Conference on the Future of Europe imposes the urgent question – not only on the Commission, but also member states – of how to respond respectfully to the process and its conclusions. Or, in this

20 agenceurope.eu/en/bulletin/article/12494/5 Agence Europe 2020a

21 Plus almost €3 billion for a temporary RescEU pandemic response and more funds for Horizon Europe research

22 agenceurope.eu/en/bulletin/article/12586/2 Agence Europe 2020c

23 eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0724 European Commission 2022b

24 Official Journal of the European Union 2021

25 eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0724 Official Journal of the European Union, 2020d

26 Conference on the Future of Europe 2022: 50

specific case, whether or not member states should strive towards a fully-fledged European Health Union. In the short term, the question is about what money to endow and at the expense of what. The first building blocks of the European Health Union will respect the member states' competence in the area of health, the Commission wrote in 2020.²⁷ But in the long term, the question becomes whether or not the Union can honor citizens' demands without treaty change and what powers member states wish to delegate to the EU.

So far the tone set by Council ministers is less ambitious. In December 2021, conclusions from the meeting of the Employment, Social Policy, Health and Consumer Affairs Council approved the vision of strengthening the European Health Union, but their wording was different than that of the Commission. It underscored "the need for strategic investments in health systems" and "better collaboration internally and with other countries" rather than a fundamental rewrite of the rules.²⁸ What member states will and won't commit to on health policy in the EU will be a key determinant of how the Union responds to lessons learned from COVID-19.

The years gone since Ursula von der Leyen's inaugural address to Parliament in 2019 have left a lasting imprint on the Union that goes beyond mere rhetoric. Yet **political momentum has shifted**. In her State of the Union speech of 2022, von der Leyen did not mention the vision of building a European Health Union (the word 'health' was mentioned just once).²⁹ COVID-19 already seemed like ancient history in the new context of war and inflation. That momentum has shifted was confirmed on December 15, 2022, in the EU Legislative Priorities for 2023 and 2024 that only mentioned the European Health Union once.³⁰

In conclusion, **EU4Health will not lead to a fully-fledged European Health Union**. Even in the case of a European Convention to discuss treaty change, as Ursula von der Leyen called for in her State of the Union speech 2022³¹, **we argue that the division of competences on health is unlikely to change**. The sources interviewed for this report expect health policy will remain grounded in TFEU article 168 for the foreseeable future. This will still leave considerable room for EU health policy based on economic competences but will not transfer new health competences to the EU.

1.3 NGEU Bonds as a Blueprint for more Common Debt in the EU?

A larger mark made by the EU's pandemic response is the new model of common borrowing innovated in the NGEU instrument of 2020.³² It was unique because it allowed the EU to issue bonds to finance direct spending in the form of grants, guaranteed by the EU budget (in contrast to other forms of common borrowing that finance loans, e.g. for the European Investment Bank or the €100 billion SURE loans made available in the COVID-19 crisis³³). Between 2020 and 2022 the common outstanding debts of the EU increased six-fold, and they will only surge further in coming years.³⁴

27 eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0724 European Commission 2020b

28 consilium.europa.eu/en/meetings/epsco/2021/12/06-07/ European Council 2021

29 ec.europa.eu/commission/presscorner/detail/ov/speech_22_5493 Von der Leyen 2022

30 commission.europa.eu/system/files/2022-12/221213-Joint%20Declaration%202023-2024.pdf Metsola et al. 2022

31 ec.europa.eu/commission/presscorner/detail/ov/speech_22_5493 Von der Leyen 2022

32 commission.europa.eu/strategy-and-policy/recovery-plan-europe_en European Commission 2020c

33 economy-finance.ec.europa.eu/eu-financial-assistance/sure_en European Commission 2022a

34 bruegel.org/blog-post/do-financial-markets-consider-european-common-debt-safe-asset Bonfanti & Garicano 2022

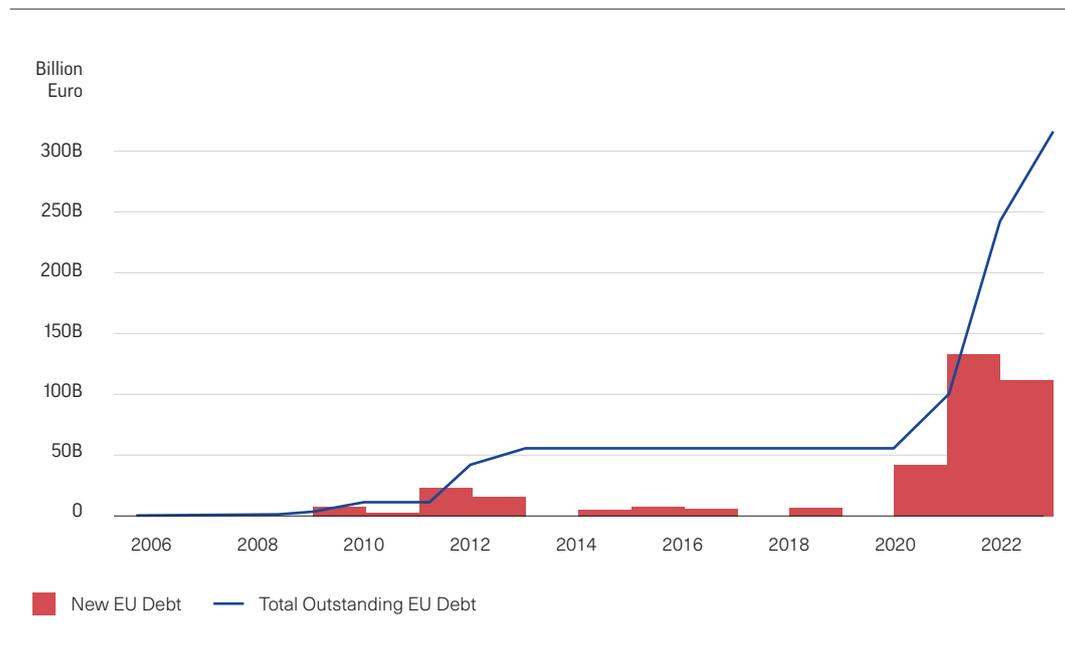
Figure 1.3: EU Outstanding Debts, billion euro

Chart: Think Tank EUROPA Source: European Commission Investor Relations

The idea of issuing such bonds was not new in 2020. However, it had been ruled out again and again by reluctant countries throughout previous decades. When France, Italy and Spain proposed it as a solution to the eurozone crisis in 2012, Angela Merkel plainly refused, stating about Eurobonds that “I don’t see total debt liability as long as I live.”³⁵ When the same countries plus six more raised the same idea in March 2020, Merkel refused again. But her position changed dramatically in the following weeks as the pandemic exploded and political conditions changed, leading her to supporting the idea of common debt in May 2020.

This followed in part from the logic of what early became the prevailing narrative about the pandemic. Merkel’s shift of positions ensued from an idea – which she herself promoted during the spring of 2020 – that the pandemic was an exogenous and “symmetrical shock” which no one was responsible for.³⁶ The eurozone crisis was, in contrast, easy to place blame for and it affected countries differently (although no one was safe from the fall-out). But “it is hard to imagine a shock better suited to elicit European fiscal solidarity than a deadly pandemic,” as an article in the *Journal of Common Market Studies* concluded in 2021.³⁷ A narrative of common interests thus replaced the former discourse of southern sinners versus northern saints, and Europe found a solution.³⁸

On one hand the NGEU bonds do advance a logic of European solidarity by raising money through common borrowing with a strong redistributive element. But **the NGEU also cements a national logic as it does not contain any cross-border spending elements**. As of December 2022, more than €40 billion from the Recovery and Resilience Facility was earmarked for national health systems, according

35 euractiv.com/section/euro-finance/news/merkel-on-eurobonds-not-in-my-lifetime/ EUROACTIV 2012

36 Merkel in van Middelaar 2021: 85

37 Tesche 2022:493

38 Matthijs & McNamara 2015

to the 2022 State of Health Preparedness report by HERA.³⁹ The lack of cross-border coordination can be viewed as a compromise made to ensure transparency on national allocations. But it also stands in sharp contrast to the wide-spread sentiment – echoed throughout interviews made during this project – that better preparedness for a future pandemic requires cross-border collaboration on health.

The open question is whether jointly financed spending will remain a one-off measure for the exceptional COVID-crisis or if it will form the basis for further integration on fiscal policy. As of late 2022, calls are growing for similar methods to finance spending needs ranging from the reconstruction of Ukraine to a sovereignty fund for industrial policy. **The growing calls sustain the debate on common EU debt thus makes it a normalized and more palatable tool.**

Such demands face two challenges in particular. First, the bonds must be issued on attractive terms. If most member states can borrow with lower interest rates than the EU, much of the sense of common debt evaporates. Yields have already increased significantly, leading a Bruegel report to conclude in December 2022 that the yield of EU bonds “is not, by any means, the yield of a safe asset.”⁴⁰

Second, several member states remain deeply skeptical of further fiscal integration. Opposition is typically confined to a few countries, the frugal four and Germany in particular. The recovery fund was challenged in the German Constitutional Court, which ruled in December 2022 that it did “not overstep the EU’s current integration programme”, but only because it was limited to a “historically exceptional situation” and was “strictly for a specific purpose from the start.”⁴¹ More permanent constructions might not be judged to comply with the treaty boundaries. **Legal interventions from national constitutional courts add uncertainty to the future evolution of common debt in the EU.**

Third, the EU has still not found common ground regarding how to repay the debts. The Commission tabled a communication on future Own Resources in 2021. Among its proposals for such are revenues from emissions trading, carbon border adjustment mechanisms and corporate taxation, as of late 2022.⁴² The Commission is currently preparing a proposal (expected in Q3 2023).⁴³ **We expect that agreement of some sorts regarding increased Own Resources will be reached, and this in itself poses a lasting impact on the Union, regardless of future borrowing.**

