

# EUROPEAN RESPONSE TO COVID 19 PANDEMIC – LEGAL FRAMEWORK AND LESSONS FOR THE FUTURE

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## **Abstract**

*The study analyzes legal and strategic constraints of the European Union (EU) response during Covid-19 pandemic. First lesson to be learnt is the legal limitation of the EU's competence in the field of public health protection that causes relative inefficient reaction of the EU institutions during pandemic. Second lesson lies in inadequate application of the solidarity clause at the beginning of the Covid-19 pandemic, exactly at the time of marking the 70th anniversary of Schuman's declaration. On the one hand, there is a lack of powers at the EU level, given its coordinating competence. On the other hand, there was a noticeable lack of solidarity among the EU Member States, solidarity which is legally established in the provisions of the Lisbon EU Treaty.*

*There is a battle between the role of the state with its sovereignty and the concept of europeanization of pandemic suppression, which proved to be prevalently unsuccessful. Some Member States, especially Romania and Hungary as well, performed an efficient approach to immunisation of their population, separate from the EU institutions. Successful example of Serbia, European candidate country, in mass vaccination of its inhabitants points to the fact that the state is primarily responsible in the field of public health. However, the advantage of the EU in the fight against pandemic is in the weakness of national approach to pandemic prevention, bearing in mind its global character. Hence the need to reform the EU legal framework and strengthen the political will of the EU members for deeper cohesion and coordination of public health protection measures. This would strengthen the EU's role in international co-operation in preventing and controlling possible future pandemic threats and in contributing to the European and global health security.*

**Key Words:** *European Union, pandemic, lessons for future.*

**JEL Classification:** [K3, K33]

## **1. Introduction**

The right to health is closely linked with a decent standard of living with adequate living conditions and medical care (Grahovac, 2020, 182). The European Union (EU) and its Member States were unprepared for the global health crisis caused by Covid-19<sup>1</sup>. There was a noticeable lack of solidarity within the Union, especially at the beginning of the Covid-19 crisis (Brehon, 2020, 5). Each Member State adopted separately regulations on protection measures, as well as regulations

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<sup>1</sup> Charles Michel, President of the European Council, [https://euobserver.com/20th-anniversary/150031?utm\\_source=euobs&utm\\_medium=email](https://euobserver.com/20th-anniversary/150031?utm_source=euobs&utm_medium=email) (accessed on 4<sup>th</sup> January 2021).

on closing its borders in a disorganized manner (Dumbrava, Sabbati, 2020, 3). Furthermore, there was no solidarity assistance to the most vulnerable Member States: Italy, Spain and France by other Members during the first strikes of the pandemic. Internal borders in the Schengen zone were temporarily closed, but without prior coordination at the level of EU institutions at the very beginning of the pandemic.

If the Union is to fight future urgent health crises, as the EU citizens expect<sup>2</sup>, the EU must learn from the COVID 19 pandemic and have the courage and vision to build a Union that has the capacity to protect, which means anticipating new threats that will be effectively suppressed. The same concept is valid for the economic recovery and the necessary new industrial policy in the EU. Hence the importance of the project "EU Geopolitical Commission" launched in September 2019 on the eve of the pandemic under her presidency (Mirel, 2020, 5). The pandemic in 2020 raises the question before the EU whether the Union will follow Schuman's ideas and commit itself to further promoting a united EU. Therefore, some authors (Giuliani, 2020) estimate that the corona virus pandemic is, *inter alia*, a litmus test for the Union, its Member States and the EU institutions.

## **2. Coordinating competence of the EU – strategic or legal constraint?**

The Union consists of institutions, states, governments, but also of people. In the field of public health protection, the EU institutions enjoy very limited powers. Namely, the limits of their competence are legally grounded in the provisions of the current Lisbon Treaty on the EU: „the Union will act only within the limits of the powers conferred on it by the Treaties” – art. 3 of the EU Treaty of Lisbon (Fairhurst, 2010, 29). The importance of the adoption of the Lisbon Treaty on the EU (TEU) in December 2009, is confirmed by the fact that many legal innovations have been introduced into the functioning of the EU, one of which is, *inter alia*, the delimitation of competencies between the EU institutions and its Member States (Gasmi, 2016, 89).

