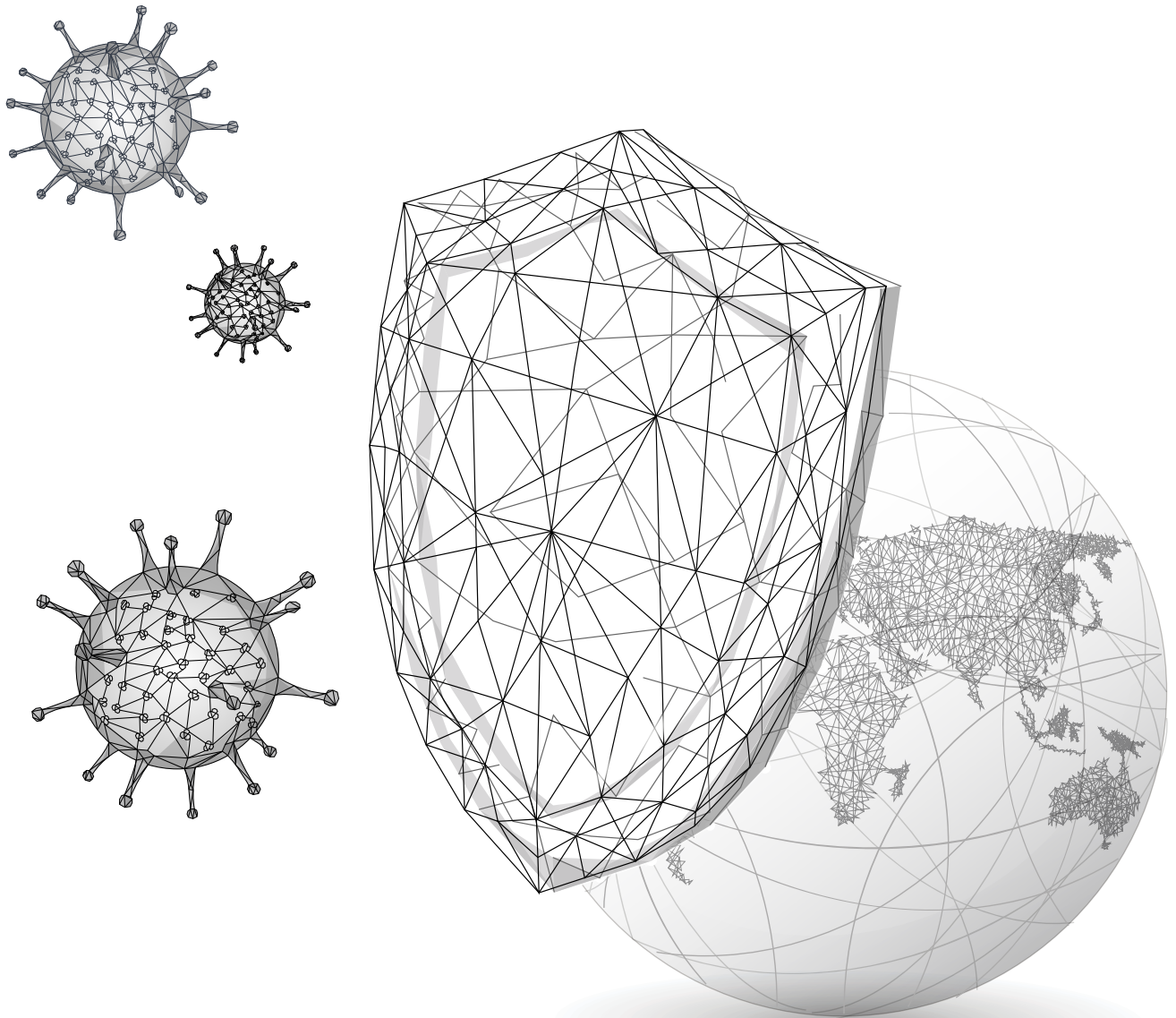




INTERNATIONAL
AND COMPARATIVE
LAW RESEARCH CENTER

COVID-19 – TEST FOR THE WORLD’S LEGAL SYSTEMS



Moscow
June 2021

ABOUT THE INTERNATIONAL AND COMPARATIVE LAW RESEARCH CENTER

The International and Comparative Law Research Center is a non-profit, non-governmental organization conducting research on various legal issues that are of importance to the Russian Federation.

Through comprehensive practice-oriented research and discussions involving leading Russian and foreign experts in various disciplines, the Center facilitates a dialogue between State authorities, business, and the expert community and implements projects to promote studies in international law.

The Center renders expertise to Russian delegations to international organizations (ISA and UNIDROIT, for example) and takes part in the work of UNCITRAL as an observer.

The Center is also the organizer of the International Law in the XXI Century Award for the best research paper on public international law and holds the Summer School on Public International Law for citizens of Russia and other CIS countries, which features the participation of world-renowned experts in international law.

The Center's constantly replenished library provides access to classical and modern publications on private and public international law, as well as comparative law in various languages, and access to foreign and Russian electronic legal databases.

The Center fosters an environment of knowledge, competence, and dialogue in the sphere of law.

14 bldg. 3 Kadashevskaya Naberezhnaya

Moscow, 119017, Russia

+7 495 640 65 65

info@iclrc.ru www.iclrc.ru

TABLE OF CONTENTS

Abbreviations	6
Introduction	11
Conclusions	12
Summary	17
Annex 1. International Law and the COVID-19 Pandemic	24
1. International Legal Regulation of Emergencies in the Health Sector	24
2. International Law and Measures Taken by States in the Fight Against Emergencies	29
Annex 2. Regional Integrations and the COVID-19 Pandemic	41
1. Regulatory Framework and Mechanisms for Responding to Health Emergencies at the European Union Level	41
2. Regulatory Framework and Mechanisms for Responding to Health Emergencies at the Eurasian Economic Union Level	47
Annex 3. Initial Response to the COVID-19 Pandemic by States	50
I. France	50
1. Public “Emergency” Response Regime	50
2. Measures Taken in the Fight Against the COVID-19 Pandemic	53
II. Germany	59
1. Public “Emergency” Response Regime	59
2. Measures Taken in the Fight Against the COVID-19 Pandemic	63
III. Italy	67
1. Public “Emergency” Response Regime	67
2. Measures Taken in the Fight Against the COVID-19 Pandemic	71
IV. Spain	76
1. Public “Emergency” Response Regime	76
2. Measures Taken in the Fight Against the COVID-19 Pandemic	78
V. Sweden	84
1. Public “Emergency” Response Regime	84
2. Measures Taken in the Fight Against the COVID-19 Pandemic	89
VI. The United Kingdom	93
1. Public “Emergency” Response Regime	93
2. Measures Taken in the Fight Against the COVID-19 Pandemic	100
VII. The USA	105
1. Public “Emergency” Response Regime	105
2. Measures Taken in the Fight Against the COVID-19 Pandemic	109
VIII. China	116

1.	Public “Emergency” Response Regime.....	116
2.	Measures Taken in the Fight Against the COVID-19 Pandemic	123
IX.	The Russian Federation	129
1.	Public “Emergency” Response Regime.....	129
2.	Measures Taken in the Fight Against the COVID-19 Pandemic	135
Annex 4.	“Second Wave” Response to the COVID-19 Pandemic by States.....	143
I.	France	143
1.	Evolution of the Measures Taken in the Fight Against the COVID-19 Pandemic	144
2.	Measures Taken in the Fight Against the COVID-19 Pandemic	145
3.	Court Practice With Respect to the COVID-19 Pandemic	152
II.	Germany.....	159
1.	Evolution of the Measures Taken in the Fight Against the COVID-19 Pandemic	159
2.	Measures Taken in the Fight Against the COVID-19 Pandemic	161
3.	Court Practice With Respect to the COVID-19 Pandemic	165
III.	Italy.....	169
1.	Evolution of the Measures Taken in the Fight Against the COVID-19 Pandemic	170
2.	Measures Taken in the Fight Against the COVID-19 Pandemic	173
3.	Court Practice With Respect to the COVID-19 Pandemic	179
IV.	Spain	183
1.	Evolution of the Measures Taken in the Fight Against the COVID-19 Pandemic	184
2.	Measures Taken in the Fight Against the COVID-19 Pandemic	185
3.	Court Practice With Respect to the COVID-19 Pandemic	198
V.	Sweden.....	207
1.	Evolution of the Measures Taken in the Fight Against the COVID-19 Pandemic	207
2.	Measures Taken in the Fight Against the COVID-19 Pandemic	207
3.	Court Practice With Respect to the COVID-19 Pandemic	213
VI.	The United Kingdom.....	215
1.	Evolution of the Measures Taken in the Fight Against the COVID-19 Pandemic	215
2.	Measures Taken in the Fight Against the COVID-19 Pandemic	218
3.	Court Practice With Respect to the COVID-19 Pandemic	221
VII.	The USA.....	224
1.	Evolution of the Measures Taken in the Fight Against the COVID-19 Pandemic	225
2.	Measures Taken in the Fight Against the COVID-19 Pandemic	226
3.	Court Practice With Respect to the COVID-19 Pandemic	231
VIII.	China	235
1.	Measures Taken in the Fight Against the COVID-19 Pandemic	235
2.	Court Practice With Respect to the COVID-19 Pandemic	239

IX. The Russian Federation	240
1. Evolution of the Measures Taken in the Fight Against the COVID-19 Pandemic	240
2. Measures Taken in the Fight Against the COVID-19 Pandemic	242
3. Court Practice With Respect to the COVID-19 Pandemic	249
Table 1. Public “Emergency” Response Regime in France, Germany, Italy, Spain	253
Table 2. Public “Emergency” Response Regime in Sweden, UK, USA, China, Russia	263
Table 3. Measures Taken in the Fight Against the COVID-19 Pandemic in France, Germany, Italy, Spain	279
Table 4. Measures Taken in the Fight Against the COVID-19 Pandemic in Sweden, UK, USA, China, Russia	292
Table 5. Response to the COVID-19 Pandemic by Moscow, Moscow Oblast, St. Petersburg, the Republic of Tatarstan, Nizhny Novgorod Oblast	314
Table 6. Response to the COVID-19 Pandemic by Irkutsk Oblast, Kaliningrad Oblast, Krasnodar Krai, Primorsky Krai, Khabarovsk Krai	329
Table 7. Response to the COVID-19 Pandemic by Moscow, Moscow Oblast, St. Petersburg, the Republic of Tatarstan, Nizhny Novgorod Oblast as of September 2020 — March 2021	346
Table 8. Response to the COVID-19 Pandemic by Irkutsk Oblast, Kaliningrad Oblast, Krasnodar Krai, Primorsky Krai, Khabarovsk Krai as of September 2020 — March 2021	355



ABBREVIATIONS

1981 Organic Law	The Spanish Constitution of 1978 and Organic Law 4/1981
Act No. 16/2003	The Act No. 16/2003 of May 28, 2003, "On the cohesion and quality of the National Health System", Spain
Act No. 3/2020	The Act No.3/2020 of September 18, 2020, "On procedural and organizational measures to deal with COVID-19 in the field of the Administration of Justice", Spain
Administrative Code of the Russian Federation	Code of Administrative Offenses of the Russian Federation No. 95-FZ of December 30, 2001
CC RF	The Constitutional Court of the Russian Federation
CDA	The Communicable Diseases Act (2004:168), Sweden
CDC	The Centers for Disease Control, the United States
Civil Contingencies Act	The Civil Contingencies Act 2004, United Kingdom
CJEU	The Court of Justice of the European Union
Constitution of the PRC	The Constitution of the People's Republic of China
Coordination Council	The Coordination Council under the Government of the Russian Federation
CoronaEinrVO	The Corona Travel Regulation, Germany
CoronaSchVO	The Regulation on Protection against New Infections with the Coronavirus SARS-CoV-2, Germany
Decision on Serious Cross-border Threats to Health	Decision of the European Parliament and of the Council on Serious Cross-border Threats to Health of 2013
Decree No. 2020-260	The Decree No. 2020-260 of March 16, 2020, France
Decree No. 2020-293	The Decree No. 2020-293 of March 23, 2020, France
Decree No. 2020-545	The Decree No. 2020-545 of May 11, 2020, France

DPA	The Disaster Protection Act, Germany
DPRF No. 239	The Decree of the President of the Russian Federation No. 239 of April 2, 2020, "On measures on ensuring sanitary and epidemiological welfare of the population on the territory of the Russian Federation in connection with the spread of the new coronavirus infection (COVID-19)"
Draft Articles on the Protection of Persons in the Event of Disasters, Draft Articles	International Law Commission's Draft Articles on the Protection of Persons in the Event of Disasters of 2016
EAEU	Eurasian Economic Union
ECHR, European Convention	European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950
ECtHR	European Court of Human Rights
EEC	Eurasian Economic Commission
Emergency Law	The Federal Law No. 68-FZ dated December 21, 1994 "On protection of the population and territories from natural and technogenic emergencies", the Russian Federation
Emergency zone	The territory in which an emergency situation has developed and the living conditions of people are violated
Epidemic Act	The Act Regulating Special Powers of Action in the Context of an Epidemic Situation of National or Nationwide Scope and Defining Responsibilities under the Infection Protection Act, Germany
ESC, Charter	European Social Charter of 1961
EU	European Union
Federal Law No. 102-FZ	Federal Law No. 102-FZ of April 1, 2020, "On amendments to parts one and two of the Tax Code of the Russian Federation and certain legislative acts of the Russian Federation"
Federal Law No. 164-FZ	The Federal Law No. 164-FZ of June 8, 2020, "On amendments to Articles 71.1 and 108 of the Federal Law 'On education in the Russian Federation'"
Federal Law No. 52-FZ	The Federal Law dated March 30, 1999, No. 52-FZ "On the sanitary and epidemiological welfare of the population", the Russian Federation



Federal Law No. 67-FZ	The Federal Law No. 67-FZ of March 26, 2020, "On amendments to Article 60 of the Federal Law 'On circulation of medicines' and Article 38 of the Federal Law 'On the basics of public health protection in the Russian Federation'"
Federal Law No. 98-FZ	The Federal Law No. 98-FZ of April 1, 2020, "On amendments to certain legislative acts of the Russian Federation on emergency prevention and response"
Federal Law No. 99-FZ	The Federal Law No. 99-FZ of April 1, 2020, "On amendments to the Code of Administrative Offences of the Russian Federation"
FIPA	The Federal Infection Protection Act, Germany
French Constitution	The French Constitution of October 4, 1958
High Preparedness Act	The Act on Municipalities and County Councils Measures Ahead of and During Extraordinary Events During Peace Time and Times of High Preparedness (2006:544), Sweden
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights of 1996
ICESCR	International Covenant on Economic, Social and Cultural Rights of 1996
IHR 2005, Rules	International Health Regulations of 2005
ILC	International Law Commission
Italian Constitution	The Constitution of the Italian Republic of December 22, 1947
Law No. 2020-290	The Law No. 2020-290 of March 23, 2020, France
Law No. 2020-546	The Law No. 2020-546 of May 11, 2020, France
Law of April 3, 1955	The Law No. 55-385 of April 3, 1955, France
Law on Biological Safety	The Federal Law "On Biological Safety in the Russian Federation"
MOR	The Medical Officer of the Region, Sweden
MSMEs	Micro-, small and medium-sized enterprises
NBHW, Board	The National Board of Health and Welfare, Sweden

Operational Headquarters	The Operational Headquarters for the prevention of the importation and spread of new coronavirus infection in the territory of the Russian Federation
Paris Standards	Paris Minimum Standards of Human Rights Norms in a State of Emergency of 1984
PHA, Agency	The Public Health Agency, Sweden
PHC	The Public Health Code, France
PHEIC	Public Health Emergency of International Concern
Presidential Decree No. 12	The Decree of the President of the Russian Federation No. 12 “On approval of the procedure for public authorities to prevent the threat of emergencies associated with the importation into the territory of the Russian Federation and the spread of dangerous infectious diseases on the territory of the Russian Federation”
Public Health Act	Public Health (Control of Disease) Act 1984, the United Kingdom
Resolution No. 304	The Resolution dated May 21, 2007, No. 304 “On the classification of emergency situations of natural and technogenic character”, the Russian Federation
Resolution of the Government of the Russian Federation No. 409	The Resolution of the Government of the Russian Federation No. 409 of April 2, 2020, “On measures to ensure sustainable economic development”
Royal Decree No. 463/2020	The Royal Decree No. 463/2020 on March 14, 2020, Spain
Royal Decree No. 900/2020	The Royal Decree No. 900/2020 of October 9, 2020, declaring the state of alarm, Spain
Royal Decree No. 926/2020	The Royal Decree No. 926/2020 of October 25, 2020, “On containment of the spread of infections caused by SARS-CoV-2”, Spain
Royal Decree No. 956/2020	The Royal Decree No. 956/2020 of November 3, 2020, extending the state of alarm, Spain
Royal Decree-Law No. 21/2020	The Royal Decree-Law No. 21/2020 of June 9, 2020, on urgent prevention, containment, and coordination measures to deal with the health crisis caused by the COVID-19, Spain



Royal Decree-Law No. 25/2020	The Royal Decree-Law No. 25/2020 of July 3, 2020, Spain
Royal Decree-Law No. 29/2020	The Royal Decree-Law No. 29/2020 of September 29, 2020, "On urgent measures in the field of teleworking in Public Administrations and human resources in the National Health System to tackle the health crisis caused by COVID-19", Spain
Royal Decree-Law No. 8/2020	The Royal Decree-Law No. 8/2020 of March 17, 2020, Spain
Second Corona Tax Aid Act	The Second Act on the Implementation of Tax Aid Measures to Manage the Corona Crisis, Germany
Siracusa Principles	Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights of 1984
SMEs	Small and medium-sized enterprises
Stafford Act	The Robert T. Stafford Disaster and Emergency Assistance Act, the United States
UDHR, Declaration	Universal Declaration of Human Rights of 1948
VAT	Value-added tax
WHA	World Health Assembly
WHO	World Health Organization



INTRODUCTION

The ongoing COVID-19 pandemic has not only become a global health and economic challenge but has also raised the questions of the sufficiency of emergency regulations at the international and national levels and the selection of the most effective response measures. The results of this research can be used to improve existing regulation, introduce the best approaches and practices for the prevention and response to emergencies, including in the health sector, in the future.

The present research examines the legal framework applicable to emergencies in general and the current pandemic at the international, regional (EAEU, EU), and national levels (China, France, Germany, Italy, the Russian Federation and its subjects, Spain, Sweden, the United Kingdom, the United States). Both the pre-existing regulation and its evolution caused by the COVID-19 pandemic have been studied. The Analytical Report describes the tools to support organizations and citizens, as well as measures to restrict their rights and freedoms (restrictive measures) taken to mitigate the consequences of the pandemic and to combat the spread of the virus respectively.

The International and Comparative Law Research Center expresses its gratitude to Marat Abzalov, Mariafrancesca Cataldo, Estelle Chambas, Ronan Cormacain, Duncan Fairgrieve, Yuxue Fang, Katarina Fast, Egor Fedorov, Natalia Galkina, Sven Jürgensen, Alba Nogueira Lopez, Victoria Manko, Olga Melnichenko, Frederik Orłowski, Thomas Perroud, Elizabeth Platt, Ruslan Sharipov, Alba Soriano, Anna Troshkina, Victoria Umanskaia, Maxim Vorobyev who took part as experts in this study.



CONCLUSIONS

1. The legal regulation of public relations arising from public health emergencies **at the international level** is mainly carried out within the framework of the International Health Regulations of 2005, which are legally binding for the WHO members. Defining a public health emergency of international concern and the international obligations of States towards WHO, other States, and the population, the IHR do not contain detailed regulation of such situations. In this regard, in the context of the COVID-19 pandemic, such regulation was implemented through the adoption of WHO interim recommendations, the scope of which was adjusted by supplementing them depending on changes in the epidemiological situation.

2. **At the regional level**, the regulation differs depending on the level of integration of the member States of the relevant union. The EU has mechanisms for responding to health emergencies both at the union level and at the level of the Member States. General measures are taken at the EU level, and more specific measures are taken at the level of individual States. With regard to the spread of COVID-19, general measures were taken in the areas of health, economy, finance, and tourism. In addition, in the EU, there is permanent coordination between the union authorities and the Member States, which is reflected in the exchange of information on the state of the epidemiological situation, needs assessment, and ensuring a coherent response to the COVID-19 pandemic. There are no such mechanisms in the EAEU, since this integration union is focused more on the freedom of trade between the Member States and implementation of a coordinated policy in the economic sector rather than on health issues. In this regard, at the EAEU level, measures were taken, on the one hand, to suspend duties on the import of goods intended to prevent the spread of COVID-19 on the territory of the EAEU, and on the other, to introduce a temporary ban on the export of such goods from the EAEU States. At the same time, the measures to help stabilize the economic situation were taken at both the EU and the EAEU levels. Nevertheless, it appears that the establishment of a **more detailed regulation regarding the adoption of coordinated measures in the areas of trade and economy by States during emergencies at the EAEU level can contribute to a more effective response** to challenges similar to the COVID-19 pandemic in the future.

3. **In the absence of detailed regulation at the universal and regional level, States act at the national level based on an assessment of the situation within their territory**, relying primarily on their own legislation, including constitutional and other provisions that regulate the relations arising in the context of emergency situations. **The creation of relevant international regulations or guidelines would have allowed States to make decisions more quickly and in a more balanced manner.**

4. A common feature of the legislation of all the examined States is the possibility of introducing **special legal regimes in the event of an emergency**. Most of these provisions are contained in the constitutions and are elaborated in special legislation. Detailed legislative regulation in terms of special legal regimes allows States to respond more quickly to emergency situations, including by expanding the powers of authorities and speeding up the procedure for adopting regulations and appropriate measures, since legal clarity and predictability in the exercise of public powers and taking response measures by authorities at various levels are provided.

5. **Special legislation providing for regulation in the case of the spread of infectious diseases specifically** was adopted in a number of States before the COVID-19 pandemic (Germany, Spain, Sweden, the United Kingdom, the United States, China, the Russian Federation) and during it (France, Italy) and **has proved to be necessary**. In the context of the COVID-19 pandemic, special regimes were introduced by almost all the States considered. The exception was Sweden, where at the initial stage of the spread of COVID-19, such a regime was not introduced and no restrictive measures were taken either in the industrial or non-productive sectors, due to the national strategy for the development of herd immunity. At the same time, with the beginning of the second wave of the COVID-19 pandemic, this strategy was revised, and the

adopted “pandemic” law introduced a special regime. In the other States examined, as the number of cases of infection decreased or increased, the corresponding regimes were canceled or re-introduced.

6. Initially responding to the COVID-19 pandemic, States retained the division of competence between national and local authorities determined by the political system. Thus, the centralized approach was initially adopted in unitary States (France, Italy, China), while the decentralized approach was adopted in federal States (Germany, the United States, the Russian Federation) and the United Kingdom, which has a quasi-unitary structure, since it includes autonomous entities. At the same time, the centralization of power was observed in the generally decentralized system of Spain.

7. As the pandemic progressed, however, in France, Italy, Spain, and China, **a trend of transition from centralization to decentralization** in the context of the measures taken started to occur, primarily due to the implementation of a risk-based approach by States. In particular, the imposition of the same restrictive measures throughout a State was replaced by the division of the territory into zones depending on the number of infections and the adoption of proportional restrictive measures. At the same time, the competence to take appropriate measures is transferred to local authorities (Italy, Spain, China). In this regard, it appears that the decentralization of decision-making and the risk-based approach can provide the most effective response to emergency situations such as COVID-19.

8. The following **containment measures regarding population** were common to most jurisdictions during the first wave of the COVID-19 pandemic: 1) the quarantine, as temporary isolation of people infected or suspected of contracting an infectious disease; 2) the restriction or prohibition of movement; 3) the restriction or prohibition of public gatherings; 4) the mandatory wearing of masks and use of other personal protective equipment; 5) the social distancing requirement. Some States have also developed apps to track the location of people infected with COVID-19, as well as contacts with those infected. In most cases, such apps are used on a voluntary basis, in some regions of the Russian Federation — on a mandatory one.

9. As the spread of COVID-19 decreased in the summer of 2020, the States began to relax their restrictive measures, while maintaining, for example, the requirements for wearing masks and ensuring social distance. However, with the second wave of COVID-19 and the increase in the number of infected people in the fall of 2020, measures were tightened up to the re-introduction of curfews and lockdowns in certain parts of the States’ territories.

10. In response to the spread of the pandemic, **containment measures regarding non-productive sectors** of the economy were also taken. Cultural, sports, and entertainment venues were closed to the public. The exception was made for the enterprises providing services or selling essential goods. **The industrial sector was largely unaffected by the restrictions** due to the classification of the relevant enterprises as critical infrastructure or as exceptions (manufacturers/sellers of medical protective equipment, medicines, vital household supplies, etc.). Meanwhile, as the spread of COVID-19 decreased and depending on the epidemiological situation, some States began to relax the restrictions imposed, while maintaining the requirements for compliance with hygiene measures and social distance at enterprises.

11. At the initial stage of the pandemic, **in the field of transport**, most States imposed restrictions on entry into their territory, including the entry of foreign citizens from China and other States and regions with a high level of COVID-19 infections. Besides, passenger and cargo transportation (except for essential and perishable goods) was suspended in Italy and Spain. Individual US states also imposed restrictions on the movement of people within the country, prescribing a mandatory 14-day quarantine for those entering a state. Over time, these restrictions were relaxed and adapted to the epidemiological situation in a State. At the same time, as a rule, persons entering a State are required to provide a negative coronavirus PCR test.

12. **In the health sector**, the measures taken during the first wave of COVID-19 were mainly aimed at providing national health systems with the necessary resources to counter the pandemic, which allowed to



avoid overloading them. With the development of vaccines against COVID-19, the States mainly focused on the process of vaccination of their population with prioritizing some groups of people, usually depending on age, the presence of chronic diseases, and the field of work.

13. Besides, the COVID-19 pandemic has accelerated the pace of **digitalization** in various areas. For example, the transfer of employees to remote work has contributed to the development of labor legislation. The digital provision of public and commercial services also began to develop.

14. **In the field of education**, educational institutions were temporarily closed and the distance learning format was implemented. As the spread of COVID-19 decreased, States began to resume classes in educational institutions with proper hygiene measures, while maintaining the possibility to hold classes remotely in case of an increase in the number of infected persons.

15. Non-compliance with containment measures is subject to **administrative and/or criminal liability** in all the States examined.

16. All States have taken **support measures for organizations**, in particular:

- tax holidays, subsidies to SMEs, deferred rent payments, bankruptcy and on-site inspections moratoriums (the Russian Federation);
- government loans, direct subsidies for small businesses and self-employed, guarantees and other means of securing bank loans, direct cash payments, VAT reduction (Germany);
- suspension of the foreign direct investment liberalization regime in certain strategic sectors (critical infrastructure; critical technologies and dual-use goods; sectors with access to confidential information; mass media) (Spain);
- concessional loans to SMEs, sometimes in certain sectors of the economy (Spain, the United Kingdom, China, the United States, the Russian Federation);
- funding of research and development of vaccines and treatment, public health, provision of medicines, assistance in the global effort to combat COVID-19 (the United States).

17. In most jurisdictions, foreign companies or companies with foreign investment could also apply for support measures, subject to certain conditions, mainly related to tax residency or registration in the relevant country.

18. Despite the decline in the spread of COVID-19, most States have extended the measures taken to support the industrial and non-productive sectors.

19. **Support measures for the population** were also taken in all States and included:

- unemployment benefits (France, the United States, the Russian Federation) and other employee support (Germany, Italy, Spain, the United Kingdom, the United States, China, the Russian Federation);
- child benefits (Germany, Sweden, the Russian Federation);
- lump sum payments (France, Italy, the United States, the Russian Federation);
- loans to self-employed (Spain);



- funding free coronavirus testing (the United States) and reducing the financial costs of treatment (China);
- financial support for students (Germany, the United States);
- reducing housing rents, credit support incentives and deferred interest payments, tax deferrals, and reduced social security payments (China).

20. Besides, in Russia, the validity period of a number of documents (in particular, passports, driver's licenses, migration cards) was extended, official paid non-working days were established, credit holidays were introduced, and non-material assistance to vulnerable categories of citizens was provided.

21. With the second wave of the COVID-19 pandemic, as a general rule, the support measures for the population were extended with some changes and additions.

22. The introduction and extension of containment measures raised some questions with regard to **possible violations of various rights and freedoms and, as a result, led to their judicial challenge.**

23. As a rule, the courts have recognized the introduction of appropriate restrictions as **a legitimate exercise of power, as well as proportional and necessary for the protection of public health** (France, Germany, Italy, Spain, the United Kingdom, the United States, the Russian Federation). At the same time, the courts of some States have faced the need to determine the powers of local authorities in the field of public health. In this regard, there is a tendency to recognize **the excess of power on the part of local authorities in the case of taking measures that are inconsistent with the national ones or deviate from them** (Italy, Spain, the United States).

24. In some cases, the measures taken **were declared illegal** due to, for example, **violations of the right to freedom of assembly** (Spain), **the right to freedom of religion** (France, the United States), **the procedure for introducing them** (the United States), **the lack of convincing legal arguments and scientific evidence confirming the need to introduce the measure** (Italy, Spain). Besides, since the start of the mass vaccination process, cases involving the issue of access to COVID-19 vaccines by certain groups of the population have begun to appear in the courts (France, Spain).

25. At the same time, no cases challenging the measures imposed were found in Sweden and China. In Sweden, this is due to the advisory nature of the measures, and in China — due to the procedural impossibility of challenging them in the State courts.

26. In general, **Russia's response to the COVID-19 pandemic is in line with the global approaches** both in the field of regulation and in the context of specific measures to support the population and organizations and counter the spread of the virus.

27. First, the need for special legislation providing for regulation in the case of emergencies, including the spread of infectious diseases, was proved. In the Russian Federation, even before the COVID-19 pandemic, there was special legislation on emergency response. It was applied in the context of the pandemic. At the same time, in order to respond more effectively to the pandemic, the legislation was amended to expand the powers of the subjects of the Russian Federation. Such amendments will enable the State to respond quickly to any possible spread of infectious diseases in the future.

28. Second, the risk-based approach of States founded on the decentralization of power has proved its effectiveness. However, it is worth noting that, despite the use of the risk-based approach to responding to the pandemic in the Russian Federation, there was disunity and inconsistency among its subjects to which the authority to take appropriate measures was delegated. This, in turn, had a negative impact on the operation of the industrial and non-productive sectors. **General guidelines and instructions issued by**



the federal government and establishing certain frameworks for the actions of the regional authorities could provide clarity and predictability of the measures taken, as well as eliminate possible risks associated with the violation of the unity of the Russian economic area.

29. Third, the containment measures taken by States should be as targeted as possible, aimed at certain sectors of the economy and population groups, as well as proportionate to the existing epidemiological situation. In the Russian Federation, as in many other States, at the initial stage of the spread of COVID-19, there was a tendency to take common general measures for the population and the economic sphere. However, over time and after the analysis of the consequences the measures taken have led to, the Russian authorities began to take more targeted measures, aimed at certain objectives, taking into account the principle of proportionality.

30. Fourth, the introduction of containment measures requires a State to have budgetary resources to take appropriate support measures. In general, the reserve funds of the Russian Federation provided a timely and appropriate response to the COVID-19 pandemic and its consequences.

31. Fifth, in order to prevent abuse of power by authorities in taking containment measures in States, there should be the provided possibility of judicial control over compliance with the criteria of necessity and proportionality during the introduction of such measures. Based on the judicial practice of the Russian Federation related to challenging containment measures taken by federal and regional authorities, it could be concluded that the courts tend to analyze the criteria of necessity and proportionality by finding a balance between the protection of the life and health of citizens and the rights and freedoms of a particular citizen.



SUMMARY

1. Natural and man-made emergencies, such as droughts, floods, epidemics, and industrial accidents, can be of a cross-border nature. At the same time, there are currently no international treaties at the universal level (with the exception of those in the field of public health) that regulate general issues of response to them both on the part of individual States and the international community as a whole. Besides, there is no generally accepted term for such situations in international law: the concepts of “emergency”, “state of emergency”, “disaster” are used (**paras. 1–5 of Annex 1 to the Analytical Report**).
2. At the universal level, international legal regulation of issues arising from public health emergencies is carried out within the framework of the IHR 2005, which are aimed at preventing the international spread of diseases, protecting from them, and combating them through response measures. The IHR 2005 define what constitutes a “public health emergency of international concern”, as well as the procedure to be followed by WHO and the State in whose territory an event that could create such a situation occurred (**paras. 6–13 of Annex 1 to the Analytical Report**).
3. WHO recommendations also play an important role in the area of public health emergency management. WHO’s evidence-based recommendations are not mandatory regulations aimed at governing emergency situations and their consequences. However, they are intended to guide States in making appropriate decisions and actions. During the spread of COVID-19, WHO adopted a number of interim recommendations that guide States when taking health measures to combat COVID-19 (**paras. 14–24 of Annex 1 to the Analytical Report**).
4. While States have the freedom to respond to emergencies, a number of international legal instruments establish a framework for such freedom to prevent abuse (IHR 2005; UDHR; ICCPR; ICESCR; ECHR; ESC; recommendatory international instruments: the Paris Standards and the Draft Articles on the Protection of Persons in the Event of Disasters) (**paras. 25–78 of Annex 1 to the Analytical Report**).
5. At the regional level, inter alia, EU legislation provides for the possibility of occurrence of a serious cross-border threat to health in the EU Member States and contains provisions on the legal regulation of issues arising in connection with it. In the event of such a threat to health, the European Commission issues appropriate executive orders and notifies WHO. EU legislation defines the term “health measure”, and the EU Member States responsible for responding to public health emergencies within their borders have the right to take health measures in response to a serious cross-border threat to health. Such measures should be proportionate to the health risks and not contradict international legal instruments (**paras. 1–10 of Annex 2 to the Analytical Report**).
6. With regard to the COVID-19 pandemic, the EU authorities have been undertaking a set of support measures in various areas of public life (health, economy, finance). At the same time, at the EU level, restrictive measures were introduced only in tourism (**paras. 11–1.3 of Annex 2 to the Analytical Report**).
7. The regulation at the level of the EAEU does not provide for a mechanism for responding to emergencies. At the same time, with regard to the spread of COVID-19, the EAEU bodies adopted a number of decisions aimed at promptly responding to the spread of the virus and helping to stabilize the economic situation in the EAEU Member States (**paras. 30–38 of Annex 2 to the Analytical Report**).
8. The analysis of the existing regulation at the universal and regional levels leads to the conclusion that at the international level there is no uniform concept of “state of emergency” / “emergency situation” and there is no established procedure for taking general measures in connection with the emergence of a cross-border threat to human health. As a result, States act on the basis of an assessment of the situation

within their territory, relying on a legal framework that includes international legal acts regulating issues arising from emergency situations, constitutional and other provisions.

9. The emergency responses in the legal systems of the States analyzed in this Report, including France, Germany, Italy, Spain, Sweden, the United Kingdom, the United States, China, and the Russian Federation, have both common features and differences.

Legal regimes introduced in the States to protect the life and health of the population

10. The legislation of all examined States contains provisions that allow them to respond to emergencies in general by introducing special regimes (for example, the regimes of “exceptional circumstances” and “state of siege” in France (**paras. 7–14 of Annex 3 to the Analytical Report**), “state of emergency” in Germany (**paras. 61–62 of Annex 3 to the Analytical Report**), “state of alarm”, “state of emergency” and “state of siege” in Spain (**paras. 168–176 of Annex 3 to the Analytical Report**), etc.). Often, such provisions are contained in the constitutions of States, except for Italy (**paras. 118–122 of Annex 3 to the Analytical Report**), Sweden (**paras. 224–231 of Annex 3 to the Analytical Report**), and the United Kingdom (**para. 282 of Annex 3 to the Analytical Report**), and are detailed in special legislation.

11. In support of the provisions on general legal regimes introduced in connection with emergencies, a number of States adopted special legislation providing for legal regulation in the event of the spread of infectious diseases even before the COVID-19 pandemic (Germany (**paras. 63–68 of Annex 3 to the Analytical Report**), Spain (**paras. 177–184 of Annex 3 to the Analytical Report**), Sweden (**paras. 232–247 of Annex 3 to the Analytical Report**), the United Kingdom (**paras. 283–296 of Annex 3 to the Analytical Report**), the United States (**paras. 351–363 of Annex 3 to the Analytical Report**) and China (**paras. 400–426 of Annex 3 to the Analytical Report**)).

12. As a result, in these States, the COVID-19 pandemic either did not require changes to the existing legislation (as in China (**para. 427 of Annex 3 to the Analytical Report**)) or required minor changes and the adoption of special acts clarifying the regulation both for the period of duration of the COVID-19 pandemic and for the purposes of a rapid response to similar emergencies in the future (Germany — both at the federal level and in individual states (**paras. 69–85 of Annex 3 to the Analytical Report**), Spain (**paras. 185–186 of Annex 3 to the Analytical Report**), Sweden (**paras. 248–250 Annex 3 to the Analytical Report**), the United Kingdom (**paras. 297–314 of Annex 3 to the Analytical Report**), the United States (**para. 364 of Annex 3 to the Analytical Report**)).

13. In the absence of special regulation of an emergency due to the spread of infectious diseases, Italy was forced to adopt a significant number of new acts regulating relations during the COVID-19 pandemic (**paras. 133–139 of Annex 3 to the Analytical Report**). France, in response to the pandemic, adopted the law that established a new special regime for the occurrence of a threat to public health — a state of health emergency (**paras. 21–28 of Annex 3 to the Analytical Report**).

Centralization vs. decentralization: delineating the competence of federal and regional / national and local authorities when introducing legal regimes to protect the life and health of the population

14. The approach to delineating the competence of authorities when introducing legal regimes to protect the life and health of the population is largely determined by the form of the state structure — a federal or unitary State — or other features of the state structure (as in the case of Great Britain, which has a quasi-unitary structure, since it contains the following autonomous subjects: England, Wales, Scotland, and Northern Ireland).

15. The centralized approach was taken, in particular, in France (**para. 30 of Annex 3 to the Analytical Report**), Italy (**paras. 121, 131 of Annex 3 to the Analytical Report**), and China (**paras. 411–412 of Annex 3 to the Analytical Report**). The decentralized one was adopted in Germany (**paras. 70, 86 of Annex 3 to**

the Analytical Report), Sweden (paras. 242–247 of Annex 3 to the Analytical Report), the United Kingdom (para. 291 of Annex 3 to the Analytical Report), and the United States (paras. 367–369 of Annex 3 to the Analytical Report).

16. At the same time, during the initial reaction to the COVID-19 pandemic, the centralization of power was observed in Spain's usually decentralized system. In particular, the "state of alarm" introduced in Spain changed the distribution of powers between central and regional authorities: all decisions were centralized at the national level (para. 186 of Annex 3 to the Analytical Report).

17. As the pandemic progressed, the trend of transition from centralization to decentralization of power became more evident in France (paras. 21–26 of Annex 4 to the Analytical Report), Italy (paras. 122–126 of Annex 4 to the Analytical Report), Spain (paras. 186–189 of Annex 4 to the Analytical Report), and China (para. 411 of Annex 4 to the Analytical Report).

Containment measures to counteract the effects of COVID-19

18. The introduction of certain legal regimes to protect the life and health of the population often entails the restriction of certain rights and freedoms. The most common containment measures against the population were:

- the quarantine, as a temporary isolation of people infected or suspected of having contracting an infectious disease;
- the restriction or prohibition of movement;
- the restriction or prohibition of public gatherings;
- the mandatory wearing of masks and use of other personal protective equipment;
- social distancing requirement.

19. Some States developed apps to track the location of people infected with COVID-19, as well as contacts with those infected. Such apps in the reviewed foreign States are used on a voluntary basis (France (para. 18 of Annex 4 to the Analytical Report), Italy (paras. 160–161 of Annex 3 to the Analytical Report), Spain (para. 195 of Annex 3 to the Analytical Report), Germany (para. 106 of Annex 3 to the Analytical Report), the United States (para. 392 of Annex 3 to the Analytical Report)).

20. Containment measures were also taken with regard to the industrial and non-productive sectors of the economy, except for Sweden (para. 257 of Annex 3 to the Analytical Report).

21. Most of the containment measures were related to the non-productive sector. For example, cultural, sports, and entertainment venues such as bars, theaters, cinemas, museums, fairs, exhibitions, libraries, swimming pools, and other places open to the public were closed. In some States, the exception was made for the enterprises that provided services or sold essential goods (France (para. 38 of Annex 3 to the Analytical Report), the United Kingdom (paras. 327–328 of Annex 3 to the Analytical Report)).

22. The industrial sector was largely unaffected by the restrictions, since this industry falls under the concept of "sector particularly necessary to the safety of the nation and to the continuity of the economic and social life" (France (para. 37 of Annex 3 to the Analytical Report)), the relevant enterprises are classified as "critical infrastructure" (the United States (paras. 375–376 of Annex 3 to the Analytical Report)) or included in the exclusion lists, for example, enterprises that produce, transport, and sell medical protective equipment, sterilizers, medicines, or vital household supplies (China (para. 435 of Annex 3 to the Analytical Report)).

23. In the field of transport, most States imposed restrictions on entry into their territory, including the entry of foreign citizens from China and other States and regions with a high level of COVID-19 infections. Besides, Italy provided for the suspension of cargo and passenger services by land, rail, inland water, and public transport, including irregular one, with the exception of transportation of essential and perishable goods (**para. 142 of Annex 3 to the Analytical Report**). Similar measures were introduced in Spain (**para. 188 of Annex 3 to the Analytical Report**). Some states in the United States also imposed restrictions on the movement of people within the country, prescribing a mandatory 14-day quarantine (**para. 371 of Annex 3 to the Analytical Report**).

24. Over time, these restrictions were relaxed and adapted to the epidemiological situation in the States. At the same time, persons entering a State are required to provide a negative PCR test for coronavirus (France (**para. 13 of Annex 4 to the Analytical Report**), Germany (**para. 77 of Annex 4 to the Analytical Report**), Italy (**para. 141 of Annex 4 to the Analytical Report**), Spain (**para. 192 of Annex 4 to the Analytical Report**), Sweden (**paras. 297–298 of Annex 4 to the Analytical Report**), the United Kingdom (**para. 341 of Annex 4 to the Analytical Report**), the United States (**para. 368 of Annex 4 to the Analytical Report**), China (**para. 407 of Annex 4 to the Analytical Report**)).

25. In the health sector, the measures were generally aimed at providing national health systems with the necessary resources to counter the COVID-19 pandemic. Following the development of vaccines against COVID-19, a number of States focused on vaccination (France (**para. 17 of Annex 4 to the Analytical Report**), Germany (**para. 80 of Annex 4 to the Analytical Report**), Italy (**paras. 117–121 of Annex 4 to the Analytical Report**), the United States (**paras. 359–360 of Annex 4 to the Analytical Report**)).

26. In the field of education, educational institutions were temporarily closed and the distance learning format was implemented. As the spread of COVID-19 decreased, States began to resume classes in educational institutions, while maintaining the possibility of conducting classes remotely (Germany (**para. 82 of Annex 4 to the Analytical Report**), Spain (**paras. 207–209 of Annex 4 to the Analytical Report**), the United Kingdom (**para. 334 of Annex 4 to the Analytical Report**), the United States (**para. 369 of Annex 4 to the Analytical Report**)).

27. Non-compliance with containment measures is subject to liability, including criminal one (France (**paras. 39, 44 of Annex 3 to the Analytical Report**), Germany (**paras. 82, 100–101 of Annex 3 to the Analytical Report**), Italy (**para. 152 of Annex 3 to the Analytical Report**), Spain (**paras. 211–214 of Annex 4 to the Analytical Report**), Sweden (**para. 288 of Annex 4 to the Analytical Report**), the United Kingdom (**para. 330 of Annex 3 to the Analytical Report**), China (**para. 434 of Annex 3 to the Analytical Report**)).

Support measures to mitigate the impact of the COVID-19 pandemic

28. All examined States have adopted support measures for the industrial and non-productive sectors, such as:

- government loans, emergency financial assistance in the form of subsidies for small businesses and self-employed, as well as guarantees and other means of securing bank loans (Germany (**paras. 107–111 of Annex 3 to the Analytical Report**));
- suspension of the liberalization of foreign direct investment regime in certain strategic sectors (critical infrastructure; critical technologies and dual-use goods; sectors with access to confidential information; mass media) (Spain (**para. 204 of Annex 3 to the Analytical Report**));
- concessional loans to SMEs, sometimes in certain sectors of the economy (Spain (**para. 204 of Annex 3 to the Analytical Report**), the United Kingdom (**para. 343 of Annex 3 to the Analytical Report**), the United States (**para. 389 of Annex 3 to the Analytical Report**), China (**para. 443 of Annex 3 to the Analytical Report**));

- funding of research and development of vaccines and treatment, public health financing, provision of medicines, small business loans, and assistance in the global effort to combat COVID-19 (the United States (para. 389 of Annex 3 to the Analytical Report)).

29. In most jurisdictions, foreign companies or companies with foreign investment could also apply for support measures, provided that they are tax residents of the State (France (para. 49 of Annex 3 to the Analytical Report)), (Spain (para. 205 of Annex 3 to the Analytical Report)), have a registered head office of the company in the relevant State (Germany (para. 108 of Annex 3 to the Analytical Report)), are registered and pay taxes in the State (Italy (para. 158 of Annex 3 to the Analytical Report), Sweden (para. 266 of Annex 3 to the Analytical Report)), the United States (para. 389 of Annex 3 to the Analytical Report)). In Shanghai (China (para. 446 of Annex 3 to the Analytical Report)), the national regime for providing support measures applies, for example, to foreign enterprises in the industrial sector, as well as companies with foreign investment.

30. Support measures for the population included:

- unemployment benefits (France (para. 54 of Annex 3 to the Analytical Report)), the United States (para. 390 of Annex 3 to the Analytical Report)) and other employee support due to changed working conditions (Germany (para. 92 of Annex 4 to the Analytical Report)), Italy (para. 162 of Annex 4 to the Analytical Report), Spain (para. 209 of Annex 3 to the Analytical Report), the United Kingdom (para. 345 of Annex 3 to the Analytical Report), the United States (para. 390 of Annex 3 to the Analytical Report), China (para. 453 of Annex 3 to the Analytical Report));
- child benefits (Germany (paras. 112–113 of Annex 3 to the Analytical Report), Sweden (para. 273 of Annex 3 to the Analytical Report));
- lump sum payments (France (para. 54 of Annex 3 to the Analytical Report), Italy (para. 163 of Annex 4 to the Analytical Report), the United States (para. 391 of Annex 3 to the Analytical Report));
- loans to self-employed (Spain (para. 209 of Annex 3 to the Analytical Report));
- funding free coronavirus testing (the United States (para. 390 of Annex 3 to the Analytical Report)) and reducing the financial costs of treatment (China (para. 451 of Annex 3 to the Analytical Report));
- financial support for students (Germany (para. 91 of Annex 4 to the Analytical Report));
- reducing housing rents, credit support incentives and deferred interest payments, tax deferrals, and reduced social security payments (China (para. 453 of Annex 3 to the Analytical Report)).

31. The introduction and extension of containment measures raised questions concerning possible violations of various human rights and freedoms and, as a result, led to their judicial challenge.

32. The courts of a number of States have recognized the introduction of such restrictions as a legitimate exercise of power, as well as proportional and necessary for the protection of public health (France (paras. 36–44 of Annex 4 to the Analytical Report), Germany (paras. 95–100 of Annex 4 to the Analytical Report), Italy (para. 167 of Annex 4 to the Analytical Report), Spain (paras. 246–247, 249, 256, 258 of Annex 4 to the Analytical Report), the United Kingdom (paras. 346–348 of Annex 4 to the Analytical Report), the United States (paras. 393, 397 of Annex 4 to the Analytical Report)). At the same time, the courts of some States have faced the need to determine the powers of local authorities in the field

of public health (Italy (paras. 168–170 of Annex 4 to the Analytical Report), Spain (paras. 246–247, 254–256, 258–259, 263–265 of Annex 4 to the Analytical Report), the United States (para. 391 of Annex 4 to the Analytical Report)).

33. In a number of cases, the measures were declared illegal due to, for example, violations of the right to freedom of assembly (Spain (para. 259 of Annex 4 to the Analytical Report)), the right to freedom of religion (France (para. 52 of Annex 4 to the Analytical Report)), the procedure for introducing them (the United States (para. 390 of Annex 4 to the Analytical Report)), the lack of convincing legal arguments and scientific evidence confirming the need to introduce the measure (Italy (paras. 173, 176–179 of Annex 4 to the Analytical Report), Spain (para. 261 of Annex 4 to the Analytical Report)). Besides, since the start of the mass vaccination process, cases involving the issue of access to COVID-19 vaccines by certain groups of population have begun to appear in the courts (France (paras. 60–61 of Annex 4 to the Analytical Report), Spain (paras. 276–277 of Annex 4 to the Analytical Report)).

The Russian Federation's response to the COVID-19 pandemic

34. As in other examined States, the Russian Federation provides for the possibility of introducing a special legal regime due to the occurrence of emergency situations — a “state of emergency” — to ensure the safety of citizens and protect the constitutional system both on the entire territory of the whole country and its parts (paras. 460–462 of Annex 3 to the Analytical Report).

35. The regulation of the relevant issues is detailed in the federal legislation, including in the special legislation on the sanitary and epidemiological welfare of the population. Depending on the nature of the emergency situation, it is envisaged that the Government of the Russian Federation can exercise its powers to impose containment measures (quarantine) on the entire territory of the State or, if there are proposals, prescriptions of the chief state medical officers and their deputies, on the territories of certain subjects of the Russian Federation (paras. 463–474 of Annex 3 to the Analytical Report). Thus, as in other federal States examined in the Report, the approach to combating COVID-19 in the Russian Federation was decentralized.

36. During the COVID-19 pandemic, a “state of emergency” was not introduced. However, based on special legislation, including legislation on the sanitary and epidemiological welfare of the population, special measures to combat the spread of a new coronavirus infection on the state territory were taken by the Government of the Russian Federation. At the same time, in the territories of the analyzed subjects of the Russian Federation, the acts of the highest officials of the subjects of the Russian Federation, with reference to the current special legislation, introduced a “high alert mode” and regional measures were taken (paras. 475–477 of Annex 3 to the Analytical Report).

37. The COVID-19 pandemic required amendments to the legislation in force aimed at clarifying the concepts and powers of federal and regional authorities in order to respond both to the COVID-19 pandemic itself and to the possible spread of diseases that pose a danger to people's health in the future.

38. Thus, the concept of “emergency situation” has been clarified so that it now includes “the situation resulting from the spread of a disease that poses a danger to others” (including COVID-19). In this regard, the competence of the management bodies of the unified universal state system for the prevention and elimination of emergencies applies to the situation that has been developed due to the spread of COVID-19. In accordance with the specified powers of the Government of the Russian Federation, in case of emergencies and (or) a threat of their occurrence, it has the right to:

- make a decision on the exercise of the powers as the coordinating body of the unified state system for the prevention and elimination of emergencies;

- make a decision on the introduction of a high alert mode or an emergency situation on the entire territory of the Russian Federation or its part;
- establish mandatory rules of conduct for citizens and organizations when introducing a high alert mode or an emergency situation.

39. The state authorities of the subjects of the Russian Federation, in particular, were empowered to establish mandatory rules of conduct for citizens and organizations when introducing a high alert mode or an emergency situation. Besides, the state authorities were entailed to establish additional mandatory rules of conduct when a high alert mode or a state of emergency was declared by the Government of the Russian Federation taking into account the specifics of an emergency situation on the territory of a subject of the Russian Federation or the threat of its occurrence (**paras. 478–486 of Annex 3 to the Analytical Report**).

40. As in the other States considered, the Russian Federation has adopted a large number of containment and support measures.

41. At the federal level, containment measures were taken in the field of transport, public health, and education (**paras. 489–496 of Annex 3 to the Analytical Report, paras. 429–438 of Annex 4 to the Analytical Report**).

42. Depending on the sanitary and epidemiological situation and the specificities of the spread of COVID-19 in a particular subject, containment measures with respect to the industrial and non-productive sectors were also taken at the regional level (**paras. 497–498 of Annex 3 to the Analytical Report, para. 442 of Annex 4 to the Analytical Report, Table 5, Table 6, Table 7, Table 8**).

43. Containment measures regarding the population were taken not at the federal, but the regional level and, as a result, differed depending on the subject of the Russian Federation and on the sanitary and epidemiological situation within it (**paras. 502–506 of Annex 3 to the Analytical Reference, para. 443 of Annex 4 to the Analytical Reference, Table 5, Table 6, Table 7, Table 8**).

44. Administrative liability is established for violations of containment measures (**paras. 499–501, 504 of Annex 3 to the Analytical Report, Table 5, Table 6**), which corresponds to the general trend of enshrining the rules on liability for relevant violations in the legislation of the other examined States.

45. In general, the content and objectives of the containment measures imposed on businesses and the population were largely similar to those taken in other States. However, for example, the use of an app for tracking the location of people, in contrast to the other examined States (**para. 19 of the Analytical Report**), was mandatory in certain subjects of the Russian Federation.

46. Various measures to support business and the population were taken at both the federal and regional levels (**paras. 507–511 of Annex 3 to the Analytical Report, paras. 444–446 of Annex 4 to the Analytical Report, Table 5, Table 6, Table 7, Table 8**) and are in many ways similar in nature to measures taken in other States.

47. The containment measures challenged in the courts of the Russian Federation were found to be necessary and proportionate to the purpose of protecting the life and health of citizens (**paras. 447–456 of Annex 4 to the Analytical Report**). Besides, the Supreme Court of the Russian Federation provided some explanations on certain issues pertaining to judicial practice related to the application of legislation and measures to counter the spread of COVID-19 on the territory of the Russian Federation (**para. 457 of Annex 4 to the Analytical Report**).

ANNEX 1. INTERNATIONAL LAW AND THE COVID-19 PANDEMIC¹

1. International Legal Regulation of Emergencies in the Health Sector

1.1. Definition of an Emergency Situation / a State of Emergency

1. Natural and man-made emergencies, such as droughts, floods, epidemics, and industrial accidents, may have a cross-border nature. Despite this, there are currently no tools at the universal level that regulate the general response to them, both on the part of individual States and the international community as a whole. In addition, there is no generally accepted concept that defines such situations. International treaties use, among other, such notions as “emergency”, “state of emergency”, “disaster”.

2. At the same time, a number of international human rights treaties contain the wording “public emergency” which determines a possibility for States to derogate from their obligations. For instance, the ICCPR uses the concept of “public emergency” which threatens the life of the nation.² This may include, for example, armed conflicts of an international or non-international character, natural disasters, mass riots accompanied by violence, or a major industrial accident.³ The ECHR and the ESC, in turn, refer to cases of “war or other public emergency threatening the life of the nation.”⁴

3. Soft law instruments use the concepts of “public emergency” and “disaster”. According to the Paris Standards, the term “public emergency” means “an exceptional situation of crisis or public danger, actual or imminent, which affects the whole population or the whole population of the area to which the declaration applies and constitutes a threat to the organized life of the community of which the state is composed”.⁵ The Draft Articles on the Protection of Persons in the Event of Disasters, defining the concept of “disaster”, refer to “a calamitous event or series of events resulting in widespread loss of life, great human suffering and distress, mass displacement, or large-scale material or environmental damage, thereby seriously disrupting the functioning of society”.⁶

¹ Information in Annex 1 is relevant as of November 2020.

² International Covenant on Civil and Political Rights. U.N. Doc. A/6316. 999 U.N.T.S. 171. December 16, 1966. Article 4.

³ UN Human Rights Committee. General Comment No. 29 – Article 4: Derogations during a State of Emergency. CCPR/C/21/Rev.1/Add.11. 24 July 2001. Paras. 3, 5.

⁴ Convention for the Protection of Human Rights and Fundamental Freedoms. 213 UNTS 221. ETS No. 005. November 4, 1950. Article 15(1); European Social Charter. ETS No. 035. Adopted on October 18, 1996, revised on May 3, 1996. Article F (1).

⁵ International Law Association. The Paris Minimum Standards of Human Rights Norms in a State of Emergency // American Journal of International Law. Ed. R. B. Lillich. Vol. 72. 1985. Section A. Para. 1(b). URL: https://www.uio.no/studier/emner/jus/humanrights/HUMR5503/h09/undervisningsmateriale/ParisMinimumStandard_s.pdf.

⁶ UN General Assembly. ILC’s Report. Draft Articles on the Protection of Persons in the Event of Disasters with comments. Resolution A/71/10 // Yearbook of the International Law Commission. Vol. II. 2016. Article 3(a).

4. However, none of the above-mentioned international instruments is intended to regulate situations where there is a threat to public health. The legal regulation of this area is assigned to the IHR 2005 that use the concept of “public health emergency of international concern”.

5. The COVID-19 pandemic may fall under any of the terms “public emergency” or “disaster” mentioned above. An extraordinary event in its nature, the pandemic has put the entire world’s population at risk. As of November 2020, according to the official WHO statistics, more than 1.2 million people have died from a new coronavirus infection.⁷ This fact indicates a global emergency that requires an urgent response.

1.2. The International Health Regulations 2005 as the Main Tool for Ensuring Health Safety Through the Prevention of Public Health Emergencies

6. The IHR 2005, as the main public health treaty within the WHO,⁸ aim to prevent and control the international spread of diseases through response measures.⁹ The Rules are legally binding on the WHO Member States, as well as new Member States, if they have not rejected them, made reservations or amendments to them within 18 months from the date of notification by the Director-General of their adoption.¹⁰

7. The IHR 2005 provide for the concept of “public health emergency of international concern” which means an extraordinary event and is determined to constitute a public health risk to other States through the international spread of disease and to potentially require a coordinated international response.¹¹ The Rules establish a step-by-step procedure for determining its existence and taking appropriate response measures.

8. A State Party to the IHR 2005 shall provide to the WHO all relevant public health information if it has evidence of an unexpected or unusual public health event within its territory, irrespective of origin or source, which may constitute a PHEIC.¹²

9. If, after an assessment of events occurred on the territory of the State in accordance with the decision instrument in Annex II of the Rules, it was concluded that they may constitute a PHEIC, the State shall notify the WHO of those events, as well as of any health measure implemented in response to them.¹³ The State is given 24 hours to provide this information from the moment the situation was assessed.¹⁴

⁷ WHO Coronavirus Disease (COVID-19) Dashboard. URL: <https://covid19.who.int/>.

⁸ To date, 196 States are parties to the IHR. URL: https://www.who.int/ihr/legal_issues/states_parties/en/.

⁹ International Health Regulations. May 23, 2005. Article 2. URL: https://apps.who.int/iris/bitstream/handle/10665/43883/9789241580410_eng.pdf.