In conclusion, the NGEU bonds move the goalposts for financing public investment through common debt in the EU. Demands for such measures are growing in a wide range of areas from industrial to climate policy, at a time when geopolitical allies and rivals are accelerating similar efforts. **It remains uncertain whether or not the NGEU bonds will also set a new precedent for financing cross-border grants and spending, not just loans, through common borrowing as there is still deep opposition to this in several member states.**

39 health.ec.europa.eu/system/files/2022-11/hera_shp-report-2022_en_0.pdf

European Health Emergency preparedness and Response Authority 2022

40 bruegel.org/blog-post/do-financial-markets-consider-european-common-debt-safe-asset Bonfanti & Garicano 2022

41 ft.com/content/361769c1-b9a3-4410-958f-36ba4cf2cc87 Chazan 2022

42 ec.europa.eu/commission/presscorner/detail/en/ip_21_7025 European Commission 2021a

43 commission.europa.eu/strategy-documents/commission-work-programme/commission-work-programme-2023_en European Commission 2022c

2. INSTITUTIONS: Banking on Solidarity

Key points

- The EU is neglecting to finance the institutional structures that ensure due preparedness for a future health crisis. Although it has established HERA and strengthened the mandates of health agencies ECDC and EMA, it is so far failing to back them with sufficient and reliable funds to fulfil their obligations.
- The EU needs a more structural, long-term answer to the weaknesses exposed by COVID-19. It cannot rely on ad hoc solutions because in the preparedness phase political wins are scarce while costs are high, which implies that more urgent priorities tend to steal funds. As a result of the Ukraine war, the political momentum behind reforms has already stalled.
- Voluntary acts of solidarity cannot be taken for granted in the next European health crisis. New health initiatives taken by the EU after COVID-19 can be viewed as attempts to hardwire solidarity into the system for emergency response. But the EU's crisis response remains vulnerable to decisions by individual member states.

The first reactions to COVID-19 in Europe relied on national instincts: Across the continent state leaders closed borders and restricted critical exports while ignoring neighbors' calls for help. European countries neglected solidarity for a few weeks in the spring of 2020 while resorting to actions that may in the short term protect its citizens, but in the long term undermine the common ability to suppress a virus that knows no borders.

If gut instinct is what psychologist Daniel Kahneman has labelled 'system one' of the mind, the EU typically functions as Europe's collective 'system two': the slow, rational and deliberate institution that counters protectionist instincts. That system was severely challenged in early 2020. The EU structures were not geared to deal with the pandemic, in part because the EU as a 'system two' is constructed as a rules-based institution, not a crisis manager. On top, the EU was not well prepared for it, one reason being that it had only limited competences on health policy.⁴⁴ As such the Commission's first response was limited. Yet after a few weeks, it stepped into a leading role and ended up, according to most of the people interviewed for this report, doing a fairly good job.

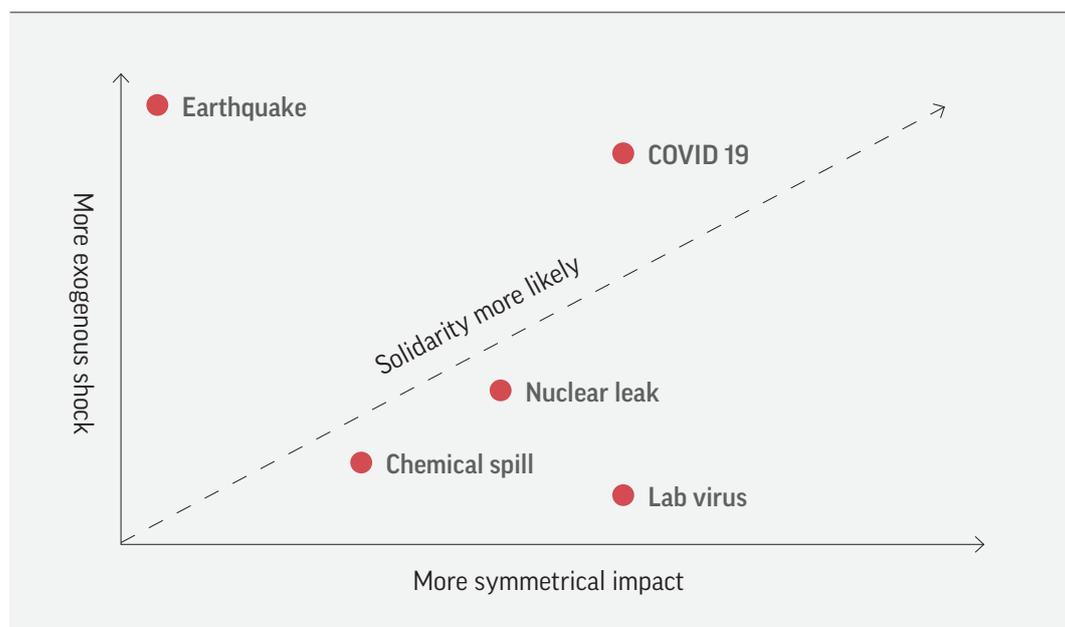
European unity was saved by the fortunate circumstance that its national leaders found a sufficient degree of solidarity to work together in a crisis that was framed as an exogenous, symmetrical shock, as described in chapter 1. **The conditions for solidarity might not be as favorable in the next health crisis – and so we cannot take for granted the same degree of solidarity again.** How might events turn out if a future health threat, such as a chemical spill or a nuclear leak, strikes alongside structural fault lines? Can we trust voluntary action then? Faced with a self-inflicted or asymmetrical health crisis the EU might not have the means to prevent disaster.

⁴⁴ The EU has supporting competences on health, except under the scope of article TFEU 168 which provides it with shared competence

The EU must therefore be better prepared for the next health crisis. **Europe is neglecting due preparedness again as it is failing to back EU health structures with sufficient and reliable funds and the required political capital.** After the Ukraine war, the political momentum necessary to spark reforms has stalled. But, as HERA's 2022 State of Health Preparedness report concludes, "preparedness is not a sprint – it is a marathon."⁴⁵

Initiatives taken by the EU to strengthen its health policy after COVID-19 can be viewed as an attempt to hardwire solidarity into the system for emergency response – to institutionalize solidarity – in order to ensure an effective, deliberate and common reaction to the next health crisis. But, as stressed by interviewed sources in HERA and DG GROW, under current legislation Europe still depends on voluntary acts of solidarity, for example to allocate emergency funding.

Figure 2.1: Illustration of the relation between how a health crisis is framed and how likely it is to generate solidarity



"Historically, crisis response and management has been the weak point of European action on health threats", concluded the European Observatory on Health Systems and Policies in an analysis written one year prior to the pandemic.⁴⁶ To solve this the EU and its member states will not only have to increase budgets for health. They must also confront more long-term institutional questions about where authority and competences should lie on health policy. *This chapter explores the EU institutions' response to weaknesses exposed by COVID-19, what has been learned and what shortcomings the EU has yet to fully address.*

45 European Commission 2022d

46 Greer et al. 2019

2.1 The Early Response and How It Exposed Shortcomings in EU Institutions

On February 27, 2020, when the novel coronavirus had just four days earlier forced Italy to lock down 11 districts, the Commission's Directorate-General for Health and Food Safety (DG SANTE) concluded that EU member states had a strong level of preparedness in place.⁴⁷ In fact, the EU was unprepared for a pandemic: it lacked an effective early warning system, strategic stockpiles of equipment, emergency plans, a unit responsible for coordination, to name a few.⁴⁸ Member states were barely better equipped, however, and so they soon demanded new and better solutions at the European level. **This section describes the how the ECDC and EMA evolved in response to COVID-19 and argues that the pandemic's primary impact has been strengthened institutional mandates.**

Shortcomings of the ECDC

Shortcomings first became apparent at the European Centre for Disease Control (ECDC). Established in 2004 after SARS, the agency based in Stockholm should support preparedness planning and "identify, assess and communicate current and emerging threats to human health from communicable diseases."⁴⁹ Yet the ECDC initially failed to assess and warn of the risk of COVID-19 to Europe.

The pandemic exposed several weaknesses of the ECDC, two in particular⁵⁰:

- 1 Its disease surveillance was inadequate as it received incomplete, untimely and incomparable data from member states.
- 2 The ECDC was cautious and shied away from giving hands-on, practical advice for member states as it had a strict interpretation of its mandate, focusing primarily on risk assessment rather than management.⁵¹

Upon this the EU drew an early lesson of the pandemic: The ECDC should provide early advice to decision-makers, provide practical and timely recommendations for risk management and deliver cross-country learnings. These lessons have been operationalized through the amendment to regulation (EC) No 851/2004⁵² adopted by the Council and Parliament in October 2022, which strengthens the mandate of the ECDC.

The EU has however widened the mandate of the ECDC without allocating sufficient resources to fulfill it. Based on interviews with people from HERA, DG SANTE and the COVI Special Committee⁵³, it brings attention to two challenges for the ECDC: relating to data and funds.

First, the problem of unharmonized data is likely to persist. The output of the ECDC can only be as good as the input it receives from member states. A well-performing ECDC requires a harmonization of standards and practices across a patchwork of European health care systems with different practices and degrees of digitization.