Unlike the previous constituent Treaties on the EU, where the powers of the Union institutions and the national administrations of the Member States were not clearly delineated, the Lisbon TEU legally established three types of Union competences in the provisions of the art. 3, 4 and 6 (Gasmi, 2016, 90). These are: exclusive powers, which belong exclusively to the EU institutions (customs union, competition regulations related to the functioning of the internal market, monetary policy for members with the single currency euro, fisheries policy and common trade policy, covering a total of five areas); then shared competencies in over ten areas of economic policy and finally, the third group that consists of supporting competencies in seven areas, including public health protection.

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<sup>2</sup> To the question "what are the areas in which the Union should use its budget?" the answer is 40% on public health, the Europeans and the EU budget, *Eurobarometer* November 2018.

It follows that in the field of health, the Union has only ancillary competence, that is, in accordance with the provisions of the Treaty of Lisbon: the EU can only intervene to support, coordinate or supplement actions taken primarily by the Member States. Broader analysis of the provisions of the Lisbon TEU indicates the importance of the provisions of the art. 9, which provides for the Union an obligation to take into account the protection of public health when undertaking any activity or implementing the EU policy. In addition to the legal definition of the field of public health as an accompanying competence of the EU (art. 6), the Lisbon TEU in the provisions of the art. 168 regulates that the Union may adopt legal acts on measures to establish high standards of quality and safety for medical products and devices for medical use (Piris, 2010, 320). In this way it was legally strengthened and raised to a higher level of the constitutive act, the previously adopted Directive of the Council of Ministers in this domain from 1993. This power to adopt EU legislation is, however, limited by the need to address common security concerns in this area<sup>3</sup>.

The EU's coordinating or supporting competence in the field of public health must not jeopardize the primary powers of the Member States in this area. The Union will complement the action of the Member States and encourage cooperation between the Member States, but the action of the Union shall be carried out with due respect for the powers of the Member States. Member States coordinate their policies and programs. The EU Commission can take any useful initiative to improve such coordination. Health care falls within the competence of the Member States, which finance, manage and organize the provision of health services and care. Any action taken by the Union aims to complement national policies, not to replace them.

However, the implementation of the coordinating EU competencies has proven to be delicate. The Union is always between too much action and / or too little action. All the more so because two opposing processes are taking place at the same time. On the one hand, it is an internal integration process. The European Court of Justice, establishing a link between health, improving the internal market and the principle of free movement, has developed case law in favor of the Union intervention and the improvement of patients' rights. Hence, some authors point to the process of tacit expansion of the EU competences based on the interpretation of the provisions of the EU Constitutional Treaty by the Court of Justice in the spirit of the theory of the beneficial effect of the norms of international public law (Zečević, 2015, 357, 362).

When it comes to protecting public health, the EU Commission has found a basis for a legislative initiative by explaining its proposals through strengthening the internal market or the cross-border dimension of a specific issue proposed for

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<sup>3</sup> Council Directive 93/42/EEC of 14 June 1993 concerning medical devices, OJ L No 169, 12 July 1993, 1.

regulation at Union level<sup>4</sup>. One of the important issues is, *exempli causa*, the reimbursement of treatment costs in EU Member States.

Some authors (Piris, 321) estimate that the Lisbon Treaty in the provisions of art. 168 introduced greater restrictions on the Union's competences in the field of public health than before its adoption. This is supported by the provisions in para. 7 of art. 168, that the responsibilities of the Member States include the management of health services and medical care, as well as the allocation of resources allocated to them. It follows that the establishment of national public health policies remains the exclusive competence of the Member States. This fact is not changed by the provisions of art. 114, which provide for the harmonization of national legislation in the field of health, with the aim of completing the internal market.