¹⁰ See International Health Assembly. Constitution of the WHO. Off. Rec. Wld. Hlth. Org., 2, 100. July 22, 1946. Article 22. URL: <https://apps.who.int/gb/bd/PDF/bd47/RU/constitution-ru.pdf>; International Health Regulations. Articles 59–65.

¹¹ International Health Regulations. Article 1.

¹² Ibid. Article 7.

¹³ Ibid. Article 6.

¹⁴ Ibid.

10. In addition to information from the State in whose territory the relevant events take place, the WHO may take into account reports from sources other than notifications or consultations and shall assess these reports according to established epidemiological principles and then communicate information on the event to the State Party to obtain its verification.¹⁵ If the verification of such information confirms the existence of a PHEIC, the WHO shall offer to collaborate with the State Party concerned in assessing the potential for international disease spread, possible interference with international traffic, and the adequacy of control measures.¹⁶

11. Then the WHO shall send to all States Parties and, as appropriate, to relevant intergovernmental organizations, as soon as possible and by the most efficient means available, in confidence, such public health information which it has received and which is necessary to enable States Parties to respond to a public health risk.¹⁷

12. The Director-General of the WHO determines whether an event occurring on the territory of a State is a PHEIC. In particular, if after the assessment of the information provided to them, they and the State Party agree upon the determination of the event as a PHEIC, the Director-General shall seek the views of the Emergency Committee established under Article 48 of the IHR 2005 on appropriate temporary recommendations.¹⁸ After receiving the views of the Emergency Committee, the Director-General makes a final determination on whether or not there are grounds for declaring a PHEIC.¹⁹

13. The Director-General shall communicate to States Parties the determination and the termination of a PHEIC, any health measure taken by the State Party concerned, any temporary recommendation, and the modification, extension, and termination of such recommendations, together with the views of the Emergency Committee.²⁰ When a PHEIC is declared, the WHO, at the request of a State Party, shall collaborate in the response to public health risks and other events by providing technical guidance and assistance and by assessing the effectiveness of the control measures in place, including the mobilization of international teams of experts for on-site assistance, when necessary.²¹

1.3. WHO Recommendations on Appropriate Health Measures to Combat the COVID-19 Pandemic

14. If a PHEIC is declared, the WHO Director-General issues temporary recommendations to States Parties.²² Those recommendations *do not have a binding character* and are provided “for application on a time-limited, risk-specific basis, in response to a public health emergency of international concern, so as to prevent or reduce the international spread of disease and minimize interference with international traffic”.²³

¹⁵ Ibid. Articles 9–10.

¹⁶ Ibid.

¹⁷ Ibid. Article 11.

¹⁸ Ibid. Article 12.

¹⁹ Ibid. Article 49.

²⁰ Ibid.

²¹ Ibid. Article 13.

²² Ibid. Articles 15, 49.

²³ Ibid. Article 1.

15. Temporary recommendations shall automatically expire three months after their issuance. They may be modified or extended for additional periods of up to three months. Temporary recommendations may not continue beyond the second WHA after the determination of the PHEIC to which they relate.²⁴

16. Besides, the IHR 2005 provide for the possibility of making standing non-binding recommendations on appropriate health measures for routine or periodic application in order to prevent or reduce the international spread of disease.²⁵ In the context of the spread of COVID-19, the WHO Director-General has been publishing only temporary recommendations covering a wide range of issues related to countering the coronavirus outbreak.

17. The first WHO recommendations for health measures related to countering the outbreak of the new coronavirus infection were published on January 10–12, 2020.²⁶ According to them, international travelers were advised to take the general precautions to reduce the overall risk of acute respiratory infections by:

- avoiding close contact with people suffering from acute respiratory infections;
- frequent handwashing, especially after direct contact with ill people or their environment;
- avoiding close contact with live or dead farm or wild animals;
- travelers with symptoms of acute respiratory infection should practice cough etiquette (maintain distance, cover coughs and sneezes with disposable tissues or clothing, and wash hands).²⁷

18. Additional temporary recommendations were also published by the WHO prior to the declaration of a PHEIC on January 30, 2020.²⁸

²⁴ Ibid. Article 15. The first part of the WHA's session, convened in a virtual format in light of the ongoing COVID-19 pandemic, was held on May 18–19, 2020, on a reduced agenda. The resumed session took place also virtually from 9 to 14 November 2020. Recommendations adopted by the WHO and aimed at combating COVID-19 can be extended and, accordingly, are valid only until the second session of the WHA, which is expected to be held in May 2021, see Seventy-third World Health Assembly. URL: <https://www.who.int/about/governance/world-health-assembly/seventy-third-world-health-assembly>; see also Seventy-third Session of the World Health Assembly. Report of the Committee B. 11 November 2020. P. 4. Para. 3. URL: [https://apps.who.int/gb/ebwha/pdf_files/WHA73/A73_44\(draft\)-en.pdf](https://apps.who.int/gb/ebwha/pdf_files/WHA73/A73_44(draft)-en.pdf).

²⁵ International Health Regulations. Articles 1, 16, 53.

²⁶ See, e.g., WHO advice for international travel and trade in relation to the outbreak of pneumonia caused by a new coronavirus in China. January 10, 2020. URL: <https://www.who.int/news-room/articles-detail/who-advice-for-international-travel-and-trade-in-relation-to-the-outbreak-of-pneumonia-caused-by-a-new-coronavirus-in-china>; WHO's Interim guidance. Clinical management of severe acute respiratory infection when novel coronavirus (nCoV) infection is suspected. January 12, 2020. URL: <https://apps.who.int/iris/bitstream/handle/10665/332299/WHO-2019-nCoV-Clinical-2020.1-eng.pdf>.

²⁷ See WHO advice for international travel and trade in relation to the outbreak of pneumonia caused by a new coronavirus in China. Op cit.

²⁸ See, e.g., WHO's interim guidance. Laboratory testing of 2019 novel coronavirus (2019-nCoV) in suspected human cases. January 17, 2020. URL: [https://www.who.int/publications/i/item/laboratory-testing-of-2019-novel-coronavirus-\(2019-ncov\)-in-suspected-human-cases-interim-guidance-17-january-2020](https://www.who.int/publications/i/item/laboratory-testing-of-2019-novel-coronavirus-(2019-ncov)-in-suspected-human-cases-interim-guidance-17-january-2020); WHO's interim guidance. Home care for patients with suspected novel coronavirus (nCoV) infection presenting with mild symptoms and management of contacts. January 20, 2020. URL: <https://apps.who.int/iris/bitstream/handle/10665/330671/9789240000834-eng.pdf>; WHO's interim guidance. Infection prevention and control during health care when novel coronavirus (nCoV) infection is suspected. January 25, 2020. URL: <https://apps.who.int/iris/bitstream/handle/10665/330674/9789240000919-eng.pdf>.

19. After the declaration of the PHEIC, the WHO published the Operational Planning Guidelines to Support Country Preparedness and Response which specified a number of technical recommendations issued on January 10–12, 2020.²⁹

20. On March 7, 2020, the WHO released a consolidated set of then-existing recommendations (an interim guidance) covering strategic and operational preparedness and response measures for four different transmission scenarios for COVID-19:

- no reported cases;
- sporadic cases;
- clusters of cases;
- community transmission of cases.³⁰

21. According to that interim guidance, public health measures such as interventions related to individual protection, social distancing, and travels can slow the transmission and spread of the disease. In this regard, the WHO recommended that the following measures should be applied in all States in any situation:

- hand hygiene;
- respiratory etiquette;
- wearing a mask by persons with symptoms of the infection;
- isolation and treatment of patients with symptoms of the infection;
- monitoring contacts with confirmed cases;
- monitoring people arriving from other countries;
- disinfection of street spaces and premises.³¹

22. Besides, because of the global situation, the WHO recommended adopting the following measures:

- a ban on mass public gatherings;
- closure of schools and kindergartens;
- closure of educational institutions;

²⁹ Operational Planning Guidelines to Support Country Preparedness and Response. February 12, 2020. URL: <https://www.who.int/docs/default-source/coronaviruse/covid-19-sprp-unct-guidelines.pdf>.

³⁰ WHO's interim guidance. Critical preparedness, readiness and response actions for COVID-19. WHO/COVID-19/Community_Actions/2020.1. March 7, 2020. URL: https://apps.who.int/iris/bitstream/handle/10665/331422/WHO-COVID-19-Community_Actions-2020.1-eng.pdf.

³¹ Ibid.

- cancellation of public transport services;
- closure of workplaces;
- quarantine of persons with no symptoms of the disease (asymptomatic contacts) and/or isolation of infected persons.³²

23. On May 10, 2020, following up on previous recommendations for investigating COVID-19 cases and clusters,³³ the WHO issued the interim recommendations for contact tracing.³⁴ On June 5, 2020, the WHO published updated recommendations for the use of masks.³⁵

24. Thus, based on the above, it can be concluded that in the context of the spread of the new coronavirus infection in 2020, the WHO's recommendations are useful legal tools which, as the practice has shown, States are guided by when taking health measures in the fight against COVID-19 (**Annex 3 to the Analytical Report**).

2. International Law and Measures Taken by States in the Fight Against Emergencies

25. International law does not restrict the ability of a State to independently decide on measures to respond to emergencies that occur in the State or affect the entire world community. At the same time, such measures must comply with certain international standards, including:

- the International Health Regulations of 2005;
- the Universal Declaration of Human Rights of 1948;
- the International Covenant on Civil and Political Rights of 1996;
- the International Covenant on Economic, Social and Cultural Rights of 1996;
- the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950;
- the European Social Charter of 1961;
- the Paris Minimum Standards of Human Rights Norms in a State of Emergency of 1984 and the ILC's Draft Articles on the Protection of Persons in the Event of Disasters of 2016.

³² Ibid.

³³ WHO's interim guidance. Considerations in the investigation of cases and clusters of COVID-19. March 13, 2020. URL: https://apps.who.int/iris/bitstream/handle/10665/331447/WHO-2019-nCoV-cases_clusters_investigation-2020.1-eng.pdf.

³⁴ WHO's interim guidance. Contact tracing in the context of COVID-19. May 10, 2020. URL: https://apps.who.int/iris/bitstream/handle/10665/332049/WHO-2019-nCoV-Contact_Tracing-2020.1-eng.pdf.

³⁵ WHO's interim guidance. Advice on the use of masks in the context of COVID-19. June 5, 2020. URL: [https://www.who.int/publications/i/item/advice-on-the-use-of-masks-in-the-community-during-home-care-and-in-healthcare-settings-in-the-context-of-the-novel-coronavirus-\(2019-ncov\)-outbreak](https://www.who.int/publications/i/item/advice-on-the-use-of-masks-in-the-community-during-home-care-and-in-healthcare-settings-in-the-context-of-the-novel-coronavirus-(2019-ncov)-outbreak).

2.1. International Health Regulations of 2005

26. The IHR 2005 recognize the sovereign right of States to legislate and to implement legislation in pursuance of their health policies. However, this right of States shall be exercised *with full respect for the dignity, human rights and fundamental freedoms of persons, as well as taking into account the provisions of the UN Charter and the WHO Charter*.³⁶

27. Part V of the IHR 2005 sets out a number of health measures that can be used by a State for public health purposes. In particular, a State Party may require “information concerning the traveler’s itinerary to ascertain if there was any travel in or near an affected area or other possible contacts with infection or contamination³⁷ prior to arrival, as well as review of the traveler’s health documents.”³⁸ With regard to a suspect or affected traveler, States Parties may apply additional health measures, in particular, *the least intrusive and invasive medical examination* that would achieve the public health objective of preventing the international spread of disease.³⁹

28. No medical examination, vaccination, prophylaxis, or health measure under the Regulations shall be carried out on travelers without *their prior express informed consent or that of their parents or guardians*, except as provided in paragraph 2 of Article 31 of the IHR 2005.⁴⁰ Such persons shall be informed of any risk associated with vaccination, prophylaxis, or refusal of them.⁴¹

29. The Regulations determine that when applying health measures to travelers, States shall treat them with respect for their dignity, human rights, and fundamental freedoms and minimize any discomfort or distress associated with such measures, including by:

- treating all travelers with courtesy and respect;
- taking into consideration the gender, socio-cultural, ethnic, or religious concerns of travelers; and
- providing or arranging for adequate food and water, appropriate accommodation and clothing, protection for baggage and other possessions, appropriate medical treatment, means of necessary communication if possible, in a language that they can understand, and other appropriate assistance for travelers who are quarantined, isolated, or subject to medical examinations, or other procedures for public health purposes.⁴²

³⁶ International Health Regulations. Article 3. Italicized by the ICLRC.

³⁷ Contamination is the process of making something dirty or poisonous, or the state of containing unwanted or dangerous substances. See Cambridge Dictionary. URL: <https://dictionary.cambridge.org/dictionary/english/contamination>.

³⁸ International Health Regulations. Article 23.

³⁹ Ibid. Italicized by the ICLRC.

⁴⁰ Ibid. Italicized by the ICLRC. Article 31 of the IHR 2005 refers to the right of a State Party to require a person to undergo a medical examination, vaccination, or other preventive measures, for example, when it is necessary to determine whether a public health risk exists or as a condition of entry for any travelers seeking temporary or permanent residence. If a traveler fails to consent to any such measure, the State Party concerned may deny entry to that traveler.

⁴¹ Ibid.

⁴² Ibid. Article 32.

30. Besides, States Parties shall take all practicable measures consistent with the IHR 2005 to ensure that conveyance operators:

- comply with the health measures recommended by the WHO and adopted by the State Party;
- inform travelers of the health measures recommended by the WHO and adopted by the State Party for application on board;
- permanently keep conveyances for which they are responsible free of sources of infection or contamination, including vectors and reservoirs.⁴³

31. The IHR 2005 prohibit the application of health measures to transit ships and aircraft, as well as civilian lorries, trains, and coaches in transit.⁴⁴ Goods in transit, with the exception of live animals, shall not be subject to health measures or detained for public health purposes.⁴⁵

32. The Regulations establish certain requirements for affected conveyances, as well as ships and aircrafts at points of entry.⁴⁶ In addition, they impose a number of requirements for international traffic containers and their loading areas.⁴⁷

33. In addition to the measures listed above, as well as those specified in the WHO interim recommendations, the IHR 2005 allow States to take additional health measures in accordance with their relevant national law and obligations under international law, in response to specific public health risks or PHEIC. Such health measures shall achieve the same or greater level of health protection than the WHO recommendations and shall not contradict the Regulations.⁴⁸

34. Article 43 of the Regulations limits the scope of health measures to those commensurate with the existing risks to human health, based on scientific principles, available scientific evidence of a risk to human health, any available specific guidance or advice from the WHO.⁴⁹

35. If a State has taken measures that significantly interfere with international traffic, it shall inform the WHO, within 48 hours of implementation, of such measures and their health rationale along with the relevant scientific information.⁵⁰

36. Thus, the IHR 2005, while outlining the general framework of health measures that can be applied by States in the event of a PHEIC, also provide them with a certain level of discretion to take additional

⁴³ Ibid. Article 24.

⁴⁴ Ibid. Articles 25, 26.

⁴⁵ Ibid. Article 33.

⁴⁶ Ibid. Articles 27, 28.

⁴⁷ Ibid. Article 34.

⁴⁸ Ibid. Article 43.

⁴⁹ Ibid.

⁵⁰ Ibid.

measures. However, all such measures shall be initiated and completed without delay and applied in a transparent and non-discriminatory manner.⁵¹

2.2. Universal Declaration of Human Rights of 1948

37. As the first universal human rights document, the UDHR enshrines the human rights and fundamental freedoms inherent in all members of the human family.⁵²

38. The Declaration is not a binding document.⁵³ However, according to some scholars and judges of international courts, some of its provisions constitute peremptory norms of international law (*jus cogens*)⁵⁴. Such norms of the Declaration include, for example, the right to life,⁵⁵ the right not to be subjected to torture,⁵⁶ the prohibition of slavery and racial discrimination.⁵⁷

39. Article 53 of the Vienna Convention on the Law of Treaties of 1969 provides that:

“a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm *from which no derogation is permitted* and which can be modified only by a subsequent norm of general international law having the same character.”⁵⁸

40. Thus, when taking restrictive measures in the fight against COVID-19, States should take into account that certain human rights listed in the Declaration are absolute and are not subject to any derogations or restrictions.

2.3. International Covenant on Civil and Political Rights of 1996

41. Unlike the UDHR, the ICCPR is binding on States Parties to the treaty and explicitly provides for the possibility of declaring a state of emergency. At the same time, it is important to note that the ICCPR establishes a restriction on the adoption of measures derogating from human rights in a time of public

⁵¹ Ibid. Article 42.

⁵² UN General Assembly. Universal Declaration of Human Rights. Resolution 217A (III), U.N. Doc A/810 (1948). Preamble.

⁵³ See, e.g., *South West Africa Cases (Ethiopia v. South Africa, Liberia v. South Africa)*. Judgment of July 18, 1966. ICJ Reports 1966 (Second Phase). The dissenting opinion of Judge Tanaka. P. 293.

⁵⁴ See, e.g., *McDougal M. S., Lasswell H., Chen L-C*. Human Rights and World Public Order: The Basic Policies of an International Law of Human Dignity. New Haven and London: Yale University Press. 1980; *Ramcharan B.G*. The Legal Status of the International Bill of Human Rights // *Nordic Journal of International Law*. Vol 55. 1986. P. 366, 380.

⁵⁵ Human Rights Committee. General comment No. 36 (Article 6: right to life). CCPR/C/GC/36. October 30, 2018. Paras. 2, 3.

⁵⁶ The International Criminal Tribunal for the former Yugoslavia. *Prosecutor v. Furundžija*. Case IT-95-17/1-T. Trial Chamber (Judgment). December 10, 1998. Para. 155; *Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*. Judgment of July 20, 2012. ICJ Reports 2012. Para. 99.

⁵⁷ *Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)*. Judgment of February 5, 1970. ICJ Reports 1970. Para. 32.

⁵⁸ Vienna Convention on the Law of Treaties. 1155 U.N.T.S. 311. May 23, 1969. Article 53. Italicized by the ICLRC.

emergency.⁵⁹ In particular, a State Party cannot derogate from its obligations under the following Articles of the ICCPR:

- Article 6 (the right to life);
- Article 7 (the prohibition of torture or cruel, inhuman or degrading treatment or punishment, as well as medical or scientific experimentation without free consent);
- paragraphs 1 and 2 of Article 8 (the prohibition of slavery, slavery-trade, and servitude);
- Article 11 (the prohibition of deprivation of liberty on the ground of inability to fulfill a contractual obligation);
- Article 15 (the principle of legality in the field of criminal law);
- Article 16 (the right to recognition as a person before the law); and
- Article 18 (the freedom of thought, conscience, and religion).⁶⁰

42. Besides, two conditions must be met before a State can derogate from its obligations under other Articles of the ICCPR.

43. First, the situation in a State must amount to a public emergency that threatens the life of the nation. However, in this case, States must be able to justify not only that such a situation constitutes a threat to the life of the nation, but also that all their measures derogating from the ICCPR are strictly required by the exigencies of the situation.⁶¹ It is noted that “a threat to the life of the nation is one that affects the whole of the population and either the whole or part of the territory of the State, and threatens the physical integrity of the population, the political independence or the territorial integrity of the State or the existence or basic functioning of institutions indispensable to ensure and protect the rights recognized in the Covenant.”⁶²

44. Second, a State Party must officially proclaim a state of emergency. In particular, a State to the ICCPR availing itself of the right of derogation shall immediately inform the other States Parties to the Covenant, through the intermediary of the UN Secretary-General, of the provisions from which it has derogated and of the reasons by which it was actuated.⁶³ HRC clarified that “the notification should include full information about the measures taken and a clear explanation of the reasons for them, with full documentation attached regarding their law.”⁶⁴ It is also stated that “additional notifications are required if a State Party subsequently takes further measures under Article 4, for instance by extending the duration

⁵⁹ International Covenant on Civil and Political Rights. Article 4. To date, 173 States are parties to this treaty. URL: https://www.ohchr.org/Documents/HRBodies/CCPR/OHCHR_Map_ICCPR.pdf.

⁶⁰ Ibid. Article 4(2). As the HRC has noted, some of these rights (such as those provided for in Articles 6 and 7) are of the peremptory nature. See Human Rights Committee. General Comment No. 29. Para. 11.

⁶¹ Ibid. Para. 5.

⁶² UN Commission on Human Rights. Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights. E/CN.4/1985/4. September 28, 1984. Para. 39.

⁶³ International Covenant on Civil and Political Rights. Article 4(3).

⁶⁴ General Comment No. 29. Para. 17; see also Siracusa Principles. Paras. 44–46.

of a state of emergency. The requirement of immediate notification applies equally in relation to the termination of derogation.”⁶⁵

45. The ICCPR also sets certain requirements for measures taken by States to derogate from their human rights obligations. For instance, the measures taken should not involve discrimination solely on the ground of race, color, sex, language, religion, or social origin.⁶⁶ Also, such measures should not be inconsistent with States’ other obligations under international law⁶⁷ and must be of an exceptional and temporary nature.⁶⁸

46. In addition, the ICCPR, along with a provision about derogations from human rights obligations, provides for legal limitations of human rights that can be implemented outside the context of public emergency. The limitation of rights must be distinguished from the derogation from human rights obligations. The imposition of such limitations is based on particular rules of the ICCPR⁶⁹ setting the following requirements for the introduction of such limitations:

- the limitations shall be prescribed by national law of general application. Moreover, “legal rules limiting the exercise of human rights shall be clear and accessible to everyone;”⁷⁰
- the limitations shall be necessary in a democratic society. In this sense, the State applying the limitations, “shall demonstrate that the limitations do not impair the democratic functioning of the society;”⁷¹
- the limitations shall be imposed in the interests of national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others.

47. Within the framework of this Analytical Report, the last of the listed grounds — the protection of public health — is of particular interest.

48. It is noted that “public health may be invoked as a ground for limiting certain rights⁷² in order to allow a State to take measures dealing with a serious threat to the health of the population or individual members of the population. These measures must be specifically aimed at preventing disease or injury or

⁶⁵ General Comment No. 29. Para. 17.

⁶⁶ International Covenant on Civil and Political Rights. Article 4(1); General Comment No. 29. Para. 8.

⁶⁷ International Covenant on Civil and Political Rights. Article 4(1); Siracusa Principles. Paras. 66–68.

⁶⁸ General Comment No. 29. Para. 2.

⁶⁹ See, e.g., International Covenant on Civil and Political Rights. Articles 12, 18–19, 21–22.

⁷⁰ Siracusa Principles. Paras. 15–18.

⁷¹ Ibid. Paras. 19–21.

⁷² For example, the UN Committee on Economic, Social and Cultural Rights pointed out that “the protection of public health is often cited by States as a basis for restricting human rights in the context of a person’s health status. However, many such restrictions are discriminatory, for example, when HIV status is used as the basis for differential treatment with regard to access to education, employment, health care, travel, social security, housing and asylum.” See Committee on Economic, Social and Cultural Rights. General Comment No. 20 – Non-discrimination in economic, social and cultural rights (Para. 2, Article 2 of the Covenant). E/C.12/GC/20. Para. 33.

providing care for the sick and injured.”⁷³ In this respect, due regard shall be given to the international health regulations of the WHO.⁷⁴

49. Therefore, Article 4 of the ICCPR and the provisions that allow limitations of certain rights are important for the system of protection of human rights enshrined in the ICCPR. On the one hand, they allow a State Party to unilaterally temporarily withdraw from a part of its obligations under the ICCPR in emergencies, which may include the COVID-19 pandemic, or to limit them, for example, in the interests of public health. On the other hand, the ICCPR provides for a special regime of guarantees both regarding the derogations or limitations and their material consequences.⁷⁵

2.4. International Covenant on Economic, Social and Cultural Rights of 1996

50. Like the ICCPR, the ICESCR is a treaty binding on States Parties.⁷⁶ However, if, under the ICCPR, States undertake to “respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant,”⁷⁷ in accordance with the ICESCR, States are obliged to “take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the Covenant.”⁷⁸ In other words, due to the possible limited resources for the realization of economic, social, and cultural rights in some States, the nature of obligations under the ICESCR is characterized by gradual implementation.⁷⁹ This, in turn, may indicate a more flexible framework for States’ obligations.

51. In the context of the COVID-19 pandemic, particular attention should be paid to the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, as set out in the ICESCR, under which States have positive obligations, including to take necessary steps to prevent, treat, and control epidemic and other diseases.⁸⁰

52. Unlike the ICCPR, the ICESCR does not provide States with a possibility of derogation from their obligations. However, as in the ICCPR, States may impose limitations on the rights set forth in the ICESCR.⁸¹

53. It is worth noting that while the ICCPR provides for limitations of individual rights, the provisions of Article 4 of the ICESCR point to the possibility of limitations of the rights in general. Although Article 4 does not explicitly specify the material conditions for setting limitations, an interpretation of the ICESCR

⁷³ Siracusa Principles. Para. 25.

⁷⁴ Ibid. Para. 26.

⁷⁵ See, e.g., *ibid.* Para. 1.

⁷⁶ International Covenant on Economic, Social and Cultural Rights. 993 U.N.T.S. 3. UN Doc A/6316. December 16, 1966. To date, 117 States are parties to this treaty. See URL: https://www.ohchr.org/Documents/HRBodies/CESCR/OHCHR_Map_ICESCR.pdf.

⁷⁷ International Covenant on Civil and Political Rights. Article 2(1).

⁷⁸ International Covenant on Economic, Social and Cultural Rights. Article 2(1).

⁷⁹ UN Committee on Economic, Social and Cultural Rights. General Comment No. 3 – The Nature of States Parties’ Obligations (Para. 1, Article 2 of the Covenant). E/1991/23. December 14, 1990. Para. 1.

⁸⁰ International Covenant on Economic, Social and Cultural Rights. Article 12.

⁸¹ *Ibid.* Article 4.

provisions suggests that such restrictions may be imposed both in peacetime and in situations of armed conflict.⁸²

54. The imposition of limitations under the ICESCR must be subject to a number of conditions. In addition to the identical requirement on the legality of limitations of the rights under the ICCPR, the ICESCR stipulates that such imitations must be compatible with the nature of the rights (without distorting their meaning and content) and promote the general welfare in a democratic society (be imposed in the public interest).⁸³

2.5. European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950

55. The ECHR, like the ICCPR, contains a provision on the possibility of States to derogate from a number of human rights obligations. In particular, the ECHR establishes that:

“In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.”⁸⁴

56. As the ICCPR, the ECHR specifies a number of rights that cannot be derogated from:

- Article 2 (the right to life, except in respect of deaths resulting from lawful acts of war);
- Article 3 (the prohibition of torture);
- paragraph 1 of Article 4 (the prohibition of slavery);
- Article 7 (no punishment without law).⁸⁵

57. Similar to the requirements of the ICCPR, two conditions must be met before States Parties to the ECHR can derogate from their obligations under other Articles of the Convention.

58. First, there must be a war in a State or other public emergency threatening the life of the nation.⁸⁶ Under such circumstances, the ECtHR understands “an exceptional situation of crisis or emergency which affects the whole population and constitutes a threat to the organized life of the community of which the State is composed.”⁸⁷ An emergency must be real or imminent. As the ECtHR pointed out, “the requirement

⁸² See, e.g., *Müleer A. Limitations to and Derogations from Economic, Social and Cultural Rights // Human Rights Law Review. Vol. 9. 2009. Issue 4. P. 573–575, 586.*

⁸³ International Covenant on Economic, Social and Cultural Rights. Article 4.

⁸⁴ Convention for the Protection of Human Rights and Fundamental Freedoms. Article 15(1).

⁸⁵ *Ibid.* Article 15(2).

⁸⁶ *Ibid.* Article 15(1).

⁸⁷ European Court of Human Rights. *Lawless v. Ireland (No. 3)*. Application No. 332/57. Court (Chamber). Judgment of July 1, 1961. Para. 28. URL: <http://hudoc.echr.coe.int/eng?i=001-57518>.

of imminence cannot be interpreted so narrowly as to require a State to wait for disaster to strike before taking measures to deal with it.”⁸⁸

59. Second, a State availing itself of the right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary General when such measures have ceased to operate, and the provisions of the Convention are again being fully executed.⁸⁹

60. The ECHR sets out two requirements for measures taken by States in derogation from their human rights obligations.

61. First, derogation is allowed only to the extent that it is strictly required by the exigencies of the situation. Despite the broad discretion granted to States under Article 15(1) of the ECHR, States do not have unlimited power and their restrictions on rights can be accepted “only to the extent strictly required by the exigencies of the crisis.”⁹⁰ In determining whether a State has gone beyond what is required by the exigencies of the situation, the ECtHR gives appropriate weight to such relevant factors as the nature of the rights affected by the derogation, the circumstances leading to, and the duration of, the emergency.⁹¹

62. Second, measures taken by a State in derogation from its obligations under the ECHR should not be inconsistent with its other obligations under international law.⁹²

63. Besides, some provisions of the ECHR, as well as those of the ICCPR, provide for the possibility of limitation of certain rights⁹³. Such limitations may be imposed if States comply with the following requirements:

- the limitations shall be prescribed by law;
- the limitations shall be necessary in a democratic society;
- the limitations shall be imposed in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals, or the protection of the rights and freedoms of others.

64. These requirements are almost identical to those set out in the ICCPR and ICESCR. The ECtHR analyzes the fulfillment of each of these conditions in the context of the circumstances of each case.

⁸⁸ See European Court of Human Rights. *A. and Others v. the United Kingdom*. Application No. 3455/05. Grand Chamber. Judgment of February 19, 2009. Para. 177. URL: <http://hudoc.echr.coe.int/eng?i=001-91403>.

⁸⁹ Convention for the Protection of Human Rights and Fundamental Freedoms. Article 15(3); see also European Court of Human Rights. *Mehmet Hasan Altan v. Turkey*. Application No. 13237/17. Second Section. Judgment of March 20, 2018. Para. 89. URL: <http://hudoc.echr.coe.int/eng?i=001-181862>.

⁹⁰ European Court of Human Rights. *Ireland v. the United Kingdom*. Application No. 5310/71. Court (Plenary). Judgment of January 18, 1978. Para. 207. URL: <http://hudoc.echr.coe.int/eng?i=001-57506>.

⁹¹ European Court of Human Rights. *Brannigan and McBride v. the United Kingdom*. Application nos. 14553/89; 14554/89. Court (Plenary). Judgment of May 25, 1993. Para. 43. URL: <http://hudoc.echr.coe.int/eng?i=001-57819>; *A. and Others v. the United Kingdom*. Para. 173

⁹² See, e.g., European Court of Human Rights. *Hassan v. the United Kingdom*. Application No. 29750/09. Grand Chamber. Judgment of September 16, 2014. Paras. 104–107. URL: <http://hudoc.echr.coe.int/eng?i=001-146501>.

⁹³ See, e.g., Convention for the Protection of Human Rights and Fundamental Freedoms. Articles 8–11.

2.6. European Social Charter of 1961

65. Similar to the provisions of the ECHR, the ESC provides for the possibility for States Parties to derogate from their obligations:

“In time of war or other public emergency threatening the life of the nation any Contracting Party may take measures derogating from its obligations under this Charter to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.”⁹⁴

66. If a State decides to derogate from its obligations under the Charter, it shall, within a reasonable lapse of time, keep the Secretary General of the Council of Europe fully informed of the measures taken and of the reasons therefor, as well as when such measures have ceased to operate and the provisions of the Charter which it has accepted are again being fully executed.⁹⁵

67. Also, the rights established in the ESC may be limited. Those limitations shall be prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, *public health*, or morals.⁹⁶

68. Thus, the ESC framework, in which States Parties should act in the event of an emergency, such as the COVID-19 pandemic, generally reflects the provisions of the universal human rights treaties and the ECHR.

2.7. Soft Law Documents

2.7.1. Paris Minimum Standards of Human Rights Norms in a State of Emergency of 1984

69. The Paris Standards are not a binding document. They were adopted at the 61st Conference of the International Law Association to help ensure that States comply with Article 4 of the ICCPR, Article 15 of the ECHR, and Article 27 of the American Convention on Human Rights.⁹⁷

70. In the Paris Standards, the possibility of taking measures to derogate from the treaties (the ICCPR and the ECHR) depends on five conditions:

- every State shall comply with the principle of notification as may be prescribed by the particular treaty;
- such measures must be strictly proportionate to the exigencies of the situation;

⁹⁴ European Social Charter. Article F (1). URL: <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168006b642>.

⁹⁵ Ibid. Article F (2).

⁹⁶ Ibid. Article G (1). Italicized by the ICLRC.

⁹⁷ International Law Association. The Paris Minimum Standards of Human Rights Norms in a State of Emergency. Introduction. The American Convention on Human Rights is not the subject of this Analytical Report.

- such measures must not be inconsistent with the other obligations of the State under international law;
- such measures must not involve any discrimination solely on the ground of race, color, sex, language, religion, nationality, or social origin; and
- the basic rights and freedoms guaranteed by international law shall remain non-derogable even during an emergency.⁹⁸

71. Currently, all these conditions are reflected in the ICCPR and the ECHR and are subject to mandatory implementation by the States Parties to these treaties.

2.7.2. International Law Commission's Draft Articles on the Protection of Persons in the Event of Disasters of 2016

72. The Draft Articles on the Protection of Persons in the Event of Disasters are also advisory in nature. Their purpose is to facilitate the adequate and effective response to disasters and reduction of the risk of disasters, so as to meet the essential needs of the persons concerned, with full respect for their rights.⁹⁹

73. According to the Draft Articles, "disaster" means:

*"a calamitous event or series of events resulting in widespread loss of life, great human suffering and distress, mass displacement, or large-scale material or environmental damage, thereby seriously disrupting the functioning of society."*¹⁰⁰

74. As it was noted by the ILC, "the possibility of "great human suffering and distress" was included out of the recognition that many major disasters are accompanied by widespread loss of life or by great human suffering and distress, including those occasioned by non-fatal injuries, *disease*, or other health problems caused by the disaster."¹⁰¹ Therefore, it is possible to consider applying the Draft Articles to situations such as the COVID-19 pandemic in terms of the global response and cooperation to protect people.¹⁰²

75. The Draft Articles cover *ratione materiae*, first of all, the rights and obligations of States affected by a disaster in relation to persons on their territory or under their jurisdiction or control. Second, they also cover the rights and obligations of third States, intergovernmental organizations, non-governmental organizations, and other entities that are able to cooperate in disaster relief and disaster risk reduction.¹⁰³

⁹⁸ Ibid. Section B. Para. 2; see also Section C.

⁹⁹ UN GA. ILC Report. Draft Articles on the Protection of Persons in the Event of Disasters with Comments. Article 2.

¹⁰⁰ Ibid. Article 3(a). Italicized by the ICLRC.

¹⁰¹ Ibid. P. 27. Para. 7. Italicized by the ICLRC.

¹⁰² See, e.g., *Ozturk A. Covid-19: Just Disastrous or the Disaster Itself? Applying the ILC Articles on the Protection of Persons in the Event of Disasters to the Covid-19 Outbreak.* URL: <https://www.asil.org/insights/volume/24/issue/6/covid-19-just-disastrous-or-disasteritself-applying-ilc-articles>.

¹⁰³ UN GA. ILC Report. Draft Articles on the Protection of Persons in the Event of Disasters with Comments. P. 20.

76. The first type of obligation points to the need to respect and protect human dignity, as well as the human rights of persons affected by a disaster.¹⁰⁴ Besides, it is noted that response to disasters shall take place in accordance with the principles of humanity, neutrality, and impartiality, and on the basis of non-discrimination while taking into account the needs of the particularly vulnerable.¹⁰⁵ The Draft Articles on the Protection of Persons in the Event of Disasters underline that the affected State has the duty to ensure the protection of persons and provision of disaster relief assistance in its territory, or in territory under its jurisdiction or control.¹⁰⁶

77. The second type of obligation provides for the duty of States faced with a disaster to cooperate with the UN, with the components of the Red Cross and Red Crescent Movement, and with other assisting actors.¹⁰⁷ Such cooperation in the response to disasters includes humanitarian assistance, coordination of international relief actions and communications, and making available relief personnel, equipment and goods, scientific, medical, and technical resources.¹⁰⁸

78. Thus, the Draft Articles on the Protection of Persons in the Event of Disasters are mainly aimed at protecting persons from disasters by reducing the risk of their occurrence, as well as by cooperating in taking response measures.

¹⁰⁴ Ibid. Articles 4–5, 10.

¹⁰⁵ Ibid. Article 6.

¹⁰⁶ Ibid. Article 9.

¹⁰⁷ Ibid. Article 7.

¹⁰⁸ Ibid. Articles 8, 11–15.

ANNEX 2. REGIONAL INTEGRATIONS AND THE COVID-19 PANDEMIC¹⁰⁹

1. Regulatory Framework and Mechanisms for Responding to Health Emergencies at the European Union Level

1.1. Regulation of Health Emergencies Within the European Union

1. The main legal document aimed, *inter alia*, at health protection within the EU is the Treaty on the Functioning of the EU. In accordance with Article 168, “a high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.”¹¹⁰

2. This Article also states that:

“Union action shall be directed towards improving public health, preventing physical and mental illness and diseases, and obviating sources of danger to physical and mental health. Such action shall cover the fight against the major health scourges, by promoting research into their causes, their transmission and their prevention, as well as health information and education, and monitoring, *early warning of and combating serious cross-border threats to health.*”¹¹¹

3. The very concept of “serious cross-border threat to health” is enshrined in the EU Decision on Serious Cross-border Threats to Health of 2013. This term is defined as:

“a life-threatening or otherwise serious hazard to health of biological, chemical, environmental or unknown origin which spreads or entails a significant risk of spreading across the national borders of Member States, and which may necessitate coordination at Union level in order to ensure a high level of human health protection.”¹¹²

4. In situation, when such a threat:

- is unusual or unexpected for the given place and time, or causes or may cause significant morbidity or mortality in humans, or grows rapidly or may grow rapidly in scale, or exceeds or may exceed national response capacity; and
- affects or may affect more than one Member State; and

¹⁰⁹ Information in Annex 2 is relevant as of November 2020.

¹¹⁰ The Treaty on the Functioning of the European Union. 2016/C 202/01. March 25, 1957 (as amended by the Lisbon Treaty of 2007). Consolidated version. Article 168. URL: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12012E/TXT:en:PDF>.

¹¹¹ Ibid. Italicized by the ICLRC.

¹¹² European Parliament, Council of the European Union. Decision No. 1082/2013/EU on serious cross-border threats to health and repealing Decision No. 2119/98/EC. October 22, 2013. Article 3. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32013D1082>.

- requires or may require a coordinated response at Union level,

the European Commission (in particular, the Directorate-General for Health and Food Safety) should notify an alert in the Early Warning and Response System¹¹³.

5. If a serious cross-border threat to health endangers public health at the Union level, and medical needs are unmet in relation to that threat, which means that no satisfactory method of diagnosis, prevention, or treatment is authorized in the Union, the European Commission may recognize a situation as a public health emergency.¹¹⁴ The recognition of an emergency is based on the conclusion of the Health Security Committee¹¹⁵ established within the European Commission. Further, the European Commission is required to inform the WHO Director-General of the recognition of the health situation as an emergency¹¹⁶ (**paras. 11–1.3 of Annex 2 to the Analytical Report**).

6. As soon as any of the applicable conditions for the recognition of an emergency is no longer met, the European Commission shall terminate such recognition through implementing acts.¹¹⁷

1.2. Legal Framework for Measures Taken at the European Union Level

7. The above-mentioned Decision on Serious Cross-border Threats to Health defines the concept of “public health measure” which means:

“a decision or an action which is aimed at preventing, monitoring or controlling the spread of diseases or contamination, combating severe risks to public health or mitigating their impact on public health.”¹¹⁸

8. In accordance with the Decision on Serious Cross-border Threats to Health, when a Member State intends to adopt public health measures to combat a serious cross-border threat to health, it shall, before adopting those measures, inform and consult the other Member States and the Commission on the nature, purpose, and scope of the measures, unless the need to protect public health is so urgent that the immediate adoption of the measures is necessary. A Member State should use the same notification and consultation procedure if measures have already been taken urgently in response to the appearance or resurgence of a serious cross-border threat to health.¹¹⁹

¹¹³ Ibid. Articles 8–9. The Early Warning and Response System of the European Union is a tool with restricted access for monitoring public health threats in the EU. Access and posting are confidential and only accessed by European Centre for Disease Prevention and Control, the Member States and the Directorate General Health and Food Safety. See European Centre for Disease Prevention and Control. URL: <https://www.ecdc.europa.eu/en/publications-data/early-warning-and-response-system-european-union-ewrs>.

¹¹⁴ Decision No. 1082/2013/EU on serious cross-border threats to health and repealing Decision No. 2119/98/EC . Article 12(1).

¹¹⁵ For more information about the Committee, see *ibid.* Article 17.

¹¹⁶ *Ibid.* Article 12(2) and (3).

¹¹⁷ *Ibid.* Article 14.

¹¹⁸ *Ibid.* Article 3.

¹¹⁹ *Ibid.* Article 11(2) and (3).

9. In the event of a serious cross-border threat to health overwhelming the national response capacities, an affected Member State may also request assistance from other Member States through the Community Civil Protection Mechanism.¹²⁰

10. In addition to the above-mentioned EU Decision on Serious Cross-border Threats to Health, the framework limiting the measures taken by the EU Member States is the provisions of the ECHR and the ESC (**paras. 55–41 of Annex 1 to the Analytical Report**), which provide for the possibility of limitations of rights and derogations from human rights obligations when States take measures to combat emergencies.

1.3. Measures Taken at the European Union Level to Combat the COVID-19 Pandemic and Its Consequences

11. The spread of COVID-19 was not declared an emergency at the EU level. At the same time, taking into account the response of the WHO (the declaration of a PHEIC due to the COVID-19 pandemic and the adoption of relevant recommendations for States and their population),¹²¹ the EU adopts regulations providing for measures to support the EU Member States and continuously coordinates with the Member States to exchange information, assess needs and ensure a coherent response across the EU.¹²²

Healthcare

12. In order to provide personal protective equipment to the EU Member States, the European Commission announced seven tenders for the supply of medical equipment under an agreement on joint procurement of medical equipment between the EU Member States.¹²³ With the participation of 36 EU Member States, seven tenders worth about EUR 1.5 billion was announced (the first four of them have already been signed).¹²⁴

13. Besides, on March 15, 2020, the European Commission took measures to ensure the availability of personal protective equipment in the EU Member States, requiring that the export of such equipment outside the EU is carried out with the authorization of Member States.¹²⁵

¹²⁰ Ibid. Article 11(4). For more information about the EU Civil Protection Mechanism, see Decision 1313/2013/EU of the European Parliament and of the Council on a Union Civil Protection Mechanism. December 17, 2013. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02013D1313-20190321>.

¹²¹ Council of the European Union. COVID-19 coronavirus pandemic. URL: <https://www.consilium.europa.eu/en/policies/coronavirus/>.

¹²² European Commission. Timeline of EU action. URL: https://ec.europa.eu/info/live-work-travel-eu/health/coronavirus-response/timeline-eu-action_en.

¹²³ Joint Procurement Agreement of medical countermeasures. April 10, 2014. URL: https://ec.europa.eu/health/sites/health/files/preparedness_response/docs/jpa_agreement_medicalcountermeasures_en.pdf; see also Signing ceremonies for Joint Procurement Agreement. URL: https://ec.europa.eu/health/preparedness_response/joint_procurement/jpa_signature_en; Guidance from the European Commission on using the public procurement framework in the emergency situation related to the COVID-19 crisis. C/2020/2078. April 1, 2020. URL: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020XC0401\[05\]](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020XC0401[05]).

¹²⁴ See European Commission. Public health. Ensuring the availability of supplies and equipment. URL: https://ec.europa.eu/info/live-work-travel-eu/health/coronavirus-response/public-health_en#ensuring-the-availability-of-supplies-and-equipment.

¹²⁵ European Commission. Implementing Regulation making the exportation of certain products subject to the production of an export authorization. No.2020/402. March 14, 2020. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L:2020:0771:TOC>.

14. On March 19, 2020, the European Commission decided to create a strategic rescEU stockpile of medical equipment within the framework of the EU Civil Protection Mechanism. Such equipment includes ventilators, personal protective equipment, reusable masks, vaccines, therapeutics and laboratory supplies. The Commission has committed itself to fully finance all costs of stockpiling the equipment and managing its distribution.¹²⁶

15. On April 14, 2020, the Council of the EU approved a proposal from the European Commission to activate the emergency support and allocate EUR 2.7 billion to support the health systems of Member States in their fight against the COVID-19 pandemic for the period from February 1, 2020, to January 31, 2022.¹²⁷

16. On May 28, 2020, the European Commission presented its proposal for a new EU health program for the period 2021–2027 called EU4Health. This program provides for a significant strengthening of the EU's capacity to support Member States in the field of public health policy. The budget for the new program is expected to be around 9.4 billion EUR.¹²⁸

17. On September 18, 2020, the European Commission published a set of recommendations for a common EU testing approach for COVID-19. The recommendations set out specific actions that will help EU Member States plan and organize their testing efforts at different stages and in different pandemic settings.¹²⁹

Economic and Financial Spheres

18. Based on the Communication of the European Commission of March 13, 2020,¹³⁰ some changes were made to the rules for providing financial assistance to the EU Member States, under which governments will be able to provide funds to citizens and companies to support them.¹³¹

19. By a decision of the European Central Bank of March 24, 2020, a new pandemic emergency purchase program of eligible marketable debt securities issued by central, regional, or local governments

¹²⁶ European Commission. COVID-19: Commission creates first ever rescEU stockpile of medical equipment. URL: https://ec.europa.eu/commission/presscorner/detail/en/ip_20_476.

¹²⁷ Council of the EU. Council Regulation activating the emergency support under Regulation (EU) 2016/369, and amending its provisions taking into account the COVID-19 outbreak. No. 2020/521. April 14, 2020. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32020R0521>.

¹²⁸ See European Commission. EU4Health programme. URL: https://ec.europa.eu/health/sites/health/files/funding/docs/eu4health_factsheet_en.pdf.

¹²⁹ European Commission. EU health preparedness: Recommendations for a common EU testing approach for COVID-19. URL: https://ec.europa.eu/health/sites/health/files/preparedness_response/docs/common_testingapproach_covid-19_en.pdf.

¹³⁰ European Commission. Communication to the European Parliament, the European Council, the Council, the European Central Bank, the European Investment Bank and the Eurogroup – Coordinated Economic Response to the Covid-19 Outbreak. No. Com/2020/112. March 13, 2020. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020DC0112>.

¹³¹ European Parliament, Council of the EU. Regulation amending Council Regulation (EC) No. 2012/2002 in order to provide financial assistance to Member States and to countries negotiating their accession to the Union that are seriously affected by a major public health emergency. No. 2020/461. March 30, 2020. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1586871536966&uri=CELEX:32020R0461>.

and recognized agencies was launched (its overall envelope was be 750 billion EUR). The goal of the program, which lasted until the end of 2020, was to support the EU economy.¹³²

20. On May 19, 2020, the EU Council Regulation created the European instrument for temporary support of States in order to mitigate unemployment risks in an emergency after the COVID-19 outbreak. Under this instrument, the EU Member States will be provided with financial assistance in the total amount of EUR 100 billion until December 31, 2022.¹³³

21. Besides, on July 21, 2020, the leaders of the EU Member States agreed to allocate EUR 750 billion for economic recovery to help the EU cope with the crisis caused by the pandemic. Along with the economic recovery package, EU leaders agreed on a long-term EU budget of EUR 1,074.3 billion for 2021–2027. Given that EUR 540 billion have already been allocated to support the EU Member States, workers, and businesses, the overall EU recovery package is EUR 2,364.3 billion.¹³⁴

Tourism

22. On January 28, 2020, the EU activated the EU Civil Protection Mechanism for the repatriation of EU citizens from the Wuhan region in China.¹³⁵

23. Besides, in order to slow the transmission of the COVID-19, on March 17, 2020, EU leaders agreed upon the temporary restriction on “non-essential” travel to the EU, which was in force until June 30, 2020. Travel for EU citizens outside the Union, to countries with a high epidemiological risk, was also not recommended.¹³⁶ Due to the improvement of the situation in some EU Member States and beyond, in June 2020, the EU Council agreed on a common approach to gradually lift restrictions on “non-essential” travel to the EU Member States from July 1, 2020.¹³⁷

24. On September 4, 2020, the European Commission proposed to ensure greater clarity and predictability of the content of measures restricting free movement in the EU Member States through the adoption of a recommendation by the EU Council. The Commission noted that any measures taken by the

¹³² European Central Bank. Decision on a temporary pandemic emergency purchase programme (ECB/2020/17). No. 2020/440. March 24, 2020. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32020D0440>.

¹³³ Council of the EU. Regulation on the establishment of a European instrument for temporary support to mitigate unemployment risks in an emergency (SURE) following the COVID-19 outbreak. No. 2020/672. May 19, 2020. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32020R0672>.

¹³⁴ European Council. Conclusions from the Special meeting of the European Council (July 17–21, 2020). EUCO 10/20. July 21, 2020. URL: <https://www.consilium.europa.eu/media/45109/210720-euco-final-conclusions-en.pdf>.

¹³⁵ European Commission. Coronavirus: EU Civil Protection Mechanism activated for the repatriation of EU citizens. URL: https://ec.europa.eu/commission/presscorner/detail/en/IP_20_142.

¹³⁶ See European Commission. Guidance on the implementation of the temporary restriction on non-essential travel to the EU, on the facilitation of transit arrangements for the repatriation of EU citizens, and on the effects on visa policy. No. C [2020] 2050. March 30, 2020. URL: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20200330_c-2020-2050-report_en.pdf.

¹³⁷ European Commission. Communication to the European Parliament, the European Council and the Council on the third assessment of the application of the temporary restriction on non-essential travel to the EU. No. COM/2020/399. June 11, 2020. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1595236855614&uri=CELEX:52020DC0399>.

EU Member States that restrict free movement due to the coronavirus pandemic should be coordinated at the EU level.¹³⁸

25. On October 12, 2020, the Council of the EU adopted a recommendation proposed by the European Commission setting out common criteria and frameworks for action on travel in response to the COVID-19 pandemic. It is indicated that this recommendation is intended to help Member States make travel decisions based on the epidemiological situation in each region.¹³⁹

26. According to the recommendation, the European Centre for Disease Prevention and Control has to publish a common color map weekly, broken down by regions, with data provided by Member States based on the following criteria:

- the total number of newly notified COVID-19 cases per 100,000 population in the last 14 days;
- the number of tests for COVID-19 infection per 100,000 population carried out during the last week (testing rate);
- the percentage of positive tests among all tests for COVID-19 infection carried out during the last week (test positivity rate).¹⁴⁰

27. Member States also agreed on a general framework for possible measures for travelers:

- they should not restrict the free movement of persons traveling to or from another Member State's areas classified as "green";
- if considering whether to apply restrictions on an area classified other than "green", Member States should respect the differences in the epidemiological situation between "orange" and "red" areas and act proportionately, and also take into account the epidemiological situation on their own territory;
- they should not refuse the entry of persons traveling from other Members States; however, they could require persons traveling from an area classified other than "green" to undergo quarantine and/or a test for COVID-19 infection after arrival;
- they could require persons entering their territory to submit passenger locator forms in accordance with data protection requirements (in this regard, it is proposed to develop a common European Passenger Locator Form).¹⁴¹

¹³⁸ European Commission. Proposal for a Council Recommendation on a coordinated approach to the restriction of free movement in response to the COVID-19 pandemic communicated at the EU level. No. 2020/0256 (NLE). September 4, 2020. URL: https://ec.europa.eu/info/sites/info/files/council-proposal-coordinated-approach-restriction-movement_en.pdf.

¹³⁹ Council of the EU. Draft Council Recommendation on a coordinated approach to the restriction of free movement in response to the COVID-19 pandemic. No.11689/1/20 REV 1. October 12, 2020. URL: <https://data.consilium.europa.eu/doc/document/ST-11689-2020-REV-1/en/pdf>.

¹⁴⁰ Ibid. P. 8. Paras. 8, 10.

¹⁴¹ Ibid. P. 10–11. Para. 17.

28. The EU Member States also agreed to provide the general public with clear, comprehensive, and timely information about any new measures or requirements at least 24 hours before they come into effect.¹⁴²

29. Thus, it can be concluded that the EU authorities have taken and continue to take a set of measures in various areas of public life (healthcare, economy, finance, and tourism) in order to combat the spread of COVID-19 and its consequences for the EU Member States.

2. Regulatory Framework and Mechanisms for Responding to Health Emergencies at the Eurasian Economic Union Level

2.1. Legal Framework for Measures Taken at the Eurasian Economic Union Level

30. The EAEU is a fairly young integration that has been operating in the current legal framework since January 1, 2015.¹⁴³ The EAEU Treaty does not address emergency and health issues, except for a small range of issues of medical support for labor migrants.¹⁴⁴

31. The EAEU is an international organization for regional economic integration. It provides for free movement of goods, services, capital, and labor, pursues coordinated, harmonized, and single policy in the sectors determined by the Treaty and international agreements within the Union.¹⁴⁵

32. The bodies of the EAEU (the Supreme Eurasian Economic Council, the Eurasian Intergovernmental Council, the Council and the Board of the Eurasian Economic Commission), within the framework of their powers, adopted acts aimed at preventing and averting the spread of COVID-19 in the spring of 2020.

2.2. Measures Taken at the Eurasian Economic Union Level to Combat the COVID-19 Pandemic and Its Consequences

33. On March 16, 2020, the EEC Council adopted Decision No. 21.¹⁴⁶ It provides for exemption from import customs duties for goods imported to prevent and avert spreading coronavirus infection across the EAEU. The decision applies primarily to personal protective equipment, disinfectants, diagnostic reagents, certain types of medical equipment and materials.

¹⁴² Ibid. P. 12. Para. 25.

¹⁴³ The Member-States of the EAEU are the Republic of Armenia, the Republic of Belarus, the Republic of Kazakhstan, the Kyrgyz Republic, and the Russian Federation. URL: <http://www.eaeunion.org/>.

¹⁴⁴ The EAEU Treaty. URL: https://docs.eaeunion.org/docs/en-us/0017353/itia_05062014_doc.pdf.

¹⁴⁵ Ibid. Article 2.

¹⁴⁶ The EEC Council Decision No. 21 "On Amending Certain Decisions of the Customs Union Commission and on Approving the List of Goods Imported into the Customs Territory of the Eurasian Economic Union to Ensure that Measures to Prevent and Avert Spreading 2019-nCoV Coronavirus Infection are Implemented by the Eurasian Economic Union Member States". URL: https://docs.eaeunion.org/docs/ru-ru/01025251/err_24032020_21.

34. On March 24¹⁴⁷ and 31, 2020,¹⁴⁸ the EEC Council adopted Decisions No. 41, 42, 43. A temporary ban was introduced on exporting personal protective equipment, protective agents and disinfectants, products for medical use, and medical materials from the EAEU.

35. On March 25, 2020, the EEC Council adopted Disposition No. 11 on joint and coordinated actions of the EAEU Member States in a wide range of issues during the implementation of such measures.¹⁴⁹ In particular, the Member States agreed to exchange information and hold timely consultations on the actions being taken and the national regulatory legal acts being adopted in order to respond to spreading coronavirus infection, coordinate the activities of national authorized healthcare authorities on an ongoing basis, and ensure the sanitary and epidemiological welfare of the population.

36. On April 10, 2020, members of the Eurasian Intergovernmental Council adopted a package of measures to be taken in the EAEU to ensure the vital needs of the population, maintain mutual trade and free movement of goods in the context of the COVID-19 pandemic, and create conditions for subsequent economic growth.¹⁵⁰ The order provides for two types of measures.

37. First, a package of urgent anti-crisis and stabilization measures, including:

- arranging interaction between the relevant authorized authorities in carrying out sanitary and epidemiological activities to prevent and minimize consequences of spreading coronavirus infection;
- the creation of a “green corridor” for supplying critical goods;
- introduction of single temporary restrictions on the export of critical goods to third countries;
- prompt prior consultations at the level of members of the EEC on draft national legal acts aimed at introducing temporary restrictions related to the exceptional need to respond to the spread of coronavirus infection;
- consultations of authorized authorities in the sphere of technical regulation;
- temporary reduction or zeroing import customs duties on components and materials for specific industries with regard to their economic and social significance, etc.

38. Second, measures aimed at creating conditions for the recovery and further economic development, including:

- ensuring macroeconomic stability and sustainable functioning of financial markets and payment systems;

¹⁴⁷ The EEC Council Decision No. 41 “On Amending Decision No. 30 of the Eurasian Economic Commission’s Board dated April 21, 2015, “On Non-Tariff Regulation Measures”. URL: <https://base.garant.ru/73806228/>.

¹⁴⁸ The EEC Council Decision No. 42 URL: http://www.consultant.ru/document/cons_doc_LAW_349222/92d3e3d03094ed76da5c15fa72b687f1cebd593/; Decision No. 43. URL: https://docs.eaeunion.org/docs/ru-ru/01425280/err_02042020_43.

¹⁴⁹ The EEC Council Disposition of March 25, 2020, No. 11 “On the Implementation of Measures to Avert Spreading COVID-19 Coronavirus Infection”. URL: https://docs.eaeunion.org/docs/ru-ru/01427832/err_30032020.

¹⁵⁰ The Eurasian Intergovernmental Council Disposition of April 10, 2020, No. 6 “On measures taken within the framework of the Eurasian Economic Union to ensure economic stability in the context of the development of the COVID-19 coronavirus infection pandemic”. URL: https://docs.eaeunion.org/docs/ru-ru/01425377/ico_16042020_6.

- support for real sector enterprises;
- further digital transformation of trade, including wider use of electronic bills of lading and accompanying documents, digitized interaction of logistics operators, more extensive use of electronic digital signatures and technologies for automatic registration and release of imported, exported, and transit goods.



ANNEX 3. INITIAL RESPONSE TO THE COVID-19 PANDEMIC BY STATES¹⁵¹

I. France

Summary

1. The state of health emergency was provided by the law adopted specifically for COVID-19 and possible future pandemics, although other emergency regimes have already existed.
2. According to the new law, the Government is able to take any restrictive and support measures it finds appropriate to handle the crisis.
3. Restrictive measures, meant to prevent the spread of the virus, were imposed in parallel with wide support measures, particularly, those for business. Such support measures focused mainly on the SMEs which had their tax residence in France, regardless of their ownership. They are entitled to receive financial assistance through a special fund and could apply for a State warranty.
4. Measures were enacted under a centralized decision-making process, and most attempts by mayors to adopt stricter initiatives were quashed in courts.
5. The main issue with the state of health emergency lays in the lack of constitutional grounds for its adoption and the question of its compatibility with the ECHR.
6. Also, its duration is not enclosed in any specific delay by the law and could lead to a violation of the rule of law.