47 think.europa.dk/brief/2022-01-the-ecdc-challenges-during-and-after-the-covid-19-pandemic Dionigi 2022

48 European Commission 2021b

49 eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32004R0851&from=EN Official Journal of the European Union 2004

50 think.europa.dk/brief/2022-01-the-ecdc-challenges-during-and-after-the-covid-19-pandemic Dionigi 2022

51 ecdc.europa.eu/sites/default/files/documents/ECDC_report_on_response_Covid-19.pdf European Center for Disease Control 2020

52 ec.europa.eu/info/sites/default/files/proposal-mandate-european-centre-disease-prevention-control_en.pdf

53 The ECDC declined our request for interview "for reasons based upon the need to protect ECDC's independence and regulatory obligations placed upon the agency"

The Commission's solution is to build a European Health Data Space (EHDS). Announced before the pandemic, it is a widely welcomed, but also very ambitious plan – or in the words of ECDC director Andrea Ammon a massive endeavor.⁵⁴ Health Commissioner Stella Kyriakides hopes it will serve as the “backbone of the Union for Health.”⁵⁵ Yet for every major crisis that consumes the attention of the EU, the EHDS risks delay. The challenge is to maintain momentum. As of late 2022, the EHDS remains a top priority: The EU Legislative Priorities for 2023 and 2024 agreed on December 15 mentions it specifically, stating that “to continue building the European Health Union, we will give priority to the swift adoption and implementation of the European Health Data Space.”⁵⁶

For the foreseeable future, though, the ECDC still relies on the abilities and goodwill of member state agencies to provide data in a relationship of power asymmetry, as outlined in a 2021 report by the European Ombudsman.⁵⁷ Although more than €10 billion is earmarked for digitization of health in the Recovery and Resilience Facility, the EHDS will compete with other priorities for funds. The same goes for funds from EU4Health, Digital Europe and the Horizon Europe programs. On top of that, investments are also needed from state budgets. One of the conclusions from a roundtable forum hosted by Think Tank EUROPA on this topic in June 2022 is that the different national ambitions and abilities to fund might create an uneven development of data structures across the EU.

A potential shortfall of funds is the second challenge for the ECDC. This is formally recognized in the October 2022 text of the proposal to amend regulation (EC) No 851/2004 that originally established the agency. It says: “In order to be able to fulfil the new tasks entrusted to it as a result of the COVID19 pandemic, the Centre will need sufficient funding and staffing. Project-oriented funds, such as those allocated under the EU4Health Programme ... are not sufficient to respond to the Centre's needs in the future.”⁵⁸

This reflects a general worry about the future allocation of funds to preparedness planning, which we will get back to in the next section on HERA after a brief look at the European Medicines Agency (EMA).

EMA Strengthened

When the pandemic hit, national governments turned to look at their inventories of medical devices such as masks and ventilators and found them lacking. Demand exploded simultaneously in all countries, inviting competition for life-critical resources. At the same time, lockdowns disrupted global supply chains and led to severe supply difficulties, including shortages in the single market.

On February 28, 2020, the Italian government asked for help. But instead of sending masks and ventilators, France and Germany introduced measures to protect own supplies in disrespect of single market rules. Only China offered assistance, until intra-EU export bans were revoked on March 15 after pressure from the Commission. Actions by individual member states hindered a strong response to the pandemic during these first weeks. Yet the EU institutions could also have been better prepared or enabled to help. As regulation (EU) 2022/123 on a reinforced role for EMA notes, the agency

54 youtu.be/A_OWuVMneD4 Ammon 2021

55 agenceurope.eu/en/bulletin/article/12944/11 Agence Europe 2022

56 [commission.europa.eu/system/files/2022-12/221213-Joint Declaration 2023-2024.pdf](https://commission.europa.eu/system/files/2022-12/221213-Joint%20Declaration%202023-2024.pdf) Metsola et al. 2022

57 ombudsman.europa.eu/en/decision/en/137815 European Ombudsman 2021

58 eur.europa.eu/press-room/en/137815 European Council 2022a

was “severely impeded by the absence of a clearly defined legal framework for managing its response to pandemics and by the limited mandates and resources of its health agencies.”⁵⁹

On January 25, 2022, the EU formally strengthened EMA's mandate, now charged with “preparing for, preventing, coordinating and managing the impact of public health emergencies on medicinal products and on medical devices.”⁶⁰ **The widened mandate of EMA serves as an important example of the EU's strengthened hand on health policy after COVID-19.**

The pandemic exposed that EMA lacked a functioning system to monitor and mitigate shortages of critical medicines, as well as a solid framework for crisis response. As part of its strengthened mandate, going forward a new Medicine Shortages Steering Group at EMA creates lists of critical medicines and collects information on their supply chains, the first of which for COVID-19 was presented on June 7, 2022. The EMA has also established an Emergency Task Force to coordinate, share expertise and accelerate authorization of vaccines.

The strengthened mandates of EMA and ECDC are welcome improvements. However, neither solves what was among the EU's major problems in 2020, namely: effective coordination between the Commission in Brussels and actors beyond, such as national and regional authorities, industry and other EU institutions. Enter HERA.

2.2 HERA: Ad Hoc Solutions under the Pandemic Response Made Permanent

The Commission will play a more prominent role in managing future European health crises. As a result of new legislation introduced since the pandemic, it is now able to declare a public health emergency and coordinate work to facilitate the development and securing supplies of critical products such as vaccines.⁶¹ “We are preparing the first steps towards a European Health Union,” Health Commissioner Stella Kyriakides said when she presented the package backing this vision on November 11, 2020.⁶²

The Commission needed an internal unit to coordinate health policy and in September 2021 unveiled the Health Emergency Preparedness and Response Authority (HERA). Due in part to time pressure and to avoid thorny issues such as where to place an agency, its favored solution was a new Directorate-General in the Commission. As perhaps the crown jewel of new health initiatives in the Commission's response to COVID-19, **HERA is a prime example of how it seeks to build solidarity as an integral part of the system so that the EU is not as dependent on it during emergencies**, as pointed out by several interviewed sources.

While HERA is a step in the right direction, HERA will not on its own solve the fundamental problems of the EU's pandemic response. Based on our interviews, the greatest worry is that due preparedness will be neglected again. HERA currently draws funds from a range of EU programs, primarily EU4Health. While funds have been prioritized during the Covid-19 crisis it is uncertain whether money will continue to flow in absence of a health emergency. **There are few political wins to be made in the preparedness phase whereas costs are high.** Compared with the cost of testing and vaccinating

59 eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32022R0123 Official Journal of the European Union 2022a

60 eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32022R0123 Official Journal of the European Union 2022a

61 eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020PC0727 European Commission 2020d

62 agenceurope.eu/en/bulletin/article/12600/24 Agence Europe 2020d

citizens domestically, however, the involved funds are very low. **What the EU needs is a structural answer to the weaknesses exposed, but it is challenging for HERA to ensure a structured response without reliable long-term funding.** The inherent risk is that other and more urgent demands will crowd out funds.

HERA is a bundled package of the ad hoc solutions taken during COVID-19. Emergency actions ranging from purchase and storage of equipment to vaccine strategy, a task force for industrial scale-up, the Vaccelerate program and the "EU FAB" project are now all part of HERA's domain.⁶³ On top of that the more general task of supporting R&D in the European health industry has been added and takes up a significant portion of the budget for 2022, expected only to grow in the future (see chapter 3).⁶⁴

As a first step towards a European Health Union, HERA's focus is broader than both ECDC's and EMA's. HERA decides its own focus. Its experiences from COVID-19 will likely serve as inspiration in other areas, particularly on the issue of joint procurement. **The ability of the EU to limit inequalities in access to COVID-19 vaccines has been hailed as one of the Unions greatest achievements during the pandemic. This will likely serve as inspiration for future joint procurement efforts in the health space.**

There is a continuing political controversy around whether HERA should remain part of the Commission or become an independent agency. As of October 2022, when the European Parliament voted on the ECDC's strengthened mandate, Parliamentarians debated HERA's identity.⁶⁵ Many parliamentarians push for HERA to become an agency, which would hand the European Parliament a say over its budget. **Should HERA become an agency, it will likely be a procurement agency. In such case it could work on health threats across the board as it is highly unlikely that it will only be used for health emergencies.**

Vaccine Procurement as a Case

The debate about procurement of COVID vaccines in June 2020 provides a background for HERA's mission. Four member states – Germany, Italy, France and Netherlands – were the first to form a "European alliance for a vaccine" on their own initiative in the spring of 2020, having signed an agreement with AstraZeneca for deliveries. But after the group of four received intense criticism from neighboring countries, the member states decided to give the Commission a mandate to negotiate vaccines. With HERA the Commission seeks to remove any future doubt about where the responsibility should lie. Joint procurement happened to be the ad hoc solution then; HERA is intended to make sure it is the permanent way.

One rationale behind joint procurement was that uniting would lead to a stronger bargaining position and thus lower prices. A centralized approach could also ensure that vaccines would be available for all countries regardless of income. Indeed, without a common strategy, member states would likely have competed for doses, aggravating existing structural inequalities among member states. Rates of vaccination would then have differed more starkly across the continent, perhaps risking further disruptions to travel and the single market – and ultimately more deaths and suffering.