### **3. Solidarity clause – *de iure versus de facto* during the pandemic**

*De iure*, solidarity principle is affirmed by Article 3.3 of the Lisbon Treaty on the EU (TEU), according to which the EU "shall promote economic, social and territorial cohesion and solidarity between Member States. Article 6.1 of the Lisbon TEU states that The Union recognizes the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, which has the same legal value as the Treaties, including solidarity.

Furthermore, the Lisbon Treaty contains a solidarity clause, which implies the provision of assistance by EU bodies and other EU members to a Member State endangered by natural or other types of disasters or terrorist attacks (Gasmi, 2016, 259-260). This clause is provided for in a special chapter of the Lisbon Treaty dedicated to the EU's common foreign and security policy<sup>5</sup>.

At the global level, the obligation to provide mutual assistance in case of aggression is regulated by Art. 51, UN Charter, Chapter VII on Collective Security. However, such regulated solidarity in order to preserve international peace and security was generally not effective in the UN practice. Within the EU, if one of the Member States is attacked, the other Member States are obliged to help it with all available means in line with Art. 42 par 7 of the Lisbon Treaty (Zečević, 2015, 455). When formulating the solidarity clause, the Member States started, above all, from the real danger of terrorism, as well as the possibility of armed aggression. The same is true in the case of a terrorist attack, human or natural disaster, but during the pandemic, the lack of solidarity came to the fore.

Some authors point out that the solidarity clause is of the greatest symbolic and political importance for the EU, although it does not change the position of member countries that are in the NATO alliance or are militarily neutral, nor does

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<sup>4</sup> European Resolution on the application of patients' rights in cross-border healthcare, Senate No. 77 (2008-2009). European Resolution on Health Technology Assessment. Senate, No. 87 (2017-2018). Political Opinion of 7 June 2018 on the Civil Protection Mechanism – RescUE.

<sup>5</sup> Given that the Lisbon Treaty consists of two parts, the solidarity of the member states is regulated in the provisions of Art. 31 of the Treaty on European Union and Art. 222 of the Treaty on the Functioning of the European Union.

it represent a legal basis for mutual defense. because the decision on that is still in the exclusive national competence of the sovereign Member States (Piris, 2010, 275). However, the provisions of the Art. 222 further regulate solidarity between the members of the Union in the event of a terrorist attack or a natural or man-made disaster. Solidarity assistance from EU Member States in these cases is activated at the request of the authorities of a particular Member State.

The EU Commission assessed that the implementation of the Union policies on health checks on persons and transit of goods should be guided by the principle of solidarity among Member States (European Commission, 2020, 1753 final). "European solidarity is in the personal interest of all of us," said European Commissioner for Health Stella Kiriakides.<sup>6</sup> However, despite this, in March 2020 EU health ministers expressed concern about a possible shortage of protective equipment and medicines in some Member States after Germany, France and the Czech Republic blocked the export of antiviral equipment right after the outbreak of the coronavirus pandemic. There was a noticeable lack of solidarity among Member States. Despite the Commission's recommendations on Member States' coordination, precisely because of unilateral decisions of some Member States, the crisis had shifted from health and public order issues to a re-examination of the functioning of the Schengen area and the single market - two foundations of the Union integration. Border controls made it difficult for goods of all kinds to move and, at the border, for sanitary facilities to function. Only a few weeks after the beginning of the pandemic, European solidarity finally came to the fore. Hospitals in Germany, Luxembourg and also in Switzerland received patients from Eastern France. Germany also sent medical equipment to Italy and received Italian patients. Such delayed assistance had negative effect, so in March 2020, only 35% of Italians gave a positive assessment of the role played by EU institutions in the pandemic (Maurice et al., 2020, 3).

Another legal foundation of solidarity is contained in the art. 196 of the Lisbon Treaty.<sup>7</sup> It remains open issue to what extent those provisions were implemented by the EU institutions. Following those norms on mutual assistance, a "European civil protection mechanism" was established, including several tools mobilised in the fight against COVID-19: an emergency coordination and response centre, a European civil protection reserve (made up of civil protection experts, means of transport and equipment), a European medical corps, etc. (Bertoncini, 2020, 10). Forthcoming time will show the effectiveness of those EU measures.