1. Public “Emergency” Response Regime

1.1. Constitutional Framework

7. The French Constitution contains two mechanisms that could correspond to a state of emergency: exceptional circumstances and state of siege.
8. Exceptional circumstances are provided by Article 16 which is commonly called “*the ‘full powers’ – plein pouvoirs provision*”. It grants the President the power to take any measure required by exceptional circumstances.
9. Two conditions determine such circumstances:
 - a serious or immediate threat to “the institutions of the Republic, the independence of the Nation, the integrity of its territory or the fulfillment of its international commitments”, and
 - interruption of “proper functioning of the constitutional public authorities”.

¹⁵¹ Information in Annex 3 is presenting the initial response to the COVID-19 pandemic by States and relevant as of Summer 2020.

10. According to Article 16, the measures “shall be designed to provide the constitutional public authorities as swiftly as possible, with the means to carry out their duties”. This provision is ambiguous and does not provide any limitations on the measures that can be taken.

11. The only condition is the mandatory consultation of the Prime Minister, the Presidents of the Houses of Parliament, and the Constitution Council before enacting each measure. After 30 days, the Constitutional Council can reassess the circumstances if asked by the President of the National Assembly, the President of the Senate, sixty Members of the National Assembly, or sixty Senators. It must conduct such an examination after 60 days.

12. The state of siege regime lies in Article 36 which states: “A state of siege shall be decreed in the Council of Ministers”.

13. The state of siege can be declared only in case of an imminent threat resulting from a foreign war or an armed insurrection and implies the transfer of public order and police powers to the military authority. Its duration must be provided by the decree declaring the state of siege.

14. The state of siege has not been used in France since World War II.

1.2. Pre-COVID-19 Regulatory Framework

15. A state of emergency is provided by the Law of April 3, 1955,¹⁵² modified since, especially by the Ordinance No. 60-372 of April 15, 1960, and the Law No. 2015-1501 of November 20, 2015.

16. In accordance with the Law of April 3, 1955, the state of emergency is established by decree of the Council of Ministers. While there is no clear definition of what this notion embraces, the Law of April 3, 1955, specifies that it can be declared either “in case of imminent peril resulting from serious violations of public order, or in the event of events presenting, by their nature and gravity, the character of public calamity”.

17. The decree declaring the state of emergency must prescribe precisely its territorial scope within the national territory, and may only declare it for 12 days. The extension of the state of emergency beyond 12 days can only be authorized by the Government.

18. Once established, the state of emergency grants the executive branch extended powers. As such, local authorities can prohibit the movement of people or vehicles in the places and at the time fixed by decree. The Minister of the Interior may pronounce the house arrest of any individual in respect of whom there are serious reasons to think that their behavior constitutes a threat to the security and the public order. The freedom of association can be restricted, whereas any associations or *de facto* groups that participate in the commission of acts seriously undermining the law can be dissolved by a decree of the Council of Ministers. The Minister of the Interior and local authorities can order the temporary closure of theaters, bars, and other spaces of public gathering.

¹⁵² The Administrative Supreme Court ruled that this law was not abrogated by the ulterior and current French Constitution (Council of the State, Ordinance of November 21, 2005, No. 287217). Article L. 2131-1 Code of Defence states that the rules regarding the state of emergency are provided by the Law of April 3, 1955.

19. It is supposed that the state of emergency should be used for a short period as a reaction to particularly serious events.¹⁵³ However, in practice, the state of emergency in France has always been prorogued, most of the time, for a minimum of 6 months¹⁵⁴ and a maximum of nearly 2 years (as the reaction towards the 2015 terrorist attacks).

20. It is worth mentioning that the Law of April 3, 1955, says nothing about a potentially never-ending succession of laws proroguing the state of emergency. To this day, there is no legal mechanism resolving the issue of the maximum duration for the state of emergency.

1.3. COVID-19 Regulatory Framework

21. A COVID-19 lockdown was declared by the Decree No. 2020-260 (modified by the Decree No. 2020-279 of March 19, 2020), on the basis of exceptional circumstances derived from administrative case law.¹⁵⁵

22. No amendments or modifications were made to the pre-COVID state of emergency legislation and regulations. However, a new "state of health emergency" was established by the Law No. 2020-290, which was adopted under the accelerated legislative procedure. In accordance with this law, a state of health emergency was incorporated into the PHC.

23. The state of health emergency is declared by a decree adopted by the Council of Ministers, which should indicate the reasons for it and specify its territorial scope of application.

24. In accordance with the new Article L. 3131-13 of the PHC, the state of health emergency can be declared for 1 month and promulgated beyond that duration only with authorization by law. Notwithstanding this general provision, the Law No. 2020-290 stipulated a specific provision, which provided for an exception during the COVID-19 crisis — the state of health emergency from the very beginning was declared for 2 months.

25. The laws relevant to the state of health emergency grant the Prime Minister extensive powers to restrict the freedom of movement. The Prime Minister can "regulate the movement of people and vehicles and even forbid it, prohibit people from going out of their home, place people in isolation, restrict or forbid assemblies and reunions, requisition any people, goods or services necessary to fight the catastrophe or even fix the prices of some goods when there are tensions on their market".

26. The new state of health emergency introduced such measures as isolation and quarantine. The Minister of Health also enjoys extended powers to organize the public health service. The crisis was also used as the opportunity to enhance his powers before the declaration of the state of health emergency, in case of a risk of a pandemic to prevent its occurrence.

27. Additionally, a scientific committee must be established to provide regular reports on the evolution of the sanitary crisis, the appropriate measures to respond to it, and their suitable duration. An opinion from this committee is required for the adoption of law extending the state of health emergency.

¹⁵³ Case law also underlines that the state of emergency should necessarily be temporary (Council of State, Ordinance of November 14, 2005, *Rollin*, No. 286835, *Rec.* p. 499).

¹⁵⁴ See the Report No. 3237 of the National Assembly, November 19, 2015.

¹⁵⁵ This is the case law which absolves the administration from respecting the principle of legality in "exceptional circumstances" which are qualified when the functioning of public institutions and public services cannot be assured by other means. This case law was only used occasionally, mostly during war times, when no other legal mechanism or instrument could be used.

28. According to Article 38 of the French Constitution, ordinances are void if they are not ratified by the Parliament by a date set in the delegating statute. The Law No. 2020-290, for most of the measures, fixed a 2-month period to register a ratifying law in the Parliament. However, some specific measures have different periods for their adoption: e.g., 3 months to apply measures adopted under the new state of health emergency to overseas territories. Moreover, the PHC provides a genuine sunset clause in its Article 3131-14, which states that any measures taken to implement the state of health emergency will be annulled together with the state of emergency.

2. Measures Taken in the Fight Against the COVID-19 Pandemic

29. There is no definition of the term “measure(s)” in the COVID-19 related legislation.

30. Due to the declaration and prorogation of the state of health emergency, the powers of the executive branch were largely extended. As such, the Law No. 2020-290 assigned the Government with the power to adopt ordinances.¹⁵⁶ Therefore, it is the Government that is vested with the legislative power concerning the measures that could be taken in the fight against the COVID-19 crisis. In addition to that, the Government also exercises the regulatory power granted under Article 37 of the French Constitution.

31. It must be noted, however, that the new legislation resulted in a competition of powers between the Government and mayors concerning some measures to fight the spread of the virus, especially the powers of general administrative police.¹⁵⁷ In theory, mayors could tighten the national measures adopting them in accordance with local circumstances.¹⁵⁸ At the same time, most measures enacted by mayors during the COVID-19 were quashed by the administrative judge.

32. As such, decisions revoking the prohibition of docking any ships except those carrying essential goods in overseas municipalities,¹⁵⁹ the declaration of curfew,¹⁶⁰ or the obligation to wear a mask in the public space of the municipality¹⁶¹ have already been taken. Those decisions were taken on the ground that the measures had been disproportionate and/or the mayors had not provided sufficient reasoning justifying the specificity of local circumstances. At the same time, the curfew in Nice was validated by the judge since it concerned only a small part of the city and prolonged the curfew decreed by the local state representative only by two hours¹⁶². Other measures, much less restrictive, were also implemented depending on the identification of infection clusters and implying the closure of some public facilities.

¹⁵⁶ Such ordinances have the value of statutes, see the French Constitution. Article 38.

¹⁵⁷ The municipal police powers are provided by Article L. 2212-1 of the General Code of Local Collectivities. This code grants the power to take exceptional measures to respond to a very serious danger to the mayors, who are obliged to inform the local representant of the Government of the taken measures and the circumstances justifying their adoption [Article L. 2212-4 of the General Code of Local Collectivities].

¹⁵⁸ Conseil d'État, Ordonnance du 22 mars 2020, Syndicat jeunes médecins, No. 439674.

¹⁵⁹ Administrative Tribunal of Guadeloupe, Ordonnance du 27 mars 2020, Préfet de la Guadeloupe, No. 2000294.

¹⁶⁰ Administrative Tribunal of Caen, Ordonnance du 31 mars 2020, Préfet du Calvados, No. 20000711; Administrative Tribunal of Montreuil, Ordonnance du 7 avril 2020, No. 2003861.

¹⁶¹ Conseil d'État, Ordonnance du 17 avril 2020, Commune de Sceaux, No. 440057.

¹⁶² Administrative Tribunal of Nice, Ordonnance du 22 avril 2020, Ligue des droits de l'homme, No. 2001782.

2.1. General Measures

Transport

33. Instruction of the Prime Minister No. 6149/SG of March 18, 2020,¹⁶³ provided for the closure of national borders. This measure was implemented by other rules applying within the national territory:

- boats carrying more than 100 passengers were forbidden to stopover or stay within territorial seas according to Article 4 of the Decree No. 2020-293 (abrogated by the Decree No. 2020-545);
- transportation of people through commercial flights was forbidden between the mainland and overseas territories and between overseas territories themselves, except for cases of emergencies, reasonable justification related to family matters, or professional obligation according to Article 5 of the Decree No. 2020-293 (abrogated by the Decree No. 2020-617 of May 22, 2020);
- public transportation by roads or railroads were subject to mandatory daily disinfection according to Article 6 of the Decree No. 2020-293 (abrogated by the Decree No. 2020-545).

Public Health

34. The following measures were taken:

- the so-called “white plan” was declared — an emergency plan for hospitals facing a sanitary crisis. It allows their internal reorganization in order to adapt health services to the crisis (for example, beds in intensive care units were doubled). Each plan is applicable to every hospital but the local state representant may decide on launching it (Articles L. 3131-7, L. 3131-8 and R. 3131-4, R. 3131-5 of the PHC);
- stocks of masks for respiratory protection and sanitizers were requisitioned according to Article 1 of the Decree No. 2020-247 of March 13, 2020, and then Article 12 of the Decree No. 2020-293 (abrogated by the Decree No. 2020-545);
- the local state representant was granted the power to requisition any health structure and service or to take any professional needed for its functioning according to Article 12-1 of the Decree No. 2020-293 (abrogated by the Decree No. 2020-545);
- the Minister of Health was granted the power to requisition any planes and professionals necessary to their functioning to guarantee the transit of sanitary products and protection equipment according to Article 12-1 of the Decree No. 2020-293 (abrogated by the Decree No. 2020-545);
- an information system was developed to collect, process, and exchange personal data, if needed, without the consent of individuals, to fight the spread of the coronavirus (Article 11 of the Law No. 2020-546 of May 11, 2020, proroguing the state of health emergency, and the Decree No. 2020-551 of May 12, 2020). No judicial claims were brought against these measures. However,

¹⁶³ Instruction of the Prime Minister No. 6149/SG of March 18, 2020. URL: <https://www.interfel.com/wp-content/uploads/2020/03/cp-edouard-philippe-controle-aux-frontieres18032020.pdf>.

those were under the tight control of the National Commission for Computerization and Freedom. The national tracking app available for individuals who voluntarily use it was challenged neither.¹⁶⁴

Education

35. In the field of education, the following measures were adopted: nurseries, schools, and universities were closed according to Article 4 of the Ministerial Order of March 14, 2020.¹⁶⁵

2.2. Containment Measures Regarding Industrial and Non-Productive Sectors

36. The Government has full powers to close businesses that are opened to public. It can do so through executive orders and then a decree. At the same time, the issue of home office was left at the discretion of employers.

Industrial Sector

37. Since this industry falls under the notion of a “sector particularly necessary to the safety of the Nation and to the continuity of the economic and social life”¹⁶⁶ and, therefore, was deemed to keep a normal business activity, restrictive measures in the sector were almost non-existent.

Non-Productive Sector

38. Most restrictive measures were related to a non-productive sector. As such, spaces open to the public, such as restaurants, bars, shops, or exhibit centers, were closed. Only shops of basic necessity remained open.¹⁶⁷

39. The violation of this restriction originally exposed to a contravention of the first class (38 EUR), which was then stepped up to a contravention of the fifth class (1,500 EUR).¹⁶⁸ Furthermore, the local state representative could pronounce an administrative closure of the violating establishment for a certain time.

40. According to Article L. 1222-11 of the Labour Code, employers can impose home office to their employees in case of an epidemic threat to secure the continuity of the company’s activity and the health of the workers.

41. It must be noted that there were no sunset clauses, and executive orders imposing the measures were abrogated by subsequent legal instruments.

2.3. Containment Measures Regarding Population

42. The Government, and more precisely the Prime Minister, is the most powerful authority when it comes to containment measures for the population. It is noteworthy to highlight that its competences for

¹⁶⁴ The app was introduced by the Decree No. 2020-650 of May 29, 2020.

¹⁶⁵ Text No. 16 in the Official Journal of the French Republic No. 0064 of March 15, 2020.

¹⁶⁶ The Law No. 2020-290 of March 23, 2020. Article 11, I., 1., b.

¹⁶⁷ These establishments were identified in the Annex I of the Executive Order of March 14, 2020.

¹⁶⁸ For the ranking of contravention in French law, see the Criminal Law Code. Article 131-13.

decreasing the lockdown or isolation measures for potentially sick people were specially mentioned by the Law No. 2020-546 and included in the PHC (**para. 45 of Annex 3 to the Analytical Report**).

43. Lockdown was declared by the Decree No. 2020-260. The Decree clearly stipulated exceptions to the lockdown, which included journeys to work, shops of basic necessity, places related to health matters, for compelling family matters, for physical exercise, and needs of pets. A derogation form had to be filled and carried at all times by individuals going out of their residence.

44. Violation of the lockdown exposed the individual to a contravention (EUR 38 which was increased to EUR 135). In case of recidivism, the amount could go up to EUR 1,500. In case of more than three violations within a month, it was considered as a criminal offense punished by 6 months in prison and EUR 3,750 of penalty.

45. Isolation and quarantine were provided by the Law No. 2020-546 in its Article 3. Modifying Article L. 3131-15 of the HPC, it gave the Prime Minister the power to isolate and assign to a place people who were entering the national territory after having been in a place where the virus was circulating. The Constitutional Council validated the constitutionality of this disposition under the condition that if a person is required to remain at his or her home or in a place of accommodation for more than 12 hours per day, there should be a judge authorization.¹⁶⁹

46. With respect to a sunset clause, Article L. 3131-15 of the PHC states that any measure enacted must be proportionate to the existing threat and expire immediately when it is no more necessary. Thus, the measures must end at the same time as the state of health emergency.

47. Any regulatory measure adopted by the government can still be reviewed by the administrative judge to assess its legality.¹⁷⁰ For instance, a claim was lodged on the closure of markets,¹⁷¹ but the judge stated that the emergency had justified this measure.¹⁷² Another case arose regarding the decision of the local state representative in Paris to use drones for surveillance purposes.¹⁷³ If it was judged that the restrictive use of the drone had been proportionate to the aim of public health protection, the judge considered that the collected data was personal and by such was submitted to the legal regime of the treatment of personal data. It thus required the authorization by ministerial decree after a public opinion of the National Commission for data processing and liberties. Also, the administrative judge assessed requests in order to force the State to take more extensive measures such as to deliver FFP2 and FFP3 masks to health workers¹⁷⁴ or to impose a stricter lockdown nation-wide.¹⁷⁵

¹⁶⁹ Conseil Constitutionnel, Décision No. 2020-800 DC du 11 mai 2020.

¹⁷⁰ L. 3131-18 PHC. Béatrice Guillaume has underlined that the administrative judge is already very efficient to give quick decisions for accelerated procedures. *Guillaumin B. L'état d'urgence sanitaire: de l'empirisme avant toute chose*, *JCPA* No. 17, April 2020, 2132.

¹⁷¹ Decree No. 2020-293 of March 23, 2020.

¹⁷² Council of State, Ordinance of April 1, 2020, *Fédération nationale des marchés de France*, No. 439762.

¹⁷³ Council of State, Ordinance of May 18, 2020, *Association la Quadrature du net* and *Ligue des droits de l'homme*, No. 440442 and No. 440445.

¹⁷⁴ At the beginning of the crisis, France did not have enough masks supplies even for health workers. See Council of State, Ordinance of March 28, 2020, *SMAER*, No. 439726.

¹⁷⁵ Council of State, Ordinance of March 22, 2020, *Syndicat des jeunes médecins*, No. 439674.

2.4. Support Measures for Industrial and Non-Productive Sectors

48. On a national level, the Law No. 2020-290 granted the Government powers to intervene within the economic sector. As a result, most of the measures were enacted by ordinances and then implemented by decrees.¹⁷⁶

Industrial Sector

49. The Government announced diverse support plans that included financial aid. The following support measures were taken:

- according to Article 6 of the Law No. 2020-289 of March 23, 2020, a state guarantee was issued for loans to companies for a total amount of 300 billion EUR. The guarantee is charged and cannot cover the total amount of the loans. To benefit from it, a company must be registered in France but no requirement is made about the nationality of the capital of such company;
- a solidarity fund was created for small companies particularly affected by the COVID-19 crisis, like those which had to close due to the lockdown (Ordinance No. 2020-317 of March 25, 2020). The amount of aid starts from EUR 1,500 up to 5,000 depending on the economic situation within the company. The conditions to benefit from this fund mostly assured that the aid went to SMEs, a maximum turnover was fixed by Article 1 of the Decree No. 2020-371 of March 30, 2020.¹⁷⁷ A foreign SME can benefit from this fund if it has its tax residency in France;
- a fund of EUR 20 billion was created for the state to invest in companies according to Article 10 of the Law No. 2020-473 of April 25, 2020. It is supposed to be used to help companies, such as Air France or Renault, to survive after the crisis;
- a mechanism of partial unemployment was created to save jobs. It was provided by the Decree No. 2020-325 of March 25 and the Ordinance No. 2020-346 of March 27, 2020.

50. On the local level, some aids were given by local communities. For instance, the city of Paris allowed companies to suspend the payment of any bill due to the city until June 30, 2020.¹⁷⁸

Non-Productive Sector

51. For the touristic sector, travel service contracts which were terminated early between the March 1 and September 15, 2020, the service provider could, instead of repaying customers, give them an identical or equivalent performance or a valid credit note for 18 months, according to the Ordinance No. 2020-315 of March 25, 2020.

52. As to a sunset clause, the ordinances had to be ratified by the Parliament and their time scope had to be provided. Moreover, the texts creating these aids were valid within a limited time and another act would have to be adopted to prorogue them. For instance, the state warrantee is meant to be applicable until December 31, 2020.¹⁷⁹

¹⁷⁶ Some decrees were announced in the ordinances but never adopted though (for instance the decree for the definition of "sectors of activities particularly necessary to the safety of the Nation and the continuity of socio-economic life").

¹⁷⁷ This Decree was then modified by the Decree No. 2020-552 of May 12, 2020.

¹⁷⁸ See Coronavirus: soutien aux entreprises parisiennes. URL: <https://www.paris.fr/pages/coronavirus-soutien-aux-entreprises-parisiennes-7678>.

¹⁷⁹ The Law No. 2020-289 of March 23, 2020. Article 6.

2.5. Support Measures for Population

53. The Law No. 2020-290, which delegated to the Government most of the power, provides conditions to support the population. Once the ordinances were adopted, decrees were issued to precise the measures. Local communities also have jurisdiction to grant aids to the population if they have a budget to do so.

54. In addition to the above, the following measures were taken:

- to recognize the work of the most exposed professions to the virus, according to the Decree No. 2020-568 of May 14, 2020, a supplementary payment from EUR 500 to 1,500 was granted to civil agents who were at the forefront of the crisis, such as health worker;
- according to the Ordinance No. 2020-324 of March 25, 2020, unemployment allowances were extended for people losing their rights to it after March 12, 2020, and until July 31, 2020;
- an exceptional aid of solidarity was provided by the Decree No. 2020-519 of May 5, 2020, which granted the population identified as the poorest¹⁸⁰ an amount of money starting from EUR 100 and which depended on the situation of an applicant and a number of their children.

55. As to a sunset clause, the ordinances had to be ratified by the Parliament and the period of their validity had to be set. Moreover, the texts creating these aids were limited in time, and to prorogue them, another act would have to be adopted.

¹⁸⁰ If the person was already receiving the minimal subsidies in normal time, see Decree No. 2020-519 of May 5, 2020, Article 1.

II. Germany

Summary

56. All measures taken by the federal and lands' governments against the pandemic are subject to the requirement of effectiveness. This applies both to fighting the virus itself and the support to the economy. This means that any measures should effectively contain the spread of the virus, on the one hand, and limit the economic consequences, on the other.

57. In any case, however, the question of evidence arises. It is uncertain which measures will lead to success. Even though much has already been discovered about COVID-19 after months of intensive research, it is still unclear how exactly the virus spreads, especially why it does so this quickly and how infection can be prevented. In this regard, any measures taken to contain the spread of the virus and to support the economy must be justified by the evidence.

58. For the reasons above, the German law is based on the relationship between effectiveness and evidence and requires the application of the principle of proportionality, which follows from the principle of the rule of law. Measures must, therefore, be appropriate, necessary, and justified, i.e., the state must be able to give reasons why it restricts one or another right.

59. The state is not completely free in the area of support measures either, especially in the complex area of the economy. The gigantic resources that Germany spends after a long period of austerity policy may have the potential to distort competition.

60. The law offers the state sufficient possibilities to respond to the enormous dangers of a pandemic. At the same time, however, it also imposes limits.

1. Public “Emergency” Response Regime

1.1. Constitutional Framework

61. The Basic Law (the German Federal Constitution) provides an “Emergency Constitution” in several Articles (12a III-VI, 53a, 57a, 87a, 91, 115a sq.). The founders of the Constitution gravely feared a new version of the Reich President's right to issue emergency decrees under Article 48 Weimar Constitution from 1919,¹⁸¹ based on which essential basic rights and liberties were suspended in 1933 (the most known is the Reichstag Fire Decree).¹⁸² Accordingly, the newly established Basic Law of 1949 initially refrained from an explicit “Emergency Constitution”; only some marginal areas of emergency law were regulated.¹⁸³

62. Later, Article 91 of the Basic Law was amended in such a way that on its basis a state of internal emergency can be declared. However, it must be noted that Article 91 does not allow for a shift of powers towards the executive branch or special interventions in fundamental rights. Instead, the declaration of a state of internal emergency enables the Federal Government and the states to provide mutual

¹⁸¹ Reich Law Gazette 1919. P. 1383–1418. This Article of the Weimar Constitution analyses in detail *Barczak T.* Der nervöse Staat, Tübingen: Mohr Siebeck 2020. P. 300 ff.

¹⁸² Reich Law Gazette I 1933. P. 83.

¹⁸³ *Kaiser A.-B.* Ausnahmeverfassungsrecht, Tübingen: Mohr Siebeck, 2020. P. 144–145.

administrative assistance. A state of internal emergency can only be declared in “order to avert an imminent danger to the existence or free democratic basic order of the Federation or of a land”.

1.2. Pre-COVID-19 Regulatory Framework

Federal Laws

63. The FIPA¹⁸⁴ is a federal legal basis for dealing with infectious diseases. It was passed in 2000 and consists of 16 sections and 77 articles. In the past 20 years, the legislator modified it several times, for the last time — in March 2020, due to the COVID-19 outbreak.

64. Article 2 of the FIPA defines certain important legal terms within it. Neither the term “pandemic” nor the term “emergency situation” is mentioned in this Article. Neither of those terms is mentioned in the entire act too. Although these terms are not explicitly named, the FIPA plays a major role in terms of fighting the COVID-19 pandemic.

65. In this regard, the main focus is to be given to Article 28, which deals with certain “protective measures” that apply to sick people, suspects of illness, suspected infectious people. The competent authorities can apply those measures in different ways:

- if the measure is supposed to regard one specific person only, the authorities will order an administrative act;
- if the measure addresses several people, the authorities will order a general administrative act or an executive regulation.¹⁸⁵

66. The main purpose of the FIPA is to effectively and adequately fight COVID-19 while ensuring the personal freedoms of the population.

67. Under the FIPA the measures may be taken based on a strict reasonableness test. Regional and local authorities need to take into account the respective level of infection rates and current circumstances.

Land Laws

68. Laws of separate lands have not played a prominent role at a regional level so far. Therefore, standards established by those laws are not covered within this Analytical Report. However, legislators at the land level have also been active in the course of the COVID-19 pandemic, amending existing or enacting new laws.

1.3. COVID-19 Regulatory Framework

Federal Laws

69. The most significant legislative amendment introduced in the context of the COVID-19 pandemic is the amendment of the FIPA. Since its introduction in 2000, Article 28 section 1 contained a general clause according to which authorities could take “all necessary measures” to fight infectious diseases. Based on

¹⁸⁴ Federal Law Gazette I. 2000. P.1045–1077.

¹⁸⁵ Terminology adopted by *Klafki A., Kießling A.* Fighting COVID 19 – Legal Powers and Risks: Germany. URL: <https://verfassungsblog.de/fighting-covid-19-legal-powers-and-risks-germany>.

this article, local authorities responsible for the enforcement of the act declared various pandemic control measures. The bans on assemblies in public spaces, closure of kindergartens, schools, universities, cultural institutions, retail outlets, cafes, amusement arcades, restrictions on visits to hospitals, retirement homes, the prohibition of religious services in the presence of the congregation were particularly controversial, and it has been debated whether these measures were lawfully ordered on the basis of the FIPA.¹⁸⁶ However, the legislator modified Article 28 section 1 sentence 1 for reasons of “clarification”.¹⁸⁷ In other words, the legislator did not extend the scope of Article 28.

70. In addition, by the end of March 2020, the Federal Parliament fundamentally redesigned Article 5 of the FIPA.¹⁸⁸ The wording of the entire article was completely changed. As such, it now states that “The Federal Parliament notes an epidemic situation of national importance. The Federal Parliament shall revoke the determination of an epidemic situation of national importance if the conditions for its determination no longer exist. The repeal shall be published in the Federal Law Gazette. The Federal Ministry of Health shall be empowered, within the framework of the epidemic situation of national importance, without prejudice to the powers of the lands [...]”.

71. Therefore, the Federal Parliament is empowered to declare an epidemic situation of national importance. At the same time, it may also subsequently determine on its own that the conditions for an epidemic situation no longer exist. In the meantime, neither provisions of Article 5 nor any other part of the FIPA defines when an epidemic situation of national importance occurs. In this respect, the Federal Parliament, which is henceforth responsible for determining such a case, has a corresponding scope of assessment.

72. The Research Services of the German Bundestag has recently reiterated in a study that “the Federal Parliament is free to apply its own criteria for the declaration of the epidemic situation”.¹⁸⁹ In other words, no conditions other than the decision of the Federal Parliament need to be fulfilled in order for an epidemic situation to be deemed existing.¹⁹⁰

Land Laws

73. Under the Basic Law, the lands (and not the Federation) have the right to legislate as far as the Basic Law does not confer the legislative power to the Federation. In this regard, in the context of the COVID-19 pandemic North Rhine-Westphalia, which is the most densely populated land with approximately 18,000,000 inhabitants, has been taken as a common example. Only regulations that differ considerably from those in North Rhine-Westphalia are mentioned below.

State of Disaster

74. According to Article 73 section 1 number 1 of the Basic Law, the Federation has exclusive legislative power with respect to foreign affairs and defense, including protection of the civilian population. However,

¹⁸⁶ Gärditz K. F., Abdulsalam M. K. Rechtsverordnungen als Instrument der Epidemie-Bekämpfung // Zeitschrift für das Gesamte Sicherheitsrecht. Vol. 3. 2020. No. 3. P. 108–113.

¹⁸⁷ Kießling A. Rechtssicherheit und Rechtsklarheit bei Ausgangssperren & Co? Zur geplanten minimalinvasiven Änderung des § 28 I IfSG. URL: <https://www.juwiss.de/33-2020>.

¹⁸⁸ Federal Law Gazette I. 2020. P. 587–589.

¹⁸⁹ Deutscher Bundestag. Ausarbeitung WD 3 – 3000 – 141/20: Epidemische Lage von nationaler Tragweite, Verfassungsrechtliche Fragestellungen. URL: <https://www.bundestag.de/resource/blob/700666/da1b330c0d4f3ac6c8b14ed3844a4d38/WD-3-141-20-pdf-data.pdf>.

¹⁹⁰ Ibid.

the respective authorities in the lands have the competence to avert dangers for public safety. This includes the right to declare a “state of disaster”.

75. All 16 lands passed their own DPAs that is applicable when disaster actually strikes. Every DPA has its own definition of disaster. For example, the DPA of North-Rhine Westphalia defines in Article 1 section 2 number 2 that a disaster “is a damaging event which endangers or substantially impairs the life, health, or vital supplies of numerous people, animals, natural resources, or substantial material assets to such an unusual extent that it results in a threat to public safety”.¹⁹¹

76. It is common to DPAs of all lands that in case of a disaster a more streamlined command structure is to be given to the authorities. For example, the cities and districts are usually the responsible authorities. However, according to Article 2 of the Bavarian DPA,¹⁹² when a state of disaster is declared by the Bavarian Government, the Bavarian Ministry of the Interior can attain the competence. So far, out of 16 lands, only Bavaria has used these means, and, for the first time in its history, it has done so without limiting the application of the act to certain areas but applying it to the entire territory.

Epidemic Act North Rhine-Westphalia

77. In addition to the DPA, North Rhine-Westphalia for the first time has enacted a so-called “Epidemic Act”.¹⁹³ This act determines authorities within North Rhine-Westphalia responsible for the enforcement of laws and regulations to combat a pandemic.

78. The act was adopted on April 14, 2020. The same day, on the basis of Article 11 of the Epidemic Act, the Land Parliament identified that an epidemic situation due to the spread of a threatening contagious disease in the land threatens the nursing and health care of the population in North Rhine-Westphalia or significant parts of it.¹⁹⁴

79. Article 14 of the Epidemic Act empowered the Minister of Health to confiscate and dispose medical, nursing, or sanitary equipment.

Executive Legislation of North Rhine-Westphalia in the Field of Protection from New Infections

80. On the basis of Articles 28, 32 and in conjunction with Article 73 of the FIPA, and Article 10 of the Epidemic Act, the land’s Ministry of Labor, Health, and Social Affairs decreed the CoronaSchVO.¹⁹⁵ The land also adopted other regulations, such as the CoronaEinrVO,¹⁹⁶ and the Regulation on Childcare.

81. The CoronaSchVO encourages the competent authorities (as determined by Article 1 of the Epidemic Act) to enforce the rules “vigorously, consistently, and, where necessary, by coercive means”

¹⁹¹ Law Gazette for the State of North Rhine-Westphalia 2015. Vol. 48 (29.12.2015). P. 885–918.

¹⁹² Law Gazette for the State of Bavaria 1996 (24.07.1996). P. 282.

¹⁹³ The Act Regulating Special Powers of Action in the Context of an Epidemic Situation of National or Nationwide Scope and Defining Responsibilities under the Infection Protection Act. Law Gazette for the State of North Rhine-Westphalia 2020. Vol. 12b (14.04.2020). P. 217b–244b.

¹⁹⁴ *Landtag Nordrhein-Westfalen 17. Wahlperiode*. Document number 17/8987. URL: <https://www.landtag.nrw.de/portal/WWW/dokumentenarchiv/Dokument/MMD17-8987.pdf>.

¹⁹⁵ Law Gazette for the State of North Rhine-Westphalia 2020. Vol. 6a (22.03.2020). P. 177a–184a.; this Act is continuously modified, most recently by the CoronaSchVO, effective from July 15, 2020, proclaimed in Law Gazette for the State of North Rhine-Westphalia 2020. Vol. 30 (14.07.2020). P. 697–698.

¹⁹⁶ Law Gazette for the State of North Rhine-Westphalia 2020. Vol.12a (09.04.2020). P. 217a–222a.

(Article 17). It is not the police, but the local authorities that are responsible for the enforcement of the regulation. Nevertheless, these authorities receive “assistance” from the police under Article 17.

82. Infringements can be sanctioned as an administrative offense with a fine of up to 25,000 EUR.

83. As to a sunset clause, the regulation does provide an expiry date.

Infection Protection Act of Bavaria

84. The legislator in the land of Bavaria has passed an act similar to the one adopted in North Rhine-Westphalia, the Bavarian Infection Protection Act.¹⁹⁷ According to Article 1, local authorities may declare a health emergency and subsequently take far-reaching measures.

85. As to a sunset clause, Article 11 of the Bavarian Infection Protection Act provides that the act expires on December 31, 2020, at the latest.

2. Measures Taken in the Fight Against the COVID-19 Pandemic

86. Facing the COVID-19 pandemic, the German federal and land governments took various measures to contain the spread of the virus and limit its effect on the economy and society. The measures are defined “as any legally relevant action or omission attributable to the Lands or the Federation, regardless of its legal form”.

2.1. General Measures

Transport

87. Temporary restrictions on non-essential travel to the EU were adopted.¹⁹⁸ Such measures include, *inter alia*, entry restrictions at Germany’s Schengen external borders, temporary border controls (enforced by police). Also, travelers without a valid reason for entering Germany were refused entry at internal borders, airports, and seaports.

Public Health

88. Such measures as confiscation and disposal of medical, nursing, or sanitary equipment, including raw materials, were taken in North Rhine-Westphalia.

Education

89. Schools and other educational institutions were closed in all lands from March 13, 2020, onwards.¹⁹⁹

90. Teaching was supposed to continue in a remote mode. Schools that re-open must adopt a strict hygiene plan.

¹⁹⁷ Law Gazette for the State of Bavaria 2020 (25.03.2020). P. 174.

¹⁹⁸ Europäische Kommission. Mitteilung der Kommission an das Europäischen Parlament, den Europäischen Rat und den Rat – COVID-19: Vorübergehende Beschränkung von nicht unbedingt notwendigen Reisen in die EU. URL: <https://eur-lex.europa.eu/legal-content/DE/TXT/PDF/?uri=CELEX:52020DC0115&from=EN>.

¹⁹⁹ Kultusministerkonferenz. Beschluss der 369. Kultusministerkonferenz vom 12.03.2020. URL: <https://www.kmk.org/presse/pressearchiv/mitteilung/zum-umgang-mit-dem-corona-virus.html>.

2.2. Containment Measures Regarding Industrial and Non-Productive Sectors

91. Since the beginning of the COVID-19 pandemic, it was part of the federal and land authorities' strategy to keep the German economy running as far as possible. Still, restrictions were necessary to contain the outbreak of the COVID-19 and, since March 2020, several containment measures directed at the economy were introduced.

Industrial Sector

92. German industry was not subject to general regulations on pandemic control. Therefore, there were no measures specifically tailored to industrial production. Nevertheless, the competent authorities can take individual measures against manufacturers on the basis of the FIPA.

Non-Productive Sector

93. The lands closed leisure, cultural, sport, and entertainment facilities like bars, theaters, cinemas, museums, fairs, exhibitions, fitness studios, solariums, swimming pools, arcades, casinos, betting shops. The local governments were responsible for the closure. The measures were limited in time.

94. Article 14 of CoronaSchVO stipulates that the responsibility for the execution of measures is governed by the FIPA.

95. Since March 22, 2020, the measures aimed at the economy have been progressively relaxed. The closure of the numerous facilities from the non-productive sector has mostly developed into a state of generalized restrictions. These restrictions apply equally in all lands.

96. So far, during the COVID-19 pandemic, facilities of the so-called "critical infrastructure" remained open.²⁰⁰ Since April 24, 2020, these restrictions included, above all, the obligation, which is now mandatory for all facilities, to wear a mouth and nose covering.

97. Infringement of the above-mentioned restrictions can be sanctioned as an administrative offense with fines between EUR 200 and EUR 25,000.

2.3. Containment Measures Regarding Population

98. Quarantine is regulated by Article 30 of the FIPA and allows for the temporary isolation of people who are infected or suspected of being infected.

99. Quarantine is the most serious measure that can be taken under the FIPA against an individual.²⁰¹ The responsibility is determined by the respective laws at the level of lands but is usually transferred to the local authorities. Quarantine measures are, therefore, issued at the local level.

100. If an affected person violates the quarantine order, he or she can be forcibly placed in quarantine in accordance with Article 30 section 2 of the FIPA. However, this requires a decision by a judge. In addition,

²⁰⁰ Hildebrandt B., Schneider D. "Systemrelevanz" und "Kritische Infrastruktur" in den Corona-Verordnungen der Länder und ihre Konkretisierung durch die BSI-KritisV // COVID-19 und Recht. Vol. 1 2020. No. 2. P. 78–82.

²⁰¹ Klafki A. Risiko und Recht. Tübingen: Mohr Siebeck, 2020. P. 306, 309, 350.

Articles 73, 74, and 75 of the FIPA provide for fines and penalties. If a person violates a quarantine order, Article 75 section 1 of the FIPA provides for a sentence of up to two years and a fine.

101. Since late April 2020, all lands have been requiring everyone to cover their nose and mouth with a mask (not necessarily medical) when using public transport and shops. The legal basis for this is Article 28 of the FIPA. The penalties for violating the new mask regulations range from warnings to fines. Bavaria, for example, those caught not wearing a face covering while taking public transportation or while in a store face a EUR 150 fine, which could double to EUR 300 for repeat offenders. Store owners who do not provide their employees with masks could face a EUR 5,000 fine. Those violating the rules in the northeastern land of Mecklenburg-Western Pomerania face a EUR 25 fine, while the central land of Hesse has instituted a EUR 50 fine.

102. A ban on contacts has several facets and is implemented differently in every land and at different times on the basis of Article 28 of the FIPA. A ban on contacts was introduced at the end of March 2020, after which the lands agreed on a joint approach and a catalog of measures in the field of public life and social contacts.²⁰²

103. To protect patients in clinics, retirement homes, nursing homes, and facilities for disabled people, restrictions on visits were imposed in all lands from March 13, 2020.²⁰³

104. On March 22, 2020, the land governments banned religious events and gatherings of all faiths (CoronaSchVO). The celebration of religious services was only allowed on a small scale for distribution as a livestream or for recording. Marriages and baptisms were only allowed in presence of the closest family circle, as well as funerals and mourning ceremonies in the open air with no more than ten people.

105. The package of measures agreed at the federal level between the lands in March 2020 to combat the COVID-19 pandemic included a ban on major events.

106. The COVID-19 tracking app is to be used on a voluntary basis.

2.4. Support Measures for Industrial and Non-Productive Sectors

107. The core of the economic policy measures is a billion-EUR aid program of the Federal Government, which was launched by the Federal Finance and Economics Ministries.

108. The Credit Institute for Reconstruction handles state loans, with the land assuming, up to a certain level, the default risk. These loans are targeted at companies, self-employed or freelancers who have got into financial difficulties due to the COVID-19 crisis and need a loan.²⁰⁴ Foreign participation in the company is irrelevant: the decisive requirement is that the company has its registered head office in Germany.

²⁰² Die Bundesregierung. Telefonschaltkonferenz der Bundeskanzlerin mit den Regierungschefinnen und Regierungschefs der Länder am 15. April 2020. URL: <https://www.bundesregierung.de/breg-de/themen/coronavirus/bund-laender-beschluss-1744224>.

²⁰³ Rixen S. Gesundheitsschutz in der Coronavirus-Krise – Die (Neu-)Regelungen des Infektionsschutzgesetzes // Neue Juristische Wochenschrift. Vol. 73. 2020. No. 16. P.1098.

²⁰⁴ Bundesministerium der Finanzen. Kampf gegen Corona: Größtes Hilfspaket in der Geschichte Deutschlands. URL: <https://www.bundesfinanzministerium.de/Content/DE/Standardartikel/Themen/Schlaglichter/Corona-Schutzschild/2020-03-13-Milliarden-Schutzschild-fuer-Deutschland.html>.

109. In North Rhine-Westphalia, payments were made under the title “NRW-Emergency-Aid-2020”. The purpose of this measure is to provide emergency financial assistance in the form of direct grants to alleviate economic hardship and to secure the existence and continuation of small commercial enterprises, the self-employed, and members of the liberal professions.²⁰⁵ All companies with up to 50 employees that have their headquarters in North Rhine-Westphalia and are registered with a German tax office are eligible to apply.

Industrial Sector

110. An “Economic Stabilization Fund” has been established specifically for large companies based on the Act on the Establishment of an Economic Stabilization Fund of March 27, 2020.²⁰⁶

Non-Productive Sector

111. The provision of state loans, short-time labor compensation, and the emergency aid program also apply to companies in the non-productive sector. There are prominent examples of cases when economic measures were applied: the commercial gastronomy sector, the rescue of the Lufthansa airline.²⁰⁷

2.5. Support Measures for Population

112. The legal basis for the cut on Value Added Tax is the Second Corona Tax Aid Act²⁰⁸ that was introduced by the Federal Parliament and Federal Council on June 29, 2020. Article 3 of this act modifies the already existing VAT Act to the extent that the standard tax rate is now only 16% (instead of 19%) and the reduced rate only 5% (instead of 7%). This amendment came into force on July 1, 2020, and expired on December 31, 2020.

113. Raise of child benefits was also adopted on the basis of the Second Corona Tax Aid Act, as well as on another family policy measure, the “Bonus for children”. It was financed by the federal budget. This measure provides parents with a one-time payment of EUR 300 for each child.

²⁰⁵ Ministerium für Wirtschaft, Innovation, Digitalisierung und Energie des Landes Nordrhein-Westfalen. Richtlinien des Landes zur Gewährung von Soforthilfen für gewerbliche Kleinunternehmen, Selbständige und Angehörige Freier Berufe, die infolge der Sars-CoV-2-Pandemie in ihrer Existenz gefährdet sind. URL: https://www.wirtschaft.nrw/sites/default/files/asset/document/richtlinie_nrw-soforthilfe_2020.pdf.

²⁰⁶ Federal Law Gazette I. 2020. P. 543–555.

²⁰⁷ Ewing J. Lufthansa to Receive \$10 Billion Bailout. URL: <https://www.nytimes.com/2020/05/25/business/lufthansa-bailout.html>.

²⁰⁸ Federal Law Gazette I. 2020. P. 1512–1516.

III. Italy

Summary

114. Italian legislation does not contain explicit provision for a “state of emergency” with the exception of a state of war, which is characterized by the refusal to grant full powers to the Government.

115. A multi-lateral approach has been applied for the COVID-19 crisis, i.e., authorities at state, regional, and municipal levels are involved and empowered to take certain measures.

116. A great number of legal acts was adopted to mitigate a spread of COVID-19 by taking a variety of measures.

117. The measures were taken by the State Government and gradually extended across the country with the following three aims:

- to eliminate a spread of the COVID-19 by means of a gradual lockdown;
- to increase the capacity of medical facilities;
- to manage the pandemic-induced economic crisis through social and financial recovery package.

1. Public “Emergency” Response Regime

1.1. Constitutional Framework

118. The Constitution of the Italian Republic does not include an explicit provision on a state of emergency.²⁰⁹ Though it does provide in Article 78 an opportunity to declare a state of war according to which the Parliament authorizes the Government to issue war decrees.²¹⁰

119. According to Article 77 of the Italian Constitution, “when the Government, in extraordinary cases of necessity and urgency, adopts under its own responsibility a temporary measure, it shall introduce such measure to Parliament for transposition into law. During dissolution, Parliament shall be convened within 5 days of such introduction. Such a measure shall lose effect from the beginning if it is not transposed into law by Parliament within sixty days of its publication. Parliament may regulate the legal relations arisen

²⁰⁹ On this issue see *Angiulli G.* The State of emergency and fundamental rights Italy. The state of emergency in Italy // Comparing Constitutional Adjudication. A Summer School on Comparative Interpretation of European Constitutional Jurisprudence. University of Trento. 2009.

²¹⁰ At the time of drafting the Constitution, a minority proposal to include other cases of emergency within Article 78 was rejected, because, among other reasons, it is not possible to make use of analogies in relation to an exceptional provision, see *Cerquozzi F.* Stato d'emergenza e Costituzione. URL: <https://www.iusinitinere.it/stato-demergenza-e-constituzione-26393> (citing *Piazza M.* L'illegittima “sospensione della costituzione” prevista nel cosiddetto c.d. “Piano Solo” // *Giur. Cost.* 2001. P. 804). The choice of not including a provision on the state of emergency is due to historical reasons: the Constitution was drafted after the fascist regime with the purpose to achieve a democracy based on the separation of powers rather than their concentration at the head of a single body. It was, therefore, considered more appropriate to establish limits on the exercise of extraordinary powers, not least because emergency situations are not easily regulated *a priori*, given their exceptional nature. On this topic, for a reconstruction of the historical debate on the possible inclusion of a provision on the state of emergency in the Constitution see *Cherchi B.* Stato d'assedio e sospensione delle libertà nei lavori dell'assemblea costituente // *Rivista trimestrale di diritto pubblico.* 1981. Vol. 31. P. 1129.

from the rejected measure.”

120. This means that the Article 77 enables the Government to adopt a decree to be adopted by the President. The decree must be confirmed by the Parliament into a law within 60 days, otherwise, it loses its effects *ex tunc* (from the outset).

121. Moreover, the Italian Constitution identifies the allocation of competences between central State and regions, more specifically, the competent authorities responsible for the management of health crisis. As such, according to Article 117(2)(q), “the State has the exclusive competence in matter of international prophylaxis”. Still regarding the relationship between central State and decentralized bodies, according to Article 120(2), “The Government can act for bodies of the regions, metropolitan cities, provinces, and municipalities if the latter fail to comply with international rules and treaties or EU legislation, or *in the case of grave danger for public safety and security*, or whenever such action is necessary to preserve legal or economic unity and in particular to guarantee the basic level of benefits relating to civil and social entitlements, regardless of the geographic borders of local authorities”.²¹¹

122. The attention of the constitutional lawmaker for the collective dimension implies the adoption of measures to prevent and fight the spread of the virus that can limit individual freedoms, in the name of the collective interest for health and more broadly in the light of the principle of social solidarity provided under the Article 2 of the Italian Constitution (regarding the restrictions of individual freedoms see Articles 14, 16, 17 of the Constitution).

1.2. Pre-COVID-19 Regulatory Framework

123. Law No. 106/1982²¹² was approved and executed by the Italian Parliament in accordance with the IHR 2005.

124. In addition to that, on February 9, 2006, the National Plan for Preparedness and Response to an Influenza Pandemic was approved according to the WHO recommendations.²¹³ Its aim is to identify the main objectives and actions to manage pandemics.

125. The Civil Protection Code (restated in the Legislative Decree No. 1 of January 2, 2018)²¹⁴ is a legal base for a state of emergency. Article 4 of the Civil Protection Code establishes the authorities responsible for preventing, dealing with, and overcoming emergency situations. Among those are State

²¹¹ Italicized by the ICLRC.

²¹² Law No. 106 of February 9, 1982. Approval and execution of the international health regulation, adopted in Boston on July 25, 1969, modified by the additional regulation, adopted in Geneva on May 23, 1973. *Gazzetta Ufficiale*, No. 87 of March 30, 1982.

²¹³ Piano nazionale di preparazione e risposta ad una pandemia influenzale. URL: http://www.salute.gov.it/imgs/C_17_pubblicazioni_511_allegato.pdf.

²¹⁴ Legislative Decree No. 1 of January 2, 2018: Civil protection code, January 2, 2018. Published in the Official Journal of the Italian Republic n. 17 of January 22, 2018. Effectively in force as of February 2018. URL: http://www.protezionecivile.gov.it/en/transparent-administration/legal-measures/detail/-/asset_publisher/default/content/decreto-legislativo-n-1-del-2-gennaio-2018-codice-della-protezione-civi-1.

administrations, the Regions, the Autonomous Provinces of Trento and Bolzano, as well as the Local Authorities, which are all empowered to take measures.²¹⁵

126. According to the Civil Protection Code, there are three different categories of emergency.²¹⁶ The first two relate to emergencies that deal with ordinary means and those to face with extraordinary means by the Regions. The third type provides for a term “emergency of national relevance” which means those emergencies are “connected with calamitous events of natural origin or deriving from human activity which, due to their intensity or extent, must be immediately faced with extraordinary means and powers to be used during limited and predefined periods of time in accordance with Article 24”.

127. Article 7 also identifies the requirements to qualify a circumstance as an emergency and to allow the adoption of extraordinary means and powers: the national relevance, the intensity or extent, the urgency. The extraordinary means and powers can be put into place for a limited and predefined period of time.

128. A state of emergency of national importance is grounded on Article 24 (“Deliberation of the state of emergency of national importance”), which provides the allocation of competences among all the bodies involved:

“... in conjunction with the Regions and autonomous Provinces concerned, or in their imminence, the Council of Ministers, also formulated at the request of the President of the Region or Autonomous Province concerned and in any case acquired the agreement, resolves the relevant state of emergency national, fixing its duration and determining its territorial extension with reference to the nature and quality of events and authorizing the issue of civil protection orders referred to in Article 25”.

129. Article 24 establishes a sunset clause for the declared emergency which cannot exceed 12 months and can be extended for no longer than 12 additional months.

130. The Civil Protection Code establishes that the management of national emergency is delegated to the Government and the Council of Ministers has the power to declare an emergency, its duration, and territorial extension. The President of the Council of Ministers is designed as the national civil protection authority and holder of relevant policies and determines civil protection policies for the promotion and coordination of the activities carried out by central and peripheral State administrations and other regional and local authorities. The metropolitan Mayors and the Presidents of the Regions, as territorial civil

²¹⁵ The Civil Protection Code. Article 4 “Components of the National Service of civil protection”: “1. The State, the Regions and Autonomous provinces of Trento and Bolzano and the local authorities are members of the National Service and provide for the implementation of the activities referred to in Article 2, according to their respective laws and competence.”

²¹⁶ Ibid. Article 7 “Type of civil protection emergency event”: “1. For the purposes of carrying out the activities referred to in Article 2, the civil protection emergency events are divided in the following:

- a) emergencies connected with disasters of natural origin or deriving from human activity that can be faced by means of actions that can be implemented by the individual bodies and administrations that are competent in an ordinary way;
- b) emergencies connected with natural or man-made disasters which by their nature or extension require a coordinated response by several bodies o administrations as they must be faced through the deployment of extraordinary means to be implemented for a predefined period of time, regulated by the Regions and autonomous provinces of Trento and Bolzano according to their legislative power;
- c) emergencies of national importance connected with natural origin or man-made disasters which, by reason of their intensity or extension, must, with immediate intervention, be faced with extraordinary means and powers to be employed during limited and predefined periods of time pursuant to Article 24.”

protection authorities, exercise supervisory functions on the integrated and coordinated development of the same activities by the structures belonging to the respective administrations.

131. It is noteworthy to mention that the Constitutional Court has underlined in many rulings²¹⁷ the primacy of the Government over the regional and local authorities in tackling the emergencies of national relevance, from one side, and, from the other, Regions' crucial role in the management of emergencies since they must cooperate fairly with the central administrations. The centrality of the Government is aimed to ensure the unity of the country, applying a uniform regulation throughout the country.

132. During the COVID-19 pandemic, the emergency measures were taken by the Government on the basis of the mandate given by the ordinary legislation.

1.3 COVID-19 Regulatory Framework

133. Italy adopted new laws designed specifically to tackle the COVID-19 pandemic. The legal tools have been chosen in correlation with the Italian legal system on emergency, pursuant to the Italian Constitution, and based on the Civil Protection Code.

134. On January 31, 2020, on the ground of the Civil Protection Code, the Italian Government formally declared the state of emergency which was intended to endure for six months.²¹⁸ The decision was made on the ground of scientific evidence resulting from the WHO recommendations and following the assessment of the Scientific Technical Committee at the Civil Protection Department (the national body that deals with the prediction, prevention, and management of emergency events).

135. Later the Government started enacting decree-laws on the basis of Article 77 of the Constitution.

136. In addition to that, on February 5, 2020, Decree No. 371 was adopted.²¹⁹ In accordance with it, the Head of the Civil Protection Department nominated the members of the Scientific and Technical Committee of the Civil Protection Department. The Italian National Institute of Health,²²⁰ a member of the Scientific and Technical Committee, was empowered to monitor the trend of the COVID-19 spread under the Decree of the Head of the Civil Protection Department No. 640 of February 27, 2020.²²¹ The Ministry of Health was issuing urgent orders by virtue of the mandate given to it by the law on the National Health Service.²²²

²¹⁷ For an in-depth examination of Constitutional Court's decisions about the relations between State and regions in matters of emergency events see *Luciani M.* Il sistema delle fonti del diritto alla prova dell'emergenza. P. 131-133.

²¹⁸ Decision of the Council of Ministers of January 31, 2020. Declaration of the state of emergency as a consequence of the Health risk associated with the onset of diseases deriving from transmissible viral agents, published in *Gazzetta ufficiale*, No. 26 of February 1, 2020. URL: https://www.agid.gov.it/sites/default/files/repository_files/quri_01.02.2020_-161_n._26.pdf.

²¹⁹ Decreto del Capo Dipartimento della Protezione civile n. 371 del 5 febbraio 2020. URL: <http://www.protezionecivile.gov.it/documents/20182/989700/Decreto+CD+371+del+5+febbraio+2020>.

²²⁰ The Italian National Institute of Health (Istituto superiore di sanità) is the main center for research, control, and technical-scientific advice on public health in Italy.

²²¹ Ocdpc n. 640 del 27 febbraio 2020. Ulteriori interventi urgenti di protezione civile in relazione all'emergenza relativa al rischio sanitario connesso all'insorgenza di patologie derivanti da agenti virali trasmissibili. URL: <http://www.protezionecivile.gov.it/documents/20182/823803/OCDPC+N.+640+del+27+febbraio+2020.pdf>.

²²² Legge No. 833 del 23 Dicembre 1978. Istituzione del servizio sanitario nazionale. URL: <https://www.gazzettaufficiale.it/eli/id/1978/12/28/078U0833/sq>.

137. It is noteworthy that this decree did not establish any explicit changes in powers allocation for the responsible authorities, maintaining what the Italian Constitution and the current general laws on emergency provide for.

138. Initially, a sunset clause of the state of emergency had been established until July 31, 2020. However, on July 29, 2020, the Council of Ministers extended the state of emergency.

139. The Decree-Law No. 6 of February 23, 2020,²²³ converted with amendments into Law No. 13 of March 5, 2020, was adopted to mitigate the COVID-19 spread through the creation of the first “red” zone. The measures have been gradually implemented and put into effect by a series of decrees of the President of the Council of Ministers.

2. Measures Taken in the Fight Against the COVID-19 Pandemic

2.1. General Measures

Transport

140. The measures taken²²⁴ were aimed at reducing travel connections, containing crowds during the lockdown by limiting the mobility of people to work, health, and necessity reasons, while always ensuring the minimum essential service.

141. A total ban on flights from China was imposed on all airlines, companies, public and private entities managing the airports, which had to respect the ban and any implementing measures adopted by the National Aviation Authority and other competent authorities.²²⁵

142. The Decree-Law No. 6 of February 23, 2020,²²⁶ provided for a suspension of freight and passenger transport services, land, rail, inland waters, and local public, including non-scheduled ones, with the exclusion of the transport of essential and perishable goods and without prejudice to any exceptions provided for by the territorially competent Prefects.²²⁷

Public Health

143. Special health surveillance measure, a so-called quarantine with active surveillance, was taken. In addition to that, measures to improve the capacity of the health care facilities were also taken.

²²³ Decreto-Legge No. 6 del 23 febbraio 2020. URL: <https://www.gazzettaufficiale.it/eli/id/2020/02/23/20G00020/sq>.

²²⁴ For a list of the measures taken by the Minister of Infrastructures and Transports see URL: <http://www.protezionecivile.gov.it/attivita-rischi/rischio-sanitario/emergenze/coronavirus/normativa-emergenza-coronavirus>.

²²⁵ Quoted by *Negri S.* Report on the legal measures adopted by Italian Government to combat COVID-19 (updated on April 20, 2020) // Newsletter University of Salerno, EAHL, NCP for Italy. P. 13.

²²⁶ Decreto-Legge No. 6 del 23 febbraio 2020. URL: <https://www.gazzettaufficiale.it/eli/id/2020/02/23/20G00020/sq>.

²²⁷ For a summary of measures taken against the spread of COVID-19 see Chronology of main steps and legal acts taken by the Italian Government for the containment of the COVID-19 epidemiological emergency. URL: <http://www.protezionecivile.gov.it/documents/20182/1227694/Summary+of+measures+taken+against+the+spread+of+C-19>.

144. The Government also adopted the Decree-Law No. 18 of March 17, 2020,²²⁸ (the so-called “Decree ‘Cura Italia’”) providing for specific measures to empower the production and supply of medical devices and personal protective equipment, by increasing the level of financing of the standard national health needs.

145. There also was a possibility for the Ministry of Health, Regions, and the National Social Security to hire additional doctors, nurses, and other qualified persons with contracts for an unspecified period of time.

Education

146. Educational activities in the presence, as well as educational trips, early childhood education, schools of all levels, universities (except for post-graduate courses connected with the exercise of health professions),²²⁹ and the Higher Education in Art, Music, and Dance institutions have been suspended in the whole national territory, until the end of the school year.

2.2. Containment Measures Regarding Industrial and Non-Productive Sector

Industrial Sector

147. During the lockdown, with the Decree of the President of the Council of Ministers of March 22, 2020, after a negotiation with trade unions the President of the Council of Ministers announced a general stop to non-essential production activities, with the exception of essential public services, basically food, supermarkets, banking, insurance, postal services, transports.²³⁰

Non-Productive Sector

148. The restrictive measures to non-productive sectors have been applied gradually starting from the first “red” zones to the whole national territory with the declaration of the lockdown:

- suspension of retail commercial activities, with the exception of the food and basic necessities activities;
- closure of museums and other places of culture;
- closure of restaurants and bar services;
- suspension of personal services (hairdressers, barbers, beauticians).