63 thinkeuropa.dk/notat/2021-05-hvad-er-hera-perspektiver-og-udfordringer-for-eus-pandemiberedskab Dionigi 2021

64 ec.europa.eu/commission/presscorner/detail/en/ip_22_928 European Commission 2022e

65 agenceurope.eu/en/bulletin/article/12822/2 Agence Europe 2021

Putting all eggs in the Commission's basket exposed its own shortcomings though. In short, negotiators were not aggressive enough and focused too much on price despite the enormous advantage of inoculating citizens fast. As Luuk van Middelaar concludes in *Pandemonium*, "in the worldwide battle for vaccines and personal protective equipment, the European Union experienced how hard power and the capacity to act trump agreed rules and price incentives", i.e. how the laws of a wartime economy rather than a market economy apply in a pandemic.⁶⁶ This "overconfidence of rules-politics" led to a loss of public trust.⁶⁷

Figure 2.2: Total COVID-19 vaccine doses administered per 100 people⁶⁸
All doses, including boosters, are counted individually

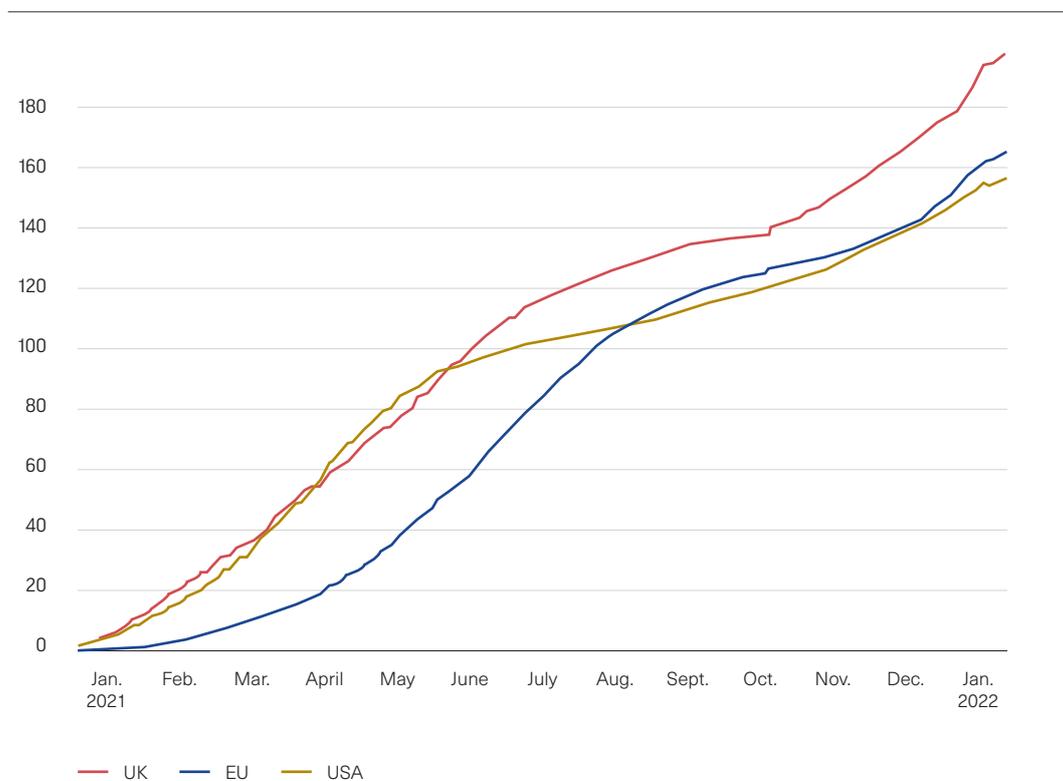


Chart: Think Tank EUROPA Source: World in Data

HERA has become an object of scrutiny for the public, a body to blame when the EU doesn't deliver. Compared with the US or UK, Europe was indeed slow to vaccinate in the first six months. The EU cannot be blamed for that alone, and it is difficult to conclude if it was generally due to a lack of vaccines or problems of distribution. The analogies between EU and US or UK are unfair, too. The EU does not exert the same powers as sovereign states, least of all on health policy. **But the fact that the EU is often compared to states like the US and UK or Canada and Israel is in itself revealing of what is expected of the EU – and what the EU is beginning to expect of itself. Tellingly, the Commission presented HERA as a counterpart to the Biomedical Advanced Research and Development Authority**

⁶⁶ van Middelaar 2021: 93

⁶⁷ van Middelaar 2021: 62

⁶⁸ ourworldindata.org/grapher/covid-vaccination-doses-per-capita?time=2021-01-01..2022-01-01&country=USA~European+Union~GBR
Our World in Data 2023

(BARDA) in the US. These demands indicate that many assume the Commission will act as the coordinator-in-chief; and that they might be disappointed when it does not.

The comparisons encapsulate another key aspect of the controversy around HERA. Some think it is too weak and the EU should move even closer to the US on its path to a federal structure. Others find HERA too strong and warn against introducing the vision of EU as a health union through the backdoor with COVID-19 used as a strategic lever. These debates will persist in parallel with the ongoing discussion about whether the EU should move towards a European Health Union.

3. INDUSTRY: Enabling a Crisis-Resilient Private Sector

Key points

- A core part of the EU's initial crisis response to COVID-19 aimed to protect the single market and the European freedoms it is set to guard. However, protective measures were accompanied by a wide-ranging bundle of measures aiming to enable and boost European industry in the crisis response.
- As a horizontal crisis response measure based on learnings from the COVID-19 crisis, the recently proposed Single Market Emergency Instrument (SMEI) underscores that the European Commission is willing to increase its competences to intervene in the market during crises.
- The advancement of enabling measures to boost the European industry's capacity to respond to crises will likely raise several principled debates relating to (a) the desired balance between public support and fair competition, (b) ownership and intellectual property rights as well as (c) taxation and redistribution.

As soon as the COVID-19 pandemic hit Europe, it became evident that it would deal a devastating blow to the European economy and pose an existential threat to the single market and the four freedoms it is set to protect. Member states instantly imposed a wide range of restrictions on shipments of PPEs and medicinal supplies, travel and movement, and several (partially) closed their borders. Over the course of the pandemic all member states enforced restrictions ranging from school closures to quarantine requirements and proof of vaccination. Several of the nationally imposed restrictions weakened the functioning of the single market and the European freedoms that it is set to protect. In addition, it became increasingly evident that EU-wide coordination of industrial production and distribution of countermeasures was needed in response to the crisis.

The COVID-19 crisis underscored how health-related measures on their own were insufficient in dealing with the crisis. **Protective measures** needed to be taken to ensure that goods and people continued to move freely and that the single market could continue to function during the crisis. In addition, **enabling measures** were required to establish a crisis framework for European industry, in order to facilitate rapid early development and scale-up of new medicines as well as coordinated production and distribution of PPEs. **Industrial and market-related measures were thus central to the EU's pandemic response from the very start.**

In this chapter, we provide a conceptual framework for the industrial and market-related measures initiated by the EU during the COVID-19 pandemic. The chapter will not focus on national measures, nor will we in this chapter present a complete list of all measures taken by the EU. Instead, we illustrate how the measures, which were rapidly implemented during the pandemic to protect the internal market, have led to the proposed institutionalization of a crisis framework for the single market: the Single Market Emergency Instrument (SMEI). Finally, we identify a list of unresolved and forward-looking questions concerning industrial and market-related emergency measures.

3.1 Protective Measures: Safeguarding the Single Market

The Single Market Enforcement Task Force (SMET) was announced on March 10, 2020, in the context of the European Industrial Strategy⁶⁹ and thus predated the COVID-19 pandemic. However, when COVID-19 hit, it provided a forum for member states' authorities and the Commission to prioritize the actions needed and coordinate their responses. The measures launched by the EU to protect the continuous working of the single market included:

Measures to facilitate the free flow of individuals:

In early response to restrictions on free movement imposed by member states to minimize the spread of the COVID-19 virus, the Commission issued a number of guidelines regarding how to exercise the right to free movement during the pandemic, especially focusing on the movement of cross-border workers, seasonal workers in critical industries (e.g. harvesting), health professionals, persons on board of ships and workers in the food sector.⁷⁰ In addition, the member states agreed on a common approach to travelers entering the Union from third countries.⁷¹

In response to member states imposing a range of travel restrictions and quarantine rules, the Commission in March 2021 presented a proposal for a common framework for an EU COVID-certificate, which was agreed upon by the legislators in May 2021. The digital COVID-certificate, which does not distinguish between types of travelers (e.g., commuters, seasonal workers, business travelers and tourists), aimed to restore the free movement for all European citizens travelling inside the Union. **The EU digital COVID-certificate in combination with the successful establishment of a coordinated approach to the EU's external border have been cornerstones in quickly reinstating free movement of individuals during the pandemic.**

In addition, a vast set of measures were adopted to protect the European tourism industry. According to the Commission, the European tourism industry contributes approximately 10 percent of GDP and the industry faced devastating prospects for the 2020 summer season. In the lead up to the season, the Commission presented a designated tourism and transport package including but not limited to: a strategy for the recovery of the European tourism sector, the Re-open EU website, consumer protection measures to facilitate reimbursement of cancelled travels, and designated financial support and liquidity support through a relaxation of the State Aid rules.⁷²

Measures to protect the free flow of goods:

Border restrictions including elaborate health checks severely disturbed the movement of goods in the early days of the pandemic. In response, the Commission, on March 23, 2020, presented its 'Green Lane' initiative, which aimed to ensure that checks installed at the borders did not keep freight vehicles more than 15 minutes.⁷³ The European Council on March 26, 2020, called for the Commission to help ensure that all internal restrictions to the free movement of goods were removed. In addition, the Commission proposed VAT exemptions and customs duties on COVID-19-related medicinal goods and PPE⁷⁴ as well as flexibility in expediting customs formalities. **The sources interviewed for this**

69 ec.europa.eu/info/sites/default/files/communication-enforcement-implementation-single-market-rules_en_0.pdf

70 [eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020XC0414\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020XC0414(01)&from=EN) Official Journal of the European Union 2020a

71 The common approach has been updated over the course of the pandemic. The Commission initially published a Communication on non-essential travel to the EU. The most recent update is from February 2022, with effect from March 2022; European Council 2022b

72 single-market-economy.ec.europa.eu/sectors/tourism_en European Commission 2023

73 ec.europa.eu/commission/presscorner/detail/en/ip_20_510 European Commission 2020e

74 European Commission 2021c

report unanimously hailed the EU's role in ensuring the continuous workings of the single market during the pandemic.⁷⁵

3.2 Enabling Measures: Creating an Enabling Framework for European Industry

The measures taken by the EU in support of European industry were both designed to alleviate the economic burden faced due to the pandemic, to ensure adequate access to needed products short-term, as well as to ensure that European industrial stakeholders were well positioned to innovate, ramp-up production and distribute crisis-related products.