The second aspect of solidarity is based on economic factors, in the spirit of the clause in the Lisbon TEU, which speaks of providing assistance with all available means. The economic scale of the health crisis forced Competition

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<sup>6</sup> Published in the EU Observer, <https://euobserver.com/coronavirus/147659>, 12.11.2020 (accessed on 3<sup>rd</sup> of January 2021).

<sup>7</sup> Part Three – Union Policies and Internal Actions. TITLE XXIII – Civil Protection, [http://data.europa.eu/eli/treaty/tfeu\\_2016/art\\_196/oj](http://data.europa.eu/eli/treaty/tfeu_2016/art_196/oj) (accessed on 3<sup>rd</sup> of January 2021).

Commissioner Margrethe Vestager to relax the EU state aid rules<sup>8</sup>. In this context, there is a positive initiative to establish EU solidarity funds for medium-sized companies that lack share capital (Sales, 2020, 3). These funds would contribute to strengthening cohesion in the EU.

Besides legal and economic dimensions of the solidarity in the EU, some authors emphasize also geopolitical one (Bertoncini Y., 2020, 2), explaining it by grappling of the EU with a series of crises (financial, migratory, Brexit) that jeopardized the EU unity, especially Brexit, but which ultimately led to progress. Many external challenges and threats, such as: climate change, relations with Russia, instability in the Middle East and the Sahel, terrorist attacks, financial deregulation, the rise of China, American isolationism and now the COVID-19 crisis, may prompt the EU Member States to respond more effectively. Therefore, pandemic is a major test of the EU's cohesion and hence of the ability to show all the solidarity needed to overcome it.

#### **4. State sovereignty v. Europeanization – relevant lessons during pandemic**

Despite the positive action of the EU institutions in the crisis caused by the pandemic, the impression of confusion and passivity prevailed (Maurice et al., 2020). The main reason is that the area of public health protection is not within the competence of the EU institutions, and therefore they were not equipped to manage an adequate response to the pandemic at the very beginning.

These facts influenced the Commission to submit a proposal in November 2020, which would enable the Commission to declare a state of emergency in public health throughout the EU in order to quickly activate the emergency response mechanisms in the Union<sup>9</sup>. This initiative of the Commission was submitted in the form of a communication to the European Parliament, the EU Council and EU advisory bodies, but was accompanied by proposals for three legislative acts, which upgrade Decision 1082/2013 / EU on serious cross-border threats to health, then strengthen the mandate of the European Center for disease prevention and control (ECDC) and also the extension of the mandate of the European Medicines Agency (EMA). The Commission's initiative is linked to the proposal to improve the Union Civil Protection Mechanism, proposed by the Commission in June 2020<sup>10</sup>.

The Commission pointed to the inefficiency of the unilateral measures taken by the EU Member States, the introduction of border controls and the ban on sources of protective equipment at the beginning of the pandemic, because they were not coordinated at the EU level. Referring to the expectations of EU citizens

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<sup>8</sup> [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_20\\_496](https://ec.europa.eu/commission/presscorner/detail/en/IP_20_496), 9.11. 2020 (accessed on 18<sup>th</sup> December 2020).

<sup>9</sup> European Commission, Building a European Health Union: Reinforcing the EU's resilience for cross-border health threats, Brussels, 11.11.2020, COM (2020) 724 final, [www.europa.eu](http://www.europa.eu), (accessed on 24<sup>th</sup> February 2021).

<sup>10</sup> COM (2020)220.

that the EU institutions act more effectively in combating the pandemic<sup>11</sup>, as well as the need to preserve the single market and sustainable economic development of the EU, the Commission proposed building the European Health Union. It is important to stress that repeated attacks of infectious diseases are becoming more probable, and strengthening the powers of key EU institutions is legally based on the provisions of the EU Charter of Human Rights, which is an integral part of the Lisbon Treaty being the primary legislation. The EU Charter provides for the right to a high level of health protection in the EU.