149. As to a sunset clause, the measures taken were in compliance with the Italian Constitution and emergency legislation since they were time-limited, appropriate, and proportional to the purpose, namely the protection of the right to health.

²²⁸ Decree-Law No. 18 of March 17, 2020, on measures to strengthen the national health service and to provide economic support for families, workers, and business related to the COVID-19 epidemiological emergency, published in the Official Journal No. 70 of March 17, 2020.

²²⁹ Decree of the President of the Council of Ministers of March 4, 2020. URL: <https://www.gazzettaufficiale.it/eli/id/2020/03/04/20A01475/sq>.

²³⁰ Decree of the President of the Council of Ministers of March 22, 2020. URL: <https://www.assolombarda.it/servizi/internazionalizzazione/documenti/dpcm-22-marzo-2020-in-inglese>.

2.3. Containment Measures Regarding Population

150. In accordance with the Decree of the President of the Council of Ministers of March 9, 2020, a lockdown within the whole national territory was established. It extended the limitations previously provided for certain zones (Decree of the President of the Council of Ministers of March 8, 2020), namely:

- limitation of movement except for proven work needs or situations of needs or for reasons of health;
- absolute prohibition of mobility from one's home, or dwelling, or residence for those subjected to the quarantine measure or positive to the virus;
- suspension of civil and religious ceremonies, including funeral services.

151. In addition to the above, a ban to assembly, to access parks, public areas, leisure activities in the open air except for physical exercise in the neighborhood of one's own home, with a distance of at least one meter from any other person, was taken. There was also a ban for individuals to move around by public or private transport to a different municipality from that in which they currently resided (ban extended subsequently to residences other than the main ones).

152. Violation of the lockdown measures exposed an individual to an administrative contravention (from EUR 400 to EUR 3,000), while criminal sanctions were provided for those who failed to comply with the absolute obligation of quarantine when they had been infected.²³¹

153. Judicial authorities have provided legal assessments on the implementation of measures taken.²³² Administrative courts have been called upon to rule on the proportionality and necessity of the measures taken, especially in view of the balance between the right to health and other interests (mainly economic interests). In most cases, judicial authorities expressed an orientation in favor of the legitimacy of the measures. The protection of health can justify the limitation of other rights through measures that have a sunset clause and are necessary and proportionate to the emergency. It is mentioned in the case of the Administrative Court of Lazio Region²³³ on the legitimacy of a municipality ordinance restricting the opening of commercial activities in which it specified that the public interest in protecting the health of the community prevails over the contested time limits (taking into account the limited duration of the contested measure).

154. Judicial authorities have also provided explanatory statements on the implementation of the measures taken, especially with regard to conflicts of competence between Central State and Regions or local bodies.²³⁴

²³¹ See Decree-Law No. 19 of March 25, 2020. Article 4.

²³² In order to have a general overview about the claims before the administrative courts related to the measures adopted to tackle the COVID-19 emergency, see URL: <https://www.giustizia-amministrativa.it/covid19-focus-covid19>.

²³³ URL: https://www.giustiziaamministrativa.it/portale/pages/istituzionale/visualizza?nodeRef=&schema=tar_rm&nrg=202003463&nomeFile=202004098_05.html&subDir=Provvedimenti.

²³⁴ See 'Consiglio di Stato', Sez. I, Ad. 07/04/2020, aff. N. 260/2020. URL: <https://www.federalismi.it/ApplyOpenFilePDF.cfm?artid=41789&dpath=document&dfile=08042020161521.pdf>.

2.4. Support Measures for Industrial and Non-Productive Sectors

155. The most important decree-laws regarding the measures taken include:

- the Decree “Cura Italia” introducing measures to boost the health sector, to support workers and employers;
- the Decree “Liquidità” (adopted on March 17, 2020, and converted into Law No. 40, dated June 5, 2020) providing for measures to assist businesses by providing loan guarantees, government assumption of non-market risks, and certain targeted tax relief;
- the Decree “Rilancio” (adopted on May 19, 2020) providing for urgent measures to support healthcare, employment, and social policies;
- the Decree-Law No. 52 of June 16, 2020, providing further measures for workers and employers.

Industrial Sector and Non-Productive Sectors

156. The Decree “Cura Italia” provided funding to enterprises that produce medical products. Support measures were taken in favor of the logistics and transportations industry.

157. The Decree “Liquidità” introduced support measures for companies financially struggling due to the COVID-19 crisis. The measures included access to credit, liquidity support, export, internationalization, and investment. Other measures included incentives and contributions for sanitization and increased safety at work, indemnity of self-employed workers, incentives for workers in the entertainment industry and agricultural sector, the possibility for workers who have at least one child under the age of 14 to require a home-office.

158. Companies with foreign shares were also eligible for support measures as long as they were registered and pay taxes in Italy.

2.5. Support Measures for Population

159. The Reddito di Emergenza (REM d.l. 34) is an economic support measure established by Article 82 of Decree-Law No. 34 of May 19, 2020 (“Decreto Rilancio”), in favor of households in difficulty due to the Covid-19 epidemiological emergency.²³⁵

160. The Decree-Law No. 28 of April 20, 2020,²³⁶ contains explicit conditions on a COVID-19 tracing app, called “Immuni”, in order to manage the phase of the post-lockdown emergency. “Immuni” is voluntary and based on a so-called “contact tracing” system, i.e., digital tracking of contacts between people, aimed at alerting users that they have come into contact with a person infected with the COVID-19. The Data Protection Authority (independent administrative authority responsible for monitoring application of the General Data Protection Regulation (pursuant to Article 51 of Regulation No. 2016/679)) granted the

²³⁵ Decreto Rilancio No. 34 of May 19, 2020. Article 82. URL: https://www.inps.it/docallegatiNP/Miq/Allegati/Brochure_Informativa_REM.pdf.

²³⁶ Decree-Law No. 28 of April 20, 2020. URL: http://images.go.wolterskluwer.com/Web/WoltersKluwer/%7B6a53f396-bb85-4464-864b-4349248e4120%7D_decreto-legge-30-aprile-2020-n-28.pdf.

authorization to use the “Immuni” app, making an overall positive judgment²³⁷ since it complied with the following criteria:

- the app is used voluntarily;
- the data must be processed exclusively for the purposes indicated by law;
- the app must guarantee the absolute anonymity of users.

161. In Italy, the COVID-19 tracing app is considered a support measure for the population to mitigate the spread of the new coronavirus infection.²³⁸

²³⁷ Data protection authority. Decision on Immuni app. URL: http://images.go.wolterskluwer.com/Web/WoltersKluwer/%7Bbcbf65c6-ffe2-4b95-8931d4e42ac03ee7%7D_garante-privacy-provvedimento-1-giugno-2020.pdf.

²³⁸ Immuni – Sito Ufficiale. URL: <https://www.immuni.italia.it/>.



IV. Spain

162. Spanish legislation does not contain an explicit provision for a “state of emergency”.
163. A centralized approach has been applied after a declaration of a state of alarm.
164. A great number of legal acts were adopted to mitigate the spread of the COVID-19 by taking a great variety of measures.
165. The measures taken do not follow the ordinary distribution of powers between the State, the Autonomous Communities, and the local entities.
166. The measures imposed restrictions on fundamental rights and freedoms.
167. A variety of support measures were taken to assist affected industries and the population to overcome the consequences of the COVID-19 crisis.

1. Public “Emergency” Response Regime

1.1. Constitutional Framework

168. Article 116 of the Spanish Constitution of 1978 and the 1981 Organic Law²³⁹ provide the possibility for declaration of three different states of emergency: state of alarm, state of emergency, and state of siege.
169. The state of emergency and the state of siege have never been declared.
170. The difference between the state of alarm and the state of emergency is that the former allows the government to “limit” freedom of movement, whereas the latter enables to “suspend” it as well as other fundamental rights in cases of serious disturbances of public order. The distinction between “limitation” and “suspension” is quite relevant, as the legal requirements to declare the state of alarm are less strict than those established for the state of emergency. The declaration of the state of alarm is subject to an *ex post* parliamentary control, whereas the declaration of the state of emergency requires a previous authorization by the Parliament.
171. A state of alarm must be declared by the Council of Ministers of the central government through a Royal Decree (within 15 days) indicating the measures and effects imposed by this decision. Overall, only central authorities can declare any of the three states of emergency.
172. The prerequisites for declaring a state of alarm are “situations of catastrophe, health crises, paralysis of public services, and shortage of basic necessities”.
173. The state of alarm can only be declared when the competent authorities cannot ensure the return to normality making use of their ordinary prerogatives provided by the 1981 Organic Law.
174. The state of alarm can be declared for all the territory or territorially limited, and the Royal Decree that declares it should establish the competent authorities. In fact, its main outcome is an alteration of the

²³⁹ Ley Orgánica No.4/1981, de 1 de junio, de los estados de alarma, excepción y sitio. URL: <https://www.boe.es/buscar/pdf/1981/BOE-A-1981-12774-consolidado.pdf>.

ordinary distribution of competences, although the central government could appoint regional responsible authorities.

175. The state of alarm can be extended without a time limit and as many times as necessary, but in successive times before the extension, the parliament can propose amendments and not validation *a posteriori* as in the first declaration.

176. In addition, under Article 86 of the Constitution, in cases of “extraordinary and urgent need”, the Government may issue temporary legislative provisions which shall take the form of Decree laws and which may not affect the regulation of the basic State institutions, the rights, duties, and liberties. The Decree laws must be submitted to the Congress of Deputies and voted within 30 days after their promulgation.

1.2. Pre-COVID-19 Regulatory Framework

177. In Spain, health services lay within the responsibility of regions. Although the central government can pass basic regulations with minimum common standards and coordinate the health system, it only has executive powers over transboundary health issues (e.g., airport entrance control).

178. Organic Law No. 3/1986 of April 14, 1986, on Special Measures in Public Health gives health authorities a very broad power, as it allows them to take any measure “deemed necessary in the event of a transmissible risk” (Article 3). This law aims to “protect public health and prevent its loss or deterioration”, for which “the health authorities of the various public administrations may, within the scope of their powers, adopt the measures provided for in this Law, when so required for urgent or necessary health reasons”.

179. Central State laws (Act No. 14/1986 of April 25, 1986, on General Health, Act No. 17/2015 of July 9, 2015, on the National Civil Protection System, and Act No. 33/2011 of October 4, 2011, on Public Health) allow health authorities to impose, for instance, personal obligations on retired and trainee health workers, requisition of goods, duties on the population to collaborate with the police, etc. Regional health and emergency laws also contain similar provisions.

180. The Law No. 33/2011 of October 4, 2011 aims to “achieve and maintain the highest possible level of health of the population”, and, specifically, “to lay the foundations for the achievement and maintenance of people’s health at the highest possible level, by means of policies, programs, services and, in general, actions of all kinds carried out by public authorities, companies and citizens’ organizations with the aim of acting on the processes and factors that most influence health, and thus prevent diseases and protect and promote people’s health, both in the individual and collective sphere”. In addition, the the Law 33/2011 grants the powers to the Ministry of Health and General Directorates to take special intervention measures to protect public health, in situations of emergency or need and in the face of extraordinary circumstances.²⁴⁰

181. The 1981 Organic Law also expressly refers in Article 12 to the case of a health crisis, such as epidemics and serious contamination situations that the competent authority may adopt measures “in addition to the measures provided for in the previous articles, those established in the rules for the control of infectious diseases”.

²⁴⁰ Ley No. 33/2011, de 4 de octubre, General de Salud Pública. URL: <https://www.boe.es/eli/es/l/2011/10/04/33/con>.

182. Overall, Spanish health law²⁴¹ provides broad extraordinary powers to the relevant (state and regional) authorities, which could be used to deal with pandemics like COVID-19. It is noteworthy that the laws provide conditions for the centralization of powers.

183. The decrees to mitigate the spread of COVID-19 were adopted according to the state of alarm regime, within the framework of the pre-COVID-19 existing emergency legislation or by using the power of the Government to adopt emergency legislation provided in Article 86 of the Spanish Constitution.

184. Only one article from the pre-COVID-19 legislation, the Law No. 16/2003 May 28, 2003, on Cohesion and Quality of the National Health System, was modified to improve the coordination between the Ministry of Health and the Autonomous Communities and to strengthen health information mechanisms.²⁴²

1.3. COVID-19 Regulatory Framework

185. A great number of new legislative acts and regulations has been adopted in a fast-track during the COVID-19 crisis,²⁴³ but it has mainly focused on approving health containment measures, social measures to alleviate the economic effects, and organizational measures to adapt public services, transport, other establishments open to the public, etc.

186. The state of alarm declared by the Royal Decree No. 463/2020, changed the distribution of powers between central and regional governments. The decisions were centralized at a state level, specifically the ones under the Ministry of Defense, the Ministry of Transport, and the Ministry of Health and Home Office.

2. Measures Taken in the Fight Against the COVID-19 Pandemic

2.1. General Measures

187. The first measures were taken by the Autonomous Communities. But it was the Royal Decree No. 463/2020 that declared the state of alert for the management of the health crisis caused by the COVID-19 and established the first general measures. This act was later amended on several occasions²⁴⁴ to extend the duration of the state of alert by strengthening the requirements for the containment measures and clarifying what activities could be left operational. This act also centralized the decision-making authority in the Ministry of Health to be supported by three other ministries (Interior, Defense, and Transport).

²⁴¹ Ley Orgánica No. 3/1986, de 14 de abril, de Medidas Especiales en Materia de Salud Pública. URL: <https://boe.es/buscar/act.php?id=BOE-A-1986-10498>.

²⁴² Real Decreto-ley 21/2020, de 9 de junio, de medidas urgentes de prevención, contención y coordinación para hacer frente a la crisis sanitaria ocasionada por el COVID-19. URL: <https://www.boe.es/boe/dias/2020/06/10/pdfs/BOE-A-2020-5895.pdf>.

²⁴³ The Official Journal has an online Code with all the legislation passed over these months that keeps track of the intense legal activity. URL: https://www.boe.es/biblioteca_juridica/codigos/codigo.php?id=355.

²⁴⁴ The successive versions of the Royal Decree can be consulted at URL: <https://www.boe.es/buscar/act.php?id=BOE-A-2020-3692>.

Transports

188. Measures on the suspension of international air communication were taken.²⁴⁵ In addition, State-owned road, rail, air, and maritime public passenger transport services reduce their total supply of operations.²⁴⁶

Public Health

189. According to the Royal Decree No. 463/2020, the Minister for Health was allowed to:

- issue orders necessary to ensure the supply of market and operation of services of production centers necessary for the protection of public health and affected by the shortage of products;
- intervene in and temporarily occupy industries, factories, workshops, holdings, or premises of any kind, including privately owned health centers, services, and establishments, as well as those operating in the pharmaceutical sector;
- temporarily requisite all types of goods and impose mandatory personal services in cases where this is necessary for the adequate protection of public health in the context of the health crisis.

Education

190. According to the Royal Decree No. 463/2020,²⁴⁷ all the classroom-based educational activities, including university education, as well as any other educational or training activities provided in other public or private centers are suspended.

191. During the period of suspension, educational activities shall be maintained through online modalities, whenever possible.

2.2. Containment Measures Regarding Industrial and Non-Productive Sector

Industrial Sector

192. According to the Royal Decree No. 463/2020, all retail premises and establishments were closed to the public (an exception was made for retailers of food, beverages, essential products and goods, pharmacy and healthcare establishments, veterinary centers and clinics, opticians, and sellers of orthopedic supplies, hygienic products, press and stationery, automotive fuels, tobacconists, IT and telecommunications supplies, pet food, e-commerce, telephone or postal sales, dry-cleaners, laundromats, and professional home hairdressing).

²⁴⁵ Orden PCM/205/2020, de 10 de marzo, por la que se publica el Acuerdo del Consejo de Ministros de 10 de marzo de 2020, por el que se establecen medidas excepcionales para limitar la propagación y el contagio por el COVID-19, mediante la prohibición de los vuelos directos entre la República italiana y los aeropuertos españoles. URL: <https://www.boe.es/boe/dias/2020/03/10/pdfs/BOE-A-2020-3433.pdf>.

²⁴⁶ For detailed measures in the transport area please refer to Royal Decree No. 463/2020. URL: <https://www.boe.es/eli/es/rd/2020/03/14/463/con>.

²⁴⁷ Real Decreto No. 463/2020, de 14 de marzo, por el que se declara el estado de alarma para la gestión de la situación de crisis sanitaria ocasionada por el COVID-19. URL: <https://www.boe.es/eli/es/rd/2020/03/14/463/con>.

Non-Productive Sector

193. According to the Royal Decree No. 463/2020, public access to museums, libraries, monuments, archives, and premises for shows, leisure, sports, festivals, or public events, has been suspended.

2.3. Containment Measures Regarding Population

194. The first measures to fight the COVID-19 were adopted on March 9, 2020, by the Interterritorial Council of the National Health System, a coordination body with the Ministry of Health and regional health peers. Those measures were limited to areas where community transmission was significant at that point (Madrid region, the city of Vitoria, and the small town of Labastida). In these areas, school activities were closed and social distancing was established in the educational and work environment.

195. Between March 8 and 13, 2020, all regions took executive measures, as they were increasingly affected by the expansion of the COVID-19:

- large social gatherings and face-to-face educational activities were suspended;
- sanitary recommendations on hygiene and social distancing were issued;
- forced medical controls, quarantines, requisition of sanitary supplies, the takeover of private hospitals, and regulations on the working conditions of health and emergency personnel were also taken;
- social distancing;
- mandatory mask-wearing on the public sidewalks, in open-air spaces and in enclosed areas for public use or that are open to the public, as well as in transport;
- voluntary use of the COVID-19 tracing app.

196. The increase in the number of infected people, together with the epidemiological projections derived from what was happening in countries where the COVID-19 had arrived earlier, led most of the Autonomous Communities to take successive legal and organizational decisions in a very short time in order to fine-tune their health systems, have the necessary technical and human resources, and confine the sick and the population in general.

197. The ways chosen to convey these measures can be divided into three:

- some Autonomous Communities published Decree(s) and Orders implementing the enabling health laws;
- some approved Agreements of the Government Councils that referred to the health laws and provided specific measures that they publicized in their Official Journals;
- some activated their Emergency Plans by declaring the health emergency as an umbrella for adopting the limiting measures provided for in the emergency legislation.

198. All of these provisions, which are legal and binding, were adopted before the central government approved its first regulations to respond to the health crisis.



199. On the regional level, the local governments have also taken emergency measures:

- on March 12, 2020, Catalonia activated the emergency phase 1 of its Emergency Plan, and the Generalitat of Catalonia decided on the confinement measures for the municipalities of Igualada, Vilanova del Camí, Santa Margarida de Montbui i Òdena;
- the Basque Country declared a health emergency and activated its emergency plan which provided for the lockdown measures;
- Galicia activated the Territorial Plan of Emergencies of Galicia (Platerga) in its GS level (emergency of Galician scale) that included measures on the warnings, lockdown, or perimetral access control;²⁴⁸
- Murcia activated the plan for emergencies. It was one of those Autonomous Communities that adopted early measures of confinement “that restrict the freedom of movement” in its coastal municipalities and transferred the measures for judicial ratification;²⁴⁹
- Andalusia published an Order with measures on public services, public workers, and establishments open to the public.²⁵⁰ It didn’t provide for lockdowns, but it did mention the possibility of adopting intervention measures on goods or persons in case the risk increases.

200. The need to have judicial confirmation of measures that affect fundamental rights has sometimes led to an extended control or even annulment of other administrative measures regardless of their purely administrative nature with no affection to fundamental rights. For example, that was the case of the judge’s decision not to ratify Madrid’s prohibition to smoke in public premises or streets if social distancing can’t be kept.²⁵¹ That measure, as a matter of fact, had been agreed as a common unified measure by all the Autonomous Communities along with the central Ministry of Health. The decision was later repealed by the Superior Justice Court of Madrid claiming that no judicial control was needed for those measures as they didn’t affect fundamental rights.

2.4. Support Measures for Industrial and Non-Productive Sector

201. The central government set up a line of guarantees to cover financing granted by financial

²⁴⁸ Xunta de Galicia. Resolución del Dog. No.50-bis de 13 de marzo de 2020. URL: https://www.xunta.gal/dog/Publicados/excepcional/2020/20200313/2256/AnuncioG0244-130320-1_es.html.

²⁴⁹ Orden de la Consejería de Salud por la que se insta la activación del Plan Territorial de Protección Civil de la Región de Murcia (PLATEMUR) para hacer frente a la pandemia global de Coronavirus (COVID-19) de 12 de marzo de 2020. Suplemento número 2 del BORM No.61 del marzo de 2020. URL: <https://www.borm.es/services/anuncio/ano/2020/numero/1609/pdf>.

²⁵⁰ Junta de Andalucía. Orden de 14 de marzo de 2020, por la que se adoptan medidas preventivas de salud pública en la Comunidad Autónoma de Andalucía como consecuencia de la situación y evolución del coronavirus (COVID-19). Boletín Oficial de la Junta de Andalucía No.7 de 14 de marzo de 2020. URL: <https://www.juntadeandalucia.es/boja/2020/507/2>.

²⁵¹ Juzgado de lo Contencioso-Administrativo no 02 de Madrid. Autorizaciones o ratificaciones de medidas sanitarias 269/2020. Auto No. 121/20 del 20 de agosto de 2020. URL: <https://www.laregion.es/media/laregion/files/2020/08/21/Auto%20Covid.pdf>.

institutions to companies and self-employed.²⁵²

202. Royal Decree-Law No. 25/2020 of July 3, 2020, on urgent measures to support economic recovery and employment creates a new fund of EUR 10 billion managed by the State Industrial Ownership Corporation to provide financial support to solvent strategic non-financial companies that have been particularly affected by the COVID-19 and that request it.²⁵³

203. Customs procedures are streamlined in the industrial sector: The Head of the Customs and Special Taxes Department of the State Tax Administration Agency is allowed to agree that customs clearance may be carried out by anybody or official in the area.

204. According to the Royal Decree-Law No. 25/2020, the Royal Decree-Law No. 8/2020 of March 17, 2020, and the Royal Decree-Law No. 17/2020 of May, 5, 2020, the following measures were taken:

- loans granted to SMEs in the tourism sector and related activities;
- promoting the implementation of new business investment projects, particularly for environmental sustainability and digitalization;
- financial support to solvent strategic non-financial companies;
- broad package of fiscal measures, aid, and measures to make unemployment coverage more flexible for the cultural sector;
- suspension of the regime of liberalization of foreign direct investment in Spain in certain strategic sectors affecting public order, public security, and public health (critical infrastructure; critical technologies and dual-use goods; supply of essential inputs, in particular energy; sectors with access to sensitive information; and media).

205. It must be noted that a foreign SME can benefit from this fund if it has its tax residency in Spain.

206. As to a sunset clause, all support measures have an expiry date.

2.5. Support Measures for Population

207. The Royal Decree-Law No. 21/2020²⁵⁴ is a government regulation with the status of a law that requires subsequent validation by the Parliament, establishes common measures to adapt activities to what was called a “new normality” (a period of adaptation characterized by the adoption of health

²⁵² The ICO publishes fortnightly data on the evolution of this line of guarantees on its website identifying information on the size of beneficiary company, sector of activity, and Autonomous Community. URL: <https://www.ico.es/web/ico/linea-avales>; Resolution of May 19, 2020, of the State Secretariat for the Economy and Business Support, published on 20 May in the Official State Gazette. URL: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2020-5140; Resolution of July 28, 2020, of the State Secretariat for the Economy and Business Support, publishing the Agreement of the Council of Ministers of July 28, 2020, establishing the terms and conditions of the first tranche of the line of guarantees for financing granted to companies and self-employed persons for the main purpose of financing investments and authorizing limits for acquiring commitments for expenditure to be charged to future financial years (in application of the provisions of Article 47 of Law No. 47/2003 of November 26, 2003, General Budgetary Law). URL: https://boe.es/diario_boe/txt.php?id=BOE-A-2020-8686.

²⁵³ Real Decreto-ley No. 25/2020, de 3 de julio, de medidas urgentes para apoyar la reactivación económica y el empleo, available at URL: https://boe.es/diario_boe/txt.php?id=BOE-A-2020-7311.

²⁵⁴ Real Decreto-ley No. 21/2020, de 9 de junio, de medidas urgentes de prevención, contención y coordinación para hacer frente a la crisis sanitaria ocasionada por el COVID-19. URL: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2020-5895.

prevention measures). The powers were returned to the Autonomous Communities, but a series of general measures were established.

208. The Royal Decree-Law No. 21/2020 expressly identified the COVID-19 as a disease that must be declared urgent. It also introduces the duty of the Autonomous Communities to provide information when public health emergencies occur, to guarantee adequate coordination between health authorities, and to strengthen the functioning of the National Health System. In addition, they must continue to provide the data necessary for the monitoring and epidemiological surveillance of the COVID-19, as well as the status of care capacity and human and material resource requirements.

209. The following measures were taken to support the population:

- health centers and care centers for the elderly must maintain their activity and may only proceed to partially reduce or suspend it in the terms that the competent authorities allow;
- reduction of working hours;²⁵⁵
- loans granted to self-employed in the tourism sector and related activities, and financing granted to self-employed for the purchase of motorized road transport vehicles for professional use;
- the approval of the Minimum Vital Income;²⁵⁶
- prolongation of leasing contracts, etc.

210. As to a sunset clause, the expiry date for this provision is January 31, 2021.

²⁵⁵ Real Decreto-ley No. 8/2020, de 17 de marzo, de medidas urgentes extraordinarias para hacer frente al impacto económico y social del COVID-19. URL: <https://www.boe.es/eli/es/rdl/2020/03/17/8>.

²⁵⁶ Guía de facilitación de acceso a las medidas. URL: <https://www.mscbs.gob.es/ssi/covid19/ingresoMinVital/home.htm>.

V. Sweden

Summary

211. A great number of legislative and regulatory measures have been put into place in Sweden to tackle the COVID-19 pandemic and the economic crisis that it triggered.

212. The measures taken are mainly temporary and of a financial nature, relating to businesses that might suffer economically as a result of the pandemic.

213. New, temporary legislation has been enacted. It is mandatory for owners of restaurants, coffee shops, bars, canteens, and dining places to take measures aimed at disease prevention, such as social distancing.

214. Another category of legislative and regulatory measure relates to employees and making sure that they can stay home if they have symptoms such as cold, cough, or fever, without losing their income and without administrative hindrances, such as easing the requirements to obtain a doctor's certificate when ill. In this regard, the Government has in some cases been given extended powers to act in the case of extraordinary events, such as quickly making decisions regarding sickness benefits in order to adapt to new situations.

215. Crisis legislation has also been introduced on a more permanent basis. Some enacted laws concern the handling of extraordinary events in peacetime and will apply to future crises.

216. Furthermore, a new permanent law was introduced to give the Government the mandate to temporarily close schools that are a part of the compulsory schooling system due to extraordinary events in peacetime.

1. Public "Emergency" Response Regime

*Overview of a State Machinery*²⁵⁷

217. The Swedish Parliament (the Riksdag) is the highest decision-making body that has the competence to respond to and control communicable diseases. The Riksdag is a sole legislator, i.e., its regulatory competence is superior. It can always intercede by canceling or amending provisions enacted by the Government or any other regulatory body.

218. The Government has the competence to make decisions with or in certain fields without prior authorization from the Riksdag, within its so-called residuary competence. The area of residuary competence primarily includes instructions for State authorities, such as the Public Health Agency or the National Board of Health and Welfare, as well as voluntary charges and subsidies. Nevertheless, the Riksdag can always cancel provisions that were adopted within the Government's residuary competence. The Government can sub-delegate decision-making in certain areas where this has been authorized by the

²⁵⁷ Here and hereafter this subsection is added for Sweden, the United Kingdom and China due to the complexity of their state machinery and/or legislation hierarchy.

Riksdag.²⁵⁸ As such, the Government has sub-delegated its competence within the area of communicable disease control and prevention to the PHA and the NBHW.

219. The PHA is in charge of the Swedish strategy to combat the COVID-19 pandemic. It is, thus, mainly designed and adjusted not by politicians but by expert public servants (in this case epidemiologists).²⁵⁹ However, the Agency does not act alone. It is the coordinating authority for public authorities at the state, regional and local levels.²⁶⁰ In the case of a severe health crisis, the PHA cooperates with other agencies, regions, county councils, and municipalities. The Agency is also the national focal point for international organizations, such as the EU²⁶¹ and the WHO.²⁶² Nevertheless, the Government has the overall responsibility for the response and will be the one to be held accountable in any way.

220. The NBHW plays a coordinating role at the national level when it comes to health and medical care as well as communicable disease prevention in Sweden's municipalities and regions.²⁶³ The Board has a particular mandate as a coordination body in times of crisis according to the Government regulation with the instruction for the NBHW.²⁶⁴

221. There are 290 municipalities and 21 regions in Sweden.²⁶⁵ They play an important part in the public administration and have their own competences within their respective geographical areas, which includes crisis management. These competences are regulated by fundamental law and by the Riksdag. What concerns the pandemic, such local governments may respond to it in accordance with their mandates and the severity of the situation, as well as the guidance provided by the Government.

222. Within the field of health care, the Regions are mainly responsible for health care and hospital care.²⁶⁶

223. The Medical Officer of the Region is in charge of disease control and prevention. Municipalities, on the other hand, are chiefly responsible for the care of the elderly and the disabled, home health care, rehabilitation, and school health care.²⁶⁷ Communicable disease prevention and control at the municipal

²⁵⁸ *Isberg M.* The Fundamental Laws of Sweden 2016. P. 61; see the Instrument of Government. Article 8:10. URL: https://www.legislationline.org/download/id/8226/file/Sweden_The_Instrument_of%20Government_1994_am_2014_en.pdf.

²⁵⁹ Jonung 2020. P. 5.

²⁶⁰ Ordinance with instruction to the Public Health Agency (2013:1020). Para. 8.

²⁶¹ The solidarity principle laid down in article 2 of the Treaty of the European Union is also an important part of Swedish crisis readiness.

²⁶² Lag (2006:1570) om skydd mot internationella hot mot människors hälsa. § 5.

²⁶³ URL: <https://www.socialstyrelsen.se/en/about-us/emergency-preparedness/the-role-of-the-national-board-of-health-and-welfare-during-the-covid-19-response-in-sweden/>; Nordberg och Mattson 2020. P. 732.

²⁶⁴ Förordning (2015:284) med instruktion för Socialstyrelsen. § 8. During the COVID-19 pandemic the NBHW has played a central role in, for instance, purchases of medical supplies and personal protective equipment and establishes a national coordination mechanism for intensive care unit beds. In this capacity the Board has collaborated with other authorities such as the Swedish Armed Forces, Swedish Civil Contingencies Agency as well as public organisations such as the Red Cross.

²⁶⁵ See the Instrument of Government. Chapter 14. URL: https://www.legislationline.org/download/id/8226/file/Sweden_The_Instrument_of%20Government_1994_am_2014_en.pdf.

²⁶⁶ Hälso- och sjukvårdslag (2017:30). Chapter 8.

²⁶⁷ *Ibid.* Chapter 12.

level is generally handled by the Environmental and Health Committee.²⁶⁸ The MOR is in charge of the coordination and cooperation of the work with disease control and prevention at this level.²⁶⁹

1.1. Constitutional Framework

224. The Swedish Constitution consists of four fundamental laws: the Instrument of Government (1974:152) of 1975, the Act of Succession (1810:0926) of 1810, the Freedom of the Press Act (1949:105) of 1950, and the Fundamental Law on Freedom of Expression (1991:1469) of 1992. The Instrument of Government is considered the most important of the fundamental laws, due to the fact that it contains the basic principles for both politics and the legal system as well as defining human rights and freedoms.²⁷⁰

225. In addition, there is the Riksdag Act (2014:801) of 2014, which can be described as a hybrid and contains both provisions with a fundamental legal status as well as of “ordinary” legal status.

226. The fundamental laws of Sweden do not stipulate any right concerning a declaration of a state of emergency regarding a civilian crisis. Such a crisis is to be handled in accordance with the Constitution and the law.

227. In other words, the Constitution does not provide for the possibility to declare a state of emergency due to crises in peacetime. And it does not provide a framework for a general emergency act in ordinary legislation.

228. If the Government is forced to act swiftly in an emergency situation, such actions can be evaluated by the Riksdag afterward. There is thus no possibility for the Government to declare a full state of emergency and the Government will be held accountable directly by the Riksdag.

229. As for the terms, the general term “pandemic readiness” is used, and such readiness is assessed through the phases developed by the WHO, which is the interpandemic phase, the alert phase, the pandemic phase, and the transition phase. During the interpandemic phase, the focus is on strategy and securing a sufficient level of readiness. During the alert phase, surveillance, risk assessments, and escalation of measures for communicable disease prevention and control are crucial. The transition phase is characterized by a decrease in response as well as recovery activities.²⁷¹

230. As regards the constitutional dimension, the term “constitutional readiness” is also used. It means that “a civilian crisis in peacetime is to be handled according to the ordinary legislative procedure. As a rule, the principle of legality is guaranteed even in times of crises. Only in concrete and specific situations can the constitutional right of necessity be invoked according to constitutional custom.”²⁷²

²⁶⁸ See, e.g., the Swedish Environmental Code, *Miljöbalk* (1998: 808). Chapter 9. Para. 14.

²⁶⁹ Smittskyddslag (2004:168) 6:7 (Communicable Diseases Act).

²⁷⁰ Shirin A. Ö. Constitutional design in Pierre, Jon. The Oxford Handbook of Swedish Politics. Oxford University Press. 2016. P. 87.

²⁷¹ Pandemiberedskap – Hur vi förbereder oss - ett kunskapsunderlag, Folkhälsomyndigheten 2019. P. 5; Pandemic Influenza Risk Management. A WHO guide to inform & harmonize national & international pandemic preparedness and response, World Health Organization, May 2017. P. 13–14.

²⁷² Prop. 2019/20:155. P. 8; Jonsson Cornell A. Författningsberedskap i praktiken – en kommentar med anledning av lagen om ändring i smittskyddslagen, SvJT 2020. P. 377.

231. It is noteworthy that all competent authorities are involved during a pandemic. Apart from the Riksdag and the Government, authorities at both state, regional and municipal levels are obliged to cooperate in times of crisis (paras. 217–223 of Annex 3).

1.2. Pre-COVID-19 Regulatory Framework

232. The Communicable Diseases Act (2004:168),²⁷³ which came into force in 2004, is the law on protection against infectious diseases.²⁷⁴

233. The CDA classifies diseases into 3 categories:

- contagious diseases. These are diseases that can be transmitted to or between people and can pose more than insignificant threat to human health;²⁷⁵
- diseases dangerous to public health. These are diseases that can be life-threatening, involve long-term illness or severe suffering or have other serious consequences;²⁷⁶
- diseases dangerous to society. These are diseases that can spread in society and cause a serious disturbance or imminent risk of a serious disturbance in important societal functions and which require extraordinary infection control measures.²⁷⁷

234. These diseases must be reported and are subject to “contact tracing”.²⁷⁸

235. The Government declared the COVID-19 as a “Public Health Hazard” — “a disease that is dangerous to public health and society” — on February 2, 2020, based on a recommendation of the Public Health Agency.²⁷⁹

236. This was later approved by the Riksdag and, hence, added to the list of such diseases in Annex to the Communicable Diseases Act.²⁸⁰

237. This means that the PHA and the medical officers of the regions are able to take “extraordinary measures” concerning disease control (for example, coercive measures regarding individuals, such as health control, isolation, and travel bans).

238. The CDA does not contain the term “state of emergency” or “health emergency”, however, it provides the term “extraordinary situation”. This means that the Government may issue special regulations

²⁷³ Smittskyddslagen [Communicable Diseases Act] [Svensk Författningssamling [SFS] 2004:168]. URL: https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/smittskyddslag-2004168_sfs-2004-168.

²⁷⁴ Prop. 2003/04:30. P. 69; Nordberg och Mattsson 2020. P. 732.

²⁷⁵ See the CDA. Chapter 1:3. Para. 1. URL: <http://rkrattsbaser.gov.se/sfst?bet=2004:168>.

²⁷⁶ Ibid. Chapter 1:3. Para. 2.

²⁷⁷ Ibid. Chapter 1:3. Para. 3.

²⁷⁸ Ibid.

²⁷⁹ Folkhälsomyndigheten, *Hemställan om att infektion med 2019-nCoV klassificeras som allmänfarlig och samhällsfarlig sjukdom*, 2020-01-31, ärendenr. 00487-2020.

²⁸⁰ Prop. 2019/20:144, bil. 1. P. 18.

on disease control if in a state of war or a danger of war.²⁸¹ Hence, this term is not related to a health emergency.

239. As to a sunset clause, there are no specific time limits, since there are no general rules that permit a declaration of emergency. Nevertheless, if there is a disease that is dangerous to public health and society, the competent authorities will be able to take extraordinary measures for disease control in accordance with the law until the threat is over, e.g., when a vaccination program can be put in place.

240. In the Act on Municipalities and County Councils Measures Ahead of and During Extraordinary Events During Peace Time and Times of High Preparedness (2006:544)²⁸² the term “preparedness for extraordinary situations” is established.

241. This means such a situation “that deviates from the norm, entails a serious disturbance or imminent risk of a serious disturbance in important societal functions and requires urgent action by a municipality or a region”.²⁸³

242. This definition relates to peace times as well as to high preparedness times. The powers are distributed between the authorities at different levels.

243. According to the High Preparedness Act, municipalities and regions shall analyze which extraordinary situations in peacetime may occur in the municipality or region and how these events may affect their own activities. Municipalities and regions must also, taking into account the risk and vulnerability analysis, establish a plan for each new term of office for how to handle extraordinary situations.²⁸⁴

244. The Government or the authority determined by the Government may issue more detailed regulations on risk and vulnerability analyzes as well as plans for the handling of extraordinary situations.²⁸⁵

245. During high preparedness time, municipalities and regions should make the necessary preparations for action. The municipal council is responsible for managing the part of the civil defense that the municipality is required to carry out. Whereas the regional council is responsible for civil health management and other civil defense activities that the region must undertake.²⁸⁶

246. Overall, due to the decentralized structure of the Swedish state machinery, the role of regions and municipalities regarding crisis management is prominent. They are responsible for making sure their geographical areas have sufficient readiness to cope with extraordinary situations.

²⁸¹ See the CDA. Chapter 9. Para. 5.

²⁸² Lag (2006:544) om kommuners och regioners åtgärder inför och vid extraordinära händelser i fredstid och höjd beredskap. URL: <http://rkrattsbaser.gov.se/sfst?bet=2006:544>.

²⁸³ Ibid. Para. 4.

²⁸⁴ See High Preparedness Act. Chapter 2.

²⁸⁵ Ibid.

²⁸⁶ Ibid. Chapter 3.

247. The cooperation between different competent authorities shall be headed by a coordinating authority. Coordinating authorities regarding public health crises, such as the COVID-19 pandemic, is the Public Health Agency²⁸⁷ and the National Board of Health and Welfare.²⁸⁸

1.3. COVID-19 Regulatory Framework

248. The Constitution as well as laws in general have to be followed even during a civilian crisis such as the COVID-19 pandemic.

249. Otherwise, there is only one new law related to the COVID-19 pandemic in Sweden, which was introduced in March 2020 in order to give the Government the mandate to temporarily close schools that are part of the compulsory schooling system due to extraordinary events in peacetime.²⁸⁹

250. It is noteworthy that this law was adopted in an accelerated mode. Also, it was adopted as permanent and it will be applied to a future possible crisis as well.

2. Measures Taken in the Fight Against the COVID-19 Pandemic

251. The Swedish strategy in response to the COVID-19 pandemic is focused on personal and shared responsibility.²⁹⁰ The recommendations regarding the measures were issued by the PHA. Therefore, measures have principally been taken through Government regulations and recommendations from public agencies.

252. The Communicable Diseases Act and the Ordinance with Instruction for the PHA have played a key role in Sweden's response to the pandemic.

253. Limited temporary legislation has been introduced, such as a law regulating disease control and prevention in dining places and alike.

2.1. General Measures

Transport

254. Sweden introduced a ban on non-essential travel to it from countries outside the EU. The entry ban does not apply to citizens or their families of EU/EEA countries, the UK, Switzerland, Andorra, Monaco, San Marino, the Vatican, or to travels to Sweden from the EU/EEA area.

²⁸⁷ Ordinance with instruction for the Public Health Agency (2013:1020). Para. 8.

²⁸⁸ Förordning (2015:284) med instruktion för Socialstyrelsen. URL: https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/forordning-2015284-med-instruktion-for_sfs-2015-284.

²⁸⁹ Lag (2020:148) om tillfällig stängning av verksamheter på skolområdet vid extraordinära händelser i fredstid. The law was initiated by the Committee of Education of the Riksdag by recommendation of the government, 2019/20: UbU25.

²⁹⁰ The Swedish strategy in response to the COVID-19 pandemic in English. URL: <https://www.Government.se/articles/2020/04/strategy-in-response-to-the-covid-19-pandemic/>; The Swedish strategy in different languages. URL: <https://www.regeringen.se/regeringens-politik/regeringens-arbete-med-anledning-av-nya-coronaviruset/strategi-med-anledning-av-det-nya-coronaviruset---andra-sprak/>.

Public Health

255. On March 20, 2020, the Government introduced a ban on visits to nursing homes in order to protect individuals living in those homes, who are considered as risk groups.²⁹¹

Education

256. Distance education for secondary schools and partial closure of universities was introduced.²⁹² On March 13, 2020, within its residual competence, the Government decided that higher education and upper secondary schools (gymnasium) would provide distance education for reasons of disease control. Pre-schools and compulsory schools have largely functioned as usual due to the fact that small children are less likely to spread the virus. The Government has also pointed out that it is important to make sure that parents working in hospitals, care homes, or other businesses important to the critical infrastructure of the country have access to the necessary childcare.

2.2. Containment Measures Regarding Industrial and Non-Productive Sectors

257. No containment measures were taken regarding industrial and non-productive sectors due to the COVID-19 crisis.

2.3. Containment Measures Regarding Population

258. Initially, the Government banned public gatherings of 500 people, but this number was changed to 50 people during the course of the pandemic.²⁹³ The competent authorities, such as the PHA, have issued several recommendations on how to implement the ban.

259. A temporary law has been enacted, creating legal obligations for owners of restaurants, coffee shops, bars, canteens, or dining places to provide conditions for social distancing, organize entry lines, facilitate handwashing, etc.

260. As to a sunset clause, the measures taken have an expiry date. Most of them are to expire on December 31, 2020.

261. Supervision is carried out by the municipalities as part of their respective mission regarding disease prevention and control, if necessary, with police assistance. Due to the strained economic situation for the restaurant industry in general, business owners are not required to pay a fee for the supervision, which is normally required in regard to this type of control.²⁹⁴

²⁹¹ Förordning (2020:163) om tillfälligt förbud mot besök i särskilda boendeformer för äldre för att förhindra spridningen av sjukdomen covid-19.

²⁹² Förordning (2020:115) om utbildning i visa skolformer i skolväsendet vid spridning av viss smitta.

²⁹³ Förordning (2020:162) om ändring i förordningen (2020:114) om förbud mot att hålla allmänna sammankomster och offentliga tillställningar.

²⁹⁴ Lag (2020:526) om tillfälliga smittskyddsåtgärder på serveringsställen; Förordning (2020:527) om tillfälliga smittskyddsåtgärder på serveringsställen; Prop. 2019/20:172.

262. Evaluation measures have also been taken. The general idea is that the Swedish response has to be continuously evaluated by an audit commission, together with different experts and scientists in different fields, to scrutinize the overall response to the COVID-19 pandemic.²⁹⁵

263. For the moment there is no public information on any claims lodged to a court concerning the containment measures taken to mitigate the COVID-19 crisis.

2.4. Support Measures for Industrial and Non-Productive Sectors

264. Since Sweden has remained an open society, business life has been able to continue albeit in a more limited manner, because of many different factors, for instance, social distancing requirements and differences in the response to the pandemic internationally.

265. Numerous measures have been taken to support businesses during the COVID-19 crisis. In some cases, legislation enacted during former times of crisis has been re-used.²⁹⁶ An example of this is a law regulating the deferral of payment of taxes in other situations than regulated in the ordinary legislation, which was reenacted, albeit with some modifications.²⁹⁷

266. Conversion Aid Act (2020:548) and the adhering ordinance were introduced on July 1, 2020.²⁹⁸ This act aims at compensating businesses for turnover losses and reorientation support, for example, to simplify a shift in production for a company or for a restaurant to direct its activities to take-away services.²⁹⁹ In order to receive conversion aid, the company must meet certain requirements and demands. The company needs to have business in Sweden or be approved for a so-called F-tax certificate in the country. Companies which are registered in certain States that are on the EU list of non-cooperative jurisdictions for tax purposes are not eligible for conversion aid.³⁰⁰

267. A temporary increase of a short-time work allowance was adopted. The Swedish short-time work allowance system means that employers can “reduce the employees’ working hours and receive financial support from the Government to compensate for retaining the employee”. The purpose of the program is to encourage diligent employers to keep their employees instead of making them redundant, which will decrease costs for hiring anew when the crisis is over.

²⁹⁵ Mats Melin leder coronakommissionen. Publicerad 30 juni 2020. URL: <https://www.regeringen.se/pressmeddelanden/2020/06/mats-melin-leder-coronakommissionen/>. Also, a report on 1,700 nursing homes by the Health and Social Care Inspectorate was presented on July 7, 2020. It found that: a) 70% of the deaths due to the COVID-19 occurred in only 40 municipalities; b) 91 nursing homes had severe problems and will be the object of further supervisory measures.

²⁹⁶ Prop. 2019/20:132. P. 32; Lind, Yvette. *Sweden and Denmark Incorporate Anti-Tax-Avoidance Rules into Very Different COVID-19 Responses*. Tax Notes International. June 8, 2020. P. 1130.

²⁹⁷ Lag (2009:99) om anstånd med betalning av skatt i vissa fall; 2019/20:132. P. 32–35. The Committee on Finance of the Riksdag contributed to important modifications in this proposal. Taxpayers will pay a deferral fee when granted a deferral of payment of taxes. The Committee pointed out that the deferral fee is equated to an interest rate of 6.6%, which it did not deem proportionate in the present context and due to the current low interest rates on the market. It made a demand to the Government to make the necessary changes in this regard and adjust the deferral fee to prevalent interest rates on the market (2019/20: FiU51. P. 5, 12).

²⁹⁸ Lag (2020:548) om omställningsstöd; förordning (2020:552) om omställningsstöd; prop. 2019/20:181.

²⁹⁹ Lind 2020. P. 1131.

³⁰⁰ Lag (2020:548) om omställningsstöd, § 3 sec. 3; Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes (2020/C 64/03).

268. Employers' social security contributions due to the COVID-19 disease were temporarily reduced. The reason for this was to alleviate the economic consequences of the COVID-19 and keep unemployment levels down.³⁰¹

269. The central Government public loan guarantee program was put in place. The purpose of the program is to make it easier for SMEs primarily to access financing, meaning that the Government will guarantee 70% of any new loans that banks provide to companies struggling financially due to the COVID-19 crisis. A limit has been set at 75 million SEK per borrower.³⁰²

2.5. Support Measures for Population

270. The Swedish Social Insurance Agency, the NBHW, and the National Board for Dialogue and Consultation between the Government and Civil Society are empowered to take support measures for the population.

271. The PHA recommends that people stay home if they feel unwell with cold symptoms, cough or fever, for as long as they feel unwell to prevent the COVID-19 from spreading.

272. Those infected are to be compensated for a lack of income for the time when they were forced to stay home (such individuals are entitled to a disease carrier's benefit for employees regulated in Chapter 46 of the Social Insurance Code).³⁰³

273. Due to the COVID-19 pandemic, some permanent adaptations have been made to the Social Insurance Code (2010:110) to make sure that the Government can make swift decisions regarding parental allowance, sickness benefit, disease carrier's benefit for employees, etc., in the case of extraordinary events.³⁰⁴ The Government has used these new competences to make certain decisions, for example, those relating to individuals belonging to a risk group³⁰⁵ to be able to receive a preventive sickness benefit in order to be able to afford to stay at home. There is also an ongoing inquiry into introducing benefits for individuals who have family members being part of a risk group.

³⁰¹ Prop. 2019/20:151. P. 23.

³⁰² Prop. 2019/20:142; information in English has been published on the Government webpage: <https://www.Government.se/articles/2020/03/proposed-central-Government-loan-guarantee-programme-for-small-and-medium-sized-enterprises/>; Lind 2020, p. 1131. Lind points out that the Government has clearly stated that loan guarantees will not be granted or upheld if it is used for bonuses, variable remuneration to senior management, or profit distribution. There are also demands that the companies have well managed finances and reasonable tax debts. This underlines that tax-evading companies are excluded from such aid measures, see Lind 2020. P. 1132–1133.

³⁰³ Prop. 2019/20:132. P. 92.

³⁰⁴ Chapter 2 § 5 a of the Social Insurance Code: Regeringen eller den myndighet som regeringen bestämmer kan med stöd av 8 kap. 7 § regeringsformen meddela föreskrifter om undantag från bestämmelserna om tillfällig föräldrapenning i 13 kap., sjukpenning och karens i 27 och 28 kap., smittbärrapenning i 46 kap. och handläggning av ärenden i 110 kap. Sådana föreskrifter kan endast meddelas vid extraordinära händelser i fredstid. Lag (2020:189). Prop. 2019/20:132. P. 96.

³⁰⁵ The National Board of Health and Welfare has been given the mission to identify these risk groups by the Government in April 2020; Socialstyrelsen, *Uppdatering av tidigare rapport gällande identifiering av de riskgrupper som löper störst risk att drabbas av ett särskilt allvarligt sjukdomsförlopp vid insjuknande i covid-19*, 2020-06-02.

VI. The United Kingdom

Summary

274. Since there is no written or official Constitution in the UK, there is, therefore, no formal part of a constitution which regulates emergencies. Instead, the UK responds to the COVID-19 pandemic under its pre-existing and new laws adopted in response to coronavirus.

275. The legal response can be characterized by the use of legislation as an instrument to achieve the policy goals of reducing the virus spread and mitigating its economic effects. Nearly everything that restricts individual liberty is done through legislation. Even those things that start off as guidance quickly become law. No extra-legal measures have been taken, and nothing has been done outside the law.

276. There is the Civil Contingencies Act, which is designed specifically to be used during an emergency. At the same time, the Government decided not to use this act. Instead, it passed new legislation and relied on a minor power in the Public Health (Control of Disease) Act 1984 to make emergency public health regulations.

277. There has been a plethora of measures put in place by the Government and public entities, such as the Bank of England, to provide financial support for individuals and companies affected by the COVID-19 crisis.

1. Public “Emergency” Response Regime

Overview of a State Machinery

278. The UK comprises four separate nations: England, Wales, Scotland, and Northern Ireland. Each nation also has the ability to pass laws for itself. In this light, a brief description of the hierarchy of norms in the UK is necessary.

279. The highest level is an Act of Parliament. This is a piece of primary legislation passed by the UK Parliament.

280. The next level is primary legislation passed by the legislatures of the devolved jurisdictions: these are an Act of the Northern Ireland Assembly, an Act of the Scottish Parliament, and an Act of Senedd Cymru (previously referred to as an Act of the National Assembly for Wales). There is no separate legislature for primary legislation for England which is simply an Act of Parliament.

281. The next level is secondary legislation. This is legislation made by a Minister or a Department under the authority of primary legislation (it can only be made if a primary legislation authorizes it). The most common form for secondary legislation is “regulations”, but they can also be referred to as subordinate legislation, delegated legislation, statutory instruments, statutory rules, or orders in council (depending upon the precise way that it is made). Secondary legislation can be made by the UK Government, or by the Governments of Northern Ireland, Scotland, or Wales.

1.1. Constitutional Framework

282. There is no written or official Constitution in the UK. Instead of a codified constitution, the UK has what may be termed an informal or uncodified constitution. This consists of statutes which have come to be regarded as having constitutional significance. This is not a formal status, instead, it is an informal appellation given to them by courts, politicians, and academics over time. The uncodified constitution also consists of court decisions and academic works which are regarded as constitutionally important by virtue

of a legal consensus. Within the uncodified constitution, there is nothing which seeks to regulate emergencies.

1.2. Pre-COVID-19 Regulatory Framework

283. The Civil Contingencies Act is the key law. This is an Act of Parliament, and it applies across the whole of the UK.³⁰⁶

284. This act applies to what are termed “emergencies”. An “emergency” in Sections 1 and 19, *inter alia*, means “an event or situation which threatens serious damage to human welfare in a place in the United Kingdom; an event or situation which threatens serious damage to the environment of a place in the United Kingdom, etc.” It is also noted that an event or situation threatens damage to human welfare only if it involves, causes or may cause, among others, loss of human life, human illness or injury. The event or situation mentioned may occur inside or outside the UK.

285. There is no general power to declare an emergency, and nor is there any requirement for such a declaration before emergency powers are exercised. As long as the conditions for an emergency are satisfied, there is no need to formally declare an emergency. A Minister (either UK-wide, or for Wales, Scotland, and Northern Ireland) has a power by order to specify that a particular thing is or isn’t an emergency.³⁰⁷ However, this isn’t a power to declare an emergency, instead, it is about clarifying whether a certain event falls within the definition of an emergency.

286. There is a minor additional power which applies in cases of “urgency”. The criteria are that there is “an urgent need” but that there is “insufficient time” for the regular procedure to be followed.³⁰⁸ This is a limited power which means that a Minister can do something by way of a written direction, rather than doing them by regulations. A “direction” will have the force of law for this purpose, but it does not fall within the normal hierarchy of norms. The rules for this urgency procedure are set out in Section 7 for England and Northern Ireland, Section 8 for Scotland, and Section 8A for Wales. This urgency provision mainly deals with administrative matters within government.

287. The Civil Contingencies Act sets out obligations to prepare for an emergency, and it also allows for normal government powers to be re-allocated to different branches of government during an emergency. But the key powers which apply during an emergency are set out in Part 2 of the act.

288. The most important power is a power to make emergency regulations.³⁰⁹ These can either be made by way of Order in Council (meaning they are made in the name of the Crown) or by a senior Minister of the Crown. A senior Minister means the Prime Minister, the Chancellor of the Exchequer, or a Secretary of

³⁰⁶ Civil Contingencies Act 2004. Section 35. See also *Cormacain R.* Keeping Covid-19 emergency legislation socially distant from ordinary legislation: principles for the structure of emergency legislation // *The Theory and Practice of Legislation.* Vol. 8. 2020. No. 3. P. 247-248. URL: <https://www.tandfonline.com/doi/pdf/10.1080/20508840.2020.1786272>.

³⁰⁷ *Ibid.* Section 1(4).

³⁰⁸ *Ibid.* Section 7.

³⁰⁹ *Ibid.* Section 20.

State — in essence, the most senior members of the UK Executive. They can only be made by a senior Minister of the Crown, if it is not possible to make them by way of Order in Council without a serious delay.³¹⁰

289. There are three conditions which must be met for making emergency regulations set out in Section 21 of the Civil Contingencies Act:

- an emergency has occurred, is occurring, or is about to occur;
- it is necessary to make provision for the purpose of preventing, controlling, or mitigating an aspect or effect of the emergency;
- the need for provision is urgent.

290. Section 27 of the Civil Contingencies Act sets out the procedure for scrutiny of the emergency regulations. After being made by the UK Executive, they must be laid before the UK Parliament as soon as it is reasonably practicable. They will automatically lapse 7 days after they are laid before the Parliament, unless the Parliament approves them. The Parliament has the power to pass a resolution negating the regulations, which has effect from a date specified by the Parliament (although they cannot retrospectively invalidate them). Parliament can also amend the emergency regulations — this is very unusual as in normal practice the Parliament only accepts or rejects secondary legislation, it never amends it. If the Parliament is prorogued or adjourned during this time, then there is an obligation to recall it in order to consider the emergency regulations.³¹¹ These emergency regulations can only be made by a Minister of the UK Executive. However, if they relate to Scotland, Wales, or Northern Ireland, a senior minister of those jurisdictions must be consulted by the UK Executive.³¹²

291. The UK Government must appoint Emergency Coordinators for each part of the UK, as well as Regional Nominated Coordinators for each region in which the emergency regulations are to have effect.³¹³

292. What concerns a sunset clause, there is no requirement on the length of a state of emergency, as there is no formal declaration of a state of emergency. However, there is a time limit on the duration of emergency regulations. Those automatically lapse 30 days after they are made, but they can be remade without any limitation.³¹⁴

293. It should be noted that the Civil Contingencies Act has not been used as a basis for the response to the COVID-19 pandemic.

³¹⁰ A serious delay is defined in Section 20(4) of the Civil Contingencies Act 2004 as a delay that might (a) cause serious damage, or (b) seriously obstruct the prevention, control or mitigation of serious damage. Regardless of the way that the regulations are made, Section 20(5) requires that they must contain a statement, made by the person making the regulations, (a) specifying the nature of the emergency in respect of which the regulations are made, and (b) declaring that the person making the regulations — (i) is satisfied that the conditions in Section 21 are met, (ii) is satisfied that the regulations contain only provision which is appropriate for the purpose of preventing, controlling or mitigating an aspect or effect of the emergency in respect of which the regulations are made, (iii) is satisfied that the effect of the regulations is in due proportion to that aspect or effect of the emergency, (iv) is satisfied that the regulations are compatible with the Convention rights (within the meaning of Section 1 of the Human Rights Act 1998).

³¹¹ Civil Contingencies Act 2004. Section 28.

³¹² Ibid. Section 29.

³¹³ Ibid. Section 24.

³¹⁴ Ibid. Section 26.

294. Public Health Act applies only to England and Wales. It is designed to cover normal public health matters, but it also contains some provisions which can apply in relation to emergencies.

295. There are two broad powers under this act:

- a power of the Government to make public health regulations. There are two different types of regulation: (a) international travel regulations and (b) domestic health protection regulations. The international travel regulations are made in respect of vessels, aircrafts, trains, etc. and are designed to stop the spread of disease into a country.³¹⁵ The criteria for domestic health protection regulations is that they are “for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination in England and Wales (whether from risks originating there or elsewhere)”.³¹⁶ Measures in domestic health protection regulations must be proportionate.³¹⁷ The more serious restrictions on personal liberty cannot be made under the domestic health protection regulations unless the regulations are made “in response to a serious and imminent threat to public health”.³¹⁸ Under the ordinary procedure for making these regulations, a draft must be laid before the Parliament (in the case of English regulations) or the Senedd Cymru (in the case of Welsh regulations), and the regulations will not take effect unless they have been approved by those legislatures.³¹⁹ Under the urgent procedure (which can be used if a Government Minister declares that it is necessary to use the urgent procedure) these Regulations must still be laid before the legislature, but come into force before the legislature has voted to approve them;³²⁰
- a power of a justice of the peace to make an order in respect of an individual. Any offences created cannot be punishable by a sentence of imprisonment, only a fine, and there are limitations on the size of that fine.³²¹

296. Justice of the peace orders have not been used in respect of the COVID-19 pandemic, and only public health regulations were used so far.

