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**Another European
rescue of the Member
States?
EU public health policy for
COVID-19**



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Another European rescue of the Member States? EU public health policy for COVID-19

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Introduction

For those of us who are not professional European Union (EU) watchers, it would have been easy to forget the EU existed in the calamitous spring of 2020. The few media outlets that covered the EU response to the Coronavirus disease (COVID-19) seemed to want to portray it as a story of failure — e.g. a recent New York Times headline (Greer 2020) or Politico.eu's account (Herszenhorn and Wheaton 2020). That framing was common even if the EU leadership was more prescient than many other world leaders. The EU eventually found its feet (Paun and Deutsch 2020), threatening infringement proceedings against Member States that interfered with the internal market, creating a large stimulus package, easing its austere fiscal rules, and taking a leading role in raising funds ⁽¹⁾ for international vaccine and treatment research. For most European and global media, though, it was national capitals, not Brussels, that seemed to be in charge. It was heads of government who ordered closures, set up testing, mandated masks and debated school reopening, not a seemingly distant Brussels absorbed in arguments about Coronabonds that seemed like a replay of 2010.

Narrative notwithstanding, the COVID-19 crisis has not been a story of EU failure. If we ask whether the EU did what was asked of it, then it is a story of success: the EU has delivered what it was built to do in a crisis like this, which was not much. Member State governments created a Union that would have very limited capacities, no leadership role, and literally no budget in a major health emergency. Come the COVID-19 crisis, governments took actions on the Member State level, showed such limited solidarity that Italians received masks from China before they got them from Germany (Cui 2020), and had to be persuaded to avoid overt infringements of EU law as they closed borders. Now, they are equally reluctant to coordinate with each other or their European partners as they reopen borders (Jarman *et al.* 2020).

This performance was a success by the standards to which Member States held the EU, even if it might look like a failure to those who wanted effective European collective action against COVID-19. Whatever else can be said, the EU observed subsidiarity to a fault. It did not mandate public health or health care policies or impose on Member States.

That leaves the EU trapped once again in a fork. On one side there is a strong norm of subsidiarity which keeps it from doing visible and popular things to help its citizens. On the other, the urge to show European citizens what it can do for them.

1. Including through an international pledging marathon during May 2020, dubbed 'Coronavirus Global Response': https://global-response.europa.eu/index_en

Another European rescue of the nation-state?

The way out for the EU is for Member States to learn that it can help them do what they cannot otherwise do. The role of the EU through history, as convincingly argued by Alan Milward (2000), is to rescue Member States from problems they cannot solve on their own. The EU historically 'fails forward' in this way (Jones *et al.* 2015), solving crises only when Member States see that they can't do it alone, and to the minimal extent that Member States think they need.

In the case of COVID-19, we will soon learn that the European economy is too united to allow Member States to make health policies on their own. Tourism is an enormous industry across Europe, 7.4% of the French GDP and 6.5% of the Austrian in 2018 ⁽²⁾, and how many will go on a holiday that might lead to death? Higher education, manufacturing, trucking and strawberry picking — the list of activities that depend on pan-European movement is long. If Europeans do not trust each other to move around the continent, the economy of the EU will be as badly damaged as the solidarity of its citizens.

Possible European actions

What can the EU do if and when Member States learn that they are too tightly connected to self-isolate? There is little appetite for reopening treaty negotiations, though it is worth remembering that after a few years of the less severe crisis of 2008, most Member States did agree a new fiscal governance regime and treaty (Greer *et al.* 2016). If the management of the health and economic crises is as inadequate as the management of the financial crisis, we might indeed see an opportunity for a treaty action.

Within Article 168, the existing public health powers, there are options. Article 168 is written to put Member States in charge, which means that most of its language seems to weaken the EU, but it enables forceful action if Member States want it (de Ruijter 2019).

One seemingly reasonable goal is a stronger centralized EU capacity for public health surveillance (monitoring) and response. Many in public health advocate for something more like the United States (US) Centers for Disease Control and Prevention (CDC) at the EU level as well as each Member State. The names as well as organizational forms of organizations such as ECDC pay tribute to that ambition (Greer 2012). The US shows its advantages. It helps smaller and poorer jurisdictions that cannot afford elaborate scientific teams and field epidemiology capacity. It helps bigger and richer ones because even a Germany or France might not view research on all the different emerging diseases as a good investment. It diffuses expertise and creates trustworthy data. The disadvantage, as the

2. Source: OECD.Stat. Key tourism indicators. Available online : https://stats.oecd.org/Index.aspx?ThemeTreeId=10&DatasetCode=tourism_key_ind_pc

US federal government response to COVID-19 shows, is that strong executive capacity is only as good as the executive in charge.

The European Center for Disease Control and Prevention in Stockholm is a small agency dedicated to sharing best practice and information. It has helped Europeanize public health in the EU, but its 300 staff can only do so much. Likewise, the EU Civil Protection mechanism, which substantially grew out of its foreign disaster aid system, is built on win-win solutions, such as matching countries with spare firefighting or search and rescue capacity and countries that have fires or earthquakes.