Through the Coronavirus Response Investment Initiative (CRII), which enabled the mobilization of unspent EU funds under cohesion policy, € 5.9 billion has been reallocated by November 2020 starting from 1 February 2020, to support health systems and actions in the EU Member States and regions<sup>12</sup>. In addition, the scope of the European Solidarity Fund has been extended to cover major public health emergencies. Cooperation and coordination at EU level gradually increased and efforts have been made in all sectors. It follows that it was the only way to effectively address the various interrelated damages caused by the pandemic: in the health, economic and social sectors. Important lesson is that the fragmentation of pandemic efforts makes all Member States collectively more vulnerable.

In February 2021, The European Commission admitted mistakes were made during the bloc's approval and rollout of vaccines, but argued lessons were learned in the process (weak contracts with responsible pharmaceutical companies). The admission came amid a wave of criticism over the slow pace of immunisation programmes in Member States<sup>13</sup>. However, Romania was the most successful Member State in implementation of the immunisation of the population and Hungary started vaccinating its citizens with Russia's Sputnik V vaccine and Chinese Sinofarm vaccine, being the first EU country to do so, despite the fact that it was not approved by the EU medicines regulator<sup>14</sup>. At the same time Hungarian Prime Minister Viktor Orbán was strongly criticized in the EU for weakening the democratic state and institutions with the argument that he used the pandemic crisis to gain the power to rule by decrees (Kelemen, 2020, 3).

Besides Romania, also Serbia, European candidate country, gave successful example of mass vaccination of its inhabitants early in 2021, which points to the fact that the state is primarily responsible in the field of public health. Serbian Prime Minister, A. Brnabić stated that the primary goal of immunisation is protection of public health of population in Serbia, without geopolitical reasons in choice of

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<sup>11</sup> <https://europarl.europa.eu/at-your-service/en/be-heard/eurobarometer/public-opinion-in-the-eu-in-time-of-coronavirus-crisis-2>, 14.11.2020 (accessed on 11<sup>th</sup> January 2021)

<sup>12</sup> [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_20\\_1864](https://ec.europa.eu/commission/presscorner/detail/en/IP_20_1864) (accessed on 20<sup>th</sup> February 2021)

<sup>13</sup> [https://euobserver.com/coronavirus/150889?utm\\_source=euobs&utm\\_medium=email](https://euobserver.com/coronavirus/150889?utm_source=euobs&utm_medium=email), accessed on 11<sup>th</sup> February 2021.

<sup>14</sup> [https://euobserver.com/political/150878?utm\\_source=euobs&utm\\_medium=email](https://euobserver.com/political/150878?utm_source=euobs&utm_medium=email), accessed on 15<sup>th</sup> February 2021.

vaccines. Consequently, another lesson for the future appeared: mixture of political standpoints and protection of public health is not an effective response to pandemic suppression.

What are the main elements of Europeanization in the fight against Covid - 19 pandemic?

The institutional health care framework of the EU is based on the activities of the Commission through the EU Health Security Committee and the Early Warning and Response System. At the EU Council of ministers level, Integrated Policy Crisis Response (IPCR) arrangements have been used to implement coordination and support the EU's policy response. The Health Safety Committee is a key body in which EU Member States consult with the Commission to coordinate preparedness and response planning, national responses and communication on risks and crises related to serious cross-border health threats. Nevertheless, it became apparent that this Committee had a limited ability to implement or coordinate national responses of pandemic control measures or to apply agreed common approaches. This is illustrated by the examples of a wide range of primarily national control measures applied across the EU, such as lockdowns, wearing masks or closure measures at border crossings. Severe border checks and travel restrictions introduced across Europe to fight new Covid-19 variants in 2021, once again raise questions on how the EU Commission can keep the passport-free Schengen zone open. Grave economic consequences appeared causing chaos to goods transport by road across Europe.<sup>15</sup>