Alleviating the economic burden:

A Temporary Crisis Framework for State Aid was adopted by the Commission on March 19, 2020.⁷⁶ The framework included liquidity measures, solvency support, investment support as well as options for conversion and loan restructuring. The crisis framework was later revised and expanded six times as the pandemic evolved.⁷⁷ In addition, funds were redirected from existing EU programs⁷⁸ to provide different financial measures to SMEs such as loan guarantees.

The adopted framework was inspired by the Temporary State Aid Framework adopted during the banking crisis⁷⁹ and has later served as inspiration for the Temporary State Aid Framework which was launched in support of the economy in context of Russia's invasion of Ukraine.⁸⁰ **The three frameworks have advanced the Commission's experience with and knowledge of the efficiency of different types of solvency support and liquidity measures, and thus also strengthened its ability to respond with similar measures in upcoming crises.**

The continuous use of lenient state aid rule has, however, also raised concern in some member states regarding fair competition and an internal level playing field. **While recent analyses from DG GROW of the national uptake and implementation of state aid during COVID-19 do not indicate significant deteriorating effects,⁸¹ concerns remain in some member states that a prolonged state aid crisis framework might distort competition. Such concerns were recently corroborated by the announcement of the German energy relief plan.⁸²**

Ensuring short-term access to goods through joint procurement:

The Commission did not just work to ensure that goods moved freely in the European market, it also introduced measures aimed to ensure that member states had adequate access to needed goods short-term. For example, the Commission worked to unify the sourcing and purchase of PPE and COVID-19 relevant medicinal equipment, and temporarily prohibited exports of PPE from the EU.⁸³ The

75 As shown in a 2021 Think Tank EUROPA paper; Friis et al. 2021

76 ec.europa.eu/commission/presscorner/detail/en/STATEMENT_22_2980 European Commission 2022f

77 op.europa.eu/en/publication-detail/-/publication/ecfdc6fc-6191-11ed-92ed-01aa75ed71a1/language-en/format-PDF/source-search Cannas et al. 2022

78 E.g. Funds from European Fund for Strategic Investments to reinforce the COSME Loan Guarantees Facility and the InnovFin SME Guarantees Facility.

79 ec.europa.eu/competition/state_aid/legislation/temp_framework_en.pdf European Commission 2008

80 ec.europa.eu/commission/presscorner/detail/en/statement_22_1949 European Commission 2022f

81 op.europa.eu/en/publication-detail/-/publication/ecfdc6fc-6191-11ed-92ed-01aa75ed71a1/language-en/format-PDF/source-search Cannas et al. 2022

82 euronews.com/my-europe/2022/09/29/germany-to-spend-200-billion-to-tackle-high-energy-prices Sørensen & Overvad 2022, Euronews 2022

83 Including the introduction of an accelerated joint procurement procedure and joint EU stockpiling and medicinal equipment and PPE.

Commission issued guidelines to public buyers clarifying the flexibility provided in case of urgency including the possibility to award public contracts without publication in case of extreme urgency.⁸⁴

The COVID-19 pandemic upset normal demand structures for medicinal supplies and PPE and thus increased the risk of damaging pricing practices arising from the abnormal market situation. **The increased global demand for COVID-19-related products caused concerns regarding price and access and thus stimulated the novel use of public procurement at the EU-level.**

The Commission activated the Joint Procurement Agreement (JPA)⁸⁵ under which it has since 2020 enabled 12 joint procurement procedures to order essential medical supplies and innovative therapeutics for nearly €13 billion.⁸⁶ The JPA was adopted in 2014 in the aftermath of the H1N1 influenza, which had exposed weaknesses in the member states' ability to access pandemic vaccines and medicinal supplies. The purpose of the JPA is to ensure equitable and cost-effective access to medicinal supplies during a health crisis.⁸⁷ It establishes greater countervailing purchasing powers and economics of scale. **Thus the JPA helps to rebalance the powers of public buyers and private suppliers in emergency situations where these have been skewed.**

Moreover, the JPA levels the playing field among public buyers as it for example restricts exclusivity agreements and discrimination. It also ensures risk-sharing among buyers and lowers the administrative burden. **While the Commission has been scrutinized for its joint procurement efforts, the sources interviewed for this report all underscored the activation of the JPA as being among the most groundbreaking and important efforts of the EU during the pandemic as it worked to equalize market access for members states and have left an institutional mark on the Union (see chapter 2).**

Supporting European Industry:

More so than allowing state aid, the Commission launched initiatives aiming to ramp up European production of PPE and medicinal products, including setting up a designated task force⁸⁸ for industrial scale-up of COVID-19 vaccines under the leadership of Commissioner Thierry Breton in early 2021. DG GROW spearheaded an initiative to ensure ongoing coordination (including match-making events on vaccine production) with selected stakeholders from European industry and published guidance to assist manufactures in increasing output of PPE (including facial masks, 3D printing, and hand disinfectants).⁸⁹ In addition, DG GROW facilitated that the European Committee for Standardization (CEN) and the several European standards for medical devices and PPE were freely available.

The experiences from the DG Grow industrial task force were later utilized in the creation of the strong industrial component of HERA, including the EU-FAB initiative (see chapter 2). The Commission also upgraded the EU Civil Protection Mechanism with the creation of the RescEU initiative, which is run by the DG for European Civil Protection and Humanitarian Aid Operations (ECHO). Under RescEU the Commission facilitates European stockpiling of medicinal equipment and PPE in

84 [eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020XC0401\(05\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020XC0401(05)&from=EN) Official Journal of the European Union 2020c

85 health.ec.europa.eu/publications/commission-decision-c2014-2258-final_en. JPA is neither an international treaty (see European Parliament; Council (2015b)) nor a pure EU legal act, but a budgetary implementing measure of Decision 1082/2013/EU

86 European Commission 2014

87 cambridge.org/core/journals/european-journal-of-risk-regulation/article/abs/role-of-the-joint-procurement-agreement-during-the-covid19-pandemic-assessing-its-usefulness-and-discussing-its-potential-to-support-a-european-health-union/962A64946053159BEF68F-24CF26E5142 Mcevoy & Ferri 2020

88 The Task Force for Industrial Scale-up of COVID-19 vaccines

89 See for example European Commission a, European Commission b, European Commission c

nine member states.⁹⁰ **Thus DG GROW launched a set of wide-ranging and innovative initiatives to ensure availability of needed products**, including monitoring the supply-chains for COVID-19 related products, monitoring available stocks, mapping manufacturing facilities and capacities, reaching out to companies not currently active, issuing recommendations on conformity assessments⁹¹, as well as monitoring supply and demand for crisis-related products.

The Commission also pursued de-risking efforts to boost investments, accelerate innovation and production of needed products. **Commission sources underscored that continuous work is being done to find models that will help de-risk investments in the area of medicinal devices and treatments.** For example, the Commission launched a new program – the ESCALAR program – which provides scale-up support to European companies in need of financial support. The approach was invented in a partnership with the European Investment Fund and was pledged as part of the EU SME Strategy in March 2020.⁹² The ESCALAR program aims to increase VC investment capacity and private equity funds to high-risk European SMEs (especially in the scale-up phase) by de-risking investments and thus minimize the European private investment gap.

The continuous work to design investment de-risking models (including in the health sector) underscores both a commitment to support innovative European SMEs, but also the broader political commitment to facilitate the establishment of novel European industrial heavy-weights.

Focusing more narrowly on vaccines, the Commission presented its COVID-19 Vaccine Strategy⁹³ in June 2020. The core aim of the strategy was to ensure that a safe and efficacious vaccine was produced in Europe and that swift access was provided to all member states. **The Advance Purchase Agreements (APAs) with pharma companies were a central component to ensure the rapid development of vaccines, hedge bets, and pool investments.** €2.7 billion was allocated through the Emergency Support Instrument (with the possibility of additional funding from member states and EIB loans) to cover the producers' up-front cost for vaccine production. **Akin to a down payment or an insurance policy the APAs transferred risk from industry to public authorities which, in return, was granted prioritized access to vaccines in the cases where they became available.**

3.3. SMEI: From Ad Hoc Measures to Structured Protection of the Single Market

The Commission has tabled several initiatives, which in different ways will strengthen the response capabilities of European industry when faced with a future health crisis.⁹⁴ We will in this section focus on the SMEI proposal tabled by the Commission on September 19, 2022.⁹⁵

90 Belgium, Denmark, Germany, Greece, Hungary, Romania, Slovenia, Sweden, and The Netherlands. The RescEU initiative has 34 participating countries: the EU-27 and the UK, plus Iceland, Norway, Serbia, North Macedonia, Montenegro and Turkey.

91 eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020H0403&from=EN Official Journal of the European Union 2020b

92 European Commission 2020e. In addition, the European Enterprise Network was utilized to ensure innovations partnerships for SMEs on areas linked to COVID-19.

93 European Commission 2020g

94 The project has facilitated events focused on two such initiatives: the IPCEI on Health and the proposal for a European Health Data Space (EHDS) (Sørensen 2022; Sørensen & Foss 2022). The IPCEI on health, which was launched March 3rd, 2022, aims to strengthen the EU's strategic autonomy in the health sector in general, but also includes a component which will focus on innovating with regards to future crisis response (FRENCH PRESIDENCY OF THE COUNCIL OF THE EUROPEAN UNION 2022). The EHDS was announced in the European Strategy for Data (European Commission 2020h), which set out a vision for sectoral European data spaces, including on health data. The EHDS thus precedes the COVID-19 pandemic, and the ambitions are also more wide-ranging than response to health crises. However, the pandemic has underscored the need for credible and interoperable data at the Union level.