1.3. COVID-19 Regulatory Framework

297. In response to the spread of the COVID-19, the UK Parliament enacted the Coronavirus Act 2020 and the Scottish Parliament enacted the Coronavirus (Scotland) Act 2020 and the Coronavirus (Scotland) (No. 2) Act 2020. These are all pieces of *primary legislation* made as a direct consequence of the COVID-19 pandemic.³²²

298. The Coronavirus Act 2020 was made under the accelerated procedure, which meant it passed through all its parliamentary stages in under 1 week. Most acts take several months, at least, to go through all their parliamentary stages. It applies through the UK.

³¹⁵ Ibid. Section 45B.

³¹⁶ Ibid. Section 45C.

³¹⁷ Ibid. Section 45D(1).

³¹⁸ Ibid. Section 45D(4).

³¹⁹ Ibid. Section 45Q.

³²⁰ Ibid. Section 45R.

³²¹ Ibid. Section 45F(5) and (5A).

³²² For description of newly adopted legislation see, for example, *Cormacain R.* Op cit. P. 248–249, 252–254, 256–263.

299. Although many provisions of the Coronavirus Act 2020 are called “emergency” or “temporary” provisions, there is no express definition of the “emergency”.

300. The Coronavirus Act 2020 does not make any changes to the official bodies charged with implementing laws, but it does temporarily release them from some of their duties. The basic thrust of this act is to streamline official obligations in order to make it possible for the Government to continue to act during the pandemic. These changes are all expressly set out as temporary modifications of ordinary laws, expiring in accordance with the sunset clauses referred to above (**para. 292 of Annex 3 to the Analytical Report**).

301. In addition, the Coronavirus Act 2020 made specific provisions for Scotland which replicated the powers in the Public Health Act and essentially grant the Scottish Government the exact same powers that the English and Welsh Governments had under the Public Health Act to make public health regulations. It also granted the same powers in respect of justice of the peace orders that existed in England and Wales under that act.

302. Finally, the Coronavirus Act 2020 made similar provisions for Northern Ireland, enacted changes to the Public Health Act (Northern Ireland) 1967. These changes were essential to grant the Northern Ireland Government the exact same powers that the English and Welsh Governments had under the Public Health Act to make public health regulations. It also granted the same powers in respect of justice of the peace orders that existed in England and Wales under that act.

303. As for a sunset clause, there are a number of provisions which limit the duration of the Coronavirus Act 2020. As such:

- Section 89(1) states that the act expires 2 years after it is made. Although some of the administrative provisions continue to stay in force after that date;
- Section 90 grants the power to alter that expiry date. The Government may by regulations shorten or extend, but only by up to 6 months, that expiry date in relation to specific provisions. The power to extend may be repeatedly made, although each individual extension may only be for up to 6 months. If the Government makes regulations extending the expiry date, those regulations must be laid before the Parliament. The extension is lawful as soon as the regulations are made, but the extension will lapse unless it is approved by the Parliament within 40 days.³²³ Alternatively, the Government can lay a draft of the regulations before the Parliament, which can approve that draft;
- Section 98 sets out a procedure for a 6-month Parliamentary review. If the Parliament refuses to assent to a motion calling for the act to continue, then the Government must take action under Section 90 to make the act expire early. This procedure is repeated every 6 months.

304. Coronavirus (Scotland) Act 2020 was passed by the Scottish Parliament and is similar in scope to the Coronavirus Act 2020. It only applies to Scotland.

305. It has an express sunset clause in Section 12, and it was due to expire on September 30, 2020. The Scottish Ministers can by regulations extend this to March 31, 2021, and can further extend it to September 30, 2021. There is a power to bring forward this expiry date by regulations, meaning it can expire sooner than this.³²⁴ There is no criteria for the decision to extend the duration of the act, although the Scottish

³²³ Coronavirus Act 2020. Part 2. Sections 90, 93. URL: <https://www.legislation.gov.uk/ukpga/2020/7/contents>.

³²⁴ Coronavirus (Scotland) Act 2020. Part 2. Section 13. URL: <https://www.legislation.gov.uk/asp/2020/7/section/13>.

Ministers must state their reasons for any extension. Every 2 months, the Scottish Ministers must report to the Scottish Parliament on the status of the act, and the appropriateness of that status.

306. Coronavirus (Scotland) (No. 2) Act 2020 supplements the Coronavirus (Scotland) Act 2020, makes further temporary modifications to other laws in the same way as the Coronavirus (Scotland) Act 2020 did, and also only applies to Scotland. It also has sunset provisions similar to those in the Coronavirus (Scotland) Act 2020.

307. In Northern Ireland, the Assembly has not enacted any primary legislation concerning the pandemic. Nor are there any proposed bills on the subject before it.

308. In Wales, the Senedd Cymru has not enacted any primary legislation concerning the pandemic. Nor are there any proposed Bills on the subject before it.

309. There has been a huge number of pieces of secondary legislation made in response to the COVID-19. The social distancing regulations have had the most impact upon the population as a whole. These are the regulations which give effect to the lockdown. There is then a large number of other COVID-19 related regulations.

310. A summary of the social distancing regulations is set out in the table below. These regulations curtail personal liberties: preventing citizens from leaving their houses, shutting down businesses, etc. The table illustrates a decentralized mode of taking the decisions in relation to secondary legislation.

Social Distancing Regulations

Name	Date made	Extent
Health Protection (Coronavirus, Restrictions) (England) Regulations 2020	March 26, 2020	England
Health Protection (Coronavirus, Restrictions) (England) (Amendment) Regulations 2020	April 21, 2020	England
Health Protection (Coronavirus, Restrictions) (England) (Amendment) (No. 2) Regulations 2020	May 12, 2020	England
Health Protection (Coronavirus, Restrictions) (England) (Amendment) (No. 3) Regulations 2020	May 31, 2020	England
Health Protection (Coronavirus, Restrictions) (England) (Amendment) (No. 4) Regulations 2020	June 12, 2020	England
Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020	March 26, 2020	Wales
Health Protection (Coronavirus Restrictions) (Wales) (Amendment) Regulations 2020	April 3, 2020	Wales



Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 2) Regulations 2020	April 24, 2020	Wales
Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 3) Regulations 2020	May 11, 2020	Wales
Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020	March 26, 2020	Scotland
Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment Regulations 2020	April 1, 2020	Scotland
Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No. 2) Regulations 2020	April 21, 2020	Scotland
Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No. 3) Regulations 2020	May 28, 2020	Scotland
Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2020	March 28, 2020	Northern Ireland
Health Protection (Coronavirus, Restrictions) (Amendment) Regulations (Northern Ireland) 2020	April 24, 2020	Northern Ireland
Health Protection (Coronavirus, Restrictions) (Amendment No. 2) Regulations (Northern Ireland) 2020	May 15, 2020	Northern Ireland
Health Protection (Coronavirus, Restrictions) (Amendment No. 3) Regulations (Northern Ireland) 2020	May 19, 2020	Northern Ireland

311. The English and Welsh regulations were made under the Public Health Act. The Scottish regulations were made under the Coronavirus Act 2020. The Northern Irish regulations were made under the Public Health Act (Northern Ireland) 1967.

312. All regulations contain an express sunset clause which states that they automatically expire 6 months after they are made, or more precisely, 6 months from the date the “original” regulation in each jurisdiction was made.

313. As of December 2020, there are more than 200 pieces of secondary legislation on the official government website with the word “coronavirus” or “COVID” in the title.³²⁵

³²⁵ The Official website of the UK legislation. URL: www.legislation.gov.uk.

314. Besides social distancing regulations, they include regulations on restrictions on business and public gatherings,³²⁶ self-isolation,³²⁷ track and trace,³²⁸ and many others.

2. Measures Taken in the Fight Against the COVID-19 Pandemic

315. There have been a wide variety of different measures taken in a variety of fields in the UK. These measures cover the breadth of the regulatory spectrum — meaning that they are primary and secondary pieces of legislation (“hard law”), financial measures (taxes, subsidies), official guidance and advice (“soft law”).

2.1. General Measures

Transport

316. The Foreign & Commonwealth Office has advised against all but essential travel.³²⁹ At the international level there have been some basic restrictions introduced for persons traveling to the UK, for example, that they fill in a form stating where they are coming from and where they are staying.³³⁰

317. A requirement to wear face coverings whilst using public transport in England to protect against the risks to public health arising from coronavirus, except in certain limited cases, was introduced, for example, by the Health Protection (Coronavirus, Wearing of Face Coverings on Public Transport) (England) Regulations 2020.

Public Health

318. A multiplicity of measures has been taken in this sphere, both in primary legislation³³¹ and secondary legislation.³³²

319. Measures were taken in relation to hospitals, in order to secure National Health Service and care capacity, including the procurement of personal protective equipment, improving testing and tracking.

Education

320. Sections 37 and 38 of the Coronavirus Act 2020 provided for the closure of educational establishments. Minister and devolved administrations give directions for the restriction of attendance at educational institutions.

³²⁶ Health Protection (Coronavirus, Restrictions) (North of England) Regulations 2020 (SI 2020/828) and Health Protection (Coronavirus, Restrictions) (North East and North West of England) Regulations 2020 (SI 2020/1010): both as amended.

³²⁷ Health Protection (Coronavirus, International Travel) (England) Regulations 2020 (SI 2020/568).

³²⁸ Health Protection (Coronavirus, Collection of Contact Details etc and Related Requirements) Regulations 2020 (SI 2020/1005) (“the Track and Trace Regulations”), see: 27th Report, Session 2019-21 (HL 131).

³²⁹ The Official website of the UK Government. Foreign Travel Advice. URL: <https://www.gov.uk/foreign-travel-advice>.

³³⁰ See, e.g., the Health Protection (Coronavirus, International Travel) (England) Regulations 2020. URL: <https://www.legislation.gov.uk/uksi/2020/568/contents/made>.

³³¹ See Coronavirus Act 2020. Sections 2–5, 11–17.

³³² See, e.g., the Health Protection (Coronavirus, Restrictions) (England) (Amendment) (No. 2) Regulations 2020.

2.2. Containment Measures Regarding Industrial and Non-Productive Sectors

321. Containment measures as they relate to businesses and commercial undertakings in the UK are normally referred to as the social distancing regulations or the lockdown regulations. These laws are designed to stop the spread of the disease by shutting down shops and businesses.

322. The laws have been made under the authority of Public Health Act (for England and Wales), Coronavirus Act 2020 (for Scotland), Public Health Act (Northern Ireland) 1967 (for Northern Ireland).

323. The principal regulations are the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020, the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020, the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020, and the Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2020.

324. In addition, there has been one “local lockdown” which only applied in a particular area. This was contained in the following Regulations, also made under the Public Health Act, — the Health Protection (Coronavirus, Restrictions) (Leicester) Regulations 2020.³³³

325. These regulations have been made separately by the Governments of the 4 nations of the UK, although there is a considerable degree of symmetry between them.

Industrial Sector

326. All businesses (in England, Wales, Scotland, and Northern Ireland) which were open to the public were obliged to shut down, unless they were included in a list of exempt businesses. As the pandemic receded, the list of businesses which had to shut was reduced.

Non-Productive Sector

327. All businesses (in England, Wales, Scotland, and Northern Ireland) which were open to the public were obliged to shut down, unless they were included in a list of exempt businesses (these providing essential services or selling essential goods, e.g., food retailers, including food markets, supermarkets, convenience stores and corner shops, pharmacies and chemists, homeware, building supplies and hardware stores, funeral directors and many others).

328. Places that were obliged to shut down included:

- businesses selling food and drink for consumption in the premises. There were exemptions for those that could sell food and drink for consumption off the premises (such businesses could remain open);
- businesses which provided services or sold goods that could be described as non-essential — cinemas, theaters, nightclubs, etc.;
- businesses offering holiday accommodation;
- places of worship;

³³³ For detailed analysis of the Leicester lockdown, see *Cieslak E. Getting the timing right — a review of the Leicester lockdown Regulations // UK Constitutional Law Blog. URL: <https://ukconstitutionallaw.org/>.*

- businesses operating a library service except for orders that it received remotely and where it then delivered those orders to its clients.

329. There was also a residual category of businesses that were not specifically covered by law, i.e., there was no express law stating that such businesses must shut or that they must remain open. This category included, for example, factories, constructions work, house building, and in very broad and non-technical terms could be described as an industrial sector. In this regard, in accordance with normal constitutional practice in the UK, if there is no rule prohibiting it, it remains lawful. This means those businesses could remain open.

330. Non-compliance with the regulations is a criminal offense. The only punishment is a fine not exceeding level 5 on the standard scale, which currently amounts to 5,000 GBP. A person cannot be imprisoned for non-compliance. The 5,000 GBP maximum fine can only be imposed by a court.

331. As to a sunset clause, the regulations contained a 6-month expiry clause, as well as an obligation upon the Executive of each part of the UK to review them every 21 or 28 days to determine if they were still necessary.

2.3. Containment Measures Regarding Population

332. In the UK these are normally referred to as the social distancing regulations, or the lockdown regulations.

333. The principal regulations are the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020, Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020, Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020, Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2020. Those are amended frequently, and there is a symmetry between them.

334. The containment measures for the general population include, but are not limited to:

- restriction of movement. Initially, no person could leave the place where they were living without a reasonable excuse. Reasonable excuse was defined to include things like: shopping to buy necessities, taking exercise alone or with other members of a household, providing care to vulnerable people, accessing critical public services, etc.;
- restriction on staying overnight in a house other than your own unless you have a reasonable excuse;
- restriction on public gatherings. Initially, no more than 2 people could gather in a public place;
- restrictions on close contact between individuals.

335. Non-compliance with the regulations is a criminal offense which is normally dealt with by way of a fixed penalty notice.

336. As to a sunset clause, these regulations have a 6-month expiry clause and a 21- or 28-day review clause.

337. This is a summary outline of the taken restrictions. Each nation had a slightly different version of restrictions, and the restrictions have all been lifted at different times for each of the nations.



338. There were challenges in courts to these social distancing regulations, but none was successful.

339. There were a couple of cases before the courts as yet on the implementation of legal and regulatory framework related to the Coronavirus crisis.

340. In one case, *Hussain v Secretary of State for Health and Social Care* [2020] EWHC 1392 (Admin)³³⁴ concerning the legality of closing places of worship to prevent the spread of coronavirus, the English High Court found the Regulations to be lawful.

341. The case of *Dolan v Secretary of State for Health and Social Care* [2020] EWHC 1786 (Admin)³³⁵ also challenged the legality more generally of the lockdown Regulations. *De novo*, the High Court ruled that the Regulations were lawful. Although not expressly relying upon the precautionary principle, this principle was implicit in the judgement.³³⁶ On human rights grounds, this was a justified interference with the right to family life and it fell within the scope of measures that the Government could take for the protection of public health.

2.4. Support Measures for Industrial and Non-Productive Sectors

Industrial Sector

342. Various support measures for the farming sector were established, for instance, by the Payments to Farmers (Controls and Checks) (Wales) (Coronavirus) Regulations 2020 and the Direct Payments to Farmers (Application Deadlines) (Coronavirus) (Amendment) (England) Regulations 2020. For example, in England dairy farmers will be able to access up to 10,000 GBP each to help them overcome the impact of the coronavirus crisis.

Non-Productive Sector

343. The following measures for non-productive sector were taken:

- Covid Corporate Finance Facility (CCFF). The CCFF is operated by the Bank of England (BoE) on behalf of HM Treasury, and the detailed conditions are found in a joint BoE / HM Treasury Market Notice.³³⁷ The facility is designed to support liquidity among larger firms that can demonstrate they were in sound financial health prior to the impact of the COVID-19 and that they make a “material contribution” to the UK economy by helping them to bridge coronavirus disruption to their cash flows through the purchase of short-term debt. The scheme was designed to operate for at least 12 months and purchase sterling-denominated commercial paper;
- Coronavirus Large Business Interruption Loan Scheme helps medium- and large-sized businesses to access loans and other kinds of finance up to 200 million GBP;

³³⁴ The High Court of Justice. *Hussain v Secretary of State for Health and Social Care* [2020] EWHC 1392 (Admin). URL: <https://www.judiciary.uk/wp-content/uploads/2020/06/Transcript-of-Judgment-CO-1846-2020-Hussain-v-SS-for-Health-Social-Care.pdf>.

³³⁵ The High Court of Justice. *Dolan v Secretary of State for Health and Social Care* [2020] EWHC 1786 (Admin). URL: <https://www.judiciary.uk/wp-content/uploads/2020/12/Dolan-v-SSHSC-judgment-011220-.pdf>.

³³⁶ For further information on the application of the precautionary principle to public health emergencies, particularly in the European Union, see *Messerschmidt K. COVID-19 legislation in the light of the precautionary principle. 2020. No. 8 Theory and Practice of Legislation.*

³³⁷ See Joint HM Treasury and Bank of England Covid Corporate Financing Facility (CCFF) — Consolidated Market Notice 22 June 2020. URL: <https://www.bankofengland.co.uk/markets/market-notice/2020/joint-hmt-and-boe-ccff-consolidated-market-notice-May-2020>.

- Bounce Back Loan Scheme (BBLs) was established to provide financial support to businesses affected by the COVID-19 outbreak. The scheme helps SMEs to borrow from 2,000 GBP and up to 25% of their turnover;
- Coronavirus Business Interruption Loan Scheme was created to support SMEs with an annual turnover of up to 45 million GBP with access to 5 million GBP of finance in the form of term loans, overdrafts, invoice finance, and asset finance facilities for up to six years.

344. All VAT-registered UK businesses were made automatically eligible to the programs above with no application required.

2.5. Support Measures for Population

345. There have been a series of measures taken to support the general population, including, but not limited to:

- protection of tenants from eviction;³³⁸
- mortgage holidays for consumers;³³⁹
- freeze on repayments for 3 months for personal loans and credit card debts implemented by the Financial Conduct Authority;
- reduced VAT in various areas, such as zero rating for personal protective equipment used for protection from coronavirus;³⁴⁰
- Coronavirus Job Retention Scheme allowing businesses to place employees on a temporary leave of absence (known as furlough) and recoup 80% of their usual monthly wage costs from the UK tax authorities;
- Self-Employment Income Support Scheme allows self-employed workers to claim a taxable grant of 80% of their average monthly trading profits, paid out in installments.

³³⁸ See Section 81 and Schedule 29 of the Coronavirus Act 2020.

³³⁹ See Guidance issued by the Financial Conduct Authority: Mortgages and coronavirus: our guidance for firms (March 2020).

³⁴⁰ The Value Added Tax (Zero Rate for Personal Protective Equipment) (Coronavirus) Order 2020.

VII. The USA

Summary

346. The federal government instituted several travel restrictions, closed the United States borders, released social distancing guidelines, passed several relief packages for businesses and the population, and utilized emergency powers to facilitate production.

347. States and local governments had a more active role in issuing specific social distancing measures like stay-at-home orders, gathering bans, and face mask requirements while instituting closures of businesses, restaurants, bars, and schools. Both the federal and state governments have acted in compliance with the legal regulation of emergency situations within the country.

1. Public “Emergency” Response Regime

1.1. Constitutional Framework

348. The US Constitution neither explicitly includes general emergency powers nor provides any guidance on declaring an emergency.³⁴¹ The term “emergency” (or similar terms) is never used, emergency declarations and their duration are never addressed, and the explicit power of competent authorities is not explicitly defined. The Constitution arguably does contain implied emergency powers, which can be invoked during an emergency situation. For example, in Article I, Section 8, the granting of emergency powers by the US Congress is often interpreted to be implied by its authority to “provide for the common Defense and general Welfare”.³⁴²

349. Instead, executive emergency powers (including presidential emergency powers) derive from acts of Congress, the activation of which requires the President to declare a state of emergency.

350. While the Supremacy Clause of the Constitution requires “the preeminence of federal law in matters delegated to the federal government,” the Tenth Amendment to the Constitution reserves “police powers” to the states to promote public health, morals, or safety, and enact laws for the general welfare of the public.³⁴³ These police powers permit individual states to enforce public health interventions like isolation, quarantine, and other laws to mitigate the spread of an infectious disease during a pandemic.³⁴⁴ The Constitution grants these powers to the states, and in turn, states may delegate such powers to local governments, though the Constitution is silent on such delegation. Thus, the delegation of power to local jurisdictions is solely left up to the states, which vary from state to state on exactly how much discretion local governments have to make policy decisions for their people. For example, states that follow “Dillon’s Rule”, a state supremacy legal principle, hold that local governments are only permitted to engage in

³⁴¹ Emergency Powers, Legal Information Institute, Cornell Law School. URL: https://www.law.cornell.edu/wex/emergency_powers; Padhi C. Emergencies Without End: A Primer on Federal States of Emergency // Lawfare. 2017. URL: <https://www.lawfareblog.com/emergencies-without-end-primer-federal-states-emergency>; United States Supreme Court. *Youngstown Sheet & Tube Co. v. Sawyer*. Decision of June 2, 1952.

³⁴² National Emergency Powers. Congressional Research Service. March 23, 2020. URL: <https://fas.org/sqp/crs/natsec/98-505.pdf>.

³⁴³ Galva J. E., Atchinson C., Levey S. Public Health Strategy and the Police Powers of the State // Public Health Reports. Vol. 120. 2005. No. 1. P. 20–27; US Constitution, Amendment X.

³⁴⁴ Galva J. E., Atchinson C., Levey S. Public Health Strategy and the Police Powers of the State. P. 20–27.

activity specifically and explicitly sanctioned by the state government.³⁴⁵ Conversely, states that follow “home rule” confer greater authority by local governments by delegating them power.³⁴⁶ Thus, some local governments are permitted to proclaim a state of emergency within its territorial limits upon a finding by its chief executive. This local emergency power allows chief executives to enforce containment measures like curfews.³⁴⁷

1.2. Pre-COVID-19 Regulatory Framework

351. There are several general laws and regulations on emergency situations like pandemics in the US.

352. The National Emergencies Act authorizes the President to declare a national emergency.³⁴⁸ The declaration of an emergency by a President under the National Emergencies Act then starts a chain reaction, triggering emergency authorities under other federal statutes. Section 201 of the National Emergencies Act specifically authorizes the President to declare a national emergency, the document of which then must be immediately transmitted to Congress and published in the Federal Register. Under section 301 of the National Emergencies Act, the President must specify the provisions of law under which the President or other officials will act to enable statutory emergency authorities.³⁴⁹ This presidential declaration activates a number of federal laws delegating the President expanded authority during a national emergency.

353. The National Emergencies Act does not explicitly define what qualifies as an “emergency”. Rather, while the President is allowed to declare a national emergency, the President must also cite the specific emergency power activated under existing statutory law, notify Congress, maintain records of all orders and regulations that stem from the use of the emergency power, and regularly report the costs incurred to Congress.³⁵⁰

354. The Public Health Service Act (42 United States Code § 247d) authorizes the Secretary of Health and Human Services to lead the federal public health response to public health emergencies and declare a public health emergency.³⁵¹ The Public Health Service Act allows for the declaration of a public health emergency when “[1] a disease or disorder presents a public health emergency; or [2] a public health

³⁴⁵ Cities 101 – Delegation of Power, National League of Cities. URL: <https://www.nlc.org/resource/cities-101-delegation-of-power>.

³⁴⁶ Ibid.

³⁴⁷ For example, see Ordinance Amending Chapter 1, Code of Ordinances of the City of Columbus, Mississippi. URL: <https://www.msema.org/wp-content/uploads/2020/03/scan.pdf>.

³⁴⁸ National Emergencies Act, Pub. L. No. 94-412. Codified at 50 U.S.C. § 1601 et seq.

³⁴⁹ Ibid. §§ 1601–1651; National Emergencies Act, Sections 201 and 301. ASTHO Legal Preparedness Series Emergency Authority & Immunity Toolkit. ASTHO: Association of State and Territorial Health Officials. URL: <https://www.astho.org/Programs/Preparedness/Public-Health-Emergency-Law/Emergency-Authority-and-Immunity-Toolkit/National-Emergencies-Act,-Sections-201-and-301-Fact-Sheet/>.

³⁵⁰ National Emergency Powers. Congressional Research Service. March 23, 2020. URL: <https://fas.org/sqp/crs/natsec/98-505.pdf>.

³⁵¹ 42 U.S.C. § 247d; National Emergencies Act, Sections 201 and 301. ASTHO Legal Preparedness Series Emergency Authority & Immunity Toolkit. ASTHO: Association of State and Territorial Health Officials. URL: <https://www.astho.org/Programs/Preparedness/Public-Health-Emergency-Law/Emergency-Authority-and-Immunity-Toolkit/National-Emergencies-Act,-Sections-201-and-301-Fact-Sheet/>.

emergency, including significant outbreaks of infectious diseases or bioterrorist attacks, otherwise exists".³⁵²

355. The Robert T. Stafford Disaster and Emergency Assistance Act allows a state governor to petition the President for a declaration of a major disaster or emergency for that particular state when there is a finding that the disaster or emergency is of such severity and scope that the state government cannot effectively respond without federal assistance.³⁵³ The President can declare an emergency for any occasion, including public health emergencies, where the President determines that federal assistance is needed.³⁵⁴ Separate from this emergency declaration under the Stafford Act, the President can declare a major disaster, which is typically reserved for responses to natural events, such as hurricanes, tornadoes, or earthquakes, to assist state and local governments in their response efforts if the event has caused severe damage.³⁵⁵ States can declare a disaster or an emergency to petition for federal assistance under the Stafford Act. States will vary in terms of the specific processes and terminology that they use when declaring a disaster, emergency, or even a "disaster emergency," as was the case in New York state on March 7, 2020.³⁵⁶

356. The Defense Production Act of 1950 gives the federal government broad authority to direct private companies to meet the needs of the national defense. This power is typically used during times of war, domestic emergency preparedness, and recovery from terrorist attacks and natural disasters when there are grave concerns about the supplies and resources needed during such events.³⁵⁷

357. Upon declaration of an emergency, numerous federal statutes are triggered, making broad emergency powers available to the President and the executive branch. For example, relevant to the COVID-19 pandemic, a declaration of a public health emergency activates 21 United States Code § 360bbb-3, allowing the Secretary of Health and Human Services to authorize the use of an unapproved drug, device, or biological product or an unapproved use of an approved drug, device, or biological product.³⁵⁸ A declaration of an emergency under the Stafford Act and a declaration of public health emergency activates 42 United States Code § 1320b-5, which allows the Secretary of Health and Human Services to waive confidentiality, certification, sanctions, and other provisions as necessary to supply public health services.³⁵⁹ This justification allows for the temporary expanded use of telehealth and extending health provider licenses during an emergency.

³⁵² 42 U.S.C. § 247d.

³⁵³ The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. No. 93-288. Codified at 42 U.S.C. § 5121 et. seq.; Brennan Center for Justice. A Guide to Emergency Powers and Their Use. URL: <https://www.brennancenter.org/our-work/research-reports/guide-emergency-powers-and-their-use>.

³⁵⁴ The Federal Emergency Management Agency. The Disaster Declaration Process. URL: <https://www.fema.gov/disaster-declaration-process>.

³⁵⁵ Ibid.

³⁵⁶ New York Executive Order No.202, Declaring a Disaster Emergency in the State of New York. URL: <https://www.governor.ny.gov/news/no-202-declaring-disaster-emergency-state-new-york>.

³⁵⁷ The Defense Production Act of 1950. Codified at 50 U.S.C. § 2061 et seq.; Tucker E. What Exactly is the Defense Production Act? Military Times, March 19, 2020. URL: <https://www.militarytimes.com/news/your-military/2020/03/19/what-exactly-is-the-defense-production-act/>.

³⁵⁸ 21 U.S.C. § 360bbb-3; A Guide to Emergency Powers and Their Use, Brennan Center for Justice. URL: <https://www.brennancenter.org/our-work/research-reports/guide-emergency-powers-and-their-use>.

³⁵⁹ 42 U.S.C. § 1320b-5; A Guide to Emergency Powers and Their Use, Brennan Center for Justice. URL: <https://www.brennancenter.org/our-work/research-reports/guide-emergency-powers-and-their-use>.

358. The Brennan Center of Justice’s Guide to Emergency Powers and Their Use report identified 123 statutory powers that are activated and available to the President when they declare a national emergency; an additional 13 statutory powers are triggered when Congress declares a national emergency.³⁶⁰ At the same time, there is no legal basis or specific rule on the scope of what constitutes an emergency worthy of these declarations.

359. While there may not be an explicit scope set for what constitutes a national emergency worthy of such a declaration, this presidential power does not go entirely unchecked. When a national emergency is declared through the National Emergencies Act, Congress can attempt to overrule the President’s use of the National Emergencies Act by passing a joint resolution of both the House and the Senate to terminate the emergency.³⁶¹ In terms of duration, while Congress can terminate the declaration by a joint resolution, the President can terminate the emergency period by issuing another proclamation. Otherwise, the national emergency automatically ends one year after the declaration unless it was otherwise renewed by the President within 90 days of expiration by providing notice to Congress and publishing the renewed proclamation in the Federal Register.³⁶²

360. Federal, state, and local governments all possess the power to declare an emergency for a public health situation, like a pandemic. Generally, states do not need federal approval to declare an emergency; rather, they are permitted to declare an emergency following their own specific state processes. “Police powers” are reserved to the state governments under the Tenth Amendment to the Constitution to promote public health and safety and enact laws for the general welfare of the public.³⁶³ All 50 states and the District of Columbia have mechanisms allowing government officials to declare a state of emergency that activates authorities and resources.

361. States may declare and activate their emergency powers independent of the federal government, making these emergency powers decentralized, but there are also mechanisms allowing for emergency support for a particular state from the federal government. A state emergency declaration is typically made by the state’s governor, but some states do permit state health officers to declare public health emergencies. And due to the principles of federalism, state laws will be preempted if they conflict with the federal law.³⁶⁴ The ability of a local government to declare an emergency does vary from state to state, depending on the authority granted to the local government.

³⁶⁰ A Guide to Emergency Powers and Their Use, Brennan Center for Justice. URL: <https://www.brennancenter.org/our-work/research-reports/guide-emergency-powers-and-their-use>.

³⁶¹ Trimble M. When Can a President Declare a National Emergency? U.S. News & World Report. 8 Jan. 2019. URL: <https://www.usnews.com/news/national-news/articles/2019-01-08/what-is-a-national-emergency-and-when-can-a-president-legally-declare-one>; National Emergencies Act, Sections 201 and 301. ASTHO Legal Preparedness Series Emergency Authority & Immunity Toolkit. ASTHO: Association of State and Territorial Health Officials. URL: <https://www.astho.org/Programs/Preparedness/Public-Health-Emergency-Law/Emergency-Authority-and-Immunity-Toolkit/National-Emergencies-Act,-Sections-201-and-301-Fact-Sheet/>.

³⁶² National Emergencies Act, Sections 201 and 301. ASTHO Legal Preparedness Series Emergency Authority & Immunity Toolkit. ASTHO: Association of State and Territorial Health Officials. URL: <https://www.astho.org/Programs/Preparedness/Public-Health-Emergency-Law/Emergency-Authority-and-Immunity-Toolkit/National-Emergencies-Act,-Sections-201-and-301-Fact-Sheet/>.

³⁶³ Galva J. E., Atchinson C., & Levey S. Public Health Strategy and the Police Powers of the State. Public Health Reports. Vol.120. 1 Jan. 2005, No. 1. P. 20-27; U.S. CONST. amend. X.

³⁶⁴ National Emergencies Act, Sections 201 and 301. ASTHO Legal Preparedness Series Emergency Authority & Immunity Toolkit. ASTHO: Association of State and Territorial Health Officials. URL: <https://www.astho.org/Programs/Preparedness/Public-Health-Emergency-Law/Emergency-Authority-and-Immunity-Toolkit/National-Emergencies-Act,-Sections-201-and-301-Fact-Sheet/>.

362. The state's ability to declare an emergency is independent of and separate from its ability to request federal support to deal with an emergency. Should a state require federal support, namely financial assistance, to deal with a particular emergency, however, a state governor can petition the President for a declaration of a major disaster or emergency in their state when they need it under the Stafford Act. If this petition is approved by the President, then the federal government can provide financial assistance to the states to deal with the particular emergency.

363. Local governments are not specifically covered under the Constitution, but as noticed above, through the Tenth Amendment, states have the authority to give power, either broadly or more narrowly tailored, to local governments. In response to the pandemic, while some states can expressly preempt local public health responses at the county, municipal, or tribal level, other states establish a regulatory baseline and explicitly allow and empower local governments to issue more restrictive orders.³⁶⁵

1.3. COVID-19 Regulatory Framework

364. No new laws or regulations have been issued on emergency powers for authorities at the federal level. Nevertheless, there have been numerous laws and regulations issued during the COVID-19 regarding the measures taken.

2. Measures Taken in the Fight Against the COVID-19 Pandemic

365. On January 31, 2020, a public health emergency under the Public Health Service Act was declared in the United States as a result of the COVID-19 outbreak. The declaration stated that a public health emergency existed and had existed nationwide since January 27, 2020.³⁶⁶

366. On March 13, 2020, the President declared a national emergency under the authority of Sections 201 and 301 of the National Emergencies Act due to the COVID-19 outbreak in the United States.³⁶⁷ Under the declaration, the President directed the Secretary of Health and Human Services to exercise their authority under Section 1135 of the Social Security Act to waive certain provisions of Medicare, Medicaid, the State Children's Health Insurance Program, and the Health Insurance Portability and Accountability Act and to provide certification and notice to the Congress in advance.³⁶⁸

367. Also, on March 13, 2020, the President declared an emergency under Section 501(b) of the Stafford Act. The declaration notes that as of that date, 32 states, three territories, four tribes, and one tribal nation had already declared a state of emergency due to the COVID-19 outbreak.³⁶⁹

³⁶⁵ NLC: National League of Cities, Center for City Solutions. City Rights in an Era of Preemption: A State-by-State Analysis, 2018 Update. URL: <https://nlc.org/sites/default/files/2017-03/NLC-SML%20Preemption%20Report%202017-pages.pdf>; Davidson N. M., Haddow K. State Preemption and Local Responses in the Pandemic. URL: <https://www.acslaw.org/expertforum/state-preemption-and-local-responses-in-the-pandemic/>.

³⁶⁶ U.S. Department of Health & Human Services, Office of the Assistant Secretary for Preparedness and Response. Determination that a Public Health Emergency Exists. January 31, 2020. URL: <https://www.phe.gov/emergency/news/healthactions/phe/Pages/2019-nCoV.aspx>.

³⁶⁷ United States. President (2017-Present: Trump). (2020) Declaration of a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak. 13 March 2020. URL: <https://trumpwhitehouse.archives.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>.

³⁶⁸ Ibid.

³⁶⁹ For those declarations see Federal Management Emergency Agency (FEMA), COVID-19 Disaster Declarations. URL: <https://www.fema.gov/disasters/coronavirus/disaster-declarations>.

368. States also began to declare disasters under the Stafford Act to receive federal funding and support to cope with the growing outbreak. For example, on March 20, 2020, the federal government approved the disaster declaration by New York state, which made available federal funding for New York's emergency response.³⁷⁰ Similarly, as of June 8, 2020, disaster declarations from all 50 states, the District of Columbia, and four territories were approved by the federal government under the Stafford Act.³⁷¹ This move activated the Federal Emergency Management Agency emergency powers to provide assistance and response funds to the states.³⁷²

369. By March 16, 2020, all states declared a state of emergency, with Washington state being the first to do so on February 29 and West Virginia being the last state on March 16.³⁷³ The laws surrounding state declarations of emergency vary from state to state, with some requiring legislative approval, some states providing strict durational requirements, and other states allowing the emergency to remain in effect until otherwise lifted by a state order.

2.1. General Measures

Transport

370. The following measures were taken on a federal level:

- a travel ban for foreign nationals originating from China;³⁷⁴
- a travel ban from Iran by foreign nationals and a travel advisory warning for areas in Italy and South Korea;³⁷⁵
- a travel ban from EU countries by foreign nationals, excluding the United Kingdom and Ireland at first,³⁷⁶

³⁷⁰ White House Statements and Releases. President Donald J. Trump Approves New York Disaster Declaration. URL: <https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-approves-new-york-disaster-declaration-5/>.

³⁷¹ For such declarations see The Federal Emergency Management Agency. COVID-19 Disaster Declarations. URL: <https://www.fema.gov/coronavirus/disaster-declarations>.

³⁷² United States. President (2017-Present: Trump). (2020). Letter from President Donald J. Trump on Emergency Determination Under the Stafford Act. March 13, 2020. URL: <https://www.whitehouse.gov/briefings-statements/letter-president-donald-j-trump-emergency-determination-stafford-act/>.

³⁷³ State of Washington. Proclamation by the Governor 20-05. February 12, 2020. URL: <https://www.governor.wa.gov/sites/default/files/proclamations/20-05%20Coronavirus%20%28final%29.pdf>; State of West Virginia, Executive Department at Charleston. A Proclamation by the Governor. March 16, 2020. URL: <https://qgovernor.wv.gov/Documents/2020%20Proclamations/State-of-Emergency-March-16-2020.pdf>.

³⁷⁴ United States. President (2017-Present: Trump). (2020) Proclamation on Suspension of Entry as Immigrants and Nonimmigrants of Persons who Pose a Risk of Transmitting 2019 Novel Coronavirus. January 31, 2020. URL: <https://www.whitehouse.gov/presidential-actions/proclamation-suspension-entry-immigrants-nonimmigrants-persons-pose-risk-transmitting-2019-novel-coronavirus/>.

³⁷⁵ U.S. Department of State, Bureau of Consular Affairs. South Korean Travel Advisory. URL: <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/south-korea-travel-advisory.html>; U.S. Department of State, Bureau of Consular Affairs. Italy Travel Advisory. URL: <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/italy-travel-advisory.html>.

³⁷⁶ Saeed S. Trump's Europe Travel Ban Explained // Politico. March 12, 2020. URL: <https://www.politico.eu/article/coronavirus-donald-trump-europe-travel-ban-explained/>.

- a closure of the physical United States borders with Canada and Mexico to non-essential travel.

371. Individual states also placed restrictions on entering travelers. Early on, most state-level travel restrictions required those traveling from overseas or those who travel from early United States hot spots like New York, New Jersey, Connecticut, and the city of New Orleans to self-quarantine for at least 14 days.³⁷⁷

372. As to a sunset clause, all the measures have an expiry date.

Public Health

373. In a public health area, the following measures were taken (not exhaustive):

- increased infection control;
- environmental surface cleaning;
- use of recommended personal protective equipment;
- optimizing Personal Protective Equipment (PPE) supplies.³⁷⁸

Education

374. There was no nationwide school closure, most states ordered the closure of schools shortly after the national emergency declaration. Several governors announced these closures via press conference, while some states left the details up to local boards of superintendents and educations to handle.

2.2. Containment Measures Regarding Industrial and Non-Productive Sector

Industrial Sector

375. The United States Department of Homeland Security Cybersecurity and Infrastructure Security Agency released an original guidance for essential critical infrastructure workers on March 18, 2020. This document was intended to provide guidance to state and local jurisdictions, as well as the private sector, on distinguishing who should be considered essential critical infrastructure workers so that these workers can continue their work and perform their essential functions in spite of closures, restrictions, and social distancing mandates.³⁷⁹ “Critical Infrastructure” is defined to include any “systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems and assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination of those matters”.³⁸⁰ Several states explicitly adopted these guidelines for the workers and industries in their state.

³⁷⁷ State of Florida, Office of the Governor. Executive Order Number 20-82(1)(A). March 24, 2020. URL: https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-82.pdf.

³⁷⁸ Centres for Disease, Control and Prevention. Strategies for Optimizing the Supply of PPE during Shortages. URL: <https://www.cdc.gov/coronavirus/2019-ncov/hcp/ppe-strategy/strategies-optimize-ppe-shortages.html>.

³⁷⁹ The Cybersecurity and Infrastructure Security Agency. Identifying Critical Infrastructure During COVID-19. March 18, 2020. URL: <https://www.cisa.gov/identifying-critical-infrastructure-during-covid-19>.

³⁸⁰ USA Patriot Act of 2001 (Pub. L. 107-56), 42 U.S.C. § 5195c(e).



376. Most of the restrictive measures during the COVID-19 were taken at the state level as opposed to the federal level and vary from state to state. State Executive Orders have included closures of non-essential businesses, particularly retail businesses.

Non-Productive Sector

377. Similar to the industrial sector, most of the specific restrictive measures were taken at the state level and varied across the states. Several states had attempted to lessen the burden on the health care industry and free up the personal protective equipment stockpiles by requiring the postponement of elective medical procedures.

378. Restaurants were closed to in-person dining, though most allowed for takeout or delivery services during the closure. Other non-essential businesses, including retail businesses, entertainment businesses, and personal service businesses, were often closed by various states. These businesses were eventually allowed to reopen over time, following social distancing measures and capacity requirements that varied by regions within a given state.

379. Strict social distancing measures, including face mask requirements, were also introduced.

2.3. Containment Measures Regarding Population

380. At the federal level, the President announced social distancing guidelines, building upon guidelines issued by the Centers for Disease Control and Prevention, and, thus, limiting gatherings to fewer than 10 people, avoiding on-site dining at bars and restaurants, and limiting unnecessary travel on March 16, 2020.³⁸¹

381. Aside from these federal guidelines, specific social distancing restrictive measures, however, were primarily instituted at the state and local level and greatly varied by jurisdiction:

- according to the Centers for Disease Control and Prevention, April 6, 2020, was the first peak date of new COVID-19 cases in the United States.³⁸² By that date, 39 states had issued stay-at-home orders, with limited exceptions that varied by state to allow people to access essential services, engage in outdoor activity, and care for family members;³⁸³
- gathering bans, restrictions on public events. For example, on April 6, 2020, 29 states restricted gathering sizes, with the majority of those states banning gatherings of more than 10 people;³⁸⁴

³⁸¹ White House. 15 Days to Slow the Spread. March 16, 2020. URL: <https://www.whitehouse.gov/articles/15-days-slow-spread/>.

³⁸² Cases in the U.S. Centers for Disease Control and Prevention. URL: <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>.

³⁸³ Center for Public Health Law Research at the Temple University Beasley School of Law. COVID-19: State Emergency Declarations & Mitigation Policies. The Policy Surveillance Program, A LawAtlas Project. URL: <https://lawatlas.org/datasets/covid-19-emergency-declarations>; Boston University School of Public Health. Tracking COVID-19 Policies. April 1, 2020. URL: <https://www.bu.edu/sph/2020/04/01/tracking-covid-19-policies/>.

³⁸⁴ Center for Public Health Law Research at the Temple University Beasley School of Law. URL: <https://lawatlas.org/datasets/covid-19-emergency-declarations>; Boston University School of Public Health. URL: <https://www.bu.edu/sph/2020/04/01/tracking-covid-19-policies/>.

- face coverings in public places, while taking public transportation or shopping.

382. The majority of these measures was taken at the state level and varied widely temporarily as well as content-wise.

383. These containment measures taken at both the state and local levels are facing challenges from the public and in court for their infringement on personal freedom and business activity. For example, in the State of Michigan, armed protesters demonstrated against the governor's extension of a stay-at-home order at the Michigan capitol building back in late April 2020.³⁸⁵ Several states saw tense protests against stay-at-home orders or what many saw as the slow re-opening of businesses in some states worsening the already dire economic impact of the COVID-19-related business closures, after states like Georgia, Oklahoma, and South Carolina moved ahead with re-openings. There have also been several challenges to state COVID-19 measures. For example, a group of Michigan residents challenged the state's restrictions on intrastate travel. Yet the Michigan court refused to stop the restrictions, finding them to be reasonable measures amid the public health crisis.³⁸⁶ Similarly, there are several challenges to state stay-at-home orders that do not include exemptions for attending religious services, one of which has made its way to the United States Supreme Court. The United States Supreme Court denied the request of a California church to block the state's restriction on in-person worship services, based on the emergency situation and the ability of the state to impose such restrictions under the Constitution.³⁸⁷

384. There have been some successful challenges, most notably in the state of Wisconsin, where members of the Wisconsin legislature challenged the authority of Wisconsin executives to extend the state's stay-at-home order and the Wisconsin Supreme Court voted to overturn the state's stay-at-home order on May 13, 2020.³⁸⁸ Although some court rulings have been expedited during the emergency situation, the United States legal system is generally a slow process, further slowed by the closing of some court services amid the pandemic, so it may be a while until we know the outcome of further challenges.³⁸⁹ Lastly, there have been conflicts between local mayors and state governors, particularly surrounding the implementation of public face mask mandates. For example, the governor of Georgia is trying to block the mayor of Atlanta from imposing a face mask requirement for persons in public, filing a lawsuit on July 16, 2020, challenging the mayor's face mask ordinance, especially after the Governor issued a statewide executive order banning municipalities from issuing face mask mandates.³⁹⁰

³⁸⁵ Karson K. Michigan Gov. Whitmer: Protests 'undermine' state's response to COVID-19 crisis. ABC News. URL: <https://abcnews.go.com/Politics/michigan-gov-whitmer-protests-undermine-states-response-covid/story?id=70645516>.

³⁸⁶ Sobel L. & Musumeci M. Litigation challenging mandatory stay at home and other social distancing measures, Kaiser Family Foundation. URL: <https://www.kff.org/coronavirus-covid-19/issue-brief/litigation-challenging-mandatory-stay-at-home-and-other-social-distancing-measures/>.

³⁸⁷ Ibid.

³⁸⁸ Jimenez O. & LeBlanc P. Wisconsin Supreme Court strikes down state's stay-at-home-order, CNN. URL: <https://www.cnn.com/2020/05/13/politics/wisconsin-supreme-court-strikes-down-stay-at-home-order/index.html>.

³⁸⁹ Pandemic disrupts justice system, courts, American Bar Association. URL: <https://www.americanbar.org/news/abanews/aba-news-archives/2020/03/coronavirus-affecting-justice-system/>.

³⁹⁰ Carlisle M. Georgia Gov. Brian Kemp Sued to Block Atlanta's Face Mask Ordinance. Here's What to Know, Time. URL: <https://time.com/5868613/georgia-governor-brian-kemp-face-mask-atlanta-keisha-lance-bottoms/>.

2.4. Support Measures for Industrial and Non-Productive Sectors

Industrial Sector

385. On March 18, 2020, the President issued an Executive Order invoking emergency powers through the Defense Production Act, although the federal government did not immediately act on the provided powers.³⁹¹ Section 101 of the Defense Production Act allows the President to require private companies to prioritize government contracts over any other contracts to promote national defense.³⁹² As stated in the Executive Order, the President directed the Secretary of Health and Human Services to use the Defense Production Act powers to assist the healthcare system dealing with surge capacity in response to the outbreak by ensuring the production and distribution of ventilators and personal protective equipment.³⁹³

386. On April 28, 2020, the President issued another Executive Order again invoking the Defense Production Act to direct the Secretary of Agriculture to ensure that all meat and poultry processors continue operations, in response to several COVID-19 outbreaks among workers at several meat processing plants.³⁹⁴

387. On May 19, 2020, the President issued an Executive Order directing federal agencies to remove regulatory barriers to economic activity.³⁹⁵ The goal of the Order was to adjust regulatory requirements, either by extending agreements or utilizing enforcement requirements to promote job creation and economic growth in various industries.

Non-Productive Sector

388. The Coronavirus Preparedness and Response Supplemental Appropriations Act (H.R. 6074, Pub. L. 116–123) was signed into law by Congress³⁹⁶ and provided emergency appropriations of USD 8.3 billion to combat the COVID-19 outbreak in the United States. The act provides emergency funding for the research and development of vaccines and treatment, public health funding to support the response efforts of state

³⁹¹ Executive Order on Prioritizing and Allocating Health and Medical Resources to Respond to the Spread of COVID 19. March 18, 2020. URL: <https://www.federalregister.gov/documents/2020/03/23/2020-06161/prioritizing-and-allocating-health-and-medical-resources-to-respond-to-the-spread-of-covid-19>.

³⁹² Ibid.; NCSL: National Conference of State Legislatures. President Trump Declares State of Emergency for COVID-19. March 25, 2020. URL: <https://www.ncsl.org/ncsl-in-dc/publications-and-resources/president-trump-declares-state-of-emergency-for-covid-19.aspx>.

³⁹³ Executive Order on Prioritizing and Allocating Health and Medical Resources to Respond to the Spread of COVID-19. URL: <https://www.federalregister.gov/documents/2020/03/23/2020-06161/prioritizing-and-allocating-health-and-medical-resources-to-respond-to-the-spread-of-covid-19>; NCSL: National Conference of State Legislatures. URL: <https://www.ncsl.org/ncsl-in-dc/publications-and-resources/president-trump-declares-state-of-emergency-for-covid-19.aspx>.

³⁹⁴ United States. President. (2020) Executive Order on Delegating Authority Under the DPA with Respect to Food Supply Chain Resources During the National Emergency Caused by the Outbreak of COVID-19. April 28, 2020. URL: <https://www.federalregister.gov/documents/2020/05/01/2020-09536/delegating-authority-under-the-defense-production-act-with-respect-to-food-supply-chain-resources>.

³⁹⁵ United States. President. (2020) Executive Order on Regulatory Relief to Support Economic Recovery. May 19, 2020. URL: <https://www.federalregister.gov/documents/2020/05/22/2020-11301/regulatory-relief-to-support-economic-recovery>.

³⁹⁶ H.R. 6074, Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020, 116th Congress, Pub. L. 116–123. March 6, 2020.

and local agencies, medical supplies for surge capacity, loans for small businesses, and funds to assist in the global efforts to combat the COVID-19 pandemic.³⁹⁷

389. In addition to the above, aid package providing funding for testing, aid to health care providers, and a second round of funding for small businesses through the paycheck protection loan program through the Small Business Administration was adopted.³⁹⁸ While applications for Small Business Administration funding typically preclude foreign-owned businesses, in this specific situation a United States subsidiary of a foreign-owned business was still allowed to qualify. The Small Business Association is also providing export loans to small businesses to help identify new customer bases overseas to off-set losses due to the COVID-19.³⁹⁹

2.5. Support Measures for Population

390. The Families First Coronavirus Response Act (H.R. 6201, Pub. L. 116–127)⁴⁰⁰ supported the population by funding free coronavirus testing, providing extended family medical leave and paid sick leave for workers, and expanded unemployment benefits.⁴⁰¹ Specifically, this act temporarily expands the Family Medical Leave Act by covering leave for an employee who is unable to work or telework because that employee needs to care for a child under 18 if the child’s school or daycare is closed due to the COVID-19.⁴⁰²

391. In addition to that, the Coronavirus Aid, Relief, and Economic Security Act (H.R. 748, Pub. L. 116–136) was signed into law.⁴⁰³ This USD 2 trillion stimulus bill included direct payments to eligible Americans.⁴⁰⁴

392. The United States Centers for Disease Control and Prevention are providing guidance to states to ramp up their ability to implement contact tracing, specifically through the use of digital tools, like apps.⁴⁰⁵ States are varying in their approaches to contact tracing, with some state departments of health attempting to implement programs in-house, while other states are partnering with or contracting with private companies.⁴⁰⁶

³⁹⁷ Ibid.

³⁹⁸ Fabian J. Trump Signs \$484 Billion Package to Rescue Small Businesses // Bloomberg. April 24, 2020. URL: <https://www.bloomberg.com/news/articles/2020-04-24/trump-signs-484-billion-virus-rescue-package>.

³⁹⁹ U.S. Small Business Administration. Coronavirus (COVID-19): Small Business Guidance & Loan Resources. URL: <https://www.sba.gov/page/coronavirus-covid-19-small-business-guidance-loan-resources>.

⁴⁰⁰ U.S. Department of Labor, Wage and Hour Division. Families First Coronavirus Response Act: Employee Paid Leave Rights. URL: <https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave>.

⁴⁰¹ Ibid.

⁴⁰² Ibid.

⁴⁰³ U.S. Department of the Treasury. The CARES Act Works for All Americans. URL: <https://home.treasury.gov/policy-issues/cares>; ABA: American Bar Association. The Coronavirus Aid, Relief, and Economic Security (CARES) Act. May 18, 2020. URL: https://www.americanbar.org/advocacy/governmental_legislative_work/publications/washingtonletter/march-washington-letter-2020/cares-act-032020/.

⁴⁰⁴ Ibid.

⁴⁰⁵ Contact Tracing Resources, Centers for Disease Control and Prevention. URL: <https://www.cdc.gov/coronavirus/2019-ncov/php/open-america/contact-tracing-resources.html>.

⁴⁰⁶ National Academy for State Health Policy. State approaches to contact tracing during the COVID-19 pandemic. URL: <https://www.nashp.org/state-approaches-to-contact-tracing-covid-19/#tab-id-1>.

VIII. China

Summary

393. China does not have a general law regulating the state of emergency. Instead, the legal and regulatory framework for public health relating to emergency response consists mainly in the Constitution of the People's Republic of China, the Emergency Response Law, the Prevention and Treatment of Infectious Diseases Law, the Regulation on Responses to Public Health Emergencies and the government Response Plans for Public Health Emergency.

394. These arrangements exist in a multi-layered government structure, and the Hubei Province and the Heilongjiang Province are two illustrations for local operation. Overall, national and local emergency response plans are at the center of the system.

395. In terms of specific governmental measures, there have been restrictive and a wide range of support measures for industrial sectors, non-productive sectors, and population.

1. Public “Emergency” Response Regime

Overview of a State Machinery

396. The state machinery of the mainland China, organized according to the principle of democratic centralism under the Chinese Communist Party's leadership, mainly operates through five branches, namely, legislatures (the people's congresses), administration (the people's governments), judiciary (the people's courts), procuratorate (the people's procuratorates), and supervisory organs (supervisory commissions).⁴⁰⁷ Vertically, the formal administrative system is typically characterized by a five-layered hierarchy, consisting of the central government (the State Council), provincial-level governments (provinces, autonomous regions, centrally-administered municipalities), prefecture-level governments (autonomous prefectures, prefectures, prefecture-level cities and leagues), county-level governments (counties, autonomous counties, county-level cities, districts, etc.), and township-level governments (towns, subdistricts, district public offices, etc.).⁴⁰⁸ Below the formal five-layered structure are mass organizations of self-management at the grass-root level, mainly including residents committees among urban areas and villagers committees in rural areas.⁴⁰⁹

397. Governments at or above the county levels have general authority to administer affairs within their territorial areas, which is mainly achieved through executing resolutions by the legislatures at the corresponding levels, implementing guidance from higher governments as well as internally coordinating works of constituent departments. Each government department is both under the leadership of the government at the same level and subject to guidance by corresponding government departments at higher levels.⁴¹⁰

398. Powers to enact laws and policies are split among legislatures, governments, and constituent government departments at various levels,⁴¹¹ and all enactments can be roughly classified into several

⁴⁰⁷ Constitution of the PRC. Article 3. URL http://www.gov.cn/quoqing/2018-03/22/content_5276318.htm.

⁴⁰⁸ Ibid. Article 107.

⁴⁰⁹ Ibid. Article 111.

⁴¹⁰ Organization Law of the PRC for Local People's Congresses at All Levels and Local People's Governments at All Levels (2015 Amendment). Articles 8, 55, 59. URL: http://www.gov.cn/zhengce/2015-08/30/content_2922358.htm.

⁴¹¹ See generally the Legislation Law of the PRC (2015 Amendment). URL: http://www.npc.gov.cn/zgrdw/npc/dbdhhy/12_3/2015-03/18/content_1930713.htm.

categories. Apart from the Constitution of the PRC, on the top of the regulatory pyramid are national laws enacted by the National People's Congress and its Standing Committee, which are the supreme legislatures in China. Administrative regulations enacted by the State Council that supplement or implement laws are only secondary to laws and can override any other enactments that run contrary to them. At the central level, departments under the State Council have the power to formulate departmental rules to guide practice of local departments. Their normative effects are roughly comparable to local regulations enacted by local people's congresses and administrative rules formulated by local governments. Other miscellaneous enactments by administrative bodies are generally referred to as normative documents, which are of very low normative status but play an important role in daily administration.

1.1. Constitutional Framework

399. The Constitution of the PRC (2018 Amendment) prescribes the powers to decide and declare a state of emergency, although it neither provides any explicit definition for "a state of emergency" nor contains any time limit on the duration of a state of emergency.⁴¹² For the whole nation or a provincial administrative area to be placed under a state of emergency, the National People's Congress Standing Committee shall, first, make the decision, and the President of the PRC shall make a declaration on a state of emergency in pursuance of such decision. For any subpart of a provincial administrative area to be placed under a state of emergency, the powers to decide and declare are both at the hand of the State Council.

1.2. Pre-COVID-19 Regulatory Framework

400. The Emergency Response Law was enacted in 2007⁴¹³ to prevent and reduce the occurrences of emergency incidents, control, mitigate, and eliminate serious social damage caused by emergency incidents, standardize the emergency response activities, protect the life and property safety of the people, and maintain the national security, public safety, environment safety, and social order.⁴¹⁴ It covers all stages of emergency incidents response, including prevention and preparedness, surveillance and warning, response operations and rescue, and post-emergency response rehabilitation and reconstruction.⁴¹⁵

401. The term "emergency incidents" include natural disasters, calamitous accidents, public health accidents, and public security incidents, which occur abruptly and cause or may potentially cause serious social harm and for which measures for handling emergencies need to be adopted.⁴¹⁶ According to factors, such as a degree of social damage and extent of effects, natural disasters, accidental disasters, and public health incidents shall be rated in accordance with four levels: especially serious, serious, large, and ordinary. Specific standards for rating emergency incidents are to be made by the State Council or departments designated by it.

402. Based on the scope of effects, governments at the county levels shall be responsible for responding to an emergency incident within their administrative regions. Overall, governments at various levels have

⁴¹² There are only three places where the Constitution of the PRC mentions the term "state of emergency", in Article 67 (On functions and powers of the Standing Committee of the National People's Congress), Article 80 (On functions and powers of the President), and Article 89 (On functions and powers of the State Council) respectively.

⁴¹³ The Emergency Response Law of the PRC 2007. URL: http://www.gov.cn/flfq/2007-08/30/content_732593.htm.

⁴¹⁴ Ibid. Article 1.

⁴¹⁵ Ibid. Article 2.

⁴¹⁶ Ibid. Article 3.

very similar competences under this law. Regarding emergency preparedness, Article 17 stipulates that the State Council and local governments at or above the county levels shall establish and enhance an emergency response plan system. After a natural disaster, accidental disaster, or public health incident occurs, governments may take several emergency response measures according to emergency response plans.