Decision-making based only on the national situation in the country poses a real health risk and can prove to be very harmful from an economic and social point of view. However, this happened at the beginning of the crisis caused by the pandemic in the EU, in March and April 2020. Everywhere in the EU Member States, people were preparing to leave the restrictions on movement in June 2020, but on very different dates and in different ways (Giuliani, 2020, 2). At the beginning of the pandemic, Sweden's model in combating the epidemic stood out, which had avoided the introduction of restrictions on the movement and restaurants were opened. Denmark (as well as Norway) joined this model, which some authors analysed from the angle of a common strategic culture, mentality and security conceptualization shaped by their different historical experiences in relation to other EU Member States (Khorrami, 2020, 2). Meanwhile, in later stage of pandemic this liberal model proved to be very ineffective.

The Commission published the EU Economic Recovery Plan, where it proposed the amount of 750 billion euros through the multi-annual EU budget, on May 27, 2020.<sup>16</sup> After many problems, the multi-annual budget for 2021 – 2027 was adopted on 17<sup>th</sup> December 2020 with a total of €1.8 trillion to help rebuild a

<sup>15</sup> [https://euobserver.com/economic/150957?utm\\_source=euobs&utm\\_medium=email](https://euobserver.com/economic/150957?utm_source=euobs&utm_medium=email), accessed on 17<sup>th</sup> February 2021.

<sup>16</sup> European Commission, The European Commission's Recovery Plan - Key points for a full picture, [www.robert-schuman.eu](http://www.robert-schuman.eu), 27. 05. 2020.

post-COVID-19 Europe. This package consists of the long-term budget, the 2021-2027 multiannual financial framework, made up of €1.074 trillion, combined with the temporary recovery instrument, NextGenerationEU, of €750 billion.<sup>17</sup>

In addition to the area of economic recovery, the Commission sought to harmonize national measures to close borders in order to preserve the Schengen Agreement on the Abolition of Internal Borders (which covers a total of 26 European countries). Through Guidelines on border management measures to protect health and ensure the availability of goods and basic services, the Commission pointed out that coordination at the EU level is crucial, by establishing principles for an integrated approach to effective border management for health while preserving the integrity of the single market. "Member States, and in particular neighboring Member States, should work closely and coordinate at EU level to ensure the effectiveness and proportionality of the measures taken."<sup>18</sup> In practice, these guidelines have not been fully implemented by Member States, although the Commission primarily referred to the need to maintain the smooth functioning of the single market and to prevent shortages of goods and basic services. There was unfair competition between EU members in the procurement of protective medical equipment and respirators, and even a ban on the export of certain drugs, which significantly disrupted the single market and introduced protectionist measures at the very beginning of the pandemic. At the end of April 2020, most Member States informed the Commission about the introduction of temporary border controls due to threats to public health caused by the spread of Covid-19. Some Schengen countries, such as Italy, Latvia, the Netherlands and Malta, have not notified the Commission (Sabbati, Dumbrava, 2020, 3).

In the context of Europeanization in response to pandemic, it is important to point out the growing role of the European Council, which was reflected in a large number of meetings during 2020, although it usually meets twice a year. The legal basis for the possibility of an extraordinary session of the European Council, scheduled by the President when the situation so requires is foreseen in the art. 15, para. 3 of the Lisbon Treaty. Thus, in mid-October 2020, after twelve meetings, the European Council met again and adopted conclusions on the pandemic.<sup>19</sup> Since the European Council consists of Heads of State and/or Government, the importance of these conclusions is undeniable. The European Council called on the Council of Ministers, the Commission and the Member States to continue their overall coordination efforts, in particular on quarantine regulations, cross-border contact

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<sup>17</sup> [https://ec.europa.eu/info/strategy/eu-budget/long-term-eu-budget/2021-2027/whats-new\\_en](https://ec.europa.eu/info/strategy/eu-budget/long-term-eu-budget/2021-2027/whats-new_en), accessed on 25<sup>th</sup> March 2021.