95 European Commission 2022g

The SMEI is a horizontal crisis response measure meant both to protect the single market and strengthen the crisis response of European industry. A dedicated instrument to ensure free movement in times of crisis was announced in the EU Updated Industrial Strategy⁹⁶ following a call by the European Council in October 2020 to draw lessons from the COVID-19 pandemic in relation to the workings of the single market.⁹⁷ **Commission sources close to the development of the proposal note that while single market crisis measures have been floating before the pandemic, the concrete development on SMEI is a reflection of the desire to instrumentalize and turn the learnings from the pandemic into a legally binding tool.**

While medicinal products, medical devices and countermeasures fall outside the scope of SMEI, the SMEI proposal clearly mirrors several of the initiatives launched by DG GROW during the pandemic.⁹⁸ **The proposal is interesting (and has proven controversial) as it encompasses both protective measures to guard against disruptions to the single market as well as industrial measures aimed to better enable European industry in its crisis response.**

The Commission proposes a system of gradual intervention depending on the severity of the crisis.⁹⁹ The instrument introduces a framework for contingency planning in normal times; a vigilance framework when a potentially serious incident occurs, but has not yet escalated; and finally, an emergency framework when the single market is directly affected in a systemic way by a major incident.

If activated, the emergency mode includes the possibility of activating additional extraordinary measures. In contingency mode the instrument will facilitate initiatives such as crisis protocols and training and simulations. When in vigilance mode¹⁰⁰ the proposed measures include monitoring of supply chains, facilitation of public procurement, and build-up of strategic reserves in member states, which can under certain circumstance be made binding. If the emergency mode has been activated the SMEI allows for the Commission to call on member states to restore the free movement, to provide recommendations to member states on how to ensure the availability and supply of crisis-relevant products by expanding or repurposing production facilities or accelerating permitting, as well as recommendations on how to distribute strategic reserves. Last resort measures¹⁰¹ include information requests, calls for priority rated orders, and derogations of product legislation.

The proposal for a European Chips Act¹⁰² also contains measures that will allow the Commission to intervene and make mandatory information requests, prioritize orders and common purchasing order for critical sectors such as health care and defense. **However, while the European Chips Act is a vertical measure, the SMEI proposal is horizontal and the proposed interventionist measures would possibly affect a wide range of sectors.**

The measures proposed in the SMEI mimic the ambitions set out by the Commission in the early days of the pandemic. Especially the ambitions to increase the capacity of existing EU manufacturing facilities by for example converting production lines were evidently part of the Commission's early

96 European Commission 2021d

97 European Council 2020c

98 Energy products, semiconductors and financial services are also exempted from SMEI. The exemptions have been made in order to avoid overlaps between the horizontal SMEI and other vertical EU crisis measures such as HERA and the European Chips Act.

99 The following outline of the SMEI is based on the SMEI proposal presented September 19th, 2022.

100 The Vigilance mode can be activated by the Commission, taking into consideration the opinion provided by the advisory group, for a maximum duration of six months by means of an implementing act.

101 Can only be activated following dual activation.

102 European Commission 2022h

thinking regarding their pandemic response. **Sources in the Commission underscore that the pandemic has both accelerated the work and increased the ambitions of the Commission regarding the proposed measures.**

Internal disagreements in the Commission, especially between DG COMP and DG GROW, regarding the scope and design on the SMEI were part of the reason that the SMEI proposal was delayed. Moreover, the proposal has both in its design phase and following publication been met with calls for clarifications by both MEPs and by most member states. **The main critiques are:**

The risk of a permanent crisis:

The six-month expiration clause, inserted as a safeguard mechanism against a permanent crisis mode, has done little to satisfy critics, as the vague definition of what constitutes a crisis would – critics say – give the Commission too wide options for continuous reactivation.

Unclear roles:

Several member states underscored the need to clarify the roles of the Commission and member states respectively, for example regarding the activation of binding measures.

Ensuring workers' rights:

Some stakeholders have expressed concern that workers' rights, including the right to strike, might be impeded in a crisis situation.

Limiting the burdens imposed on European industry:

A widespread concern is that information requirements, even if they target member states, will indirectly impose too heavy administrative burdens on European industry.

There has been limited progress on SMEI during the Czech presidency in the fall of 2022. **The responsibility to find a general approach on the SMEI proposal in the Council will fall under the Swedish presidency.**

3.4 Principled Debates on European Industrial Policy

The unprecedented crisis brought novel challenges to the EU, and the innovative and explorative nature of the Union's response has opened a wide range of principled questions regarding what the right future course is for the Union. Reflecting on the measures taken to safeguard the single market and European industry, as well as the measures taken to enable industrial crisis preparedness, illuminates the following issues to be addressed:

State Aid and Level Playing Field:

The introduction of the Temporary Crisis State Aid Framework during the COVID-19 pandemic, as well as the introduction of a Temporary Crisis Framework following Russia's invasion of Ukraine, have led to **concerns that increased and prolonged flexibility in the EU State Aid regime would unbalance the European playing field.**

Balancing protective and enabling measures:

The SMEI proposal has unlocked a principled discussion regarding the desired balance between measures that **protect** the single market and free movement in times of crisis (e.g. removing export bans and travel restrictions) and measures that **enable** European industry to respond to crises. **The SMEI proposal has thus reinvigorated a principled discussion regarding what mandate public authorities have to intervene in the market in times of crisis and by what means.**

De-risking and Ownership:

During the COVID-19 pandemic, in an effort to rapidly ramp-up production of medical supplies and PPE, the Commission launched several initiatives aimed at transferring some of the risk associated with innovation and scale-up from producers to public authorities (e.g. ESCALAR and APAs, see above). De-risking efforts aimed to boost private investments in European industry are not limited to the Unions pandemic response.¹⁰³ **We expect that the continued work being done to design and implement de-risking programs will ignite a debate concerning the desired balance between public subsidies and de-risking measures and the issue of ownership and open access.** During the COVID-19 pandemic, such issues were raised in relation to the issue of IPR and pricing. However, we do not expect such discussions to be limited to the COVID-19 pandemic and the measures taken in response.

Political interference and profits:

The COVID-19 pandemic significantly disrupted supply and demand patterns on medical supplies and PPE as Europe scrambled to ensure adequate supplies of needed products. That political interference can cause rapid changes to supply and demand patterns and lead to price disturbances was once again underlined during the Ukraine crisis where political decisions to ensure independence from Russian energy caused European energy prices to spike. The price hikes on energy have unlocked a European debate on windfall profits, which was not evident during the pandemic. **However, as the Union is faced with future crises and as it ramps-up its crisis response, the discussions regarding crisis measures, price disturbances and extraordinary profits will likely reoccur, and a debate on the Union's approach to extraordinary profits made during crises is needed.**¹⁰⁴

¹⁰³ See also the EIC Accelerator Program: European Innovation Council 2023

¹⁰⁴ The ambition to launch a market observatory for fertilizers in 2023 to share data on production, use, prices and trade, as laid out in the communication on availability and affordability of fertilizers, indicates that the Commission is exploring measure to combat price disturbances during crisis. See: agriculture.ec.europa.eu/system/files/2022-11/communication-ensuring-availability-affordability-fertilisers_en_1.pdf

4. DEMOCRACY: How to Reinststate Democratic Processes and Deliberation

Key points

- The European Council has taken on a central role in the EU's crisis management. However, with its significant engagement in crisis the European Council risks overstepping its treaty-based role and the legislative procedure of the European Union as well as challenging European parliamentary oversight.
- There was an increased use of article 122 during the COVID-19 pandemic, a practice which was continued during the war in Ukraine. Article 122 allows for EU-wide measures without the inclusion of the European Parliament. Its continued use – especially as a basis for initiatives with long-lasting effects on the Union such as the NGEU – thus poses a challenge to the European Parliaments role in the EU's institutional architecture.
- The COVID-19 pandemic made evident that systematic disinformation could endanger lives and thus raised the political salience of how to regulate disinformation. The EU will be challenged to find an approach to disinformation (both foreign and domestic) that carefully balances the increasing desire to find a European approach to harmful content with continuous respect for fundamental values and national differences.

As made evident in the preceding chapters, the COVID-19 pandemic has had unprecedented effects on the functioning of the EU, both with regards to its institutional setup, the financial underpinning of the Union as well as the regulation of the single market and European industry.¹⁰⁵ However, the far-reaching changes brought by the COVID-19 pandemic also merit a reflection on the consequences for the democratic functioning of the Union.

Reflections on the societal, political and economic impact of the COVID-19 pandemic will inherently be preliminary and tentative. Indeed, this also goes for any consideration given to the impact of the pandemic on our democratic institutions, processes and culture. The following reflections on how the crisis response has impacted the democratic functioning of the Union, and the questions and unresolved challenges it has posed, are thus merely an attempt to contribute to a rapidly developing field of research.¹⁰⁶

This chapter will highlight examples of how the COVID-19 pandemic has led to institutional and procedural changes at the EU level, as well as engage with the initiatives launched by the EU to combat disinformation. The chapter will, however, not provide a full overview of the multi-faceted democratic impacts that the COVID-19 pandemic has had.

4.1 The Hour of the Executive

During the COVID-19 pandemic, we saw a gravitational pull towards the executives both at the national and the European level. As in previous crises, the COVID-19 pandemic quickly became a Chefsa-

¹⁰⁵ In addition, the COVID-19 pandemic has had far reaching social and economic consequences, as well as political and societal consequences at the national level, which are not dealt with in this report.