403. There is no specific limitation on the duration of such emergency measures in the law. However, the chosen measures shall be appropriate for the nature, degree, and extent of social damage caused by an emergency incident; and where multiple measures are available for selection, those conducive to the maximum protection of the rights and interests of citizens, legal entities, and other organizations shall be selected.⁴¹⁷

404. Procedurally, governments are required to publicize their decisions and orders in response to emergency incidents. They shall also submit their decisions or orders to standing committees of the people's congresses at the same level for archival purposes, as well as report their work to the standing committees after emergency incidents were settled.⁴¹⁸

405. It is also noteworthy that if an emergency incident rated as "especially serious" poses a serious threat to the life or property safety of the people, national security, public safety, environmental safety, or social order, and its serious social damage cannot be eliminated or effectively controlled or mitigated by taking the emergency response measures, the Standing Committee of the National People's Congress or the State Council may decide on a state of emergency in accordance with the Constitution of the PRC and other relevant laws.⁴¹⁹

406. The Prevention and Treatment of Infectious Diseases Law was firstly enacted in 1989⁴²⁰ and experienced two subsequent amendments in 2004⁴²¹ and 2013.⁴²² This law contains provisions relating to prevention of infectious diseases, information reporting and publication, control of an epidemic situation, medical treatment, supervision, control, guarantee measures, and legal liability. It classifies infectious diseases into A, B, C classes according to their descending seriousness, and mandated response measures based on this classification.⁴²³

407. Overall, the health department under the State Council (which is currently the National Health Commission) has the authority to prevent and treat infectious diseases, supervising and controlling spread of diseases nationwide. Local health administrative departments exercise similar powers in their own administrative areas.⁴²⁴ Regarding control of the epidemic situation, governments are authorized to take

⁴¹⁷ Ibid. Article 11.

⁴¹⁸ Ibid. Article 16.

⁴¹⁹ Ibid. Article 69.

⁴²⁰ This legislation was followed by a departmental regulation issued by the Ministry of Health in 1991. See Ministry of Health, Implementing Methods for Prevention and Treatment of Infectious Diseases Law of the PRC. URL: http://www.gov.cn/flfg/2005-08/06/content_21031.htm.

⁴²¹ Prevention and Treatment of Infectious Diseases Law 2004. URL: http://www.gov.cn/qongbao/content/2004/content_62975.htm.

⁴²² Prevention and Treatment of Infectious Diseases Law 2013. URL: http://www.npc.gov.cn/wxzl/qongbao/2013-10/22/content_1811005.htm.

⁴²³ Ibid. Article 3.

⁴²⁴ Ibid. Article 6.

three categories of measures, including isolation, urgent measures, and declaration of epidemic areas.⁴²⁵

408. If there is a case of infection of a person with a Class A disease in any place, local governments at or above the county level may carry out isolation measures and at the same time report to the governments at the next higher level. If outbreaks of infectious disease require more stringent measures, local governments may report and obtain approval from the governments at the next higher level to take urgent measures. In more severe outbreaks of Class A or B infectious diseases, governments may declare an “epidemic area”, so that not only urgent measures can be taken, but also sanitary quarantine can be imposed on persons, goods, materials, and vehicles entering or leaving the epidemic area. Local governments at or above the county level may announce part or the whole of their administrative area as an epidemic area, but the power to declare national or cross-provincial epidemic areas is reserved to the State Council only. If necessary, provincial governments may decide to block an epidemic area of a Class A infectious disease in their own administrative areas. However, if a blockade would involve a large or medium-sized city, or cross more than one province, or interrupt main traffic line nationally, or would lead to blockade of national territorial frontiers, the decision shall be made by the State Council only.⁴²⁶

409. The Regulation on Public Health Emergency Response 2011 was enacted prior to the Emergency Response Law in 2007.⁴²⁷ This regulation was amended in 2011.⁴²⁸

410. This act defines “public health emergency” as “a sudden outburst of a serious contagious disease, colonial disease of unknown causes, important alimentary or occupational toxicosis that has caused or may cause severe effect on the health of the general public and to other incidents that severely affect the health of the general public”.⁴²⁹

411. Overall, this regulation mandates the State Council and provincial governments to establish *ad hoc* headquarters for handling public health emergencies at both national and provincial levels.⁴³⁰ It also requires the national health department and provincial governments to formulate response plans for public health emergencies.⁴³¹ Where any emergency occurs, the administrative departments of health shall organize experts to make comprehensive appraisals about the incidents, make initial judgment about the type of the emergency, and suggest whether to initiate the urgent response plans for emergencies or not.⁴³²

412. The power to initiate response plans for emergencies is split among the State Council and provincial governments according to the affected scope of emergencies,⁴³³ and once response plans are initiated, government departments shall accordingly take various measures under the supervision and

⁴²⁵ Ibid. Articles 41, 42, 43.

⁴²⁶ Ibid.

⁴²⁷ The Regulation on Public Health Emergency Response 2003. URL: http://www.gov.cn/zwqk/2005-05/20/content_145.htm.

⁴²⁸ The Regulation on Public Health Emergency Response 2011. URL: http://www.gov.cn/gongbao/content/2011/content_1860801.htm.

⁴²⁹ Ibid. Article 2.

⁴³⁰ Ibid. Articles 3, 4.

⁴³¹ Ibid. Article 10.

⁴³² Ibid. Article 26.

⁴³³ Ibid. Article 27.

guidance of the headquarters for the urgent response of emergencies.⁴³⁴

413. Moreover, in the case of a newly found outburst of contagious disease, the health administrative department of the State Council shall announce in good time whether it is a statutory infectious disease in accordance with the Prevention and Treatment of Infectious Disease Law, and the State Council shall decide whether an infectious disease shall be classified as a Class A disease.⁴³⁵

414. The National Response Plan for Public Health Emergency,⁴³⁶ the National Overall Response Plan for Emergency,⁴³⁷ and the National Response Plan for Medical and Health Rescue in Emergency⁴³⁸ are the normative documents issued by the State Council in 2006. Though of low normative status, they provide practical guidance to coordinate the work of various public bodies.

415. Of particular interest here is the National Response Plan for Public Health Emergency, which was formulated according to the 2003 Regulation on Public Health Emergency Response. Echoing the rating system required by the National Overall Response Plan for Emergency, the National Response Plan for Public Health Emergency classifies public health emergency incidents into four levels according to their nature: especially serious (Level I), serious (Level II), large (Level III), and ordinary (Level IV).⁴³⁹ This plan provides a list for “especially serious” public health emergencies,⁴⁴⁰ and the health department under the State Council has the power to add to this list. The State Council or its health department and other central departments shall organize the work for dealing with especially serious emergencies. For emergencies of lower levels, local governments shall alarm and respond, and they may adjust the level of emergency as circumstances change. The plan generally prescribes respective responsibilities of governments at various levels, health administrative departments, medical institutions, disease prevention and control organizations, supervisory institutions for public health, border sanitary institutions, etc.⁴⁴¹ For example, governments at various levels have powers to mobilize local material resources, define control areas, take restrictive and control measures, regulate population movement, implement transport quarantine measures, etc. Health administrative departments have the power to organize medical investigation, assess and suggest the level for public health emergency response, make technical standards, etc.

Subnational Regulatory Framework on Public Health Emergencies

416. Local regulations, government rules, or normative documents dealing with emergencies are usually formulated for local implementation of the national enactments. For the purposes of this Analytical Report the two localities, including Hubei Province and its capital city of Wuhan, and Heilongjiang Province and its capital city of Harbin, were selected.

⁴³⁴ Ibid. Articles 28, 31.

⁴³⁵ Ibid. Article 30.

⁴³⁶ The National Response Plan for Public Health Emergency. URL: http://www.gov.cn/yjgl/2006-02/26/content_211654.htm.

⁴³⁷ The National Overall Response Plan for Emergency. URL: http://www.gov.cn/yjgl/2006-01/08/content_21048.htm.

⁴³⁸ The National Response Plan for Medical and Health Rescue in Emergency. URL: <http://www.chinanews.com/news/2006/2006-02-28/8/696425.shtml>.

⁴³⁹ The National Response Plan for Public Health Emergency. Para. 1.3.

⁴⁴⁰ Six types of public health emergencies are currently on the lists, including spread of infectious atypical pneumonia or human infection with highly pathogenic avian influenza, expansion of unknown disease that have plagued multiple provinces, spread of pneumonic plague or pulmonary anthrax in medium or large-sized cities, etc.

⁴⁴¹ The National Response Plan for Public Health Emergency. Para. 4.2.

417. Following the Regulation on Public Health Emergency Response and the three National Response Plans for Emergency, the Hubei Provincial Government formulated its provincial Overall Response Plan for Emergency⁴⁴² and provincial Response Plan for Public Health Emergency in 2006,⁴⁴³ and the latter normative document was amended in 2011. In 2014, echoing the enactment of the 2007 Emergency Response Law, the provincial government issued an administrative rule titled the Methods for Emergency Response of Hubei Province.⁴⁴⁴

418. Compared with national enactments, provincial enactments have very similar structures but contain more detailed practical guidance. This is particularly illustrated by the Hubei Provincial Response Plan for Public Health Emergency.

419. The Provincial Plan adopts the four-level emergency rating system, and the standards for public health emergencies are stipulated to such a level of specificity that a public health department could judge whether flu infecting 30 students within one week in the same school would count as a public health emergency. The Plan also specifies detailed coordinative responsibilities of the provincial health department in response to different levels of emergency, and it generally mandates municipal and country governments to take restrictive measures such as delimiting areas for control, policing population movement, implementing sanitary quarantine for transportation, work ban, etc. Overall, this provincial plan has served as an important basis for actions by local health departments at or below the provincial level.

420. At the prefecture level, apart from implementation options on the National Overall Response Plan for Emergency and Emergency Response Law, the Wuhan government formulated local administrative rules and normative documents to establish a municipally based emergency responses system. In 2005, the government issued Wuhan Municipal Measures for Especially Serious or Large Public Emergency Response (Trial),⁴⁴⁵ an administrative rule that prescribes the obligation for prompt publicity of information about emergencies. In 2008, the government issued Wuhan Municipal Measures for Emergency Alarming and Response Information Publicity and Communication (Trial).⁴⁴⁶ It was until 2013 that the government enacted its Wuhan Municipal Overall Response Plan for Emergency⁴⁴⁷ and in 2014 the Wuhan Municipal

⁴⁴² Overall Response Plan for Emergency of Hubei Province. URL: http://www.gov.cn/yjql/2006-05/31/content_296612.htm.

⁴⁴³ Response Plan for Public Health Emergency of Hubei Province. URL: http://www.gov.cn/zhuanti/2006-05/31/content_2616056.htm.

⁴⁴⁴ Methods for Emergency Response of Hubei Province. Order 367 of Hubei Provincial People's Government. URL: http://www.hubei.gov.cn/govfile/ezl/201401/t20140121_1031934.shtml. It will be amended, and a new Medical Emergency Material Reserve Management Measures will be issued to improve efficiency and transparency of preparation and management of medical reserves during emergencies, see General Office of Hubei Provincial People's Government. 2020 Legislation Plan of Provincial People's Government. URL: http://www.hubei.gov.cn/zfwj/ezbf/202005/t20200526_2296443.shtml.

⁴⁴⁵ Wuhan Municipal Measures for Especially Serious or Large Public Emergency Response (Trial). URL: http://www.wuhan.gov.cn/zwgk/xxqk/zfwj/zfqz/202003/t20200316_972963.shtml.

⁴⁴⁶ Wuhan Municipal Measures for Emergency Alarming and Response Information Publicity and Communication (Trial). URL: http://www.wuhan.gov.cn/zwgk/xxqk/zfwj/szfwj/202003/t20200316_973591.shtml.

⁴⁴⁷ Wuhan Municipal Overall Response Plan for Emergency. URL: http://www.wuhan.gov.cn/zwgk/xxqk/zfwj/szfwj/202101/t20210119_1603138.shtml.

Response Plan for Public Health Emergency was issued.⁴⁴⁸

421. Few changes to existing local enactments are effective so far. A new local government regulation, however, was issued on January 29, 2020, by the Wuhan Headquarter for Prevention and Control of Novel Coronavirus Pneumonia, titled the Wuhan Municipal Interim Measures for Prevention and Control of Novel Coronavirus Pneumonia.⁴⁴⁹ This normative document did not enlarge the existing government powers under the national enactments but rather consolidated specific measures that the municipal government might take to counter the COVID-19. This document did not set a date of expiry, and termination of its effects depends on the epidemic situation.

Heilongjiang Province

422. Since 2008, the Heilongjiang provincial government has successively issued the Heilongjiang Provincial Overall Response Plan for Public Emergency⁴⁵⁰ and the Heilongjiang Provincial Measures for Managing Emergency Response Plans,⁴⁵¹ which remained unchanged during the COVID-19 epidemic.

423. It is noteworthy that on February 18, 2020, a special resolution was passed by the Standing Committee of the Heilongjiang Provincial People's Congress targeted to strengthen the prevention and control of novel coronavirus pneumonia according to law.⁴⁵² This resolution clarified and concretized competences of public bodies as a response to emerging local malpractices that lack legal basis. It expressly required the temporary emergency administrative measures to be suitable for nature, degree, and scope of the social hazards that may be caused by the epidemic, and rough, harsh, and blanket measures should be avoided. It also pointed to the government responsibility to report and archive their measures to the corresponding people's congresses and to the next higher governments for supervision.

424. In fact, resolutions of a similar kind have been adopted by standing committees of local legislatures in many other provinces and prefectures,⁴⁵³ many of which expressly endorse local governments at the county, prefecture, or provincial levels the power to enact local regulations, issue orders or make public notice in relation to provisional emergency response management measures.⁴⁵⁴

⁴⁴⁸ Wuhan Municipal Response Plan for Public Health Emergency. URL: http://www.wh.gov.cn/zwgk/xxqk/zfwj/bgtwj/202003/t20200316_974442.shtml.

⁴⁴⁹ Wuhan Headquarter for Prevention and Control of Novel Coronavirus Pneumonia. Wuhan Municipal Interim Measures for Prevention and Control of Novel Coronavirus Pneumonia. URL: http://wjw.wuhan.gov.cn/zwgk_28/zc/qfxwj/202011/t20201128_1520758.shtml.

⁴⁵⁰ Heilongjiang Provincial Overall Response Plan for Public Emergency. URL: http://www.gov.cn/gzdt/2008-08/22/content_1077160.htm.

⁴⁵¹ Heilongjiang Provincial Measures for Managing Emergency Response Plans. URL: <https://zwgk.hlj.gov.cn/zwgk/publicInfo/detail?id=368860>.

⁴⁵² Decision of the Standing Committee of the Heilongjiang Provincial People's Congress on Strengthening the Prevention and Control of Novel Coronavirus Pneumonia According to Law. URL: <http://www.hlj.gov.cn/zwfb/system/2020/02/18/010919698.shtml>.

⁴⁵³ *Jian H., Yin W.* Secure Rule of Law at Crucial Moments: Highlights in Local People's Congresses' Resolutions Combating Coronavirus Epidemic // *Journal of China's People's Congresses*. Vol. 4. 2020. P. 53-55.

⁴⁵⁴ *Ibid.* Beijing and Jiangsu are two examples among others. See Decision of the Standing Committee of the Beijing People's Congress to Win the Battle in Preventing and Controlling the Outbreak of Novel Coronavirus Pneumonia According to Law. URL: http://www.bjrd.gov.cn/zdqz/zyfb/jyjd/202002/t20200207_201314.html; Decision of the Standing Committee of the Jiangsu People's Congresses to Prevent and Control the Novel Coronavirus Pneumonia Epidemic and Ensure the Health and Safety of the People according to Law. URL: http://www.jsrd.gov.cn/zyfb/sjfq/202002/t20200208_520051.shtml.

425. At the prefecture level, the Harbin government has enacted over 20 local administrative rules by 2018, including the Guiding Opinions on Emergency Response Work, the Rules for Reporting Emergency Information, the Measures for Disclosure of Emergency Information, the Working Process of Emergency Response and Handling, the Measures on Issuing Warning Information on Emergency, Emergency Duty Work Rotation.⁴⁵⁵ It also enacted the Harbin Overall Response Plan for Public Emergency and the Response Plan for Public Health Emergency.⁴⁵⁶ These rules remain unchanged during the COVID-19 outbreak.

426. The major grounds for government actions during the epidemic are a series of orders and notices issued by the Harbin Headquarter for Responding Novel Coronavirus Pneumonia, which set out specific measures to be taken at different stages of control.⁴⁵⁷

1.3. COVID-19 Regulatory Framework

427. There were no laws and regulations adopted in relation to the COVID-19 pandemic due to the implementation of pre-COVID-19 laws and regulations.

2. Measures Taken in the Fight Against the COVID-19 Pandemic

2.1. General Measures

428. The blockade of Wuhan to prevent an outflow of cases to the whole country and concentrate treatment of patients was the first significant move. On January 23, 2020, the Wuhan Municipal Headquarter for Prevention and Control of Novel Coronavirus Pneumonia, an organization newly established on January 20, 2020, at the center of local epidemic control, issued a public notice that formally placed the city under lockdown.⁴⁵⁸

429. According to Article 43 of the Prevention and Treatment of Infectious Disease Law, when a Class A or Class B infectious disease prevails, the decision to block a large-sized city can only be made by the State Council after the city is declared as an epidemic area. It seems that Wuhan was *de facto* regarded as an epidemic area, despite that the State Council did not officially announce so.

Transport

430. Traffic control was implemented down through the whole administrative system. On January 24, 2020, the Novel Coronavirus Pneumonia Joint Prevention and Control Mechanism of the State Council issued the Notice on Strengthening Community Prevention and Control of Coronavirus Pneumonia

⁴⁵⁵ Harbin Municipal People's Government. Harbin City Emergency Response System Construction Plan during the "Thirteenth Five-Year Plan". URL: http://www.harbin.gov.cn/art/2018/3/7/art_4978_401173.html.

⁴⁵⁶ Harbin Overall Response Plan for Public Emergency and Response Plan for Public Health Emergency. URL: http://www.harbin.gov.cn/art/2016/11/16/art_13791_2087.html.

⁴⁵⁷ For example, Notice No. 8 issued on February 4, 2020, set off several restrictive measures on population movement and information collection in several districts of Harbin, the expiry of which was set dependent on the epidemic situation; Notice No. 16 issued on February 17, 2020, suspended all private clinics in Harbin. See No. 8 Notice of the Harbin Headquarter for Responding Novel Coronavirus Pneumonia. URL: http://www.harbin.gov.cn/art/2020/2/4/art_209_870818.html; No. 16 of the Harbin Headquarter for Responding Novel Coronavirus Pneumonia. URL: <http://www.hlj.gov.cn/zwfb/system/2020/02/17/010919596.shtml>.

⁴⁵⁸ Notice of Wuhan Headquarter for Prevention and Control of Novel Coronavirus Pneumonia, No. 1. URL: http://www.gov.cn/xinwen/2020-01/23/content_5471751.htm.

Outbreak.⁴⁵⁹

431. In addition to the above, sanitary quarantine measures were taken. In particular, international passengers upon arrival had to be concentrated and placed under a 14-day quarantine at designated places for medical observation on their own costs and since April 1, 2020, all passengers should take a nucleic acid test, and these measures are generally mandated by Article 17 of the Frontier Sanitary and Quarantine Law.⁴⁶⁰ Moreover, international flights have been significantly reduced.

Public Health

432. Quarantine for anyone who had recent travel history to Wuhan was introduced. Such person had to register with the local medical institutions and country health department and be placed under 14-day quarantine at home for medical observation, and confirmed cases received concentrated treatment in designated medical institutions.

Education

433. School classes were suspended. These measures are mandated by Article 49(4) of the Emergency Response Law, which stipulates that after the occurrence of natural disasters, accidents, or public health incidents, the people's government performing unified leadership duties may "prohibit or restrict the use of relevant equipment and facilities, closing or restricting the use of relevant places, suspending personnel-intensive activities or production and business activities that may cause harm to expand, and take other protective measures". Article 42(2) of the Prevention and Treatment of Infectious Diseases Law also mandated the local people's government at or above the county level to suspend work, business, and school classes when an infectious disease breaks out and prevails, subject to the approval of the next-higher-level governments.

434. Violation of these government restrictive emergency measures may result in civil, administrative, and/or criminal liabilities. According to Article 50(1) of the Public Security Administration Punishment Law,⁴⁶¹ non-compliance with government orders or resolutions in an emergency may incur fines and/or detention for at most 10 days. According to Articles 67 and 68 of the Emergency Response Law, any entity or individual that violates any provision of this law, causes the occurrence of an emergency incident or expansion of damage and inflicts damage to the body or property of any other person shall assume the civil liability according to law. If a violation of relevant legal provisions constitutes a criminal offense, criminal liabilities will also be imposed.

2.2. Containment Measures Regarding Industrial and Non-Productive Sectors

Industrial Sector

435. Most enterprises have suffered from the suspension of business, except for enterprises that

⁴⁵⁹ Novel Coronavirus Pneumonia Joint Prevention and Control Mechanism of the State Council. Notice on Strengthening Community Prevention and Control of Coronavirus Pneumonia Outbreak, No. 5 of 2020. URL: <http://www.nhc.gov.cn/jkj/s3577/202001/dd1e502534004a8d88b6a10f329a3369.shtml>.

⁴⁶⁰ Frontier Sanitary and Quarantine Law of the PRC 2018. URL: <http://www.customs.gov.cn/customs/302249/302266/302267/2369512/index.html>.

⁴⁶¹ Public Security Administration Punishment Law of the PRC 2005. URL: <https://www.cecc.gov/resources/legal-provisions/public-security-administration-punishment-law-chinese-text>.

produce, transport, and sell important medical protective equipment, sterilizers, medicines, or important life supplies, which have continued to operate to support epidemic control. Since late February 2020, the resumption of business has been gradually carried out locally according to differentiated levels of epidemic risks.⁴⁶² Still, many MSMEs, individual commercial households found it extremely hard to sustain.

Non-Productive Sector

436. In non-productive sector, catering, tourism, entertainment, and hoteling have especially suffered from government containment measures, facing significantly reduced market demands due to traffic control, community quarantine, and other specific restrictions. On January 24, 2020, the Ministry of Culture and Tourism urgently suspended all group travel and halted the selling of all flight and accommodation packages by tourism companies.⁴⁶³ On March 27, 2020, the China Film Administration urged all cinemas nationwide to suspend business.⁴⁶⁴ Most public museums, karaoke bars, and internet cafes were suspended from operation by local governments.

2.3. Containment Measures Regarding Population

437. Mandatory isolation and quarantine for three groups of the population according to the Prevention and Treatment of Infectious Disease Law were imposed. The first group were people confirmed as being infected by coronavirus, to whom medical treatment in isolation applies. The second group of people included suspected cases, those with suspicious fever symptoms, and people having close contact with confirmed cases, to whom medical observation applies. The third group of people were those in the places where coronavirus cases were detected. This is based on Article 41 of the Prevention and Treatment of Infectious Disease Law, which stipulated that “with respect to the places where there are cases of infectious diseases under Class A or to the persons in the special areas within such places, the local people’s governments at or above the county level where the above places are located may carry out isolation measures”.

438. Some subnational governments had taken harsh containment measures. One extreme example is the “Wartime Order” issued by the Zhangwan District Government in Hubei Province. The order required that all buildings in the district, no matter whether there were confirmed or suspected cases of the COVID-19, shall be blocked for 14 days and no residents other than medical professionals or those supplying daily necessities shall enter or leave buildings. All those who forcibly break into the isolation, warning and sealing facilities set up in the community, courtyards, buildings, and road entrances or exits shall be detained.⁴⁶⁵

⁴⁶² Novel Coronavirus Pneumonia Joint Prevention and Control Mechanism of the State Council. Notice Regarding the Issuance of Guidelines for the Prevention and Control Measures for the Resumption of Production and Work by Enterprises and Institutions in Areas of Different Risks in the Country, No.12 of 2020. URL: <http://www.scio.gov.cn/xwfbh/xwfbh/wqfbh/42311/43043/xqzc43049/Document/1679172/1679172.htm>.

⁴⁶³ Office of Ministry of Culture and Tourism. Urgent Notice on the Prevention and Control of Novel Coronavirus Pneumonia. URL: http://www.gov.cn/fuwu/2020-01/26/content_5472279.htm.

⁴⁶⁴ Paper News. Notice from the National Film Administration: All Cinemas Shall Not Resume Business or Shall Stop If They Have Resumed. URL: https://www.thepaper.cn/newsDetail_forward_6720498.

⁴⁶⁵ The Beijing News. Shiyan Zhangwan District Issued the First Wartime Control Order in the Country. Listen to What Legal Experts Say. URL: <http://www.bjnews.com.cn/news/2020/02/13/688836.html>.

439. In addition to the above the following measures were taken:

- ban on gathering;
- social distancing;
- health QR code system. In accordance with the system, individuals were supposed to download the mobile application to create a personal health QR code, and only individuals with QR codes showing healthy condition could freely access residency communities, take public transport, or go to public places.⁴⁶⁶ This system has a tracing function. Analogous to electronic certifying, it has been promoted nationwide, and many cities have cooperated for mutual recognition of local health QR codes to facilitate efficient population movement.

440. For the moment there is no public information on any claims lodged to a court concerning the containment measures taken to mitigate the COVID-19 crisis.

2.4. Support Measures for Industrial and Non-Productive Sectors

Industrial Sector

441. At the central level, government departments and financial institutions have adopted various financial measures to support industrial sectors, particularly for enterprises that guarantee epidemic control and MSMEs.

442. The Notice of Further Strengthening Financial Support for Prevention and Control of Novel Coronavirus Infection was issued by the Ministry of Finance together with other four central institutions on January 31, 2020.⁴⁶⁷ It required that during the epidemic period, medical enterprises important for the epidemic control or people's livelihood are subject to a list management system, and listed companies are supported by preferential interest rate credit, credit loans for SMEs.

443. Financial measures to support the resumption of production of MSMEs (People's Bank of China)⁴⁶⁸ included measures to:

- 1) provide 1.8 trillion CNY re-loan and subsidies;
- 2) support policy banks to increase the special credit quota of 350 billion CNY for private SMEs until the end of June 2020;
- 3) guide financial institutions to increase 300-billion CNY low-interest rates loans targeted at individual industrial and commercial households that were greatly affected by the epidemic;
- 4) increase bond financing support and establish a "green channel" for bond issuance in special periods;

⁴⁶⁶ China Daily. One Code for All: Localities Accelerate Mutual Recognition of Health QR Code. URL: http://www.cac.gov.cn/2020-04/14/c_1588409502738547.htm.

⁴⁶⁷ People's Bank of China, Ministry of Finance, China Banking Regulatory Commission, China Securities Regulatory Commission and State Administration of Foreign Exchange. Notice on Further Enhancing Financial Supports to Facilitate Prevention and Control of Novel Coronavirus Pneumonia, No.29 of 2020. URL: http://www.gov.cn/zhengce/zhengceku/2020-02/01/content_5473639.htm.

⁴⁶⁸ Gang Y. Make Good Use of Financial Support Policies to Promote Epidemic Prevention and Control and Economic and Social Development. URL: <http://theory.people.com.cn/n1/2020/0518/c40531-31713129.html>.

- 5) promote the integration of core enterprises and state-owned banks with accounts receivable financing platforms;
- 6) make temporary deferred repayment arrangements for SMEs (including individual industrial and commercial households) that meet the conditions and have temporary liquidity difficulties.

444. In addition to the above, exemption or reduction of taxes or fees was provided. For example, on February 2, 2020, the Ministry of Human Resources and Social Security, the Ministry of Finance, the State Administration of Taxation issued the Notice on Periodic Reduction and Exemption of Corporate Social Insurance Premiums.⁴⁶⁹ It stipulated that from February 2020, provinces other than Hubei might exempt MSMEs from payment of social insurance premiums for maximum 5 months; social insurance premiums of large enterprises might be levied in half for maximum 3 months.

445. Issuing force majeure certificates to enterprises, reducing inspection and quarantine costs, and increasing export credit insurance premium subsidies in Zhejiang Province.⁴⁷⁰

446. In Shanghai, it was even particularly emphasized that foreign-invested or owned enterprises would have national treatment for the COVID-19 related support measures.

Non-Productive Sector

447. To offset the adverse effects of restriction of business, there have been several support measures.

448. Under the Notice of Further Strengthening Financial Support for Prevention and Control of Novel Coronavirus Infection,⁴⁷¹ it was required that financial institutions should not blindly withdraw or cut-off lending, or pressure repayment of loans for industries, such as wholesale and retail, accommodation and catering, logistics and transportation, cultural tourism and other industries that were greatly affected by the epidemic.

449. On February 6, 2020, the Ministry of Finance and the State Taxation Administration issued a document on Relevant Tax Policies Supporting the Prevention and Control of the Outbreak of Novel Coronavirus Pneumonia. It prescribed that the maximum carryover period for enterprises in transportation, catering, accommodation, and tourism as the four “difficult” sectors should be extended from five to eight years.

2.5. Support Measures for Population

450. To alleviate the impacts of the COVID-19 pandemic on people’s livelihood, central and local

⁴⁶⁹ Ministry of Human Resources and Social Security, Ministry of Finance, State Administration of Taxation. Notice on Periodic Reduction and Exemption of Corporate Social Insurance Premiums, No.11 of 2020. URL: <http://www.chinatax.gov.cn/chinatax/n810341/n810755/c5144708/content.html>.

⁴⁷⁰ Zhejiang Provincial Leading Group for Work on Prevention and Control of Novel Coronavirus Pneumonia. Opinions on Supporting Micro and Small-sized Enterprises to Overcome Difficulties. URL: http://www.zj.xinhuanet.com/2020-02/06/c_1125536719.htm; Opinions on Further Supporting Micro and Small-sized Enterprises to Overcome Difficulties. URL: http://www.zj.xinhuanet.com/2020-03/11/c_1125693389.htm.

⁴⁷¹ People’s Bank of China, Ministry of Finance, China Banking Regulatory Commission, China Securities Regulatory Commission and State Administration of Foreign Exchange. Notice on Further Enhancing Financial Supports to Facilitate Prevention and Control of Novel Coronavirus Pneumonia, No.29 of 2020. URL: http://www.gov.cn/zhengce/zhengceku/2020-02/01/content_5473639.htm.

governments have taken various support measures.

451. As such, support measures to patients infected by the COVID-19 were adopted by a jointly issued notice of January 22, 2020, by the Ministry of Finance and the Medical Insurance Bureau. It directed provincial governments to reduce the financial costs for treatment,⁴⁷² which set up special healthcare reimbursement arrangements for COVID-19 patients.

452. Local street offices or county government departments for civil affairs were also obliged to provisionally help households suffering temporary difficulties due to quarantine, and government officials should regularly visit orphans, left-behind children, and the elderly to ensure that they were well cared for. It is important to notice that government assistance to people's livelihood during quarantine is a legal obligation.

453. Central and local governments adopted several measures to regulate labor relations and increase employment opportunities. For example, on January 24, 2020, the General Office of the Ministry of Human Resources and Social Security issued the Notice Concerning Properly Handling Labor Relations during the Prevention and Control of the Outbreak of Novel Coronavirus Pneumonia.⁴⁷³ It provided that if an employer resumed business but their employees could not return to work due to government measures, employing enterprises should make normal pay to their employees as if they had been working. If an enterprise experienced such difficulties that it had to suspend business for a period longer than a wage payment period (usually one month), employees providing normal work to support the enterprise should be paid no less than the local minimum wages. For those employees who were unable to work as normal, the employer should subsidize their living expenses, the specific standards of which were set by provincial governments, ranging from 60% to 100% of local minimum wages.

⁴⁷² Urgent Notice on Medical Insurance for Novel Coronavirus Pneumonia Outbreaks. URL: http://www.gov.cn/xinwen/2020-01/30/content_5473177.htm.

⁴⁷³ Notice on the Proper Resolution of Labor Relations Issues During the Prevention and Control of Novel Coronavirus Pneumonia. No. 5 of 2020. URL: http://www.gov.cn/zhengce/zhengceku/2020-01/27/content_5472508.htm.

IX. The Russian Federation

Summary

454. At the time of coronavirus epidemic occurrence, the existing legislation provided for the possibility of different regimes in terms of content and legal implications.

455. The Constitution of the Russian Federation and Federal constitutional law No. 3-FKZ dated May 30, 2001 “On the state of emergency” establish the possibility of introducing a “state of emergency”.

456. The possibility of declaring a state of emergency is defined by federal legislation. The COVID-19 spread could be regarded as an interregional emergency. The decision to declare an interregional emergency is the prerogative of the Government of the Russian Federation. However, due to the established criteria only natural and technogenic situations can be classified as emergencies, but not epidemics.

457. The federal legislation also provided for the possibility of introducing quarantine — a special restrictive measure aimed at preventing the spread of infectious diseases, at both the federal and regional levels.

458. During the COVID-19 spread, after changing the federal legislation, the concept of an emergency situation began to cover “the situation that has developed in connection with the spread of a disease that poses a danger to others”.

459. On the territory of all subjects of the Russian Federation, a regime of self-isolation is introduced by acts of the head of the subjects of the Russian Federation. In each subject of the Russian Federation, the method of isolation (self-isolation) and other restrictions and support measures were based on the sanitary and epidemiological situation and the specifics of the spread of the new coronavirus infection COVID-2019 in this subject of the Russian Federation (**Table 5, Table 6**).

1. Public “Emergency” Response Regime

1.1. Constitutional Framework

460. Article 56 of the Constitution of the Russian Federation⁴⁷⁴ provides for the declaration of a state of emergency on the entire territory of the Russian Federation and in individual areas to ensure the safety of citizens and protection of the constitutional order.

461. In accordance with the federal constitutional law, individual restrictions on rights and freedoms may be established, indicating the limits and duration of their validity.⁴⁷⁵ A state of emergency may be imposed in the presence of circumstances and following the procedure established by the Federal

⁴⁷⁴ The Constitution of the Russian Federation (adopted by national vote on 12.12.1993 with amendments approved during the all-Russian vote on 01.07.2020).

⁴⁷⁵ The following rights and freedoms guaranteed by the Constitution of the Russian Federation shall not be subject to limitation: the right to life (Article 20), personal dignity (Article 21), right to inviolability of private life, personal and family secret, protection of honor and good name (Article 23, part 1), the right to protection of information about private life (Article 24), guarantees of freedom of conscience and religion (Article 28), right to use freely their abilities and property (Article 34, part 1), right to housing (Article 40, part 1), guarantees of judicial protection of rights and freedoms (Article 46), right to trial (Article 47), right to qualified legal assistance (Article 48), and other judicial guarantees of the rights of citizens (Article 49–54).

constitutional law No. 3-FKZ dated May 30, 2001 “On the state of emergency”.

462. Against the background of the COVID-19 coronavirus pandemic, the state of emergency was not declared either on the entire territory or certain territories of the Russian Federation.

1.2. Pre-COVID-19 Regulatory Framework

463. Federal Law No. 68-FZ dated December 21, 1994 “On protection of the population and territories from natural and technogenic emergencies” has a general nature.

464. Until the Emergency Law was amended in April 2020⁴⁷⁶ it included the concept of “emergency”, which was defined as “the situation in the certain territory developed as a result of an accident, a dangerous natural phenomenon, a catastrophe, a natural or other disaster which can entail or has entailed human victims, the damage to human health or the environment, considerable material losses and violation of conditions of activity of people”.

465. Pursuant to the Emergency Law, the Government of the Russian Federation adopted a Resolution No. 304.⁴⁷⁷

466. In accordance with the Resolution No. 304, emergencies are divided into the following types:

- Emergency situation at a local level — the territory in which an emergency situation has developed and the living conditions of people are violated does not go beyond the territory of the organization (facility), while the number of people who have died and (or) suffered damage to health is not more than 10 or the amount of damage to the environment and material losses is no more than RUB 240 thousand;
- Emergency situation at a municipal level — the emergency zone does not go beyond the territory of one municipality, while the number of people who have died and (or) suffered health damage is no more than 50 or the amount of material damage is no more than RUB 12 million, as well as this an emergency cannot be attributed to a local emergency;
- Emergency situation at an inter-municipal level — an emergency zone affects the territory of two or more municipal or urban districts located on the territory of one subject of the Russian Federation, or inner-city territories of a city of federal significance, while the number of people who have died and (or) those who have received damage to their health is no more than 50 or the amount of material damage is no more than RUB 12 million;
- Emergency situation at a regional level — the emergency zone does not go beyond the territory of one subject of the Russian Federation, while the number of people who have died and (or) suffered health damage is over 50, but no more than 500, or the amount of material damage is over RUB 12 million, but not more than RUB 1.2 billion;
- Emergency situation at an interregional level — an emergency zone affects the territory of two or more subjects of the Russian Federation, while the number of people who have died and (or)

⁴⁷⁶ Federal Law No. 98-FZ of April 01, 2020, “On Amendments to Certain Legislative Acts of the Russian Federation on the Prevention and Elimination of Emergency Situations”.

⁴⁷⁷ Resolution of the Government of the Russian Federation No. 304 of May 21, 2007, “On classification of natural and technogenic emergencies”.

suffered damage to health is over 50, but no more than 500, or the amount of material damage is over RUB 12 million, but not more than RUB 1.2 billion;

- Emergency situation at a federal level — the number of people who have died and (or) suffered damage to health is over 500 or the amount of material damage is over RUB 1.2 billion.

467. Consequently, the main criteria that determine the classification of an emergency situation as an emergency of a corresponding nature are the number of people who have died and (or) suffered damage to health, and the amount of material damage.

468. At the same time, neither the Emergency Law nor the Resolution No. 304 provides for a period during which an emergency regime can be declared and continued.

469. The Emergency Law also contains the term “high alert mode” but does not establish its definition.

470. In addition to the terms “emergency situation” and “high alert mode”, the Emergency Law also provides for the concept of “mode of operation of management bodies and forces of the unified state system of emergency prevention and response”. These are “determined depending on the situation, forecasting the threat of an emergency and the occurrence of an emergency, the procedure for organizing the activities of the governing bodies and forces of the unified state system for the prevention and elimination of emergency situations and the main activities carried out by these bodies and forces in the mode of daily activities, with the introduction of a high alert mode or an emergency”.

471. The Emergency Law defines a unified state system of management bodies for the prevention and elimination of emergencies:

- in accordance with Article 80 of the Constitution of the Russian Federation and federal laws, the President of the Russian Federation determines the main directions of state policy and makes other decisions in the field of protecting the population and territories from emergencies;
- the Government of the Russian Federation decides to introduce a high alert or emergency situation on the entire territory of the Russian Federation or its part in the event of a threat and (or) an emergency of a federal or interregional nature;
- State authorities of the subjects of the Russian Federation make decisions on classifying emergency situations that have occurred as regional or inter-municipal emergencies and introduce a high alert or emergency mode for the relevant management bodies and forces of the unified state system for emergency prevention and response.⁴⁷⁸

472. Article 5 of the Federal Law dated March 30, 1999, No. 52-FZ “On the sanitary and epidemiological welfare of the population”⁴⁷⁹ attributes to the power of the Russian Federation the introduction and cancellation of restrictive measures (quarantine) on the territory of the Russian Federation and the introduction and cancellation of sanitary and quarantine control at checkpoints across the State border of the Russian Federation.

⁴⁷⁸ Emergency Law. Article 11(m).

⁴⁷⁹ Federal Law No. 52-FZ “On the Sanitary and Epidemiological Welfare of the Population”. Article 5. URL: <http://www.kremlin.ru/acts/bank/13636>.

473. Additionally, Article 6 of the Federal Law No. 52-FZ⁴⁸⁰ attributes to the powers of the subjects of the Russian Federation the introduction and cancellation in the territory of the subject of the Russian Federation restrictive measures (quarantine) on the basis of proposals, orders of the chief state sanitary doctors and their deputies.

474. Restrictive measures (quarantine) are defined in Article 1 of the Federal Law No. 52-FZ⁴⁸¹ as administrative, health-sanitary, veterinary, and other measures aimed at preventing the spread of infectious diseases and providing for a special regime of economic and other activities, restricting the movement of the population, vehicles, goods, cargos, and animals.

475. During the COVID-19 pandemic, no federal quarantine was introduced, but restrictive measures including self-isolation were introduced on the territory of all subjects of the Russian Federation by acts of the heads of the subjects of the Russian Federation with reference to the possibility of introducing a regional quarantine provided in Article 6 of the Federal Law No. 52-FZ.

476. The concept of self-isolation is used in the Resolution of the Chief state sanitary doctor of the Russian Federation dated March 30, 2020, No. 9 “On additional measures to prevent the spread of COVID-2019”, by which the heads of the subjects of the Russian Federation (heads of the supreme executive bodies) are prescribed to ensure isolation and medical observation of the persons who returned to Russia, as well as the introduction of restrictive measures, including a regime of self-isolation.

477. In each subject of the Russian Federation, the features of the isolation regime (self-isolation) were determined taking into account the sanitary and epidemiological situation and the peculiarities of the spread of the new coronavirus infection.

1.3. COVID-19 Regulatory Framework

478. In connection with the spread of the coronavirus infection, the concept of a “state of emergency” in April 2020 has been clarified so that it now includes “the situation that has developed in connection with the spread of a disease that poses a danger to others”.⁴⁸² These diseases included a new coronavirus infection (2019-nCoV).⁴⁸³

479. Even before making changes to the legislation, the following bodies were promptly formed:

- The Coordination Council under the Government of the Russian Federation on combating the spread of the new coronavirus infection in the territory of the Russian Federation, ⁴⁸⁴whose main tasks are to develop proposals to combat the spread of COVID-19 and organize interaction between state authorities;

⁴⁸⁰ Ibid. Article 6.

⁴⁸¹ Ibid.

⁴⁸² Federal Law No. 98-FZ.

⁴⁸³ Resolution of the Government of the Russian Federation No. 66 of January 31, 2020, “On amendments to the list of diseases that pose a danger to others”.

⁴⁸⁴ Resolution of the Government of the Russian Federation No. 285 of March 14, 2020, “On the Coordination Council under the Government of the Russian Federation on combating the spread of a new coronavirus infection in the Russian Federation”.

- the working group of the State Council of the Russian Federation on countering the spread of a new coronavirus infection caused by 2019-NCOV;⁴⁸⁵
- operational headquarters for the prevention of importation and spread of new coronavirus infection in the territory of the Russian Federation, created by the Government of the Russian Federation.⁴⁸⁶

480. After clarifying the list of emergencies, the competence of the management bodies of the unified universal state system for the prevention and elimination of emergency situations⁴⁸⁷ began to extend to the situation that has developed due to the spread of the COVID-19.

481. In connection with the spread of the new coronavirus infection, the Emergency Law clarified the powers of the Government of the Russian Federation to introduce high alert and emergency modes (without specifying the validity period of the relevant provisions). Thus, if there is a threat of occurrence and (or) the occurrence of certain emergency situations, the Government of the Russian Federation has the right to:

- make a decision on the exercise of the powers of the coordinating body of the unified state system for prevention and elimination of emergency situations;⁴⁸⁸
- make a decision on the introduction of a high alert or emergency situation on the entire territory of the Russian Federation or its part;⁴⁸⁹
- establish mandatory rules of conduct for citizens and organizations when introducing a high alert or emergency situation.⁴⁹⁰

482. In addition, the powers of the state authorities of the subjects of the Russian Federation were clarified, which, in particular, were empowered to establish rules of conduct that are binding on citizens and organizations when introducing a high alert or the threat of its occurrence to establish additional mandatory rules of conduct when the Government of the Russian Federation introduces a high alert or emergency situation.⁴⁹¹

483. It should be noted that no other federal legislation regulating the general response to emergencies caused by the spread of infections or other causes was adopted during the COVID-19 pandemic.

484. At the same time, several “anti-virus” legislative packages were developed and adopted.⁴⁹² In particular, more than 30 federal laws have been adopted that affect almost all vital areas, including

⁴⁸⁵ Decree of the President of the Russian Federation No. 73-rp of March 15, 2020, “On the working group of the State Council of the Russian Federation on countering the spread of a new coronavirus infection caused by 2019-NCOV”.

⁴⁸⁶ The decisions on the results of the meeting in the Government of the Russian Federation on the prevention and control of the spread of coronavirus infection can be found here URL: <http://government.ru/info/39357/>.

⁴⁸⁷ The Regulations on the unified State system for the prevention and Elimination of emergency Situations (approved by the Decree of the Government of the Russian Federation of December 30, 2003, No. 794).

⁴⁸⁸ Federal Law No. 98-FZ. Article 2(2)(a).

⁴⁸⁹ Ibid. Article 2(3).

⁴⁹⁰ Ibid.

⁴⁹¹ Ibid. Article 2(4)(a).

⁴⁹² How citizens are being supported in Russia during the COVID-19. October 26, 2020. URL: <http://duma.gov.ru/news/48314/>.

health,⁴⁹³ education,⁴⁹⁴ taxation,⁴⁹⁵ budget legislation,⁴⁹⁶ administrative liability,⁴⁹⁷ criminal liability,⁴⁹⁸ etc.

485. In addition to the above, the following decisions were made as a consequence of the spread of the coronavirus infection:

- until December 31, 2020, the Government of the Russian Federation was authorized to establish other cases of procurement of goods, works, and services for state and municipal needs in addition to the cases provided for in part 1 of Article 93 of Federal Law No. 44-FZ of April 5, 2013, "On the contract system of procurement of goods and services for state and municipal needs";
- Federal Law No. 294-FZ of December 26, 2008, "On the protection of the rights of legal entities and individual entrepreneurs in the exercise of state control (supervision) and municipal control" was amended, according to which, from April 1, 2020, to December 31, 2020, inspections are not carried out in respect of small businesses (unless otherwise established by the Government of the Russian Federation). The Government of the Russian Federation has the power to make decisions that provide for the specifics of organizing and implementing types of federal state control (supervision), as well as the specifics of licensing, accreditation, certification, state registration, conducting qualification exams and other licensing regimes;
- part 1 of Article 26.3.1 of Federal Law No. 184-FZ of October 6, 1999, "On general principles of organization of legislative (representative) and executive bodies of state power of subjects of the Russian Federation" was suspended until January 1, 2021, in the part of participation of subjects of the Russian Federation in the exercise of powers of the Russian Federation in subjects of conducting the Russian Federation and the powers of the Russian Federation in subjects of joint conducting;⁴⁹⁹
- heads (heads of supreme executive public authorities) of the subjects of the Russian Federation on the basis of the sanitary-epidemiological situation and characteristics of the spread of the new coronavirus infection in the corresponding subject of the Russian Federation had the right to determine within the boundaries of the subject the territories where implementation of the set of restrictive and other measures is envisaged, as well as to establish a special order of movement in the territory of persons and vehicles.⁵⁰⁰

486. As to a sunset clause, the legislation does not provide for the duration of the newly adopted amendments concerning the emergency powers of public authorities. This is probably due to the fact that the emergency powers themselves are already limited in advance by the term — the period for which the emergency is declared.

⁴⁹³ Federal Law No. 67-FZ.

⁴⁹⁴ Federal Law No. 164-FZ.

⁴⁹⁵ Federal Law No. 102-FZ; Federal Law No. 101-FZ dated April 1, 2020, "On amendments to Article 1 of the Federal Law 'On conducting an experiment to establish a special tax regime 'Tax on professional income'".

⁴⁹⁶ Federal Law No. 155-FZ of May 25, 2020, "On amendments to the budget code of the Russian Federation and the Federal Law 'On suspending certain provisions of the budget code of the Russian Federation and establishing the specifics of budget execution of the budget system of the Russian Federation in 2020'".

⁴⁹⁷ Federal Law No. 99-FZ.

⁴⁹⁸ Federal Law No. 100-FZ of April 1, 2020, "On amendments to the Criminal Code of the Russian Federation and Articles 31 and 151 of the Criminal Procedure Code of the Russian Federation".

⁴⁹⁹ Federal Law No. 98-FZ.

⁵⁰⁰ Decree of the President of the Russian Federation No. 239 of April 2, 2020, "On measures on ensuring sanitary and epidemiological welfare of the population on the territory of the Russian Federation in connection with the spread of new coronavirus infection (COVID-19)"; Decree of the President No. 316 of May 11, 2020, "On determination of the procedure for the renewal of measures on ensuring sanitary and epidemiological welfare of the population in subjects of the Russian Federation in connection with the distribution of new coronavirus infection (COVID-19)".

2. Measures Taken in the Fight Against the COVID-19 Pandemic

487. The Government of the Russian Federation adopted a variety of measures aimed at combating the spread of the new coronavirus disease in the Russian Federation and support measures to achieve a gradual recovery of business and personal activity in the aftermath of the pandemic.

488. The heads of the supreme executive bodies of the Russian Federation subjects have the right to establish restrictive and other measures, as well as the introduction of a special order of movement on the basis of adopted acts (**paras. 481–482 of Annex 2 to the Analytical Report**). This distribution of authority means decentralized decision-making to address the COVID-19 pandemic.

2.1. General Measures

Transport

489. A set of measures was introduced in the field of international communication, in particular:

- regular and charter flights from Russian airports to foreign airports and in the opposite direction were suspended;⁵⁰¹
- entry in the country was suspended for all foreign citizens,⁵⁰² and traffic through road, rail, pedestrian, river, and mixed checkpoints on the state border of the Russian Federation was restricted;⁵⁰³
- flights for the transportation of foreign citizens to foreign countries,⁵⁰⁴ as well as for transportation of Russian citizens from foreign countries were organized;⁵⁰⁵
- social support (assistance) was provided for the Russian citizens located on the territories of foreign countries.⁵⁰⁶

490. In most cases, the relevant legal acts indicated the temporary nature of the restrictions or established the terms of the support measures or the restrictions imposed.

⁵⁰¹ Decision on the results of the meeting of the Presidium of the Coordination Council under the Government of the Russian Federation on combating the spread of the new coronavirus infection in the Russian Federation.

⁵⁰² Order of the Government of the Russian Federation No. 635-R of March 16, 2020.

⁵⁰³ Order of the Government of the Russian Federation No. 763-R of March 27, 2020, "On measures for prevention of entry of the new coronavirus infection into the territory of the Russian Federation".

⁵⁰⁴ Instruction of the Government of the Russian Federation of March 27, 2020.

⁵⁰⁵ Order of the Government of the Russian Federation No. 767-R of March 28, 2020, "On allocation of budget appropriations for reimbursement of expenses incurred in regard to the implementation of measures for the transportation of citizens of the Russian Federation and citizens of other states from foreign countries with an unfavorable epidemiological situation associated with the spread of the new coronavirus infection".

⁵⁰⁶ Order of the Government of the Russian Federation No. 868-R of April 3, 2020, "On provision of social support (assistance) to Russian citizens located on the territories of foreign countries and being unable to return to the Russian Federation due to the spread of the new coronavirus infection"; Resolution of the Government of the Russian Federation No. 433 of April 3, 2020, "On approval of the Regulation on provision of social support (assistance) to Russian citizens located on the territories of foreign countries and being unable to return to the Russian Federation due to the spread of the new coronavirus infection"; Order of the Government of the Russian Federation No. 1407-R of May 28, 2020, "On provision of social support (assistance) to Russian citizens located on the territories of foreign countries and being unable to return to the Russian Federation due to the spread of the new coronavirus infection".

Public Health

491. A number of acts were adopted, which:

- provide for the state regulation of prices for pharmaceuticals;⁵⁰⁷
- allow the remoted retail sale of pharmaceuticals;⁵⁰⁸
- simplify procedures for state registration of medical devices;⁵⁰⁹
- establish specifics of the implementation of the basic program of compulsory medical insurance;⁵¹⁰
- provide budget appropriations for the implementation of priority measures in the healthcare sector;⁵¹¹
- provide the possibility to repurpose medical organizations;⁵¹²
- allocate more than RUB 33.4 billion⁵¹³ from the Reserve Fund of the Government to the subjects of the Russian Federation to equip 95,000 beds with oxygen supply systems;⁵¹⁴
- suspend limitations on the import of medical products until September 30, 2020;⁵¹⁵

⁵⁰⁷ Federal Law No. 67-FZ.

⁵⁰⁸ Decree of the President of the Russian Federation No. 187 of March 17, 2020, "On pharmaceuticals retail trade for medical use".

⁵⁰⁹ Resolution of the Government of the Russian Federation No. 299 of March 18, 2020, "On amendments to the Rules of state registration of medical devices".

⁵¹⁰ Resolution of the Government of the Russian Federation No. 432 of April 3, 2020, "On the specifics of implementing the basic program of compulsory medical insurance in the context of threat of the spread of diseases caused by the new coronavirus infection".

⁵¹¹ Order of the Government of the Russian Federation No. 705-R of March 21, 2020, "On the allocation of budget appropriations to the Ministry of Industry and Trade of the Russian Federation from Reserve Fund of the Government of the Russian Federation in 2020 to the procurement of artificial respiration units and extracorporeal membrane oxygenation devices, including works and services for their delivery to a medical organization in the subjects of the Russian Federation"; Order of the Government of the Russian Federation No. 709-R of March 21, 2020, "On the allocation of budget appropriations to the Federal Medical and Biological Agency of Russia from the Reserve Fund of the Government of the Russian Federation in 2020 for the prevention, diagnosis and treatment of the new coronavirus infection"; Order of the Government of the Russian Federation No. 723-R of March 25, 2020, "On allocation of budget appropriations to Rospotrebnadzor from the Reserve Fund of the Government of the Russian Federation in 2020 for the development of tools for the prevention and diagnosis of the new coronavirus infection".

⁵¹² Order of the Government of the Russian Federation No. 844-R of April 2, 2020, "On approval of lists of organizations and their structural divisions that shall carry out inpatient medical activities under the jurisdiction of Federal Executive authorities and private medical organizations that shall be repurposed to provide inpatient medical care to patients with a confirmed diagnosis of the new COVID-19 coronavirus infection or suspected having new COVID-19 coronavirus infection".

⁵¹³ Order of the Government of the Russian Federation No. 1362-R of May 22, 2020; Order of the Government of the Russian Federation No. 1131-R of April 24, 2020; Order of the Government of the Russian Federation No. 1130-R of April 24, 2020; Order of the Government of the Russian Federation No. 974-R dated April 12, 2020; Order of the Government of the Russian Federation No. 919-R of April 8, 2020; Order of the Government of the Russian Federation No. 432 of April 3, 2020; Order of the Government of the Russian Federation No. 844-R of April 2, 2020.

⁵¹⁴ Repurposing hospitals. URL: http://government.ru/support_measures/measure/30/.

⁵¹⁵ Decision of the Council of the Eurasian Economic Commission No. 38 of April 8, 2020, "On amendments to the decision of the Council of the Eurasian Economic Commission No. 21 of March 16, 2020".

- impose a moratorium on imposing penalties on medical organizations;⁵¹⁶
- establish a preferential duty on medical products for the period of March 16 —September 30, 2020;⁵¹⁷
- temporarily suspend the all-Russian periodic medical examination of the adult population of the Russian Federation.⁵¹⁸

492. This set of measures is mainly aimed at supporting the health system and ensuring the rights of citizens in the healthcare sector.

493. The validity period of these measures is often not specified, some of them are of a one-time nature. Specific terms and periods of action are set for individual measures.

Education

494. Changes⁵¹⁹ have been made to ensure the remote implementation of educational programs, as well as the state final examinations⁵²⁰ on the results of basic professional educational programs, using e-learning and distance learning technologies⁵²¹, as well as remote meetings of dissertation councils.⁵²²

495. This set of measures is protective and is aimed at preventing the spread of infection.

496. The period of validity of the measures is not set. Based on the fact that the measures introduced are not restrictive, they may be preserved in the future for an indefinite period.

2.2. Containment Measures Regarding Industrial and Non-Productive Sectors

497. By the Decree of the President of the Russian Federation No. 239 of April 2, 2020, “On measures on ensuring sanitary and epidemiological welfare of the population on the territory of the Russian

⁵¹⁶ Resolution of the Government of the Russian Federation No. 409.

⁵¹⁷ Decision of the Council of the Eurasian Economic Commission No. 21 of March 16, 2020, “On amendments to certain decisions of the Customs Union Commission and on approval of the list of goods imported into the customs territory of the Eurasian Economic Union in order to implement measures by the member states of the Eurasian Economic Union aimed at preventing the spread of the coronavirus infection 2019 – nCoV”.

⁵¹⁸ Order of the Government of the Russian Federation No. 710-R of March 21, 2020, “On temporary suspension of the all-Russian periodic medical examination of the adult population of the Russian Federation”.

⁵¹⁹ Federal Law No. 164-FZ.

⁵²⁰ Resolution of the Government of the Russian Federation No. 842 of June 10, 2020, “On the specifics of the state final examination on the results of basic general and secondary general education and entrance examinations for admission to bachelor degree and specialist degree programs in 2020”; Order of the Ministry of Education of the Russian Federation and the Federal Service for Supervision in Education and Science No. 298/656 of June 15, 2020, “On approval of a unified schedule and duration of a unified state examination for each academic subject, requirements for the use of teaching and education aids during the examinations in 2020”.

⁵²¹ Order of the Ministry of Science and Higher Education of the Russian Federation No. 397 of March 14, 2020, “On the organization of educational activities in organizations that implement educational programs of higher education and related additional professional programs in order to prevent the spread of the new coronavirus infection in the territory of the Russian Federation”.

⁵²² Resolution of the Government of the Russian Federation No. 751 of May 26, 2020, “On the specifics of holding meetings of councils on the defense of dissertations for the degrees of Candidate of Sciences and Doctor of Sciences during the period of measures aimed at preventing the spread of the new coronavirus infection in the territory of the Russian Federation”.

Federation in connection with the spread of the new coronavirus infection (COVID-19)”⁵²³ senior officials (heads of supreme executive public authorities) of the subjects of the Russian Federation were ordered to ensure the development and implementation of a set of restrictive and other measures, in particular, to suspend (restrict) activities on the territory of organizations regardless of their form of business and form of incorporation, as well as individual entrepreneurs.

498. In this regard, restrictive measures against industrial and non-productive sectors were established not at the federal (i.e., not on the territory of the entire country), but at the regional level. As a result, restrictive measures differ depending on the subject of the Russian Federation and the sanitary and epidemiological situation and specifics of the spread of the new coronavirus infection in a particular subject of the Russian Federation.

499. The result of the above was the amendments to the Administrative Code of the Russian Federation⁵²⁴ aimed at clarifying the administrative responsibility for certain offenses in public health protection in the Russian Federation. Administrative responsibility was introduced for failure to comply with the rules of conduct in case of an emergency or threat of its occurrence.

500. In addition, the provisions of the Administrative Code of the Russian Federation regulating liability for violations of legislation in the field of ensuring sanitary and epidemiological welfare of the population during an emergency or in case of a threat of spreading a disease that is dangerous to others were updated.