<sup>18</sup> European Commission, Covid-19 Guidelines for border management measures to protect health and ensure the availability of goods and essential services, Brussels, 16.3.2020 C(2020) 1753 final, [www.europa.eu](http://www.europa.eu), 10.08.2020.

<sup>19</sup> European Council meeting (15 and 16 October 2020) – Conclusions, Brussels, 16 October 2020, [www.europa.eu](http://www.europa.eu), 30.10.2020.

tracing, testing strategies, joint evaluation of testing methods, mutual recognition of tests and temporary travel restrictions in the EU.

The European Council greatly broadened the number of issues it considered, thus encroaching on the competences of other EU bodies, as is the case with the multiannual framework 2021-2027 for the budget, which proved to be a constructive way of overcoming national disputes over post-pandemic recovery plan. Hence, some authors (Giraud, 2020, 2) positively assess the strategic role of the European Council in the decision-making process, emphasizing its negotiating function as a final arbitration body, whose task is to approximate the positions of governments on issues of greatest interest to the Union. Unless the constituent Lisbon Treaty is reformed, reformists (Giraud, 2020, 4) call for an end to the European Council (EC) interference in the EU legislative process, a reduction of number and a better preparation of EC sessions, as well as a stronger role for the President of the Commission who attends EC sessions *ex officio*, but without the right to vote and participate in the discussion.

### Conclusions

Health is a psychophysical aspect of human well-being and enjoys protection globally because of its importance (Grahovac, 2020, 182). In contemporary conditions of the pandemic outbreak, it has especially come to the fore that the EU is much less homogeneous, i.e. the Union in which it is difficult to apply the motto "*In varietate concordia* - Unity in diversity". According to the EU High Representative for Foreign Affairs and Security Policy, J. Borrell, the Union can play a role in restoring the "new world order" only if it has internal unity.<sup>20</sup> Bitter lesson was learned from serious difficulties in reaching compromise for long-term budget and economic recovery plan among Member States.<sup>21</sup>

The pandemic had negative effects for the three major EU cornerstones: the Schengen agreement (restrictions of mobility); the internal market, when some Member States began to restrict exports of medical equipment and medicines; and third one: economic and monetary union.

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<sup>20</sup>[https://euobserver.com/coronavirus/148296?utm\\_source=euobs&utm\\_medium=email&utm\\_source=EUobserver+Newsletter&utm\\_campaign=088b215f49-EMAIL\\_CAMPAIGN\\_2020\\_05\\_09\\_05\\_30&utm\\_medium=email&utm\\_term=0\\_8f318ca8da-088b215f49-114928981](https://euobserver.com/coronavirus/148296?utm_source=euobs&utm_medium=email&utm_source=EUobserver+Newsletter&utm_campaign=088b215f49-EMAIL_CAMPAIGN_2020_05_09_05_30&utm_medium=email&utm_term=0_8f318ca8da-088b215f49-114928981), 9. 05. 2020.

<sup>21</sup> At the end of 2020, Hungary and Poland have blocked the adoption of the €1.8 trillion EU budget and coronavirus recovery package, due to their strong resistance to link the EU funds with the respect for the rule of law. Their concerns derive from existing problems in implementation of the sanctions procedure in line of the art. 7 of the Lisbon Treaty, which are underway for several years without clear results nor ending, at the time of writing this paper. This procedure foresees sanctions for the Member State which has committed a serious breach of the values of the EU that are listed in the Art. 2: human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of minorities. Sanctions may be in the form of a suspension of the rights resulting from EU membership.

The public health crisis in the COVID-19 pandemic highlighted the fact that the EU and Member States have to do more in terms of planning preparedness and response to epidemics and other serious cross-border health threats. Although the institutions and mechanisms established at EU level as part of the Decision on Serious Cross-Border Threats to Health (1082/2013/EU) facilitated the exchange of information on pandemic evolution and supported specific national measures taken, they could not much trigger a timely joint EU response to the existing serious risk. This lack of coherence and coordination in the EU, in addition to the initial lack of solidarity, was an obstacle to an effective fight against the pandemic.