¹⁰⁶ For an overview of recent literature see: Martinse & Goetz 2022

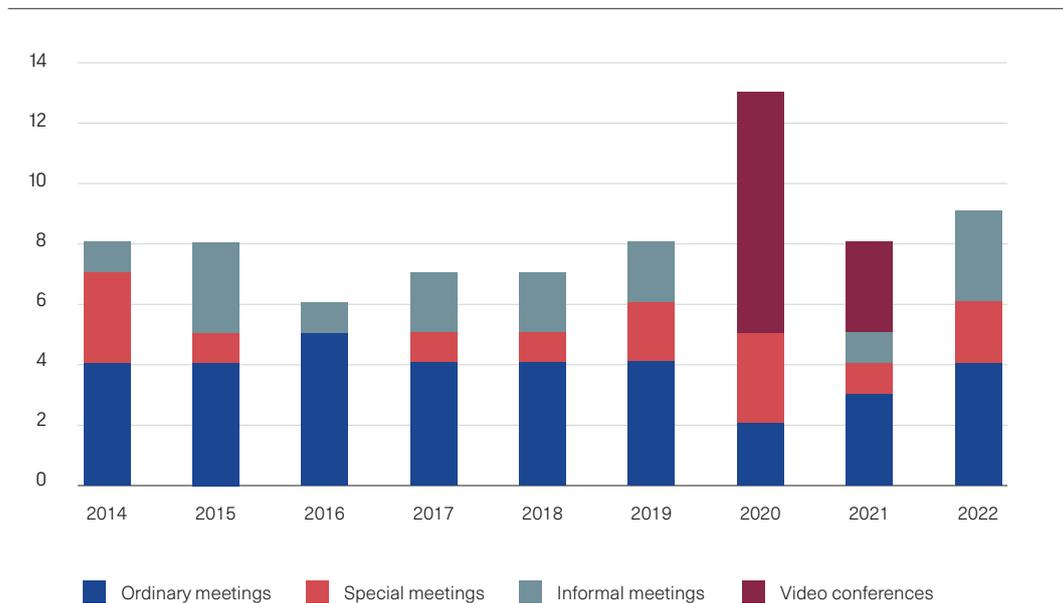
che, meaning that the heads of state and government in the European Council took on a central role in coordinating the European response to the crisis.¹⁰⁷ **The European Council took on the role as the EU crisis manager, both by negotiating the fiscal resources and by providing the political authority needed to hash out political compromises among member states.**¹⁰⁸

The centrality of the European Council in the management of the COVID-19 pandemic was emphasized both through an **intensified meeting activity** in the early months of the pandemic as well as a **high level of detail in the tasking made by the European Council** for the Commission and the Council of the European Union during the pandemic.

During the pandemic the European Council significantly stepped up its meeting activity. According to the EU Treaty, the European Council must convene at least four times per year and provide the Union with the necessary impetus for its development.¹⁰⁹ While the heads of state and government in the European Council must direct the general political directions of the Union and their priorities, it is explicitly beyond their mandate to legislate. European Council conclusions are political commitments and are thus not legally binding. To become legally binding they must be transferred into legal acts and adopted by the EU's two legislative bodies, the Council of the European Union and the European Parliament.

Figure 4.1: European Council Meetings 2014-2022

No. of meetings in each period



Source: Think Tank Europa based on data from the European Council.

Note: Other Meetings such as 'Porto Social Summit' are excluded

107 Van Middelaar 2021

108 Wessels 2016

109 TEU Article 15

In the period March 2020 to June 2021, the European Council held 19 gatherings. This is well beyond the minimum of four meetings per year stipulated by the TEU Article 15(3).

Figure 4.2: European Council meetings 16 March 2020 to 30 June 2021¹¹⁰

Month	Formal meeting of the European Council (in person)	Video conference	Output
March 2020		March 10	Conclusions by the president of the European Council
		March 17	Conclusions by the president of the European Council
		March 26	Joint Statement
April 2020		April 23	Conclusions by the president of the European Council
May 2020			
June 2020		June 19	Remarks by the president of the European Council
July 2020	July 17-21		European Council Conclusions
August 2020		August 19	Conclusions by the president of the European Council
September 2020			
October 2020	October, 1-2		European Council Conclusions
	October, 15-16		European Council Conclusions
		October, 29	Joint Statement
November 2020		November, 19	Remarks by the president of the European Council
December 2020	December, 10-11		European Council Conclusions
January 2021		January, 21	Oral conclusions by the president of the European Council
February 2021		February, 25-26	Statement of the members of European Council
March 2021		March, 25	Statement of the members of European Council
April 2021			
May 2021	May, 7-8		Porto Social Commitment, Porto Declaration
	May, 24-25		European Council Conclusions
June 2021	June, 24-25		European Council Conclusions
Total	7 meetings (15 days)	12 videoconferences	

At the first meeting since the outbreak of the pandemic, March 10, 2020, the European leaders framed the issues at stake, namely to 1) limit the spread of the virus, 2) procure medical equipment,

3) step up vaccine research, and 4) tackle the socioeconomic consequences of the pandemic.¹¹¹ Throughout the pandemic the European leaders tasked the Commission, the Council Presidency and the President of the Eurogroup with finding solutions to specified problems. The tasking was often directional such as for example developing a model for vaccination procurement, developing an 'exit model' to wind down COVID-19 restrictions across the continent, and coordinating the repatriation of over 90,000 European citizens stranded in third countries.

When European Council conclusions give direct instructions for other EU institutions to initiate or implement concrete policies, it underscores how the European Council can have direct impact on EU politics despite having no legislative competence.¹¹² **During the COVID-19 pandemic, the tasking issued by the European Council was often multilayered, extending directly to EU agencies such as European Medicines Agency and the European Center for Disease Control and the coordinating efforts demanded were at times unprecedented and at the limits of its legal authority.**¹¹³

The detailed nature of the tasking of the European Council during the COVID-19 pandemic was particularly evident in the process leading to the establishment of the European recovery fund – the Next Generation EU (NGEU). The NGEU was negotiated over the summer of 2020, with decisive parts of the negotiations taking place during the July summit, as explained in chapter 1. The July summit was the second-longest EU summit, only moments short of the Nice summit in December 2000.¹¹⁴ **The negotiations, while prolonged, ended up crossing former 'red lines' and the outcome was a historic debt-financed and loan- and grants-based recovery plan.** Which, according to Dutch Prime Minister Mark Rutte, marked a crossing of the infamous Rubicon, and which has moved the Union closer to a fiscal union.¹¹⁵

In addition to an increased meeting activity, the direction given by the European Council in the July conclusions were unusually detailed, providing thorough directions as to how the future budget and recovery funds ought to be used.¹¹⁶ Moreover, the European Council was heavily involved in the legislative process for implementing the European recovery fund. The European leaders played a central role in helping overcome the political deadlock faced when Hungary and Poland threatened to veto the EU Own Decision Agreement due to a dispute over a conditionality clause. In addition, the European leaders took on a leading role in designing a compromise where the Commission was asked to delay their guidelines on the application of the regulation until the European Court of Justice had delivered its opinion on whether the conditionality clause was compliant with the EU treaties. **The detailed governance of the process by the European Council was met with fierce critique by the European Parliament,** which reminded the European Council that it is beyond its mandate to exercise legislative functions as well as to interpret European law, and that conclusions from the European Council carry no legal weight.¹¹⁷

The process leading to the endorsement of the European recovery funds underscored both the decisive contributions of the European leaders in fabricating national compromises and pushing European integration ahead, but also how the European Council ventures beyond its treaty-based role in doing so. It thus stresses the importance of understanding the role of the European Council in EU's

111 Culley et al. 2021

112 Schramm & Wessels 2022: 4

113 Culley et al. 2021

114 Germany's Presidency of the Council of the European Union 2020.

115 Rios et al. 2020

116 Schramm & Wessels 2022

117 Wessels et al. 2016: 66-67

institutional architecture through its real-world activities, especially in times of crisis, and not only its (rather limited) formal competences.

Understanding the role of the European Council during the COVID-19 pandemic is further interesting as it underscores that a strong supranational current, as we have seen with a strongly engaged, bold and direction-setting Commission, is compatible with a strong intergovernmental current, as we have seen with a heavily engaged European Council. **Indeed, the intergovernmental logic underpinning the EU's crisis management was heavily supported and reinforced by a fast-acting Commission. In the COVID-19 crisis, the EU was to a large extent governed by a dual-executive consisting of the Commission and the European Council.**

The centrality of the European Council in times of crisis also changes the European dynamics regarding parliamentary scrutiny. The European Parliament has limited options of scrutinizing decisions taken by the European Council as the President of the European Council is not accountable to the European Parliament. **This means that parliamentary scrutiny of the European Council is largely a matter to be exercised through national parliaments.**¹¹⁸

4.2 Governing by Emergency Law

On top of an intensified meeting activity in the European Council and an increased level of detail in its tasking, we have also during the pandemic witnessed an extensive use of article 122, the EU's crisis paragraph.

Article 122 ¹¹⁹

1. Without prejudice to any other procedures provided for in the Treaties, the Council, on a proposal from the Commission, may decide, in a spirit of solidarity between Member States, upon the measures appropriate to the economic situation, in particular if severe difficulties arise in the supply of certain products, notably in the area of energy.
2. Where a Member State is in difficulties or is seriously threatened with severe difficulties caused by natural disasters or exceptional occurrences beyond its control, the Council, on a proposal from the Commission, may grant, under certain conditions, Union financial assistance to the Member State concerned. The President of the Council shall inform the European Parliament of the decision taken.