Public health surveillance and emergencies response could be strengthened at reasonable cost and without much legal or conceptual innovation (de Ruijter 2019; Greer 2017). ECDC's lifeblood is data, and health data can be very slow. In the case of COVID-19, for example, mortality data move slowly, from hospitals to local and regional governments in Barcelona or Munich, to national governments in Berlin or Madrid, to ECDC in Stockholm, leaving us all weeks behind in our knowledge of what is going on. Right now, for example, the best public health data are probably excess mortality data, because testing data are still poor for most of the continent. But excess mortality data is slow to flow even to regional capitals, let alone national ones. We don't just lack good and timely data on confirmed COVID-19 cases and deaths; we lack timely data on deaths of any kind.

It would not take much money to strengthen ECDC's capacities at the top and, by EU standards, not that much more money at the bottom to support universal testing and set standards for timely reporting. This would involve setting standards in order to produce permanently stronger public health and directing resources to help financially strapped systems achieve it. Without such surveillance and data, who will travel around the EU for work or pleasure? *Would the people of Lombardy welcome tourists, and would tourists go to Lombardy, without credible testing and reporting? Would it be rational of governments to permit cross-border travel if they did not trust their neighbours' data and policies?*

The EU civil protection mechanism, RescEU, took its first real steps in March 2020 when Member States authorized it to start stockpiling resources relevant to COVID-19 such as personal protective equipment (3). The risk with any stockpile is that it stockpiles things that interest us now, isn't funded to maintain or renew its holdings, and is ill-prepared for some new and different threat. Now and in the future, what it would need would be foresight capacity, a stable budget, and a streamlined decisionmaking mechanism. Foresight would mean plans that focus on resilience rather than particular threats, so that EU civil protection could be built to address whatever the ingenuity of people and nature could throw at Europe's citizens rather than whatever last hit. A stable budget would permit acquisition and maintenance of the stockpiles, including new items that the foresight

3. COVID-19: Commission creates first ever rescEU stockpile of medical equipment.
https://ec.europa.eu/commission/presscorner/detail/en/ip_20_476

procedure identified, and training of both staff and the people who would be deployed from Member States. A streamlined decisionmaking mechanism would enable quick deployment of resources and acquisition of new ones.

Doing this would fall within existing Treaty articles but would still not be easy. There is a great deal of political reticence within the EU about redistribution between countries or people (Greer and Sokol 2013).

According to de Ruijter *et al.* (2020) public opinion is mildly positive about the establishment of centralized EU pandemic response capabilities, but scholarship on the behaviour of public opinion is quite clear about the risks of overinterpreting such a result. Many people will support a given policy option in the abstract but will rapidly cease to support it when tradeoffs are identified, the issue is framed differently (e.g. *would you be willing to give up something to help others in a different country?*), or when political loyalties are brought in and politicians set to work mobilizing national, religious, or other resentments. What looks like an indifferent to mildly positive public which might be persuaded could quickly turn into a hostile public. Remember what happened when the EU tried to resettle refugees (without asking them) in different Member States. It was a gift to the populist radical right across Europe, and the damage to European solidarity easily exceeded the benefits to refugees.

There are other ways that the EU could work to rescue Member States during the COVID-19 crisis, which could last years, and in the foreseeable global public health crises of the future. The joint procurement mechanism is not high profile outside the UK, where its failure to participate is a regrettable sign of what Brexit means for health (Flear *et al.* 2020). It has been a success for what it is, which is a buyers' club that collectively negotiates price and quantity. It could be sped up and better funded, particularly if there is global competition for an effective vaccine in 2021 or 2022. Europeans have no reason to believe that the vaccine will be invented or manufactured in Europe, which means that their governments have cause to band together and ensure that Europe can make or buy it. Organizing European capacity to buy and produce the vaccine now will be crucial, given the cutthroat politics of vaccine discovery and the equally cutthroat markets of vaccine production. Data protection will also need attention, since while it is possible to operate intrusive contact-tracing and testing regimes under EU law, it is not clearly a good idea to get used to a state of emergency.

These are approaches within existing EU health powers. There are entire other policy areas that the EU would need to address — above all social policy, which will determine both the effectiveness of public health measures over the duration of the pandemic and the damage done to societies and economy. The fiscal governance system of the EU (especially the famous Stability and Growth Pact) has been temporarily suspended by an invocation of the attractively named 'general escape clause.'

It is nonetheless a certainty that after the first wave of the calamity is over there will be calls for more austerity, just when it would be most harmful to recovery.

Forged in crisis

When Jean Monnet said that 'Europe will be forged in crises, and will be the sum of the solutions adopted for those crises' (cited in Parsons and Matthijs 2015) he wasn't necessarily predicting a good outcome, or even a stronger Europe. But he was making a very wise point. Europe today is the sum of solutions to crises from Variant Creutzfeldt–Jakob ('mad cow') to the financial meltdown of 2008-10. It now faces the largest and most complex crisis of its history. *What solutions will be added to that sum?*

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