501. The specified offense entails the imposition of an administrative fine from RUB 50,000 to RUB 150,000 or administrative suspension of activity for up to 90 days for individual entrepreneurs and from RUB 200,000 to RUB 500,000 or administrative suspension of activity for up to 90 days for legal entities. If an administrative offense has caused harm to human health or death of a person, if these actions (inaction) do not include a criminal offense, it shall entail the imposition of an administrative fine from RUB 500,000 to RUB 1 million or administrative suspension of activities for up to 90 days for individual entrepreneurs and from RUB 500,000 to RUB 1 million or administrative suspension of activities for up to 90 days for legal entities.

2.3. Containment Measures Regarding Population

502. DPRF No. 239 provides for the possibility of establishing restrictive and other measures by acts of the heads (heads of the supreme executive bodies) of the subjects of the Russian Federation, as well as the introduction of a special order of movement.

503. In this regard, restrictive measures against the population were established not at the federal (i.e., not on the territory of the entire country), but at the regional level. As a result, restrictive measures differ depending on the subject of the Russian Federation and the sanitary and epidemiological situation and specifics of the spread of the new coronavirus infection in a particular subject of the Russian Federation.

504. Administrative responsibility was introduced for violation of legislation in the field of ensuring sanitary and epidemiological welfare of the population during an emergency or in case of a threat of spreading a disease that is dangerous to others (**para. 501 of Annex 3 to the Analytical Report**).

505. At the federal level, laws and by-laws have not been challenged or legally evaluated by the judiciary.

⁵²³ Decree of the President of the Russian Federation No. 239 of April 2, 2020, “Concerning measures ensuring the sanitary and epidemiological welfare of the population in the Russian Federation due to the spread of the novel coronavirus infection (COVID-19)”.

⁵²⁴ Federal Law No. 99-FZ.

The Presidium of the Supreme Court of the Russian Federation approved reviews of selected issues of judicial practice related to the application of legislation and measures to combat the spread of new coronavirus infection (COVID-19) in the Russian Federation.⁵²⁵

506. A number of measures taken by regional authorities have been challenged in the courts. For example, the Moscow City Court dismissed a class action lawsuit against the Mayor of Moscow in relation to the introduction of digital passes in Moscow,⁵²⁶ also the Moscow City Court dismissed claims against the Mayor of Moscow challenging fines in relation to violations of self-isolation,⁵²⁷ and others. However, many of the claims regarding self-isolation violations were upheld by the court.⁵²⁸

2.4. Support Measures for Industrial and Non-Productive Sectors

507. In order to take support measures for the industrial and non-productive sectors, a large number of regulatory documents were adopted, providing, among other things, the following:

- tax holidays are provided for the affected industries (from 3 to 12 months);⁵²⁹
- SMEs and organizations from the industries most affected by the coronavirus epidemic are exempt from taxes, fees, and insurance premiums for the second quarter of 2020;⁵³⁰
- enterprises from the affected industries, as well as community-focused non-profit organizations, can receive a preferential loan;⁵³¹
- entrepreneurs have been granted holidays on lease payments (applies to state, municipal, and private property);⁵³²
- SMEs can receive free financial assistance of RUB 12,130 per employee;⁵³³

⁵²⁵ Review on Selected Issues of Court Practice Related to the Application of Legislation and Measures to Fight the Spread of New Coronavirus Infection in the Russian Federation (COVID-19) No. 1 (adopted by the Presidium of the Supreme Court of the Russian Federation on April 21, 2020); Review on Selected Issues of Court Practice Related to the Application of Legislation and Measures to Fight the Spread of New Coronavirus Infection in the Russian Federation (COVID-19) No. 2 (adopted by the Presidium of the Supreme Court of the Russian Federation on April 30, 2020).

⁵²⁶ Moscow City Court. URL: <https://mos-gorsud.ru/fastsearch?q=%E2%84%963%D0%B0-3877%2F2020&page=1>.

⁵²⁷ Moscow City Court. URL: <https://mos-gorsud.ru/fastsearch?q=нарушение+режима+самоизоляции&page=1>.

⁵²⁸ Ibid.

⁵²⁹ Federal Law No. 102-FZ; Resolution of the Government of the Russian Federation No. 409.

⁵³⁰ Federal Law No. 172-FZ of June 8, 2020, "On amendments to part two of the Tax Code of the Russian Federation".

⁵³¹ Resolution of the Government of the Russian Federation No. 685 of May 15, 2020; Resolution of the Government of the Russian Federation No. 696 of May 16, 2020; Order of the Government of the Russian Federation No. 1286-R of May 16, 2020.

⁵³² Resolution of the Government of the Russian Federation No. 704 of May 16, 2020; Order of the Government of the Russian Federation No. 1296-R of May 16, 2020; Resolution of the Government of the Russian Federation No. 699 of May 16, 2020; Order of the Government of the Russian Federation No. 968-R of April 10, 2020; Resolution of the Government of the Russian Federation No. 440 of April 3, 2020; Order of the Government of the Russian Federation No. 670-R of March 19, 2020.

⁵³³ Resolution of the Government of the Russian Federation No. 658 of May 12, 2020; Resolution of the Government of the Russian Federation No. 576 of April 24, 2020; List of Presidential instructions following a meeting with the Government members (approved on April 21, 2020).

- interest-free salary loans are provided for companies in the affected industries;⁵³⁴
- programs of preferential loans at the rate of 8.5% and microloans for SMEs have been expanded;⁵³⁵
- insurance premiums have been reduced from 30% to 15% in respect of salaries for organizations and individual entrepreneurs;⁵³⁶
- the deadline for submitting reports to the Federal Tax Service has been postponed for up to 3 months;⁵³⁷
- a moratorium on the tax sanctions for non-submission of documents, the deadline for submission of which falls on the period from March 1 to June 1, 2020 has been introduced;⁵³⁸
- all on-site inspections, including tax and customs inspections, have been suspended until June 30, 2020;⁵³⁹
- 6-month bankruptcy moratorium has been introduced for the affected industries.⁵⁴⁰

508. In the context of self-isolation and the restrictions imposed, all support measures were presented on the websites of public authorities in order to facilitate public information and ensure prompt access to them.⁵⁴¹

509. In addition to the federal measures, regional support measures and initiatives were taken (**Table 5, Table 6**).

510. The authorities of the subjects of the Russian Federation have also established special business support centers and launched various initiatives on the Internet, for example, the Center for Support of the Moscow Economy created by the decision of the Operational Headquarters for the Moscow Economy.⁵⁴²

⁵³⁴ Resolution of the Government of the Russian Federation No. 575 of April 24, 2020; Order of the Government of the Russian Federation No. 1129-R dated April 24, 2020; Resolution of the Government of the Russian Federation No. 422 dated April 2, 2020.

⁵³⁵ Resolution of the Government of the Russian Federation No. 372 of March 31, 2020, "On amendments to the Rules for granting subsidies from the federal budget to Russian credit organizations and specialized financial companies for reimbursement of lost income on loans issued in 2019-2024 to small and medium-sized businesses, as well as individuals applying the special taxation scheme 'Professional Income Tax' at a preferential rate".

⁵³⁶ Federal Law No. 102-FZ.

⁵³⁷ Ibid; Resolution of the Government of the Russian Federation No. 409.

⁵³⁸ Federal Law No. 102-FZ.

⁵³⁹ Ibid.

⁵⁴⁰ Resolution of the Government of the Russian Federation No. 729 of May 22, 2020, "On amendments to the Resolution of the Government No. 428 of April 3, 2020".

⁵⁴¹ Federal Tax Service of Russia. URL: <https://service.nalog.ru/covid19/index.html>; URL: <https://service.nalog.ru/covid4/>; URL: <https://service.nalog.ru/covid/>; Ministry of Industry and Trade of Russia. URL: https://minpromtorg.gov.ru/press-centre/news/#!v_gisp_zapushhen_servis_monitoringa_sostoyaniya_sistemoobrazuyushhih_predpriyatij; Government of Russia. URL: http://government.ru/support_measures/.

⁵⁴² The Center for Support of the Moscow Economy. URL: <https://helpmoscoveconomy.ru/about>.

2.5. Support Measures for Population

511. In order to take support measures for the population, a large number of regulatory documents were adopted, providing, among other things, the following:

- repayment holiday for citizens have been introduced;⁵⁴³
- the validity period of some documents, namely, passports and driver's licenses has been extended;⁵⁴⁴
- the validity period of migration documents has been extended;⁵⁴⁵
- procedures for obtaining public services have been simplified: citizens do not need to collect certificates to receive social support;⁵⁴⁶
- remote registration in the public employment service has been simplified;⁵⁴⁷
- unemployment benefits have been increased;⁵⁴⁸
- period of unemployment benefits has been extended for 3 months, but shall end no later than on October 1, 2020;⁵⁴⁹
- a set of measures is established to support families with children: various payments for children aged 3–7,⁵⁵⁰ 3–16,⁵⁵¹ above 3 in April-June;⁵⁵²

⁵⁴³ Resolution of the Government of the Russian Federation No. 478 of April 10, 2020; Federal Law No. 106-FZ of April 3, 2020 "On amendments to the Federal Law 'On the Central Bank of the Russian Federation (Bank of Russia)' and certain legislative acts of the Russian Federation regarding the specifics of changing the terms of the loan agreement".

⁵⁴⁴ Decree of the President of the Russian Federation No. 275 of April 18, 2020, "On the recognition of certain documents of citizens of the Russian Federation as valid".

⁵⁴⁵ Decree of the President of the Russian Federation No. 274 of April 18, 2020, "On temporary measures to regulate the legal status of foreign citizens and stateless persons in the Russian Federation in connection with the threat of the further spread of the new coronavirus infection (COVID-19)".

⁵⁴⁶ Order of the Government of the Russian Federation No. 1535-R of June 11, 2020. URL: <http://publication.pravo.gov.ru/Document/View/0001202006150006?rangeSize=1>.

⁵⁴⁷ Resolution of the Government of the Russian Federation No. 460 of April 8, 2020, "On approval of Temporary rules for registering citizens in order to find suitable work and as unemployed, as well as for providing social payments to citizens recognized as unemployed in accordance with the established procedure".

⁵⁴⁸ Resolution of the Government of the Russian Federation No. 346 of March 27, 2020, "On the minimum and maximum amounts of unemployment benefits in 2020".

⁵⁴⁹ Resolution of the Government of the Russian Federation No. 844 of June 10, 2020, "On amendments to certain acts of the Government of the Russian Federation".

⁵⁵⁰ Resolution of the Government of the Russian Federation No. 384 of March 31, 2020, "On approval of the basic requirements to the procedure for allocating and implementing a monthly cash payment for a child aged 3-7 inclusive, a suggested list of documents (information) required for allocating the specified monthly payment and a standard application form for its allocation"; Decree of the President of the Russian Federation No. 199 of March 20, 2020, "On additional measures of state support for families with children".

⁵⁵¹ Decree of the President of the Russian Federation No. 317 of May 11, 2020, "On amendments to Decree of the President of the Russian Federation No. 249 of April 7, 2020, 'On additional measures of social support for families with children'". URL: <http://government.ru/docs/39668/>.

⁵⁵² Ibid.

- incentive payments are established for extra-duty assignments and additional workload for medical workers.⁵⁵³

512. The period of duration for such support measures is provided. In general, it does not exceed 6 months.

⁵⁵³ Regulation of the Government of the Russian Federation No. 852-R of April 2, 2020, "On approval of distributing other intergovernmental transfers provided in 2020 from the federal budget to the budgets of the Russian Federation subjects, the financial support source of which is budget appropriations of the reserve fund of the Government of the Russian Federation, for the purposes of co-financing, including in full the expenditure commitments of the Russian Federation subjects arising from implementation of incentive payments for extra-duty assignments and additional workload for medical workers who provide medical assistance to citizens diagnosed with the novel coronavirus infection and persons at novel coronavirus infection risk".



ANNEX 4. “SECOND WAVE” RESPONSE TO THE COVID-19 PANDEMIC BY STATES⁵⁵⁴

I. France

Summary

1. The state of health emergency that was introduced on March 23, 2020, was withdrawn on July 10, 2020. However, facing a new exponential growth of infections, the President decreed it again on October 14, 2020. Since then, the Statutes No. 2020-1379 and No. 2021-160 have intervened extending the state of health emergency until June 1, 2021. Using the powers stemming from the state of health emergency, the Government imposed a new lockdown until mid-December followed by a curfew from 18:00 to 6:00. In addition to that, in March 2021, facing a deterioration of the epidemic situation, local lockdowns on weekends were ordered.

2. Immediately after the first wave of the COVID-19 pandemic, Prime Minister Édouard Philippe gave his resignation to President Emmanuel Macron. This led to a new Government directed by Prime Minister Jean Castex. Since then, economic recovery has been clearly put into priority, and this is shown by the decree regarding the Ministry of Economic Affairs and the creation of the Planning High Commissioner.

3. Depending on the destination of departure, certain public transportation is still limited. A negative COVID-19 test of no more than 72 hours is mandatory to enter the French territory. Other restrictions are still in force, though a lot of businesses could open again during summer 2020. Since October 2020, certain types of businesses, including bars and museums, had to close again. Some remained closed since March 2020 (for instance, dance clubs). To assist such businesses, the Government maintained the main support measures — the state warrantee and the solidarity fund of short-term working arrangement.

4. The vaccination campaign started in December 2020 and is supposed to go in five steps. Priority was given to the elderly citizens and people presenting serious comorbidities according to the recommendation of the High Health Authority. Now, along with vaccination of the population, the strategy of the State combines the identification and interruption of infection chains through intensive testing, the use of the information system warning exposed people and the app “TousAntiCovid”.

5. Acknowledging that it will take time to return to normal life, the State also granted cash transfers to the poorest part of the population as well as extended social rights during the second state of health emergency. In addition to that, paid sick leaves are granted to those who had contacts with an infected person. One may declare such a fact to the National Social Security on its website by fulfilling a simple form without a need for a doctor’s appointment.

6. As for the court practice, the Constitutional Council was approached only once — when challenging the Law No. 2020-546 extending the state of health emergency (**para. 45 of Annex 3 to the Analytical Report**). The decision of the Constitutional Council gave a detailed decision, but showed very little control over the decision on the extension of the state of health emergency — the Constitutional Council stated

⁵⁵⁴ Information in Annex 4 is presenting the “second wave” response to the COVID-19 pandemic by States and relevant as of March 2021.

that it was only the Parliament that may assess the need for such extension. This decision correlates with its former decisions on the state of health emergency.

7. As for the practice of administrative courts, a large diversity of claims (invoking civil liberties, freedom of religion, privacy rights, right to life) have been brought before them. However, most of them were brought under an accelerated procedure, the so-called “*référé-liberté*”, setting a very high standard of proof. Therefore, it is not surprising that most claims have been rejected. Nevertheless, few successes indicate the Council of State (Supreme court for administrative litigations) will not hesitate to suspend restrictive measures if unproportional. Also, where the freedom of religion is affected the judgment can be different depending on the situation with the epidemic. Hence, the judge is led to assess a situation from a scientific point of view relying on official statistics and recommendations of scientific public authorities.

1. Evolution of the Measures Taken in the Fight Against the COVID-19 Pandemic

8. Since July 2020, there was no change in the Constitution or the legislation. The state of health emergency was declared by the Law No. 2020-290 (**paras. 21–28 of Annex 3 to the Analytical Report**). It is the legal framework used to provide extensive powers to the Government to address the COVID-19 crisis.

1.1. Institutional Changes

Government Shuffle

9. On July 3, 2020, Prime Minister Edouard Philippe resigned. A new Government was formed and is now led by the new Prime Minister Jean Castex. The Ministry of Economic Affairs and Finances became the Ministry of Economic Affairs, Finances and Economy Recovery. This was done to highlight the focus on the economic consequences of the pandemic. As such, Article 1(1) of the Decree No. 2020-871 states that the Minister of Economic Affairs “shall execute the recovery plan for an economic rebound following the epidemic of COVID-19”.⁵⁵⁵ Hence, the ministry will conduct the response to the economic consequences of the crisis.

Creating a Position of the Planning High Commissioner

10. The Decree No. 2020-1101 adopted on September 1, 2020, instituted a Planning High Commissioner.⁵⁵⁶ Attached to the Prime Minister (Article 4), his or her mission is to be in charge of research to help public authorities to plan demographic, economic, social, environmental, sanitary, technologic, and cultural matters (Article 1). It sheds some light on the State’s endeavor to adopt a new approach to economic affairs. In order to better anticipate the forthcoming economic consequences after the COVID-19 crisis, this High Commissioner will advise the Government on long-term perspectives in his or her field of competence.

⁵⁵⁵ Decree No. 2020-871 regarding the attributions of the Minister of Economic Affairs, Finances and Economy Recovery (July 15, 2020). URL: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042121191> (the date of access: March 31, 2021).

⁵⁵⁶ Decree No. 2020-1101 instituting a Planning High Commissioner (September 1, 2020). URL: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042297092/> (the date of access: March 31, 2021).

1.2. Legal Framework

State of Health Emergency

11. The State of health emergency ended on July 10, 2020. Nevertheless, the Statute No. 2020-856, adopted on July 10, 2020, still granted extensive powers to the Government until October 30, 2020, in case infections occur again.⁵⁵⁷ Due to the evolution of the pandemic, the state of health emergency was decreed again on October 14, 2020, for a month.⁵⁵⁸ The state of health emergency was then extended by the Statute No. 2020-1379 until February 16, 2021.⁵⁵⁹ Furthermore, the Statute No. 2021-160, adopted on February 15, 2021, provided a new extension of the state of health emergency until June 1, 2021.⁵⁶⁰ These statutes were adopted through fast-track proceedings (**para. 22 of Annex 3 to the Analytical Report**).

Delegation of Legislative Power

12. Article 38 of the French Constitution gives Parliament the possibility to delegate its powers to the Government for a specific time and in a determined field. Acts adopted by the Government upon this delegation are called “Ordinances”. During the first state of health emergency, the Statute No. 2020-290⁵⁶¹ operated a wide delegation of power to the Government to intervene in the purview of statutory law (**para. 25 of Annex 3 to the Analytical Report**). During the second state of health emergency, Article 10 of the Statute No. 2020-1379 provided for similar delegation of power to the Government. By its effects, the Government can adopt ordinances which acquire the value of a statute after ratification by the Parliament (**para. 30 of Annex 3 to the Analytical Report**). The statute mostly covers interventions in economic matters to cope with the crisis due to the pandemic, safeguard jobs and prevent bankruptcies. A constitutional claim was brought against the second delegation of power (**paras. 36–44 of Annex 4 to the Analytical Report**).

2. Measures Taken in the Fight Against the COVID-19 Pandemic

2.1. General Measures

Transport

Common Measures

13. Going to French overseas territories by boat (Article 6(V) of the Decree No. 2020-1310) or by plane (Article 11(III) of the Decree No. 2020-1310) is still possible. Although, a negative COVID-19 test of less than 72 hours must be presented when boarding. The requirement for a negative test also applies to travelers coming from foreign countries if their country of departure is in the list mentioned in Annex 2 *ter* of the Decree No. 2020-1310. In the beginning, every country outside the EU was on the list, but the list is empty

⁵⁵⁷ Statute No. 2020-856 organizing the end of the state of health emergency (July 9, 2020). URL: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042101318/> (the date of access: March 31, 2021).

⁵⁵⁸ Decree No. 2020-1257 declaring the state of health emergency (October 14, 2020). URL: https://www.legifrance.gouv.fr/jorf/texte_jo/JORFTEXT000042424377 (the date of access: March 31, 2021).

⁵⁵⁹ Statute No. 2020-1379 authorizing the extension of the state of health emergency and providing several measures for managing the health crisis (November 14, 2020). URL: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042520662> (the date of access: March 31, 2021).

⁵⁶⁰ Statute No. 2021-160 extending the sanitary state of health emergency (February 15, 2021). URL: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000043134078> (the date of access: March 31, 2021).

⁵⁶¹ Statute No. 2020-290 of emergency to face to COVID-19 epidemic (March 23, 2020). URL: <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000041746313/> (the date of access: March 31, 2021).

since January 15, 2021, when the Decree No. 2021-31 was adopted. Also, any passenger of a boat or a plane must have a statement on oath testifying not having any symptoms of COVID-19 or not having been in contact with an infected person 14 days before the trip. Passengers must wear a protective face mask at any time. Managers of ferry terminals (Article 7) and airports (Article 12) can monitor passengers' temperature and deny them boarding in case of a refusal to take the test.

Boats

14. Article 6 of the Decree No. 2020-1310 forbids any cruise boat to stop in French territorial seas. Circulation of boats with habitations onboard can only be authorized by a local Prefect. For other kinds of boats, the Prefect can verify the health measures implemented onboard and forbid them to stop in the harbors under his or her jurisdiction.

Planes

15. Article 10 of the Decree No. 2020-1310 suspends flights between the mainland and three French overseas territories (French Polynesia, New-Caledonia, and Wallis and Futuna), except for compelling personal reasons, health emergencies, or professional requirement which cannot be postponed.

Land Transport

16. Ski lifts were closed by the Decree No. 2020-1519⁵⁶² which modified Article 18 of the Decree No. 2020-1310.

Public Health

Vaccination Campaign

17. The Decree No. 2020-1691⁵⁶³ modified the Decree No. 2020-1310 inserting in it Article 53(1) related to the vaccination campaign. Only vaccines listed in Annex 4 of the Decree No. 2020-1310 can be administered. The National Agency for Public Health buys them and their provision is free of charge. A Ministerial Instruction divided the vaccination campaign into five phases.⁵⁶⁴ First, old people living in retirement and health care facilities and their caregivers (if they are over 75 and/or have comorbidity) shall be vaccinated. Then, the vaccination is open to people over 65 and to health workers over 50. In the third phase, the threshold will be lowered to those over 50 years old and the vaccination will be possible for every health worker and people presenting health conditions. The fourth phase targets people in precarious conditions, people living collectively in prisons, psychiatric facilities, or foster care residences. Eventually, in the fifth phase, every person over 18 will have access to the vaccination. The remuneration of health workers working overtime to vaccinate is fixed by an Order.⁵⁶⁵

⁵⁶² Decree No. 2020-1519 modifying the Decree No. 2020-1310 (December 4, 2020). URL: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042613110> (the date of access: March 31, 2021).

⁵⁶³ Decree No. 2020-1691 modifying the Decrees No. 2020-1262 and No. 2020-1310 (December 25, 2020). URL: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042739451> (the date of access: March 31, 2021).

⁵⁶⁴ Ministerial order of the Minister of Public Health and the Minister of Home Affairs No. CABINET/2020/234 regarding the planification of the first step of the national deployment of vaccination against COVID-19 (December 15, 2020). URL: <https://www.legifrance.gouv.fr/download/pdf/circ?id=45106> (the date of access: March 31, 2021).

⁵⁶⁵ Order modifying the Order adopted on July 10, 2020, prescribing the organization of the health system to face the COVID-19 health emergency (February 5, 2021). URL: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000043099878> (the date of access: March 31, 2021).

18. Originally, a tracing app called “Stop Covid” was put in place to alert its users in case of exposure to a contagious person.⁵⁶⁶ According to the President of the Republic, the app did not function well because only a small part of the population downloaded it.⁵⁶⁷ After some months, it had only a few hundreds of users. Admitting this failure, a new app “TousAntiCovid”, which relied on the same processing of data as its predecessor, was released on October 22, 2020.⁵⁶⁸ By March 5, 2020, 13,377,204 people had downloaded the app, 167,580 users had declared having COVID-19, and 96,419 had been warned by the app of exposure to COVID-19.

2.2. Containment Measures Regarding Industrial and Non-Productive Sectors

19. During the summer of 2020, most businesses could open again when respecting governmental measures (fewer clients, a social distance between groups of people, etc.) with the exception of nightclubs.⁵⁶⁹ During the beginning of the second wave of COVID-19 in large cities, Prefects set an early closing time for bars at 22:00, such as in Paris starting from September 28, 2020, or in the Gard department from October 16, 2020.⁵⁷⁰

20. Articles 40, 42, 43 and 45 of the Decree No. 2020-1310 imposed a closure on bars, restaurants, sports facilities, and concert halls. Places of worship remained open, but gatherings there were forbidden except for funerals within a limit of 30 people (Article 47(I) of the Decree No. 2020-1310). Schools did not close this time (Article 33 of the Decree No. 2020-1310).

⁵⁶⁶ It was created by the Decree No. 2020-650 concerning the treatment of data named “Stop Covid” (May 29, 2020). URL: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000041936881/> (the date of access: March 31, 2021).

⁵⁶⁷ *Macron E.* Covid-19: l’interview du Président Emmanuel Macron (October 14, 2020). URL: <https://www.elysee.fr/emmanuel-macron/2020/10/14/covid-19-interview> (the date of access: March 31, 2021).

⁵⁶⁸ National Commission for Data Processing and Liberties. “TousAntiCovid”: la CNIL revient sur l’évolution de l’application “StopCovid” (October 23, 2020). URL: <https://www.cnil.fr/fr/tousanticovid-la-cnil-revient-sur-levolution-de-lapplication-stopcovid> (the date of access: March 31, 2021).

⁵⁶⁹ See Art. 45(I) of the Decree No. 2020-860 prescribing general measures with respect to the COVID-19 pandemic during the state of health emergency (July 10, 2020) (URL: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042105897> (the date of access: March 31, 2021)) and, then, Art. 45(I) of the Decree No. 2020-1262 prescribing general measures with respect to the COVID-19 pandemic during the state of health emergency (October 16, 2020) (URL: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042430554> (the date of access: March 31, 2021)).

⁵⁷⁰ The Order of the Prefect of Paris is not available on the Internet. For the Gard, see the Order No. 30-2020-10-17-001 (October 16, 2020). URL: <https://www.gard.gouv.fr/content/download/38978/268529/file/arr%C3%AAt%C3%A9%20du%2016%20octobre%202020%20COVID.pdf> (the date of access: March 31, 2021).

2.3. Containment Measures Regarding Population

21. On October 14, 2020, the state of health emergency was redeclared by the Decree No. 2020-1257.⁵⁷¹ Two days later, Article 3 of the Decree No. 2020-1262⁵⁷² extended powers to impose restrictions to Prefects “whenever local circumstances required it”. This specifically concerns the situation when the health care system becomes critically overloaded. In addition, Article 51 of the Decree No. 2020-1262 entitles Prefects to order curfews between 21:00 and 6:00 for the “purpose of containing the virus”.

22. In Paris, on October 17, 2020, the Prefect issued the order forbidding parties in public facilities and also put in place a curfew from 21:00 to 6:00.⁵⁷³ The right of assembly was strictly limited to a maximum reunion of 6 people in public space (Article 3 of the Decree No. 2020-1262).

23. These rules were quickly followed by the declaration of a new national lockdown by Article 4 of the Decree No. 2020-1310 of October 19, 2020.⁵⁷⁴ This Article listed exceptions which included:

- commuting between homes and workplaces and going to places that are organizing official exams or contests;
- visiting doctors and buying medications;
- leaving home in case of a family emergency, bringing assistance to vulnerable people, and babysitting;
- disabled people and their caregiver could also go out;
- every individual could also go out within the limit of one daily hour and within a radius of one kilometer around his or her place of residence.

24. For any of these derogations, a statement available on the Internet or the official app “TousAntiCovid” had to be filled out.

25. The second lockdown eventually came to an end on December 15, 2020. It was replaced by the national curfew from 20:00 to 6:00 every day.⁵⁷⁵ Article 2 of the Decree No. 2021-21 adopted on January 15,

⁵⁷¹ Decree No. 2020-1257 declaring the state of health emergency (October 14, 2020). URL: https://www.legifrance.gouv.fr/jorf/texte_jo/JORFTEXT0000424243772 (the date of access: March 31, 2021).

⁵⁷² Decree No. 2020-1262 prescribing general measures with respect to the COVID-19 pandemic during the state of health emergency (October 16, 2020). URL: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042430554> (the date of access: March 31, 2021).

⁵⁷³ Prefectoral order No. 2020-00863 (October 17, 2020). URL: <https://cdn.paris.fr/paris/2020/10/20/5fe89a93535b900d2c7065944ed4b63d.pdf> (the date of access: March 31, 2021).

⁵⁷⁴ Decree No. 2020-1310 prescribing general measures with respect to the COVID-19 pandemic during the state of health emergency (October 29, 2020). URL: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042475143> (the date of access: March 31, 2021).

⁵⁷⁵ The Decree No. 2020-1582 was modified by the Decree No. 2020-1310 (December 14, 2020). URL: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042665612> (the date of access: March 31, 2021).

2021, set the curfew earlier at 18:00.⁵⁷⁶ Article 4 of the Decree No. 2020-1310 provided for the same derogations as during the first lockdown with an exception of a daily hour people could use to go out.

26. The curfew did not work well enough since some areas of France experienced a significant increase of infections. In reaction to this, the Government opted for a new strategy of local lockdowns during weekends in some parts of France. For instance, a local lockdown was put in place in some of municipalities in the department of Alpes-Maritimes by the Order of the Prefect.⁵⁷⁷ Exceptions that were listed in the Order included first necessity shopping, one daily hour of exercise within a radius of five kilometers from a residence place, consultation with a lawyer, commuting to a place of cult, or participating in activities in public space when they are not forbidden. A statement also had to be filled out when derogating from the lockdown.

2.4. Support Measures for Industrial and Non-Productive Sectors

27. The state warrantee for loans to companies (**para. 49 of Annex 3 to the Analytical Report**) was extended until June 30, 2021.⁵⁷⁸ The payments under the solidarity fund for SMEs (**para. 49 of Annex 3 to the Analytical Report**) were also extended until the same date.⁵⁷⁹ State-funded short-time working arrangement (**para. 49 of Annex 3 to the Analytical Report**) (*activité partielle*) for temporarily closed businesses or reduced working time companies was extended until December 31, 2021.⁵⁸⁰

28. Sectors particularly impacted by restrictive measures adopted to stop the spread of the virus (bars, clubs, gyms, and others) benefited of a higher short-time working arrangement allowance (70% instead of 60%).⁵⁸¹

29. Regarding modifications of statutory and contractual rights, employers were entitled to request employees to modify the date of a maximum of 10 of their resting days, and increase their working time up to 12 hours if their activity was qualified as necessary to ensure the continuity of the socio-economic life of

⁵⁷⁶ Decree No. 2021-21 modifying the Decrees No. 2020-1262 and No. 2020-1310 (15 January 15, 2021). URL: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042963011> (the date of access: March 31, 2021).

⁵⁷⁷ Order No. 2021-281 providing movement restrictions in some municipalities in the department of Alpes-Maritimes (February 26, 2021). URL: <https://www.alpes-maritimes.gouv.fr/content/download/37892/286799/file/Arr%C3%AAt%C3%A9%20Confinement%20WE.pdf> (the date of access: March 31, 2021).

⁵⁷⁸ Rectifying financial Statute No. 2020-289 (March 23, 2020) was modified by the financial Statute No. 2020-172 for 2021 (December 29, 2020). URL: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042753580> (the date of access: March 31, 2021).

⁵⁷⁹ Decree No. 2021-129 concerning a solidarity fund for companies especially affected by economic, financial, and social consequences due to the spread of COVID-19 and measures adopted to stop it (February 8, 2021). URL: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000043106299> (the date of access: March 31, 2021).

⁵⁸⁰ See Art. 12 of the Ordinance No. 2020-346 providing urgent measures related to short-time working arrangement (March 27, 2020). URL: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000041762506/> (the date of access: March 31, 2021).

⁵⁸¹ Decree No. 2020-810 providing a temporary modification of the amount of the allowance for short-time working arrangement (June 29, 2020). URL: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042056541/> (the date of access: March 31, 2021).

the nation (**para. 49 of Annex 3 to the Analytical Report**).⁵⁸² Initially, these measures applied until December 31, 2020, but then they were extended until June 30, 2021.⁵⁸³

30. Social partners have been consulted for the use of short-time working arrangements and smart working. A new national inter-professional agreement regarding smart working was enacted on November 26, 2020.⁵⁸⁴ It raised a peculiar awareness about the potential loss of social bonds it could cause. Furthermore, during working hours, the employer must be able to make sure an employee is working. To this end, the employee must be available by the regular means of communication used in the workplace. Nevertheless, this must not threaten the employees' right to disconnection and his or her private life.

2.5. Support Measures for Population

Emergency Cash Transfers

31. A policy of cash transfers started in May 2020 with an exceptional solidarity subsidy of EUR 150 per household to people who were eligible to minimal welfare payments (**para. 54 of Annex 3 to the Analytical Report**).⁵⁸⁵ In the same manner, another exceptional subsidy of EUR 200 was granted to adults under 25 years old eligible to housing subsidy, who were not students or, in the case they were, who had an employment contract.⁵⁸⁶ These two subsidies were not cumulative: the payment of one excluded the possibility to apply for the other. They were both renewed in November 2020 with an amount of EUR 150. Moreover, EUR 100 per child supported by the household was added to it.⁵⁸⁷ Also, registered job seekers who had worked at least 138 days in 2019 could earn an exceptional monthly bonus reaching up to EUR 900 when no other public subsidies were available.⁵⁸⁸ Article 3 of the Decree No. 2020-1785 provides for an opportunity to apply for the bonus from November 2020 to May 2021.⁵⁸⁹

⁵⁸² Ordinance No. 2020-323 providing urgent measures regarding paid leaves, working time, and resting days (March 25, 2020). URL: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000041755940/> (the date of access: March 31, 2021).

⁵⁸³ Ordinance No. 2020-1597 providing urgent measures regarding paid leaves, working time, and resting days (December 16, 2020). URL: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042677355/> (the date of access: March 31, 2021).

⁵⁸⁴ National interprofessional agreement for a successful use of smart working (November 26, 2020). URL: https://www.fntp.fr/sites/default/files/content/26112020_ani_teletravail.pdf.

⁵⁸⁵ Decree No. 2020-519 granting an exceptional solidarity subsidy to the most precarious households in link to the health emergency (May 5, 2020). URL: <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000041849630/> (the date of access: March 31, 2021).

⁵⁸⁶ Decree No. 2020-769 granting an exceptional solidarity subsidy to the most precarious youngsters under 25 in link to the health emergency (June 24, 2020). URL: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042032514/> (the date of access: March 31, 2021).

⁵⁸⁷ Decree No. 2020-1453 granting an exceptional solidarity subsidy to the most precarious households and youngsters under 25 in link to the health emergency (November 27, 2020). URL: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042574431/> (the date of access: March 31, 2021).

⁵⁸⁸ Decree No. 2020-1785 creating an exceptional bonus to some registered job seekers (December 30, 2020). URL: <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000042840343/> (the date of access: March 31, 2021).

⁵⁸⁹ See Art. 1 of Decree No. 2020-1785. URL: <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000042840343/> (the date of access: March 31, 2021).

Extension of Social Subsidies

32. During the first lockdown, social subsidies, including invalidity pensions, State Medical Aid (the State takes in charge of medical fees of illegal immigrants), and unemployment allowances were extended (**para. 54 of Annex 3 to the Analytical Report**). This measure was reproduced for the second lockdown. The Ordinance No. 2020-1442 restored the extension of social subsidies, which were supposed to come to an end between October 30, 2020, and a date fixed by an Order that cannot exceed the date of the end of the state of health emergency.⁵⁹⁰ Since then, every month an Order is enacted to postpone the date of ending the state of health emergency to the following month.⁵⁹¹

33. Decree No. 2020-928 provided special measures regarding unemployment allowances of entertainment workers and artists. These allowances were extended until August 31, 2021. Also, conditions for a new application to these allowances in September 2021 were eased.⁵⁹²

Paid Sick Leaves and Occupational Disease

34. In November 2020, during the second lockdown, paid sick leaves were granted to healthy people if they had to stay at home because they were particularly vulnerable to COVID-19 or lived with a person who was vulnerable. It also applied if they were placed in isolation because they had been in contact with an infected individual or if they had a child under 16 years old at home because of being vulnerable, disabled, or placed in isolation.⁵⁹³ In January 2021, the Decree No. 2021-13 merged paid sick leaves for healthy people and people infected with COVID-19 as well as it entailed the suspension of the waiting period for the payment (Articles 1 and 2 of the Decree No. 2021-13).⁵⁹⁴ Also, for people placed in isolation or being infected with COVID-19, a sick leave for a maximum of four days without a waiting period could be granted by filling out an online form on the social security website (Article 3 of the Decree No. 2021-13).⁵⁹⁵

⁵⁹⁰ Ordinance No. 2020-1442 restoring urgent measures regarding replacement incomes mentioned at art. L. 5421-2 Labor Code (November 25, 2020). URL: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042564931> (the date of access: March 31, 2021).

⁵⁹¹ Order (December 9, 2020). URL: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042658105> (the date of access: March 31, 2021); Order (December 23, 2020). URL: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042742407> (the date of access: March 31, 2021); Order (January 12, 2021). URL: https://www.legifrance.gouv.fr/jorf/texte_jo/JORFTEXT000042953062 (the date of access: March 31, 2021); Order (January 30, 2021). URL: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000043081141> (the date of access: March 31, 2021).

⁵⁹² Decree No. 2020-928 providing urgent measures regarding unemployment allowances for artists and entertainment workers (July 29, 2020). URL: <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000042170029/> (the date of access: March 31, 2021).

⁵⁹³ Decree No. 2020-1386 (URL: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042521293> (the date of access: March 31, 2021)) modifying the Decree No. 2020-73 (November 14, 2020) (URL: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000041513432> (the date of access: March 31, 2021)).

⁵⁹⁴ Decree No. 2021-13 providing derogations for paid sick leaves provided by Art. L. 1226-1 of the Labor Code and derogations to conditions of insurance by the state social security to fight against the epidemic of COVID-19 (January 8, 2021). URL: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042895619> (the date of access: March 31, 2021).

⁵⁹⁵ Assurance Maladie. Demande d'arrêt de travail dans l'attente des résultats d'un test Covid: ouverture d'un teleservice (January 15, 2021). URL: <https://www.ameli.fr/paris/assure/actualites/demande-darret-de-travail-dans-lattente-des-resultats-dun-test-covid-ouverture-dun-teleservice> (the date of access: March 31, 2021).

35. COVID-19 infection was recognized as an occupational disease only for workers in health facilities.⁵⁹⁶

3. Court Practice With Respect to the COVID-19 Pandemic

3.1. Constitutional Council

Decision No. 2020-808 DC “authorizing the extension of the state of health emergency and providing several measures for managing the health crisis” (November 13, 2020)

36. The Constitutional Council was seized by deputies and senators before the Statute No. 2020-1379 came into force.⁵⁹⁷

37. Firstly, they contested the extension of the state of health emergency, which, according to them, did not comply with the proportionality test. In the view of some of them, it imposed too serious restrictions on constitutional rights and freedoms, especially the right to freedom of movement, privacy rights, economic freedom, and the right to freedom of expression. For others, an extension of the state of health emergency for four more months was too long that allowed to impose restrictions on the rights and freedoms without any intervention of the Parliament.

38. The Constitutional Council recalled that the Constitution does not forbid a legislator to declare a state of health emergency. Moreover, it stated that only Parliament could assess the necessity to extend it in regards of the epidemic situation. Moreover, based on the opinions of the scientific committee, the Constitutional Council highlighted that at the moment of the decision, the situation was degrading and becoming more dangerous with the coming winter that justified the four-month extension. Also, the Constitutional Council pinpointed Art. L. 3131-15 of the PHC and specified that measures enacted in the execution of the state of health emergency can only intervene in the protection of public health if they are strictly proportionated to the risk incurred. Eventually, the Constitutional Council added that the state of health emergency could be terminated by a decree if the sanitary situation allowed it. For all these reasons, the argument regarding the illegality of the extension of the state of health emergency was rejected.

39. Secondly, the Statute No. 2020-1379 also granted extensive powers to the Government after the end of the state of health emergency until April 1, 2021. Deputies argued that by organizing this transitional regime automatically, without any intervention of the Parliament, the Statute was disproportionate in regards of restrictions imposed on rights and freedoms. For the senators, this disposition amounted to a violation of the division of powers and the legislator’s jurisdiction.

40. The Constitutional Council pointed out that, when fixing this transitional regime, the legislator assumed that there was a high risk of the epidemic’s spread after the end of the state of health emergency. Moreover, the state of scientific knowledge did not indicate that such an assessment was improper. Also, according to the Statute No. 2020-856 adopted on July 9, 2020, measures enacted during the transitional regime could only aim to protect public health and fight the spread of the epidemic. They should be proportionate to the risk incurred and be terminated when the grounds for their application cease to exist. Furthermore, the judge was in charge to control the observance of these requirements. In consequence,

⁵⁹⁶ Decree No. 2020-1131 regarding the recognition of occupational diseases for pathologies linked to COVID-19 (September 14, 2020). URL: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042328917/> (the date of access: March 31, 2021).

⁵⁹⁷ Statute No. 2020-1379 authorizing the extension of the state of health emergency and providing diverse measures to manage the health crisis (November 14, 2020). URL: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042520662/> (the date of access: March 31, 2021).

the Constitutional Council decided that granting the powers to the Government after the end of the state of health emergency was in accordance with the Constitution.

41. Thirdly, the Statute extended the share and analysis of data regarding the epidemic until April 1, 2021. It also gave access to this data to some health workers and the institutions in charge of social protection. Deputies argued that these facts constituted a violation of privacy rights.

42. Referring to its Decision No. 2020-800 DC,⁵⁹⁸ the Constitutional Council reminded that the legislator instituted the information system to identify the infection chains and therefore battle against the epidemic. The data could only be used for this purpose. Moreover, the Council indicated that by giving access to the data to health workers in charge of virus testing, the Statute targeted workers participating in the identification of infection chains, and they only had access to the data needed for the testing. Also, the access to the data by the institutions in charge of the social protection was conditioned by an agreement of the people who had been tested. Therefore, the Constitutional Council found no infringement of privacy rights on this point.

43. Fourthly, the Statute provided for a delegation of power to the Government so that it could intervene in the purview of statutes by ordinances to rectify the consequences of the health crisis (**para. 30 of Annex 3 to the Analytical Report**). Deputies and senators criticized this delegation of power because its introduction was supported by reference to the former cases of the delegation of power issued during the first wave of COVID-19. According to them, the delegation was too vague because of this reference.

44. The Constitutional Council noted that the Statute only permitted the extension or restoration of previous measures adopted by ordinances that were enacted on the ground of the former delegation of power. But the statute did not extend or restored this previous delegation of powers. For the Constitutional Council, the content of the delegation of power was clear enough and was limited to what was necessary for an adequate response to the epidemic in regards of the state of health emergency. As such, there was no constitutional violation.

3.2. Administrative Courts

Preliminary Remarks

45. Only administrative tribunals and courts have jurisdiction to review administrative decisions and regulations adopted in the execution of the regulatory power vested in the Government (**para. 47 of Annex 3 to the Analytical Report**). The Administrative Supreme Court is the Council of State (*Conseil d'État*) which has the role to advise the Government. Its members are thus strictly divided between the ones who judge and the ones who advise. Since most measures adopted to fight the pandemic were administrative decisions, the Council of State is the most important actor to control the French response to the COVID-19 crisis.

46. Moreover, it should be noted that most legal claims were introduced through fast-track proceedings (*référé-liberté*), which can be used whenever individual liberties are “seriously and illegally” violated.⁵⁹⁹ In such a case, a judge should take temporary measures within 48 hours. To succeed, the claimant must prove the emergency of her or his case, the obvious illegality of the contested measure, and the threat it presents to her or his liberty. Hence, the standard of proof is higher in that kind of proceedings

⁵⁹⁸ Constitutional Council. Statute extending the state of health emergency and completing its provisions. Decision No. 2020-800 DC, May 11, 2020. URL: <https://www.conseil-constitutionnel.fr/decision/2020/2020800DC.htm> (the date of access: March 31, 2021).

⁵⁹⁹ Art. L. 521-2 of the Administrative Justice Code.

than in regular ones. The drawback of the latter is their long period of waiting before a trial starts that explains the extensive use of fast-track proceedings during the COVID-19 crisis. This type of the adopted decision is called “ordinance”. It should not be confused with ordinances the Government adopts in virtue of a delegation of power from the Parliament.

Civil Liberties

47. The second lockdown, which was declared by the Decree No. 2020-1310, was challenged on the ground of violation of individual liberties, but the Council of State considered that it was a justified violation of individual liberties in regards of the protection of public health.⁶⁰⁰

48. Unlike the lockdowns, the curfew decreed in December 2020 did not provide a possibility of derogation for a daily hour of exercise or walking in a radius of one kilometer. This was contested before administrative courts because it deprived workers from daily exercise once their work is done. The Council of State decided that in regards of the spread of the pandemic there was no obvious and serious violation of the freedom of movement.⁶⁰¹

49. The restriction imposed on the right to assembly in public space, circumventing the use of the right to protest, was also challenged before the Council of State, in particular, the Decree No. 2020-663,⁶⁰² which prohibited any gathering of more than 10 people and the organization of protests. The Council of State decided that its provisions were too general and too absolute in regards of the sanitary situation and alternative possibilities to organize safe demonstrations.⁶⁰³ Thus, the measures were suspended and the right to protest was restored.

50. Alternatively, closures of businesses, in particular bars, restaurants, clubs, gyms, museums, concert halls, and movie theaters restricted several liberties, in particular the freedom of expression, economic liberties, and artistic freedom. The Council of State recognized that these closures constituted a serious violation of these rights and liberties, but it judged that they were proportionate to the purpose of the protection of public health with a view to the spread of the pandemic in France⁶⁰⁴. In the same logic, imposed distance learning in universities was considered as a measure proportionate to the restriction of the freedoms of expression and assembly in regards of the protection of public health.⁶⁰⁵

⁶⁰⁰ Council of State, cases No. 439800, 439818, and 439855. Ordinance of December 22, 2020. URL: <https://www.legifrance.gouv.fr/ceta/id/CETATEXT000042729497> (the date of access: March 31, 2021).

⁶⁰¹ Council of State, *M. A...D... et M. B...C...* Case No. 448029. Ordinance of January 7, 2021. URL: <https://www.conseil-etat.fr/fr/arianeweb/CE/decision/2021-01-07/448029> (the date of access: March 31, 2021).

⁶⁰² Decree No. 2020-663 prescribing general measures with respect to the COVID-19 pandemic during the state of health emergency (May 31, 2020). URL: <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000041939818/> (the date of access: March 31, 2021).

⁶⁰³ Council of State, cases No. 440846, 440856, and 441015. Ordinance of June 13, 2020. URL: <https://www.conseil-etat.fr/ressources/decisions-contentieuses/dernieres-decisions-importantes/conseil-d-etat-13-juin-2020-manifestations-sur-la-voie-publique> (the date of access: March 31, 2021).

⁶⁰⁴ Council of State, cases No. 447698, 447783, 447784, 447785, 447786, 447787, 447791, 448899, and 447839. Ordinance of December 23, 2020. URL: <https://www.conseil-etat.fr/actualites/actualites/cinemas-theatres-salles-de-spectacles-le-juge-des-referes-ne-suspend-pas-leur-fermeture-en-raison-d-une-situation-sanitaire-nouvellement-degrad> (the date of access: March 31, 2021).

⁶⁰⁵ Council of State. Case No. 447015. Ordinance of December 10, 2020. URL: <https://juricaf.org/arret/FRANCE-CONSEILDETAT-20201210-447015> (the date of access: March 31, 2021).

Freedom of Religion

51. The decisions mentioned above seem to indicate that the annulment of a measure by the Council of State is quite unlikely because the proportionality test it conducts is very lenient (only of the restriction imposed on the right to protest were annulled). However, comparing decisions regarding restrictions imposed on the freedom of religion during the first and the second waves of COVID-19 is particularly interesting because it reveals that the Council of State adapts its position to the actual situation and the spread of the pandemic.

52. During the first lockdown, the Government decreed the suspension of religious services for more than 20 people. After the introduction of the second lockdown it was extended, otherwise, such religious places could open again and provide services gathering people. The judge of the Council of State considered that the suspension of religious services was not proportionate to the purpose of the protection of public health during the phase of lockdown easing and in comparison with measures taken in other similar situations (such as ones in bars or restaurants).⁶⁰⁶ However, during the second lockdown, religious services were forbidden with the exception of burials within a limit of 30 people. In this situation, the Council of State validated the measure because the pandemic was much stronger compared to May 2020.⁶⁰⁷ This decision underlines that the proportionality test the Council of State conducts is directly linked to the rate of the pandemic's spread.

Privacy Rights

53. Privacy rights were at the center of the French response to the COVID-19 pandemic because information systems collecting personal data were used. The question of whether the Prefect in Paris could use drones to police the city and enforce the lockdown arose (**para. 41 of Annex 3 to the Analytical Report**).⁶⁰⁸ The Council of State annulled this measure because the Prefect lacked the power to order it. This case led the Prime Minister to consult the Council of State — not as a judge but as the advisor of the Government — on the use of drones for surveillance purposes. The Council of State issued the Advice on November 13, 2020, stating that only the legislator could decide if the use of drones could be a proportionate measure with respect to privacy rights and public order.⁶⁰⁹

54. Nevertheless, the police kept using drones for surveillance in Paris which led the association “La quadrature du net” to bring another claim to administrative courts. On December 22, 2020, the Council of State decided that even if drones only sent blurred images to the command center, the rest of the data still permitted the identification of people on them, thus constituting personal data subject to the General Data

⁶⁰⁶ Council of State, cases No. 440366, 440380, 440410, 440531, 440550, 440562, 440563, and 440590. Ordinance of May 18, 2020. URL: <https://www.conseil-etat.fr/ressources/decisions-contentieuses/dernieres-decisions-importantes/conseil-d-etat-18-mai-2020-rassemblements-dans-les-lieux-de-culte> (the date of access: March 31, 2021).

⁶⁰⁷ Council of State, *Association Civitas*. Case No. 445825. Ordinance of November 7, 2020. URL: <https://www.legifrance.gouv.fr/ceta/id/CETATEXT000042532335> (the date of access: March 31, 2021).

⁶⁰⁸ Council of State, *Association la Quadrature du net* (ord.) and *Ligue des droits de l'homme*. Cases No. 440442 and 440445. Ordinance of May 18, 2020. URL: <https://www.conseil-etat.fr/ressources/decisions-contentieuses/dernieres-decisions-importantes/conseil-d-etat-18-mai-2020-surveillance-par-drones> (the date of access: March 31, 2021).

⁶⁰⁹ Council of State, *Advice regarding the use of airborne image pickup equipment by public authorities*. Advice No. 401214. November 13, 2020. URL: <https://www.conseil-etat.fr/ressources/avis-aux-pouvoirs-publics/derniers-avis-publies/avis-relatif-a-l-usage-de-dispositifs-aerportes-de-captation-d-images-par-les-autorites-publiques> (the date of access: March 31, 2021).

Protection Regulation⁶¹⁰ and French legislation related to it. Moreover, the Council of State underlined that no statute or a ministerial decree after a public opinion of the National Commission for Data Processing and Liberties intervened to allow the use of drones as in the first decision of May 2020.⁶¹¹ In consequence, the Council of State perceived a serious doubt regarding the legality of the use of drones and suspended it.⁶¹² A bill is currently pending before the Parliament to address this question.⁶¹³

55. Another major concern for privacy rights was the creation of information systems (**para. 47 of Annex 3 to the Analytical Report**). Their purposes were to collect personal data, process it, and exchange it if needed without the consent of individuals in order to fight the pandemic more efficiently. This data was strictly limited to virological or serological statuses and could not be conserved for more than three months after its collection. The main goal was to scrutinize the pandemic, identify potential virus strains, and contact individuals exposed to the virus to ask them to observe strict isolation (including by contact tracing). Concomitantly, a tracking app “TousAntiCovid” was launched. For the first time, those information systems were used for medical purposes in France. It was also the first time when such a wide derogation from medical secrecy was implemented.⁶¹⁴ Nevertheless, both the Council of State and the Constitutional Council decided that the use of such information systems was justified by the goal to combat the pandemic efficiently.⁶¹⁵

56. The medical data was stored on a platform “Health Data Hub”, which was created in 2019.⁶¹⁶ The data could be crossed-referenced by Health Data Hub or the National Social Security to provide more information about the virus. However, Microsoft hosted the platform which raised awareness about a possible leak of the data to the United States by application of Article 702 of the “Foreign Intelligence Surveillance Act” and of the “Clarifying Lawful Overseas Use of Data Act”. Hence, it led to a claim before the Council of State. But the Council of State insisted on the state of emergency to collect and treat this data and the absence of technological alternatives. Furthermore, it highlighted that the contract concluded with Microsoft complied with the French legal requirements concerning data hosting and that there should

⁶¹⁰ Regulation (EU) 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (April 27, 2016). URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0679&from=FR> (the date of access: March 31, 2021).

⁶¹¹ Council of State, *Association la Quadrature du net* (ord.) and *Ligue des droits de l'homme*. Cases No. 440442 and 440445. Ordinance of May 18, 2020. URL: <https://www.conseil-etat.fr/ressources/decisions-contentieuses/dernieres-decisions-importantes/conseil-d-etat-18-mai-2020-surveillance-par-drones> (the date of access: March 31, 2021).

⁶¹² Council of State, *La Quadrature du Net*. Case No. 446155. Ordinance of December 22, 2020. URL: <https://www.legifrance.gouv.fr/ceta/id/CETATEXT000042729524> (the date of access: March 31, 2021).

⁶¹³ See the bill No. 3452. URL: https://www.assemblee-nationale.fr/dyn/15/textes/l15b3452_proposition-loi (the date of access: March 31, 2021).

⁶¹⁴ The National Commission for Data Processing and Liberties, *Advice upon a project of decree regarding information systems mentioned at art. 6 of the bill extending the state of health emergency*. Advice No. 2020-051. May 8, 2020. URL: <https://www.cnil.fr/sites/default/files/atoms/files/2020-051-urgence-sanitaire.pdf> (the date of access: March 31, 2021).

⁶¹⁵ Council of State. *Advice on a bill extending the state of health emergency and completing its provisions* (adv.) (May 4, 2020) No. 400104. URL: <https://www.conseil-etat.fr/ressources/avis-aux-pouvoirs-publics/derniers-avis-publies/avis-sur-un-projet-de-loi-prorogeant-l-etat-d-urgence-sanitaire-et-completant-ses-dispositions> (the date of access: March 31, 2021); Constitutional Council, *Loi extending the state of health emergency and completing its provisions* (May 11, 2020). Decision No. 2020-800 DC. URL: <https://www.conseil-constitutionnel.fr/decision/2020/2020800DC.htm> (the date of access: March 31, 2021).

⁶¹⁶ Order completing the order enacted on March 23, 2020, prescribing measures of organization and functioning of the health system to face the epidemic of COVID-19 (April 21, 2020). URL: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000041812657> (the date of access: March 31, 2021).

be no concern about the transfer of data to the US because of the privacy shield.⁶¹⁷ However, one month later, the CJEU declared the privacy shield invalid, questioning the French case law.⁶¹⁸ A new claim was brought to the Council of State. It stated that the CJEU did not prohibit American companies to process data on the EU territory. Moreover, an amendment to the contract with Microsoft signed on September 3, 2020, stipulated that the company could not process data outside the geographic area specified by the platform. Declaring the emergent need of such information systems again and the absence of satisfying alternatives, the Council of State validated the contract with Microsoft.⁶¹⁹

57. This storage contract with Microsoft still raises a lot of objections.⁶²⁰ The National Social Security even stated on February 19, 2021, that taking into account the specificity of the data only a new platform operated by a sovereign mechanism and entirely submitted to the General Data Protection Regulation⁶²¹ could perform the mission attributed to Health Data Hub. Nevertheless, in the meantime, the National Social Security adjudicated on letting some data to Health Data Hub in the strict necessity of research and prevention of COVID-19.

Elderly People and the Right to Life

58. Some associations questioned the potential triage practice upon age impeding elderlies to access hospitals when infected with COVID-19. They argued that such practice would have been based on the lower survival rate of these patients. Associations brought a claim to administrative courts invoking that people living in elderly homes were not taken in charge in hospitals that constituted a state failure. But the Council of State decided that the associations did not provide proof of their allegations.⁶²² Moreover, the Council of State pointed out that elderly people had access to palliative care outside hospitals and could have a derogatory right to be visited before dying when placed in care facilities. In another case of April 2020, claimants asked the judge to order the Prime Minister to organize systematic testing in elderly facilities and make the use of personal protection equipment mandatory.⁶²³ Noting a shortage for both tests and equipment, the Council of State rejected the claim.

⁶¹⁷ Council of State. *Plateforme Health Data Hub*. Case No. 4400916. Ordinance of June 19, 2020. URL: <https://www.conseil-etat.fr/fr/arianeweb/CE/decision/2020-06-19/440916> (the date of access: March 31, 2021).

⁶¹⁸ Court of Justice of the European Union. *Data Protection Commissioner v Facebook Ireland Ltd and Maximilian Schrems*. Case No. C-311/18. Decision of July 16, 2020. URL: <https://eur-lex.europa.eu/legal-content/FR/TXT/?uri=CELEX%3A62018CJ0311> (the date of access: March 31, 2021).

⁶¹⁹ Council of State. *Conseil National du logiciel libre*. Case No. 444937. Ordinance of October 13, 2020. URL: <https://www.legifrance.gouv.fr/ceta/id/CETATEXT000042444915?> (the date of access: March 31, 2021).

⁶²⁰ *Untersinger P. M. Données de santé : plate-forme Health Data Hub survit à nouveau au Conseil d'État* (October 14, 2020) // Le Monde. URL: https://www.lemonde.fr/pixels/article/2020/10/14/donnees-de-sante-la-plate-forme-health-data-hub-survit-a-nouveau-au-conseil-d-etat_6056038_4408996.html (the date of access: March 31, 2021).

⁶²¹ Regulation (EU) 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (April 27, 2016). URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0679&from=EN> (the date of access: March 31, 2021).

⁶²² Council of State. *Association Coronavictimes*. Case No. 439910. Ordinance of April 15, 2020. URL: <https://www.legifrance.gouv.fr/ceta/id/CETATEXT000041807017> (the date of access: March 31, 2021).

⁶²³ Council of State. *L'Union nationale des syndicats FO Santé privée*. Case No. 440002. Ordinance of April 15, 2020. URL: <https://www.conseil-etat.fr/fr/arianeweb/CE/decision/2020-04-15/440002> (the date of access: March 31, 2021).

59. Also, in its Ordinance of March 3, 2021,⁶²⁴ the Council of State quashed a ministerial recommendation inciting elderly homes to forbid their residents to go outside. Families brought a claim to the judge invoking an excessive violation of the freedom of movement. The Council of State decided that in regards of the vaccination rate in elderly homes, the measure was not proportionate. Recognizing the emergency of the situation, the Council of State decided to suspend the contested recommendation.