Historically, article 122 has rarely been activated. In the decade leading up to the pandemic (2010-2020) article 122 was used as a basis for four legal acts, two of which related to setting up and revising the European Financial Stability Mechanism. Since the beginning of the COVID-19 pandemic (2020-onwards), the Council has adopted six regulations on the basis of article 122. The adopted regulations relate to activating EU's emergency support as well as establishing economic relief programs during the pandemic as well as measures to manage the energy crisis in the wake of Russia's invasion of Ukraine. In addition to the six adopted measures, one measure related to the energy crisis are awaiting adoption, bringing the total up to seven (as per ultimo December 2022).¹²⁰

118 von Ondarza 2020

119 eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX%3A12008E122%3AEN%3AHTML

120 Lauritzen 2022

When using article 122 the Council decides on the basis of a proposal from the Commission. The European Parliament is thus not involved in the process, but only informed of the decision taken. **Article 122 is a crisis measure and its use during the pandemic and the Ukraine war is somewhat justified by the need to ensure rapid decision-making in times of crisis. However, the use of article 122 significantly impedes the power of the European Parliament.**

Recent analyses indicate that the European Parliament during the pandemic proved capable in their use of urgent procedures in legislation. According to a 2020 overview made by Nicolai von Ondarza, "Nineteen legislative procedures were completed by [the European Parliament] within 23.3 days on average between March and July 2020, with an average MEP approval rate of 90.8 per cent."¹²¹ **While thorough consideration needs to be given on how to avoid that the European Parliament ends up being merely a confirmatory institution, experiences from the pandemic indicate that the European Parliament is capable of accelerating the legislative processes during a crisis.**

The increased use of article 122 counters the general trend to allow the European Parliament a larger say in EU decision making. With the Lisbon Treaty, the role of the European Parliament in the EU's legislative procedure significantly expanded as the co-decision procedure was made the ordinary legislative procedure, establishing regulatory equality between the European Parliament and the Council of the European Union in most areas. The introduction of the co-decision procedure as the ordinary legislative procedure has significantly strengthened the role of the European Parliament in decision-making. In 2008 the European Parliament had a say in approx. 39.7 percent of passed directives and regulations, in 2019 the European Parliament was fully involved in approx. 78.8 percent of passed directives and regulations.¹²²

During COVID-19, article 122 was used as legal basis for essential parts of the European recovery funds, which has established a novel approach to loan-based public investments as well as introduced novel and significant redistributive logics. With the introduction of NGEU, former 'red lines' on joint debt (on a massive scale) and grant-based redistribution were crossed. Obviously, this does not provide a *carte blanche* for future public investments financed by joint debt, but it does move the goalposts and will likely make the Union more open to future joint loan schemes. The recent agreement to finance emergency support to Ukraine through joint debt underscores that this avenue has gained traction. While formally temporary measures such as the NGEU (if implemented successfully) will likely have a lasting imprint on the future workings of the Union, as described in chapter 1. **From a democratic point of view, it is undesirable that decisions with fundamental and long-lasting effects on the Union is taken without the involvement of the European Parliament.**

Discussions on emergency clauses are also pertinent to regulation beyond that which has article 122 as its basis. The recently tabled SMEI proposal (see chapter 3) envisions that the Emergency Mode should be activated by a Council Implementing Act (proposed Article 14.3), and thus not allotting a role to the European Parliament in this process. **However, as the SMEI proposal will be adopted via the co-decision procedure the European Parliament will have the chance to contest their envisioned role in activating future crisis responses.**

121 von Ondarza 2020

122 von Ondarza Nicolai 2020

4.3 Countering Disinformation

The COVID-19 pandemic made evident that systematic disinformation could endanger lives and thus raised the political salience of how to regulate disinformation. To combat COVID-19 disinformation, the EU quickly established a dialogue with the major online platforms. On 3 March, 2020, European Commission Vice President Vera Jourova held a meeting with social media platforms urging them to remove disinformation, such as adds for unproven medicinal products.¹²³ Disinformation and the threats that it could pose during a health crisis were also highlighted in the joint statement made by the European Council on March 26, 2020, in which the European leaders called on the Commission and the EU High Representative to be fully involved in the fight against pandemic disinformation and report their efforts back to the European Council.¹²⁴

Initiatives to combat disinformation campaigns have been ongoing for years. Disinformation was already highlighted as a threat in the 2019-2024 Strategic Agenda,¹²⁵ and the threat of cyber-attacks and election interference was high on the agenda before the COVID-19 pandemic.¹²⁶ Efforts to combat disinformation and cyber threats are thus not new, but **the pandemic altered the scope from being primarily focused on malign interventions of third countries to being more widely understood as also encompassing communication among European citizens.**

EU launched far-reaching actions to counter disinformation during the pandemic, including efforts to monitor online platforms, publish relevant information to citizens and public authorities, as well as boosting fact-checks and academic research.¹²⁷ In March 2020, the Commission launched a specific website aiming to address misinformation related to COVID-19 and promoting authorized content.¹²⁸ In June 2020, the EU High Representative launched a communication on how to tackle COVID-19 disinformation, setting out a list of actions.¹²⁹

On 15 December 2020, the Council called on the Commission and the High Representative to further enhance the response at EU level to disinformation campaigns in the light on the pandemic.¹³⁰ While honoring the work already undertaken, including the Commission's European Democracy Action Plan, the Council underscored the need to develop a new conceptual and analytical framework for disinformation as well as the need to develop and implement further transparency and accountability requirements for online platforms.¹³¹

In response to widespread disinformation, the Commission initiated a COVID-19 monitoring and reporting program where online platforms committed (on a voluntary basis) to report on a number of issues pertaining to the pandemic.¹³² Commission sources engaged in the collaboration with online platforms underscore that the reporting delivered by the online platforms during the pandemic did not allow the Commission to sufficiently assess the platform's compliance and that reporting stan-

123 ec.europa.eu/commission/presscorner/detail/en/speech_20_1000 European Commission 2020i

124 European Council 2020d

125 European Council 2020e

126 European Council 2020f

127 The European Digital Media Observatory (EDMO), which launched its second phase during 2020, supports the creation of a cross-border community of independent fact-checkers and academic researchers, working to detect, analyze and expose potential disinformation threats, including related to COVID-19.

128 ec.europa.eu/info/live-work-travel-eu/coronavirus-response/fighting-disinformation_en The content was broad in scope - in addition to promote authorized health information the site also sought to counter narratives about lacking European solidarity.

129 ec.europa.eu/info/sites/default/files/communication-tackling-covid-19-disinformation-getting-facts-right_en.pdf

130 European Council 2020f

131 data.consilium.europa.eu/doc/document/ST-14064-2020-INIT/en/pdf - European Council 2020e

132 digital-strategy.ec.europa.eu/en/policies/covid-19-disinformation-monitoring European Commission 2022i

dards were not adequately harmonized. **The collaboration with platforms during the pandemic thus underscored the need to develop harmonized reporting standards, definitions and indicators of disinformation, as well as a system of independent assessment of the commitment by the platforms.**

The work to strengthen the EU's oversight with online platforms and their efforts to combat disinformation is ongoing. The pandemic has both worked to accelerate and bolden the EU's work. **Several sources interviewed for this report underscored how the pandemic accelerated the agreement on the Digital Service Act and made possible the inclusion of detailed language on disinformation, including disinformation related to public health.**¹³³

The Commission will in 2023 put forward its Defense of European Democracy Package, which will develop the EU approach to disinformation as laid out in the European Democracy Action Plan.¹³⁴ The Defense of European Democracy Package will (among other things) present further initiatives to step up the fight against disinformation and to further the accountability of online platforms. **The forthcoming Defense of Democracy Package, and the recent unprecedented move to sanction Russian state-controlled broadcasters and channels to curb Kremlin-based disinformation during the Ukraine crisis**¹³⁵, **underscore that the efforts to establish a distinct EU approach to tackle disinformation are still evolving.**

4.4 Recommendations for Safeguarding European Democracy

The EU's 'crisis decade' has evolved from the euro crisis to the refugee crisis, Brexit, and now looks to be continuing with the COVID-19 pandemic, Russia's invasion of Ukraine and the related energy crisis. Changes to democratic processes and institutional balances in times of crisis might be justified to allow for rapid and resolute decision making. **However, as one crisis follows the next it is pivotal that crisis management is balanced with democratic considerations.**

Reevaluate the role of the European Council:

The European Council is an institutional anomaly. While established at an informal summit in the 1970s, it was only formally recognized as an EU institution in the Lisbon Treaty, which defined its mandate as providing strategic impetus, however underscoring that the European Council has no legislative powers. **The increased engagement of the European Council is both challenging the EU treaty base and the democratic legislative procedure of the European Union, and it ought to spur further reflections on the desired role of the European leaders in the EU's institutional architecture.**

Revise EU emergency law:

The increased use of EU's emergency clause – article 122 – during both COVID-19 and the Ukraine-crisis imposes the question of how to ensure that the call for rapid and resolute decision making is better legitimized by the European Parliament and balanced with respect for deliberation, transparency and parliamentary scrutiny. Short-term this discussion will likely be prevalent in the European Parliament's negotiations of the SMEI proposal¹³⁶. In the longer term the Parliament will likely seek to include a revision of article 122 as part of a general amendment of the EU Treaty.

¹³³ eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022R2065&from=EN Official Journal of the European Union 2022b

¹³⁴ eur-lex.europa.eu/legal-content/DA/TXT/PDF/?uri=CELEX:52020DC0790&from=DA European Commission 2022j

¹³⁵ European Commission 2022k

¹³⁶ The SMEI is not based on article on 122 (it is based on articles 144, 21 and 45 TFEU). However the proposal contains provisions regarding of the activation of the Emergency Mode which in the tabled proposal does not allow the European Parliament a role in this decision.

Developing a European approach to disinformation:

Managing information has been central to both the COVID-19 and the Ukraine war. **The EU will be challenged to find an approach to disinformation (both foreign and domestic) that carefully balances the increasing desire to find a European approach to harmful content with continuous respect for fundamental values and national differences.** Moreover, the EU will carefully need to consider its role vis-à-vis member states' actions to curb disinformation.

This report has highlighted what we believe to be lasting financial, institutional, industrial and democratic impacts of the COVID-19 pandemic on the EU as well as the forward-looking issues.

In her 2022 State of the European Union address and as a postlude to the Conference of the Future of Europe, Commission President Ursula von der Leyen gave her backing for a European convention.¹³⁷ Von der Leyen did not explain what kind of treaty changes would be needed, but as the above chapters have highlighted, several issues relating to the democratic functioning of the Union in times of crisis are in need of further debate. In addition to a possible convention, **the 2024 European election provides a unique platform for the European Parliament to fill the deliberative void caused by recurrent crisis management.** Indeed, it rests on the European Parliament to facilitate public debate on key fiscal, institutional and regulatory decisions taken during and in the aftermath of COVID-19.

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