Bearing in mind the stated legal limitations of the EU powers, the question arises whether it is a crisis of internal solidarity in the EU or a legal-institutional crisis of the functioning of the Union. Opinions are divided. Some authors (Giuliani, 2020, 2) believe that the EU institutions reacted quickly by sending twelve tons of protective equipment to China on January 31, 2020, and on February 1, 10 million euros were mobilized for research against viruses within the program "Horizon 2020". EU Commission, despite the fact that it does not have direct powers in health care, and the European Central Bank, with its package of 750 billion euros, quickly adopted concrete proposals for overcoming the crisis caused by the pandemic. There are important divisions among the Member States, but the Union helps to overcome them (Giuliani, 2020, 2). History shows that the EU is advancing in times of crises, as J. Monet once predicted, saying that crises are great unifiers.

Nevertheless, there are different conclusions, that this is a crisis of internal solidarity in the EU, for the activation of which there is a clear legal basis in the Lisbon Treaty and it cannot be concluded that there is no legal basis (Igrutinović, 2020).<sup>22</sup> Such conclusions are fostered by the attitude of other Member States towards Italy during the pandemic, as well as the refusal of Germany and some other countries in the EU to adopt regulations on the launch of the so-called corona-bonds under extremely favourable financial conditions for indebted member countries, such as Italy, Spain, Greece and Portugal. This is an example of the lack of economic solidarity during the pandemic by some Member States (the Netherlands, Germany, Sweden, Denmark, etc.). The most recent example is the problem in equal distribution of vaccines in the EU, starting from 2021.<sup>23</sup> Lack of capacity, deficiencies in equipment and testing, and failure to protect the most vulnerable groups indicated a lack of readiness and preparation, as well as structural weaknesses and a lack of resources. EU solidarity mechanisms offer ways to address these issues, but were not widely used. These are the conclusions of the EU Commission itself, which speak eloquently about the lack of solidarity in practice. The COVID-19 pandemic has further fuelled contradictions between open markets

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<sup>22</sup> <http://www.ies.rs/sr/200604-vebinar-medjunarodni-odnosi-u-doba-korone/>, 4. 06. 2020.

<sup>23</sup> Furthermore, in March 2021, the Union decided on the ban of exports of vaccines, as it struggles to make sure one of its suppliers of Covid-19 jabs, AstraZeneca, fulfills its pledges on delivery. [https://euobserver.com/coronavirus/151334?utm\\_source=euobs&utm\\_medium=email](https://euobserver.com/coronavirus/151334?utm_source=euobs&utm_medium=email), 25<sup>th</sup> March 2021.

and health security, and in particular, tensions between the interdependence of states and the concept of state sovereignty. There is a battle between the role of the state and its sovereignty and the concept of europeanization of pandemic suppression, which proved to be prevalently unsuccessful during pandemic. Therefore, many officials (Macron et al.) support reforms of EU primary legislation, the Lisbon TEU (Mirel P., Mirel X., 2020, 3).

Starting from the existing legal limitations of the competences of the EU institutions, which primarily function on the basis of the fundamental principle of conferred powers (Gasmi, 2016, 89), as well as due to the problem of implementing the coordinating competence of the EU in the field of public health, conclusion is that reforms in these areas are necessary, aimed at economic recovery and suppression of possible future health crises. Reforms, but also improvement of the solidarity of EU members, would strengthen the EU's role in international cooperation in preventing and controlling cross-border threats to health and in improving global health security. It remains to be seen the development of the EU in this area in the forthcoming period of global strategic geopolitical changes. The forthcoming Conference on the Future of the EU (in May 2021), with its emphasis on the needs of citizens and its aim to create a forum to address their problems and priorities, provides an optimal platform for stimulating discussions and encourages the evolution of the EU's role in a health protection in the future.

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