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Improving the EU Response to Pandemics: Key Lessons from Other Crisis Management Domains

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As EU countries are facing new waves of COVID-19 and are widely re-imposing lockdowns, the question of strengthening EU members' cooperation on health, especially on matters related to cross-border health crisis, has become more pressing. The issue of an EU Health Union, which for long was barely conceivable, is now at the forefront of political debates. On September 16 2020, President Von der Leyen raised this prospect in her State of the Union address. Subsequently, on November 11, the Commission released a proposal to enact new regulations aimed at building a stronger crisis preparedness and response framework for Europe. Such EU level initiatives came in response to a lack of coordination between Member States during first wave of COVID-19, which caused confusion, deaths, as well as social and economic damages to the population. Member States also started to adopt different approaches to confinement and population tests, and differing national measures restricting the free circulation of masks and medical and protective equipment, while unilaterally deciding to close borders, creating threats to the functioning of the single market and principle of free movement of people.

EU shortcomings in managing the crisis appeared at almost every stage of the process of dealing with the COVID-19 pandemic: surveillance, preparedness, and response (Renda & Castro, 2020). At the epidemiological and risk surveillance stage, the European Centre for Disease Control (ECDC) failed to anticipate the gravity and spread of the virus, as shown by the risk assessments conducted by the agency mid-february 2020, a period where the virus was already circulating across EU Countries (Worobey et al., 2020). Its evaluation of Member States response capacities was also largely inadequate as it did not assess properly their capacities both in terms of testing capacities and medical countermeasures. The limited scope of EU prerogatives, calling on Member States to share their preparedness plans without the means to enforce such obligation may explain such hesitations. Moreover, the response to the COVID-19 crisis was quite disorganised at first. The Health Security Committee, an intergovernmental body, which brings together Member States to define a common strategy to respond to the crisis, failed to agree on common measures, mostly because of a legal framework that allows Member States to adopt unilateral measures in the case of an emergency.

How do we evaluate and understand the limits of EU action during the crisis? A relatively simple key to analysing EU crisis management regimes is to look at two critical dimensions: (1) who has the power to make decisions: the EU or Member States? And (2) what type of legal instruments are available at the EU level to organise Member States' cooperation when a cross-border crisis strikes? Are these instruments compulsory or do they rely on voluntary cooperation? The current EU Health security framework derives from the 2013 EU Decision (1082/2013/EU) on serious cross-border health threats. This scheme relies mostly on intergovernmental arrangements preserving Member States decision-making, whilst leaving the EU with little power to incentivise cooperation between Member States.

In an article published this fall in the European Journal of Risk and Regulation, we argue that a reform of the health security framework, as part of a Health Union, should seek to improve crisis preparedness and response. We compare health to other domains of EU crisis management to provide insights into what an effective and appropriate EU mechanism to respond to cross-border health threats could look like. Drawing lessons from these domains shed light onto the different possible levels of integration, cooperation, distribution of decision-making powers, and the

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political and legal instruments which can be used by decisionmakers. Using the cases of electricity, banking and food safety, we identify three models and possible paths for improving the EU's response to health emergencies.

The first one could be characterised by inter-governmental decision-making. It is similar to the health crisis management regime in this context, except that it involves more substantial obligations and incentives to coordinate, by setting minimal standards to all member states and ensuring a level playing field. The governance of electricity crises illustrates this model well. It relies on two main tools: first the adoption of common emergency standards, and second, the harmonisation of preparedness through a Regulation (2019/941/EU), which mandates the EU to monitor and assess Member States' preparedness plans based on common templates. Electricity crisis management also involves a pre-agreed approach to assistance, as well as regional coordination. In terms of surveillance, the Regulation commanded the adoption of common definitions, risk assessment methodology and crisis scenarios. It thus regulates how Member states plan for crises, rather than their substantive decisions, which remain a national prerogative.

Food safety illustrates a second model of cooperation, characterised by a higher degree of integration while still preserving Member states room of manoeuvre when a food crisis arises. The current regime has been reorganised by a 2019 Implementing Decision (2019/300/EU). Compared to health, it presents several advantages: rather than relying on a self-assessment by member states, it allows an external audit of national plans, even though it does not go as far as harmonising those plans. The Commission thus has more powers to make decisions in response to crisis. The definition of a clear coordination scheme at EU level, with specific tasks, and pre-defined roles, is also more likely to prevent the kind of coordination problems that COVID-19 revealed in the health domain.

The third model is the most integrated one and points to a full supranationalisation of crisis management – as in the case of banking. This option is less common as Member States are often reluctant to give up their crisis management powers. After the financial crises of 2008 and 2012, Member States from the Eurozone agreed to engage in a banking union that would provide strong regulation powers to the EU, including financial regulation powers and powers to rescue banks. Since 2013, Eurozone banks are supervised by a Single Supervisory Board (Regulation 1024/2013), located at the European Central Bank, which runs stress tests to assess banks' resistance to financial crises. In 2014, a Regulation (806/2014/EU) strengthened further the EU banking competences by creating a new agency, the Single Resolution Board, tasked with overseeing banks resolution plans, and making decisions in case of a banking failure. In theory, this approach solves coordination problems. However, supra-nationalisation is difficult to implement given the heterogeneity of conditions, Member States' ability to exploit loopholes, and the lacking legitimacy of a centrally-defined solution.

In short, what lessons can be drawn from this rapid overview of available 'tools' to coordinate EU actions in times of crisis? First, a full supra-nationalisation of health crisis management appears neither legally possible nor desirable since responses to health outbreaks requires both local action and a high level of legitimacy to be accepted by the population and to be effective. However, both the food safety and electricity models provide some useful leads to devise arrangements that would both preserve Member states jurisdiction and improve the EU's ability to respond to health crises. In practice this means: harmonising pandemics preparedness through common templates based on a stronger legislative tool such as a regulation; empowering the ECDC and Health Security Committee to audit national plans and emit recommendations; clarifying the role of the Health Security Committee in times of crisis; and designating crisis coordinators and committees before crises actually happen.

While the early stages of the Covid-19 pandemic highlighted several limits of the EU health crisis management, progress has been made since then, as coordination significantly improved together with the recognition of a vital need to adopt coordinated measures and pool resources to ensure swift and continuous supply of critical goods. The EU is now speaking a more unified voice and progressing toward more integrated instruments. Between the European Recovery plan agreed by national governments in July 2020, and recent proposals for reforming the EU health security framework, there seems to be a political appetite to strengthen the EU crisis management role.

Discussions about a European Health Union, as laid down by Ursula Von Der Leyen in her State of the Union address in September 2020, followed by a proposal for a new regulation repealing the 2013 decision on serious

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cross border health threats shows that a unique window of opportunity is opening for a more integrated health union. The Commission's proposal emphasizes the need to improve preparedness and response to future outbreaks, which are expected to become more frequent. It involves the development of an EU health crisis and pandemic preparedness plan, as well as strengthened national plans, more transparent reporting of capacities; strengthened, integrated surveillance systems; enhanced risk assessment for health threats; increased power to enforce a coordinated response at EU level through the Health Security Committee and the use of a regulation; and an improved mechanism for recognition of and response to public health emergencies.

The COVID-19 crisis offered an opportunity to structurally reform the instruments of the health security framework. Based on our analysis of other crisis management framework, we can hope that the current proposals will not only create new layers of organisations dealing with cross-border health threats but tackle the more delicate question of providing increased monitoring and steering competences to the EU level, which indeed could add important value to national action.

References

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