Vaccines and the Right to Life

60. The first judicial decision related to a demand to receive a vaccine in priority was decided on January 7, 2021 by the Administrative Tribunal of Châlons-en-Champagne.⁶²⁵ The claimant was heavily disabled and wanted to be vaccinated whereas only people identified as “vulnerable” (mostly elderly people or people with serious diseases) could then have access to the vaccine. The Administrative Tribunal found that the claimant (a male person) did not demonstrate an obvious and serious violation of his fundamental liberties or that he was vulnerable. Moreover, the judge added that the claimant lived at home, did not work, and did not receive daily assistance from other people than his spouse who did not particularly expose him to the virus. Therefore, the condition of emergency for providing a vaccine was also rejected by the tribunal.

61. In another litigation on February 5, 2021, an association defending prisoners’ interests challenged the ministerial Order organizing the vaccination campaign and argued that the phase I should target prisoners because their conditions of detention present greater risks of transmission of the virus.⁶²⁶ The right to life and the principle of equality were invoked as legal grounds. The Council of State did recognize that the rights to life and the principle of equality were fundamental liberties, and that the administration of a prison is responsible for not putting prisoners’ health in danger. However, regarding the principle of equality, the Council of State recalled that phase I targeted people over 75 or who have serious comorbidities that did not exclude prisoners belonging to such groups of people. Therefore, it concluded that there was no breach of equality between prisoners and the rest of the population. Regarding the right to life, the Council of State referred to the High Health Authority which recommended to follow the five phases planned in the vaccination campaign. Furthermore, after a year of the COVID-19 pandemic, the Council of State relied on official figures to state that there was no particular threat to prisoners since only two of them had died since February 2020. With social distancing, prisoners were not at greater risk. In consequence, the Council of State rejected the claim.

⁶²⁴ Council of State. Case No. 449759, Ordinance of March 3, 2021. URL: <https://www.conseil-etat.fr/actualites/actualites/le-conseil-d-etat-suspend-l-interdiction-generale-et-absolue-de-sortie-des-residents-d-ehpad> (the date of access: March 31, 2021).

⁶²⁵ Administrative Tribunal of Châlons-en-Champagne. Case No. 2100005. Ordinance of January 7, 2021. URL : <http://chalons-en-champagne.tribunal-administratif.fr/content/download/178599/1755271/version/1/file/Ordonnance%20n%C2%B0%202100005%20du%2007.01.2021%20anonymis%C3%A9e.pdf> (the date of access: March 31, 2021).

⁶²⁶ Council of State. *Robin des lois*. Case No. 449081. Ordinance of February 5, 2021. URL: <https://www.conseil-etat.fr/actualites/actualites/vaccination-contre-la-covid-19-pour-les-personnes-detenu> (the date of access: March 31, 2021).

II. Germany

Summary

62. During the period in question, the federal government and the governments of Germany's federated states continued to develop legislation relating to various subject matters and aimed at combatting COVID-19 and overcoming its negative consequences. In addition, significant rule-making activity was carried out by the executive authorities, in particular by the German Health Ministry.

63. New measures aimed at combatting the pandemic and adopted at the federal level, included strengthening control over the spread of the infection, in particular, over the arrival of infected persons from abroad, modernizing infrastructure to adapt it to the realities of the pandemic and related restrictions, and improving sanitary measures, in particular testing and vaccination.

64. Restrictions on organizations and the population during the said period were based on the epidemiological situation and tightened or relaxed from time to time depending on the rate of the COVID-19 spread and risks to the public healthcare system. Broad restrictions were introduced during the fall 2020 – winter 2021 due to a sharp increase in the number of cases. They largely coincided with those introduced during the first wave of the pandemic. At the same time, some restrictions and requirements imposed on organizations appeared later as a result of the adoption of new regulations, in particular, in the field of employment.

65. In terms of support measures, a diversified system of financial support for enterprises and the population was created in Germany, providing for different types of help for various groups of enterprises or citizens.

66. Court practice on various issues of law relating to the pandemic comprises a significant number of court decisions, including rulings of Germany's highest courts. Occasionally, the courts reviewed the legality of restrictive measures imposed by the state. Although in most cases the courts upheld the said measures, in some rulings, including those of the Constitutional Court, they were declared unlawful (unconstitutional).

1. Evolution of the Measures Taken in the Fight Against the COVID-19 Pandemic

Federal Legislation

67. Since the beginning of the COVID-19 pandemic, the Bundestag has already passed over 40 federal laws providing for special regulation due to the spread of and control over the coronavirus infection. About a third of all COVID-19 related laws have been passed by the Bundestag since September 2020. It is still actively involved in the law-making process, despite the fact that more than a year has passed since the beginning of the pandemic.

68. Among the most important federal laws, along with the FIPA, analyzed earlier (**paras. 69–72 of Annex 3 to the Analytical Report**), several recently enacted laws should be mentioned.

69. On October 23, 2020, the Hospital Development Program Act was passed by the Bundestag.⁶²⁷ It sets forth amendments to various federal laws relating primarily to healthcare financing in order to ensure that hospitals have sufficient financial resources to carry out a broad modernization campaign. The COVID-19 pandemic was the impetus for the development of this law by the federal government.⁶²⁸

70. On November 18, 2020, the Bundestag passed the Third Law on Protection of the Population in Case of an Epidemic of the National Scale.⁶²⁹ It provides for amendments to various federal laws relating to healthcare, including the FIPA. According to the provisions of this law, the introduction by the federal government or the Health Ministry of special restrictive measures aimed at combatting the epidemic is only possible, if the Bundestag establishes an epidemic of the national scale, as it is determined by the FIPA on the basis of the following criteria:

- the WHO declares a PHEIC, and there is a risk of importing a dangerous infectious disease to Germany; or
- there is a risk of importing a dangerous infectious disease to several federated lands in Germany or such importing has already taken place.

71. Previously such criteria were not clearly defined (**paras. 71–72 of Annex 3 to the Analytical Report**).

72. This law provides for inclusion in the FIPA of a special provision (paragraph 28a), which stipulates various population protection measures that may be taken by government agencies in connection with the COVID-19 pandemic. It also stipulates that more stringent measures, for example, lockdown, may only be introduced if softer measures are not sufficiently efficient. As a general rule, the said measures are introduced by state authorities of the federated lands, based on the epidemiological situation at the local level (i.e., counties, district cities, and administrative districts). However, in case of the spread of an epidemic throughout the entire federated state, the said decisions can be based on the epidemiological situation in this federal state.

73. This federal law also provides for other measures aimed at combatting the epidemic. For example, it stipulates mandatory electronic registration for persons who came to Germany from countries with a negative epidemiological situation.

74. The development of special legislation continues to this day at the federal level. On April 21, 2021, the Bundestag approved the draft Fourth Law on Protection of the Population in Case of an Epidemic of the National Scale, the key provision of which allows to take population protection measures in connection with the COVID-19 pandemic at the federal level without consent of the representatives of the federated states (at the moment, any restrictions upon the initiative of the government are coordinated with the

⁶²⁷ Gesetz für ein Zukunftsprogramm Krankenhäuser (Krankenhauszukunfts-gesetz). URL: https://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBL&jumpTo=bgbl120s2208.pdf (the date of access: April 18, 2021).

⁶²⁸ Investitionsprogramm für Krankenhäuser. URL: <https://www.bundesregierung.de/breg-de/themen/buerokratieabbau/krankenhauszukunfts-gesetz-1781744> (the date of access: April 18, 2021).

⁶²⁹ Drittes Gesetz zum Schutz der Bevölkerung bei einer epidemischen Lage von nationaler Tragweite. URL: https://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBL&jumpTo=bgbl120s2397.pdf (the date of access: April 18, 2021).

representatives of the federated states (**paras. 85–86 of Annex 4 to the Analytical Report**)).⁶³⁰ Before entering into force, this draft law must be approved by the Bundesrat and the President.

*Laws of the Federated Lands*⁶³¹

75. No significant amendments to the legislation of the federated states of North Rhine-Westphalia and Bavaria relating to countering the spread of COVID-19 were adopted from September 2020 to March 2021 (**paras. 77–85 of Annex 3 to the Analytical Report**).

2. Measures Taken in the Fight Against the COVID-19 Pandemic

2.1. General Measures

Transport

76. Since the start of the COVID-19 pandemic, Germany has alternately seen both sinking and rising numbers of COVID-19 cases. The measures taken to combat the spread of coronavirus, including but not limited to transport, depended on the epidemiological situation at a particular moment and varied depending on the risks to the public healthcare system.

77. As of now, different rules apply to persons entering Germany, depending on which region they come from:

- persons arriving from countries with an average level of risk by any transport other than aircraft must have a test and receive a negative result within 48 hours after arrival;
- persons arriving from countries with a high level of risk, including countries where more dangerous mutations of the coronavirus are present, must have a test and receive a negative result before arrival and upon arrival;
- persons arriving by aircraft, regardless of the country of origin, must have a test and receive a negative result within 48 hours before arrival.⁶³²

Public Health

78. Since the first response to the COVID-19 pandemic (**para. 88 of Annex 3 to the Analytical Report**), a significant number of additional public health measures have been taken at the federal level. As noted above (**para. 69 of Annex 4 to the Analytical Report**), the spread of COVID-19 has served as an incentive for the government to modernize and further improve the healthcare system to ensure its efficiency in countering the pandemic. In particular, in September 2020, Germany's Health Minister announced the government's plans to increase the number of medical workers in hospitals, as well as to make

⁶³⁰ Bundesweite Notbremse beschlossen. URL: <https://www.bundesregierung.de/breg-de/aktuelles/bundesweite-notbremse-1888982> (the date of access: April 21, 2021).

⁶³¹ North Rhine-Westphalia and Bavaria were selected for analysis both in Appendix 3 and Appendix 4 to the Analytical Report.

⁶³² Diese Regeln gelten bei Einreise aus dem Ausland. URL: <https://www.bundesregierung.de/breg-de/aktuelles/corona-einreiseverordnung-1836284> (the date of access: April 18, 2021).

investments in the use of new digital technologies by public health authorities. This package of measures was agreed upon by the federation with the federated states.⁶³³

79. Furthermore, in November 2020, the government announced the launch of a program to create a national health reserve, i.e., infrastructure for storing medical equipment, materials, medicines, and so on in specially created warehouses, to which immediate access can be ensured in case of an emergency similar to the COVID-19 epidemic.⁶³⁴

80. With the advent of vaccines, steps have been taken to ensure their most rational use. To this end, the Health Ministry has developed a regulation on vaccination,⁶³⁵ which determines the priority groups of the population, the vaccination of which is carried out on a priority basis, the procedure for using different types of vaccination to different groups of the population, the manner of conducting the vaccination campaign in various types of healthcare institutions, and so on.

81. The Health Ministry has also developed and periodically updates another regulation containing provisions on COVID-19 testing.⁶³⁶

Education

82. Along with the measures, introduced earlier (**paras. 89–90 of Annex 3 to the Analytical Report**), it should be noted that to ensure the continuity of the education process during the pandemic and lockdown, the government announced its plans to invest significant funds in the development of digital technologies in the education. They include, in particular, providing teachers and students with devices through which distance learning will be possible. Measures to support higher distance education have also been taken by some federated states.⁶³⁷ For instance, in the federated state of North Rhine-Westphalia, the Law on Additional Measures to Overcome the Coronavirus Pandemic in Higher Education was adopted on December 7, 2020.⁶³⁸ This law provides for special rules regarding the education process and is aimed at combatting the spread of COVID-19 (for example, organizing the education process online).

⁶³³ Pakt für den öffentlichen Gesundheitsdienst. URL: <https://www.bundesgesundheitsministerium.de/service/begriffe-von-a-z/o/oeffentlicher-gesundheitsdienst-pakt.html> (the date of access: April 18, 2021).

⁶³⁴ Bundesregierung baut Nationale Gesundheitsreserve auf. URL: <https://www.bundesregierung.de/breg-de/themen/coronavirus/nationale-reserve-1821502> (the date of access: April 18, 2021).

⁶³⁵ Verordnung zum Anspruch auf Schutzimpfung gegen das Coronavirus SARS-CoV-2. URL: https://www.bundesgesundheitsministerium.de/fileadmin/Dateien/3_Downloads/C/Coronavirus/Verordnungen/Corona-ImpfV_BAnz_AT_11.03.2021_V1.pdf (the date of access: April 18, 2021). This regulation will take effect on March 8, 2021 and will become the third regulation on vaccination. Two previous regulations were effective from December 2020 until February 2021 and from February 2021 until March 2021 respectively.

⁶³⁶ Verordnung zum Anspruch auf Testung in Bezug auf einen direkten Erregernachweis des Coronavirus SARS-CoV-2. URL: https://www.bundesgesundheitsministerium.de/fileadmin/Dateien/3_Downloads/C/Coronavirus/Verordnungen/Corona-TestV_BAnz_AT_09.03.2021_V1.pdf (the date of access: April 18, 2021).

⁶³⁷ Digitalisierung der Schulen mit Hochdruck vorantreiben. URL: <https://www.bundesregierung.de/breg-de/mediathek/kanzlerin-podcast/podcast-schulen-1789466> (the date of access: April 18, 2021).

⁶³⁸ Gesetz hinsichtlich weiterer Maßnahmen zur Bewältigung der Corona-Pandemie im Hochschulbereich. URL: https://recht.nrw.de/lmi/owa/br_vbl_detail_text?anw_nr=6&vd_id=18940&ver=8&val=18940&sg=0&menu=1&vd_back=N (the date of access: April 18, 2021).

2.2. Containment Measures Regarding Industrial and Non-Productive Sectors

83. Along with the introduced earlier restrictive measures [paras. 91–97 of Annex 3 to the Analytical Report], other measures, taken after the first reaction to the COVID-19 pandemic should be mentioned.

84. The Employment Safety Regulation governs a wide range of issues related to labor relations during the pandemic. For example, employers are generally obliged to provide their employees with the opportunity to work from home, while the employees are not obliged to use this opportunity. In the workplace, employers are obliged to ensure compliance with safety rules, in particular, the use of masks, social distancing, and so on.⁶³⁹

85. Frequently, specific measures were taken based on the current situation and could be applied over different time periods. For instance, the most stringent measures, including the temporary closure of many types of enterprises (in catering, culture and art, entertainment, and so on) or limiting the number of visitors (for example, in the wholesale and retail trade), were agreed upon by the federation and the federated states in fall 2020 – winter 2021, during the period of the most intensive spread of the virus.⁶⁴⁰ Due to the subsequent decline in the number of cases, the measures were relaxed in March 2021, with the scope of relaxation being determined by the federated lands.⁶⁴¹ With the onset of a new increase in the number of cases, referred to in some German media as the “third wave”,⁶⁴² stringent measures, in particular the restriction of functioning of certain types of enterprises, may be reintroduced on a temporary basis. It should be noted that the nature of the adopted restrictions has not changed significantly in comparison with the measures that were taken at the initial stages of the pandemic.

2.3. Containment Measures Regarding Population

86. Containment measures regarding the population were introduced on a temporary basis depending on the general epidemiological situation. The restrictions in case of a sharp increase in the number of cases have not changed significantly since the beginning of the pandemic: lockdown at a certain time, a ban on meetings and gatherings with the number of participants exceeding the highest permitted number, mandatory wearing of masks, and so on. These restrictions were agreed upon by the federation and the federated states in fall 2020 – winter 2021 in response to a sharp increase in the number of cases.⁶⁴³

⁶³⁹ SARS-CoV-2-Arbeitsschutzverordnung. URL: <https://www.gesetze-im-internet.de/corona-arbschv/BJNR602200021.html> (the date of access: April 18, 2021).

⁶⁴⁰ Videokonferenz der Bundeskanzlerin mit den Regierungschefinnen und Regierungschefs der Länder am 28. Oktober 2020. URL: <https://www.bundesregierung.de/breg-de/themen/buerokratieabbau/videokonferenz-der-bundeskanzlerin-mit-den-regierungschefinnen-und-regierungschefs-der-laender-am-28-oktober-2020-1805248> (the date of access: April 18, 2021).

⁶⁴¹ Die nächsten Schritte klug gehen. URL: <https://www.bundesregierung.de/breg-de/themen/coronavirus/bund-laender-beschluss-1872126> (the date of access: April 18, 2021).

⁶⁴² Die perfekte dritte Welle. URL: <https://www.tagesschau.de/faktenfinder/corona-dritte-welle-101.html> (the date of access: April 19, 2021).

⁶⁴³ Videokonferenz der Bundeskanzlerin mit den Regierungschefinnen und Regierungschefs der Länder am 28. Oktober 2020. URL: <https://www.bundesregierung.de/breg-de/themen/buerokratieabbau/videokonferenz-der-bundeskanzlerin-mit-den-regierungschefinnen-und-regierungschefs-der-laender-am-28-oktober-2020-1805248> (the date of access: April 18, 2021).

2.4. Support Measures for Industrial and Non-Productive Sectors

87. Along with the introduced earlier support measures (**paras. 107–109 of Annex 3 to the Analytical Report**), the following new support measures, created by the government to support various branches of the economy, should be mentioned:

- Neustart Kultur — a program of financial support for various cultural institutions, in particular, museums, circuses, cinemas, libraries, theaters, and so on. The program includes various projects: modernization of equipment and premises, awarding scholarships to artists, assisting in conducting cultural programs, and so on;⁶⁴⁴
- Neustarthilfe — a program of financial support for self-employed individuals and small businesses affected by the pandemic, created by the Ministry of Economy and Energy. Assistance is provided through direct cash payments;⁶⁴⁵
- Überbrückungshilfe — a program of financial support for all types of enterprises, self-employed individuals, and representatives of the liberal professions. Assistance is provided through direct cash payments;⁶⁴⁶
- November- und Dezemberhilfe — a program of financial support of enterprises and self-employed individuals that were affected by stringent restrictions introduced in November – December 2020.⁶⁴⁷

88. Another support measure that should be mentioned is the Third Law on Tax Aid during the Coronavirus, adopted on March 10, 2021,⁶⁴⁸ which provides for both general tax allowances (deferral of tax on personal and corporate income) for all persons and tax breaks (VAT reduction) for some branches of the economy, for example, for enterprises providing catering services. Furthermore, mention should be made of the Employment Protection Act, adopted by the Bundestag on December 3, 2020, which provides for the reimbursement of certain types of mandatory payments to employers if they comply with certain conditions, in particular, if they participate in training programs for their employees.⁶⁴⁹

89. In addition to the above-mentioned measures of financial support through the provision of subsidies, one should also mention measures of indirect support of enterprises provided for by the federal government. They include, for example, the creation of the Economic Stabilization Fund to provide

⁶⁴⁴ Rettungsprogramm wird ausgebaut. URL: <https://www.bundesregierung.de/breg-de/bundesregierung/staatsministerin-fuer-kultur-und-medien/corona-hilfen> (the date of access: April 18, 2021).

⁶⁴⁵ Neustarthilfe. URL: <https://www.ueberbrueckungshilfe-unternehmen.de/UBH/Redaktion/DE/Artikel/neustarthilfe.html> (the date of access: April 18, 2021).

⁶⁴⁶ Überbrückungshilfe III. URL: <https://www.ueberbrueckungshilfe-unternehmen.de/UBH/Redaktion/DE/Artikel/ueberbrueckungshilfe-iii.html> (the date of access: April 18, 2021).

⁶⁴⁷ Überblick: Was ist die November- und Dezemberhilfe? URL: <https://www.ueberbrueckungshilfe-unternehmen.de/UBH/Navigation/DE/Ausserordentliche-Wirtschaftshilfe/ausserordentliche-wirtschaftshilfe.html> (the date of access: April 18, 2021).

⁶⁴⁸ Drittes Gesetz zur Umsetzung steuerlicher Hilfsmaßnahmen zur Bewältigung der Corona-Krise. URL: <https://www.bgbl.de/xaver/bgbl/start.xav> (the date of access: April 18, 2021).

⁶⁴⁹ Gesetz zur Beschäftigungssicherung infolge der COVID-19-Pandemie. URL: https://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBI&jumpTo=bgbl120s2691.pdf (the date of access: April 18, 2021).

suretyship and guarantees for bank loans to enterprises,⁶⁵⁰ as well as the provision of loans by a state-owned bank Kreditanstalt für Wiederaufbau.⁶⁵¹

90. The support measures also include federal laws extending the moratorium on filing bankruptcy petitions, as well as on some other actions, in particular, filing of tax returns during the COVID-19 pandemic. The latest law to this effect was passed by the Bundestag on February 15, 2021.⁶⁵²

2.5. Support Measures for Population

91. Along with the support measures, adopted earlier (**paras. 112–113 of Annex 3 to the Analytical Report**), the following types of support measures, set forth by the government, should be mentioned:

- Kinderkrankengeld — social allowance for parents who have to spend daytime with their children at home due to the pandemic related restrictions (closure of schools, kindergartens, and so on),⁶⁵³
- Überbrückungshilfe für Studierende — financial support program for students during the pandemic.⁶⁵⁴

92. Further laws that merit attention are the Third Coronavirus Tax Aid Act that again provides for a “Bonus for children” of EUR 150⁶⁵⁵ and the Employment Protection Act that stipulates various measures aimed at supporting employees during forced part-time employment or loss of job due to the COVID-19 pandemic, in particular, provision of financial subsidies.⁶⁵⁶

3. Court Practice With Respect to the COVID-19 Pandemic

93. In 2020, German courts considered about 10,000 cases related to the COVID-19 pandemic and the measures taken in connection with it.⁶⁵⁷ Some of these decisions concerned citizens’ challenging the restrictions imposed on them by state authorities to combat the epidemic. In 9 out of 10 cases, the courts

⁶⁵⁰ Wirtschaftsstabilisierungsfonds (WSF). URL: <https://www.bmwi.de/Redaktion/DE/Coronavirus/WSF/wirtschaftsstabilisierungsfonds.html> (the date of access: April 20, 2021).

⁶⁵¹ KfW-Corona-Hilfe: Kredite für Unternehmen. URL: <https://www.kfw.de/inlandsfoerderung/Unternehmen/KfW-Corona-Hilfe/?redirect=585280> (the date of access: April 20, 2021).

⁶⁵² Gesetz zur Verlängerung der Aussetzung der Insolvenzantragspflicht und des Anfechtungsschutzes für pandemiebedingte Stundungen sowie zur Verlängerung der Steuererklärungsfrist in beratenden Fällen und der zinsfreien Karenzzeit für den Veranlagungszeitraum. URL: https://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBL&jumpTo=bgbl121s0237.pdf (the date of access: April 18, 2021).

⁶⁵³ Weitere Entlastung für Eltern. URL: <https://www.bundesregierung.de/breg-de/themen/coronavirus/kinderkrankengeld-1836090> (the date of access: April 18, 2021).

⁶⁵⁴ Überbrückungshilfe für Studierende. Das müssen Sie jetzt wissen. URL: <https://www.bmbf.de/de/wissenswertes-zur-ueberbrueckungshilfe-fuer-studierende-11509.html> (the date of access: April 18, 2021).

⁶⁵⁵ Drittes Gesetz zur Umsetzung steuerlicher Hilfsmaßnahmen zur Bewältigung der Corona-Krise. Art. 1, 4.

⁶⁵⁶ Gesetz zur Beschäftigungssicherung infolge der COVID-19-Pandemie. Art. 1.

⁶⁵⁷ Über 530 Gerichtsentscheidungen zum Coronavirus. URL: <https://www.etl-rechtsanwaelte.de/aktuelles/erste-gerichtsentscheidungen-zum-coronavirus> (the date of access: April 21, 2021).

upheld the position of the state authorities. The overwhelming majority of these decisions were issued by the courts of the federated states and related, *inter alia*, to the restrictions indicated below.

Rulings of the Courts of Federated States

Restrictions Relating to the Functioning of Businesses

94. While most courts upheld the legality of the taken measures and resolved predominantly controversial issues of their application, in some cases the applicants were able to prove the illegality of the adopted regulations. For instance, on April 30, 2020, the Administrative Court of the federated state of Baden-Württemberg held that a restriction on the area of commercial spaces that can be used by certain types of retail stores was contrary to the principle of equality since this restriction did not apply to other retail businesses.⁶⁵⁸ In another case, the same court declared illegal the imposition of the obligation to check all employees for infection twice a week on all slaughterhouses in the region. The court pointed out that this measure was excessive whereas it did not give enterprises the opportunity to apply for its limited application due to special circumstances, for example, the adoption of special protective measures at the enterprise.⁶⁵⁹

School Attendance Restrictions

95. Court practice on these issues mainly covers disputes regarding the details of application of the said restrictions.⁶⁶⁰ However, in some cases, the applicants tried to challenge the legality of these measures. For example, on March 9, 2021, the Administrative Court of the federated state of North Rhine-Westphalia dismissed an application for suspension of the regulation adopted by the Landtag of this federated state and setting forth the said restrictions, in particular, wearing of masks. The court held that in light of the epidemiological situation at that time, the contested measures were adequate.⁶⁶¹

Restrictions Relating to Meetings, Gatherings, and Public Events

96. Since the start of the COVID-19 pandemic, extensive court practice has appeared regarding regulations that impose restrictions relating to meetings, gatherings, and public events. In some cases, applicants successfully challenged the legality of the restrictions. For example, on September 1, 2020, the Administrative Court of the federated state of Bavaria declared disproportionate the rules adopted by the Landtag (parliament) of this federated state that provided for a general ban on alcohol consumption at night and cooking in open spaces.⁶⁶² The Court noted that, although such measures might contribute to curbing

⁶⁵⁸ VGH Baden-Württemberg, Beschluss vom 30.04.2020 - 1 S 1101/20. URL: <https://openjur.de/u/2208622.html> (the date of access: April 21, 2021).

⁶⁵⁹ VGH Baden-Württemberg, Beschluss vom 30.07.2020 - 1 S 2087/20. URL: <https://openjur.de/u/2271533.html> (the date of access: April 21, 2021).

⁶⁶⁰ VG Köln, Beschluss vom 31.08.2020 - 7 L 1540/20. URL: <https://openjur.de/u/2300701.html> (the date of access: April 21, 2021); VG Düsseldorf, Beschluss vom 16.10.2020 - 7 L 2038/20. URL: <https://openjur.de/u/2304253.html> (the date of access: April 21, 2021).

⁶⁶¹ OVG Nordrhein-Westfalen, Beschluss vom 09.03.2021 - 13 B 267/21.NE. URL: <https://openjur.de/u/2331300.html> (the date of access: April 21, 2021).

⁶⁶² VGH München, Beschluss v. 01.09.2020 - 20 CS 20.1962. URL: <https://www.gesetze-bayern.de/Content/Document/Y-300-Z-BECKRS-B-2020-N-21233?hl=true> (the date of access: April 21, 2021), VGH München, Beschluss v. 01.09.2020 - 20 NE 20.1754. URL: <https://www.gesetze-bayern.de/Content/Document/Y-300-Z-BECKRS-B-2020-N-21222?hl=true> (the date of access: April 21, 2021).

the spread of the infection, they were excessive in the adopted wording, in particular since their scope was not limited to areas with the most severe epidemiological situation.

Rulings of Highest Courts

97. Several decisions regarding the restrictions, imposed due to the spread of COVID-19, have been rendered by the Federal Supreme Court and the Constitutional Court.

*BGH, Beschl. v. 17.11.2020 – 4 StR 390/20*⁶⁶³

98. The Federal Supreme Court ruled that lockdown, introduced due to the COVID-19 pandemic, cannot be interpreted as restricting a person's right to attend a public court hearing. A person's desire to do so must be recognized as a valid reason, which, according to the applicable legislation, allows to leave his or her house during such lockdown. That said, the court did not consider the question as to whether a prohibition to do so would be permissible in case of a person's confirmed infection or contact with an infected person.

*BGH, Beschl. v. 06.01.2021 – 5 StR 363/20*⁶⁶⁴

99. The Federal Supreme Court reaffirmed its position in the previous case and indicated that the imposition of lockdown does not mean that a person is prohibited from being present at trial.

*BVerfG, Beschl. v. 10.04.2020 – 1 BvQ 28/20, NJW 2020, 1427*⁶⁶⁵

100. The Constitutional Court held that while the ban on attending religious services, introduced in spring 2020, was an extremely serious abridgment on fundamental human rights by the state, it did not contradict the Basic Law, since it was enacted during a period of the rapid spread of the infection to protect public health.

*BVerfG, Beschl. v. 15.04.2020 – 1 BvR 828/20, NJW 2020, 1426*⁶⁶⁶

101. The Constitutional Court considered the prohibition of gatherings of more than two persons, introduced by the city of Giessen, excessive and therefore contrary to the Basic Law.

102. Thus, the COVID-19 relating court practice is beginning to take shape, including in the highest courts and in cases when regulations issued by executive agencies are contested. Although in most cases the courts confirm the legality of the restrictions adopted by the state, in some cases they can be declared

⁶⁶³ Bundesgerichtshof Beschluss 4 StR 390/20 vom 17. November 2020 in der Strafsache gegen wegen schweren Raubes u.a. URL: <http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&nr=113667&pos=0&anz=1> (the date of access: April 21, 2021).

⁶⁶⁴ Bundesgerichtshof Beschluss 5 StR 363/20 vom 6. Januar 2021 in der Strafsache gegen wegen Betruges u.a. URL: <http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&az=5%20StR%20363/20&nr=115507> (the date of access: April 18, 2021).

⁶⁶⁵ Bundesverfassungsgericht, Beschluss der 2. Kammer des Ersten Senats vom 10. April 2020 - 1 BvQ 28/20. URL: https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2020/04/qk20200410_1bvq002820.html (the date of access: April 18, 2021).

⁶⁶⁶ Bundesverfassungsgericht, Beschluss der 1. Kammer des Ersten Senats vom 15. April 2020 - 1 BvR 828/20. URL: https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2020/04/rk20200415_1bvr082820.html (the date of access: April 18, 2021).

illegal if they violate the principles of equality and proportionality of the restrictions imposed to the public interests concerned.



III. Italy

Summary

103. Since September 2020, the COVID-19 pandemic has been challenging the Italian legal system again, affecting and limiting certain fundamental freedoms, owing to the extension of the state of emergency.

104. Overall, a multi-lateral model in which the Government plays the main role but its action is coordinated and implemented by other authorities involved at regional and local levels was reconfirmed (**para. 115 of Annex 3 to the Analytical Report**). Another element of continuity concerns the choice of legal tools (decree-laws, decrees of the President of the Council of Ministers, as well as orders at the regional and local level) (**paras. 135–139 of Annex 3 to the Analytical Report**). Like in the first phase of the pandemic, measures have been taken to contain the spread of COVID-19 and support the most affected economic sectors (**para. 117 of Annex 3 to the Analytical Report**).

105. The classification of Italy into different areas according to the risk level was introduced. This implies the application of different measures depending on the risk of the spread of COVID-19 in each region. This strategy has been carried out with the purpose to obtain trust and citizens' acceptance of restrictive measures by avoiding total lockdown throughout the national territory. The latter has been envisaged only for Christmas time and generally for areas classified as "red" (high-risk level). However, this kind of lockdown has been lighter than in the first pandemic phase (for instance, not affecting the industrial sector, not closing all school grades, not compromising freedom of worship and public demonstrating) (**paras. 140–154 of Annex 3 to the Analytical Report**).

106. As during the first COVID-19 wave (**para. 122 of Annex 3 to the Analytical Report**), the new measures have also mainly affected individual freedoms in the name of protecting the collective interest for health, enshrined in Article 32 of the Constitution, and pursuant to the principle of social solidarity under Article 2 of the Constitution.⁶⁶⁷

107. Court practice faced some challenges that involved the conflict of competence between the State and the regions in the management of the pandemic, as well as the balance of the collective right to health with other relevant rights (e.g., the right to education, economic rights).

108. Overall, what has guided a decision-maker in the application of the measures and a judge in the adoption of the decisions, is the principle that measures restricting individual freedoms may be taken in the name of the collective interest in health, but grounded on the scientific evidence of the imminent risk.

⁶⁶⁷ Freedoms particularly concern individual freedoms (Article 13 of the Constitution), freedom of movement (Article 16 of the Constitution), freedom of assembly (Article 17 of the Constitution). For an in-depth examination of the restrictions of constitutional rights due to the COVID-19 health crisis, see *Cuocolo L. I diritti costituzionali di fronte all'emergenza Covid-19. Una prospettiva comparata*// *Federalismi.it* 2020. No. 1. P. 13–45.

1. Evolution of the Measures Taken in the Fight Against the COVID-19 Pandemic

New COVID-19 Legislation

109. In September 2020, Italy faced the second wave of the COVID-19 health crisis and was forced to take a set of measures to contain the spread of the virus and support the national economy.

110. New legal acts have been specifically designed to deal with the second wave and were adopted in accordance with the pre-COVID 19 emergency legislation, including the Italian Constitution, the Health Regulation No. 106/1982,⁶⁶⁸ the Civil Protection Code,⁶⁶⁹ and the National Plan for Preparedness and Response to an Influenza Pandemic⁶⁷⁰ (**paras. 118–119, 123–130 of Annex 3 to the Analytical Report**).

111. The state of emergency was extended until January 31, 2021, by the decision of the Council of Ministers of October 7, 2020.⁶⁷¹ Subsequently, on January 13, 2021, the Council of Ministers once again extended the state of emergency until April 30, 2021.⁶⁷²

112. As during the COVID-19 first wave, the Government rather than the Parliament has played a central role, taking into account the necessary circumstances underpinning the health crisis and the need to address it urgently (**para. 134 of Annex 3 to the Analytical Report**).⁶⁷³ Indeed, the centralization of the Government's powers addresses the need to provide a unitary response to the emergency quickly throughout the country. During an emergency, the Government's legal tools are more suitable than the ordinary ones in terms of promptness in the adoption process.

⁶⁶⁸ Law No. 106 of February 9, 1982. Approval and execution of the international health regulation, adopted in Boston on July 25, 1969, modified by the additional regulation, adopted in Geneva on May 23, 1973, in Official Gazette, No. 87 of March, 1982.

⁶⁶⁹ Legislative Decree No. 1 of January 2, 2018; Civil Protection Code of January 2, 2018. Published in the Official Journal of the Italian Republic No. 17 of January 22, 2018. Effectively in force as of February 2018.

URL: http://www.protezionecivile.gov.it/en/transparent-administration/legal-measures/detail/-/asset_publisher/default/content/decreto-legislativo-n-1-del-2-gennaio-2018-codice-della-protezione-civi-1

[the date of access: March 30, 2021].

⁶⁷⁰ Piano nazionale di preparazione e risposta ad una pandemia influenzale. URL: http://www.salute.gov.it/imgs/C_17_pubblicazioni_511_allegato.pdf (the date of access: March 30, 2021).

⁶⁷¹ Decision of the Council of Ministers of October 7, 2020, extension of the state of emergency because of the Health risk associated with the onset of diseases deriving from transmissible viral agents, in Official Gazette, No. 248 of October 7, 2020. URL: <https://www.gazzettaufficiale.it/eli/id/2020/10/07/20A05463/sg> (the date of access: March 30, 2021). The extension of the state of emergency has been incorporated in the Decree-Law No. 125 of October 7, 2020. URL: <https://www.gazzettaufficiale.it/eli/id/2020/10/07/20G00144/sg> (the date of access: March 30, 2021).

⁶⁷² Decision of the Council of Ministers of January 13, 2021, extension of the state of emergency as a consequence of the Health risk associated with the onset of diseases deriving from transmissible viral agents, in Official Gazette, No. 15 of January 20, 2021. URL: <https://www.gazzettaufficiale.it/eli/id/2021/01/20/21A00227/sg> (the date of access: March 30, 2021). The extension of the state of emergency has been transposed in the Decree-Law No. 2 of January 14, 2021. URL: <https://www.gazzettaufficiale.it/eli/id/2021/01/14/21G00002/sg> (the date of access: March 30, 2021).

⁶⁷³ It is worth mentioning the Decree-Law No. 19 of March 25, 2020 (Article 2, paragraph 5), that introduces the obligation for the Government to report to the Parliament on the measures adopted at least every 15 days. URL: <https://www.gazzettaufficiale.it/eli/id/2020/03/25/20G00035/sg> (the date of access: March 30, 2021). For an in-depth study of the centralization of Government powers, in the management of COVID-19 emergency see *Cavino M. Covid-19. Una prima lettura dei provvedimenti adottati dal Governo // Federalismi.it 2020. No. 1 P. 1–9.*

113. Like the initial Italian legal response to the pandemic, the main legal tools chosen by the Government to tackle the health emergency are still the following: the Decree-Law pursuant to the Article 77 of the Italian Constitution (having the force of law) and the Decree of the President of the Council of Ministers (**paras. 133–139 of Annex 3 to the Analytical Report**).⁶⁷⁴

114. Similarly, other legal instruments concern the orders issued at the ministerial level, particularly those adopted by the Ministry of Health (**para. 136 of Annex 3 to the Analytical Report**).⁶⁷⁵

115. The governmental action is still coordinated with the support of the Civil Protection Department whose head has the power to issue orders (**para. 136 of Annex 3 to the Analytical Report**).⁶⁷⁶

116. Even in the second phase, the Extraordinary Commissioner for the Emergency plays a strategic role, with the task to supervise every action aimed at addressing the COVID-19 health crisis.⁶⁷⁷

117. What characterizes the second phase in comparison with the first one, is the elaboration of a vaccination plan, developed by an intersectional group at the Ministry of Health.⁶⁷⁸

118. The vaccination plan identifies the categories that have priority in receiving the vaccine, the tasks of the authorities involved, the places of the distribution, and the procedures of vaccine vigilance, which are mainly carried out by the the Italian Medicines Agency.

119. It is up to the Extraordinary Commissioner to carry out the vaccination plan with the coordination of the Ministry of Health at the central level, as well as with the cooperation of the regions.

120. On March 13, 2021, the Extraordinary Commissioner drafted a plan to regulate the logistics, supply chain, and transportation of the vaccine, identifying the objectives to be achieved within a given timeframe.⁶⁷⁹

⁶⁷⁴ It is important to say that this is an act of secondary source (administrative nature), which provides a specific sunset clause. It is aimed at implementing and providing additional measures on the legal ground of the decree-laws issued in matters of COVID-19 health crisis. On the topic of the adoption of the Decree of the President of the Council of Ministers, see *Tropea G. Il Covid-19, lo Stato di diritto, la pietas di Enea // Federalismi.it* 2020. No. 1 P. 1–14.

⁶⁷⁵ On the legal ground of Article 32 of the Law No. 833 of December 23, 1978 on the National Health Service. URL: <https://www.gazzettaufficiale.it/eli/id/1978/12/28/078U0833/sq> (the date of access: March 30, 2021). On the ground of Article 2(2) of the Decree-Law No. 19 of March 25, 2020, the Ministry of Health is empowered to take measures and exercise a time-limited power of substitution in the absence of the Prime Minister in cases of necessity and urgency.

⁶⁷⁶ It is noteworthy that civil protections orders find their legal ground in the declaration of the state of emergency, pursuant to the Civil Protection Code (Legislative Decree No. 1 of January 2, 2018).

⁶⁷⁷ This position has been established by the Decree-Law No. 18 on March 17, 2020. Article 122. The Extraordinary Commissioner was nominated by the Decree of the President of the Council of Ministers of March 18, 2020.

⁶⁷⁸ Strategic plan.
URL: <https://www.trovanorme.salute.gov.it/norme/renderNormsanPdf?anno=2021&codLeg=79447&parte=1%20&serie=null> (the date of access: March 30, 2021). See also the recommendation of the Ministry of Health No. 42164 of December 24, 2020.
URL: <https://www.trovanorme.salute.gov.it/norme/renderNormsanPdf?anno=2020&codLeg=77981&parte=1%20&serie=null> (the date of access: March 30, 2021).

⁶⁷⁹ Presidenza del Consiglio dei Ministri. Straordinario per l'attuazione e il coordinamento delle misure sanitarie di contenimento e contrasto dell'emergenza epidemiologica COVID-19. Piano Vaccinale Anticovid. URL: http://www.governo.it/sites/governo.it/files/210313_Piano_Vaccinale_marzo_2021.pdf (the date of access: March 30, 2021).

121. With regard to vaccination, the Decree-Law No. 44 of April 1, 2021,⁶⁸⁰ is worth mentioning, whereas it provides for the compulsory vaccination for healthcare workers, as well as excludes their criminal liability in the event of injuries resulting from vaccine administration.

122. As for relations between central State and regions, it is possible to notice again a centralized system with a multi-lateral approach in which the Government plays the main role, coupled with regional and local authorities who are empowered to implement the state measures (**para. 131 of Annex 3 to the Analytical Report**). However, regional and local authorities have more room since there is greater attention to the specific pandemic risk of the region concerned.

123. It is noteworthy to mention that Presidents of the regions may adopt more restrictive measures in case of a pandemic worsening on their territory, on condition to be compatible with the national measures provided by the Government, in accordance with the principle of proportionality and appropriateness.⁶⁸¹

124. However, Presidents of the regions, without the approval of the Ministry of Health, can no longer adopt measures more extensive than those envisaged by the Government.⁶⁸²

125. As far as the role of the local authorities in the second phase, the Decree of the President of the Council of Ministers of October 18, 2020,⁶⁸³ empowered Mayors to close the public streets or squares in urban centers from 21:00 in case of possible situations of gathering, without prejudice to the possibility of access to the concerned open commercial activities and private homes.

126. The power of Mayors to take restrictive measures in the event of worsening of the pandemic situation in their territory is reconfirmed (**para. 130 of Annex 3 to the Analytical Report**), as long as the orders comply with national measures.⁶⁸⁴

127. Actually, the management of the second wave differs from the first phase in terms of a more targeted strategy, with the aim to avoid a national lockdown by differentiating the restrictive measures, in accordance with the pandemic risks for each region.

128. In other words, the restrictiveness of the measures is gradual and proportional to the risk of the pandemic on the territory concerned.

⁶⁸⁰ Decreto-Legge 1 aprile 2021, No. 44 Misure urgenti per il contenimento dell'epidemia da COVID-19, in materia di vaccinazioni anti SARS-CoV-2, di giustizia e di concorsi pubblici. URL: <https://www.gazzettaufficiale.it/eli/id/2021/04/01/21G00056/sg> (the date of access: March 30, 2021).

⁶⁸¹ The Decree-Law No. 19 of March 25, 2020. Article 3. URL: <https://www.gazzettaufficiale.it/eli/id/2020/03/25/20G00035/sg> (the date of access: March 30, 2021). See also the Decree-Law No. 33 of May 16, 2020. Article 1 (16). URL: <https://www.gazzettaufficiale.it/eli/id/2020/05/16/20G00051/sg> (the date of access: March 30, 2021).

⁶⁸² See Article 1 (2) of the Decree-Law No. 125 of October 7, 2020, that amends the relevant provisions of the Decree-Law No. 33 of May 16, 2020, which provides for the possibility to adopt more extensive measures without the consent of the Ministry of Health. URL: <https://www.gazzettaufficiale.it/eli/id/2020/10/07/20G00144/sg> (the date of access: March 30, 2021).

⁶⁸³ Decreto del Presidente del Consiglio dei Ministri 18 ottobre 2020. GU Serie Generale No. 258. URL: <https://www.gazzettaufficiale.it/eli/id/2020/10/18/20A05727/sg> (the date of access: March 30, 2021).

⁶⁸⁴ The Decree-Law No. 19 of March 25, 2020, converted into Law No. 35 of May 22, 2020. URL: <https://www.gazzettaufficiale.it/eli/id/2020/03/25/20G00035/sg> (the date of access: March 30, 2021).

129. Indeed, the Decree of the President of the Council of Ministers of November 3, 2020 defined different rules for different areas, establishing a division of the Italian territory in three zones (yellow, orange, and red), corresponding to an increasing risk.⁶⁸⁵

130. On the ground of the Decree-Law No. 149 of November 9, 2020,⁶⁸⁶ it is up to the Minister of Health to decide by order the level of risk for each region, after consulting Presidents of the regions concerned and the Scientific Technical Committee.

131. The role of the Scientific Technical Committee (**para. 136 of Annex 3 to the Analytical Report**)⁶⁸⁷ is reconfirmed, with the task to advise and support the coordination activities to overcome the COVID-19 emergency.

132. With the Decree of April 30, 2020,⁶⁸⁸ the Ministry of Health identified the criteria according to which monitoring the evolution of the pandemic, including the capacity for each region of the health care system, the virus transmissibility index, and the number of people affected by COVID-19.

133. A region can move from a high-risk area to a low-risk area if there are improving elements for two consequent reports.⁶⁸⁹

134. Moreover, there is a series of common measures applied on the whole territory.⁶⁹⁰

2. Measures Taken in the Fight Against the COVID-19 Pandemic

2.1. General Containment Measures

135. Throughout the whole territory, like during the first wave of the COVID-19 pandemic (**para. 151 of Annex 3 to the Analytical Report**), the obligation of social distancing of at least one meter has been confirmed.

136. *Mask wearing obligation.* The Decree of the Council of Minister of October 13, 2020,⁶⁹¹ required the wearing of respiratory protective devices (masks) not only in closed places accessible to the public but also

⁶⁸⁵ Decreto del Presidente del Consiglio dei Ministri 3 novembre 2020. GU Serie Generale No. 275. URL: <https://www.gazzettaufficiale.it/eli/id/2020/11/04/20A06109/sg> (the date of access: March 30, 2021).

⁶⁸⁶ The Decree-Law No. 149 of November 9, 2020. Article 30. URL: <https://www.gazzettaufficiale.it/eli/id/2020/11/09/20G00170/sg> (the date of access: March 30, 2021)

⁶⁸⁷ Panel of experts nominated with Decree of the Head of the Civil Protection Department No. 371 of February 5, 2020. URL: <https://sites.google.com/uniurb.it/ossacovid19/rassegna-normativa/provvedimenti-di-protezione-civile/dcdpc-371?authuser=0> (the date of access: March 30, 2021).

⁶⁸⁸ The Decree of April 30, 2020. URL: <https://www.gazzettaufficiale.it/eli/id/2020/05/02/20A02444/sg> (the date of access: March 30, 2021). Further criteria have been clarified by the Decree-Law No. 2 of January 14, 2021. URL: https://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2021-03-12&atto.codiceRedazionale=21A01589&elenco30giorni=true (the date of access: March 30, 2021)

⁶⁸⁹ On the ground of Article 1 (16-ter) of the Decree-Law No. 33 of May 16, 2020, converted into Law No. 74 of July 14, 2020. URL: <https://www.gazzettaufficiale.it/eli/id/2020/05/16/20G00051/sg> (the date of access: March 30, 2021).

⁶⁹⁰ In case of violations of containment measures, the same sanctioning system is in force as in the first phase, pursuant to Decree-Law No. 19 of March 25, 2020. Article 4. There is still an obligation to fulfill a self-certification form to justify the allowed movements.

⁶⁹¹ The Decree of the President of the Council of Ministers of October 13, 2020. URL: <https://www.gazzettaufficiale.it/eli/id/2020/10/13/20A05563/sg> (the date of access: March 30, 2021).

more generally in indoor places other than private homes and in all outdoor areas. People were obliged to wear masks, except in cases of sports activities, or where isolation is ensured. The measure is still in force.⁶⁹²

137. *Quarantine.* Temporary isolation is still compulsory in cases of a positive COVID-19 test (**para. 143 of Annex 3 to the Analytical Report**), as well as of contact with a potentially infected person.⁶⁹³

138. Pursuant to the Decree of the Council of Minister of October 13, 2020, an obligation to stay at home if the temperature exceeds 37,5 is provided.⁶⁹⁴ The measure is still in force.⁶⁹⁵

139. *Transport.* Public transport can operate with the limit of 50% of the capacity of the vehicles.⁶⁹⁶ Overall, public transport measures are less restrictive than the ones applied in the first COVID-19 wave (**paras. 142, 151 of Annex 3 to the Analytical Report**).⁶⁹⁷

140. As during the first COVID-19 wave (**para. 141 of Annex 3 to the Analytical Report**), there are still restrictions for traveling to and from abroad. The degree of restrictions depends on the country of origin or destination. The Ministry of Health identifies, by ordinance,⁶⁹⁸ low and high-risk countries, grouping them into lists for which different measures are envisaged.

141. *Passenger location form.* The ordinance of March 9, 2021,⁶⁹⁹ introduces the compulsory filling out of Passenger Locator forms for all passengers arriving via COVID-tested flights. Passengers are required to provide a certification attesting to the negative result of the molecular test or antigenic test carried out by swab, no later than 48 hours prior to boarding.

⁶⁹² See the Decree of the President of the Council of Ministers of March 2, 2021. URL: <https://www.gazzettaufficiale.it/eli/id/2021/03/02/21A01331/sg> (the date of access: March 30, 2021).

⁶⁹³ The circular of the Ministry of Health of October 12, 2020, provides guidelines on the duration and the ending of quarantine. URL: <https://www.trovanorme.salute.gov.it/norme/renderNormsanPdf?anno=2020&codLeg=76613&parte=1%20&serie=null> (the date of access: March 30, 2021).

⁶⁹⁴ The Decree of the President of the Council of Ministers October 13, 2020. Article 1 (6). URL: <http://1.flcgil.stgy.it/files/pdf/20201013/decreto-del-presidente-del-consiglio-dei-ministri-del-13-ottobre-2020-ulteriori-misure-urgenti-per-fronteggiare-l-emergenza-epidemiologica-da-covid-19.pdf> (the date of access: March 30, 2021).

⁶⁹⁵ See the Decree of the President of the Council of Ministers of March 2, 2021. URL: <https://www.gazzettaufficiale.it/eli/id/2021/03/02/21A01331/sg> (the date of access: March 30, 2021).

⁶⁹⁶ See the Decree of the President of the Council of Ministers November 3, 2020. URL: https://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2020-11-04&atto.codiceRedazionale=20A06109 (the date of access: March 30, 2021). The measure has been confirmed by the following decrees of the President of the Council of Ministers. See, e.g., the Decree of the President of the Council of Ministers of March 2, 2021. URL: <https://www.gazzettaufficiale.it/eli/id/2021/03/02/21A01331/sg> (the date of access: March 30, 2021).

⁶⁹⁷ For an overview of the COVID-19 public transport measures see Misure sull'emergenza coronavirus (COVID-19) – Quadro generale. URL: <https://temi.camera.it/leg18/temi/iniziative-per-prevenire-e-contrastare-la-diffusione-del-nuovo-coronavirus.html#altri-provvedimenti-in-relazione-all-emergenza> (the date of access: March 30, 2021).

⁶⁹⁸ See the Ordinance of April 2, 2021, on further urgent measures regarding the containment and management of the COVID-19 epidemiological emergency. URL: <https://www.trovanorme.salute.gov.it/norme/dettaglioAtto?id=79576> (the date of access: April 2, 2021).

⁶⁹⁹ The Ordinance of March 9, 2021, on further urgent measures for the testing of COVID-tested flights. URL: <https://www.gazzettaufficiale.it/eli/id/2021/03/10/21A01552/sg> (the date of access: March 30, 2021).

142. *Curfew.* A curfew has been established from 22:00 to 5:00 (during curfew, journeys are allowed only for work, necessity, health reasons) with the Decree of the President of the Council of Ministers of November 3, 2020.⁷⁰⁰

143. *Religious services.* As opposed to the first COVID-19 wave (**para. 150 of Annex 3 to the Analytical Report**), civil and religious ceremonies have not been suspended, on condition that there is a maximum limit of 30 participants, pursuant to the Decree of the Council of Ministers of October 13, 2020.⁷⁰¹ The measure is still in force pursuant to the following decrees.⁷⁰²

144. Religious freedom is ensured, by allowing access to places of worship, on the condition that interpersonal distance and the use of masks are ensured, as well as the gathering of people is avoided.⁷⁰³

145. *The freedom of assembly.* Within the COVID-19 second wave, the freedom to manifest publicly is ensured, as long as it takes place in static form with interpersonal distance.⁷⁰⁴

146. *Events.* The Decree of the Council of Minister of October 18, 2020,⁷⁰⁵ required the suspension of all conferences, congress activities, national and international fairs, as well as trade shows and public events, with the exception of those taking place remotely. The measure is still in force.⁷⁰⁶

147. As opposed to the COVID-19 first wave (**para. 151 of Annex 3 to the Analytical Report**), access to public parks is allowed in compliance with the obligation of interpersonal distance.⁷⁰⁷

Specific Containment Measures (“Yellow”, “Orange”, “Red” Zones)

148. Some sectors have been affected by restrictive measures according to the risk region in which they are located, in the light of the Decree of the President of the Council of Ministers of November 3, 2020.⁷⁰⁸ These sectors concern catering activities, retail commercial activities, personal services. Schools have also been subject to different restrictions depending on the risk area in which they are located. The same is for the freedom of movement of people.

⁷⁰⁰ The Decree of the President of the Council of Ministers of November 3, 2020. URL: <https://www.gazzettaufficiale.it/eli/id/2020/11/04/20A06109/sg> (the date of access: March 30, 2021).

⁷⁰¹ The Decree of the President of the Council of Ministers of October 13, 2020. URL: <https://www.gazzettaufficiale.it/eli/id/2020/10/13/20A05563/sg> (the date of access: March 30, 2021)

⁷⁰² See the Decree of the President of the Council of Ministers of March 2, 2021. URL: <https://www.gazzettaufficiale.it/eli/id/2021/03/02/21A01331/sg> (the date of access: March 30, 2021).

⁷⁰³ The Decree of the President of the Council of Ministers of October 13, 2020. Article 1 (6). URL: <http://1.flcgil.stgy.it/files/pdf/20201013/decreto-del-presidente-del-consiglio-dei-ministri-del-13-ottobre-2020-ulteriori-misure-urgenti-per-fronteggiare-l-emergenza-epidemiologica-da-covid-19.pdf> (the date of access: March 30, 2021).

⁷⁰⁴ Ibid. Article 1 (6) (i).

⁷⁰⁵ The Decree of the Council of Ministers of October 18, 2020. URL: <https://www.gazzettaufficiale.it/eli/id/2020/10/18/20A05727/sg> (the date of access: March 30, 2021).

⁷⁰⁶ See the Decree of the President of the Council of Ministers of March 2, 2021. URL: <https://www.gazzettaufficiale.it/eli/id/2021/03/02/21A01331/sg> (the date of access: March 30, 2021).

⁷⁰⁷ The Decree of the President of the Council of Ministers of October 13, 2020. URL: <http://1.flcgil.stgy.it/files/pdf/20201013/decreto-del-presidente-del-consiglio-dei-ministri-del-13-ottobre-2020-ulteriori-misure-urgenti-per-fronteggiare-l-emergenza-epidemiologica-da-covid-19.pdf> (the date of access: March 30, 2021).

⁷⁰⁸ Ibid.

149. *“Yellow” zone measures.* In the “yellow”, low-risk zones, the following restrictions apply in addition to the general containment measures described above:

- bars, pubs, and restaurants have been allowed to be open from 5:00 to 18:00, with the obligation to have no more than four customers; take away services are allowed until 22:00; delivery food services are allowed with no time limit;
- as far as education, all high schools and universities must adopt distance-learning solutions.

150. *“Orange” zone measures.* In the “orange” regions, in addition to the rules already valid for the “yellow” zones, the following restrictions apply:

- bars, pubs, and restaurants have shut down, with the exception of home delivery, as well as take-away allowed until 22:00;
- more containment measures regarding population have been applied since any movement in and out of the region is prohibited, except for proven situations of needs or reasons of health or proven work needs. Moreover, any movement to a municipality other than that of residence or domicile is prohibited, except for proven needs.

151. *“Red” zone measures.* A lockdown measure affects the “red” regions, although with some moderations comparing to the first COVID-19 second wave (**para. 150 of Annex 3 to the Analytical Report**):

- in addition to the rules valid in the “yellow” zone, every movement within the municipality itself is prohibited, with the exception for proven work needs, general situations of needs, or reasons of health;
- restrictive measures regard also the suspension of retail commercial activities, with the exception of the food and necessities activities. Unlike the lockdown during the first COVID-19 wave, bookstores are open;
- the suspension of personal services concerns only beauty centers and, unlike during the first wave, they do not include barbers and hairdressers;
- regarding education, school in presence is allowed only for kindergarten, primary school, and sixth grade.



Containment Measures Applied to the National Territory From December 21, 2020 to January 6, 2021

152. During the Christmas holidays, restrictive measures were applied uniformly throughout the national territory, by further reducing the movement of people, in order to contain the spread of the virus and not worsen the pandemic situation.⁷⁰⁹ The following restrictive measures were applied:

- throughout the national territory, any movement in and out of the region was prohibited except for situation of needs, proven work needs, or health needs, or return to residence/domicile;
- during holidays (December 24–27, 2020 and January 1–3, 5–6, 2021) all the regions became “red” zones with the application of all corresponding measures;
- for all other days, the Italian regions were considered “orange” zones.

153. Since January 07, 2021, the classification of Italy into different areas, according to risk levels has been confirmed, as well as the ban on traveling between regions.⁷¹⁰ A “white” area has been added for regions that have a very low risk of contagion, with all activities open and curfew removed. This classification is still in force.

2.2. Containment Measures Regarding Industrial and Non-Productive Sectors

Industrial Sector

154. Differently from the first COVID-19 wave (**para. 147 of Annex 3 to the Analytical Report**), the industrial sector has not been affected by restrictions, continuing normally, with the sole condition of respecting safety protocols for the containment of the COVID-19.

155. *Smart working*. Smart working is recommended for private companies; it is up to employers to regulate it. Instead, smart working is compulsory for each public administration at least with 50% of the public personnel who can work remotely.⁷¹¹

Non-Productive Sector

156. The restrictive measures have affected primarily the cultural sector and the sector of sports activities.

⁷⁰⁹ See the Decree-Law No. 158 of December 2, 2020. URL: <https://www.gazzettaufficiale.it/eli/id/2020/12/02/20G00184/sq> (the date of access: March 30, 2021); the Decree-Law No. 172 of December 18, 2020. URL: <https://www.gazzettaufficiale.it/eli/id/2020/12/18/20G00196/sq> (the date of access: March 30, 2021).

⁷¹⁰ See the Decree-Law No. 1 of January 5, 2021. URL: <https://www.gazzettaufficiale.it/eli/id/2021/01/05/21G00001/sq> (the date of access: March 30, 2021); the Decree of the President of Council of January 14, 2021. URL: http://www.governo.it/sites/new.governo.it/files/Dpcm_14_gennaio_2021.pdf (the date of access: March 30, 2021).

⁷¹¹ The Decree of the President of the Council of Ministers of October 13, 2020, Article 3 [3]. URL: <https://www.gazzettaufficiale.it/eli/id/2020/10/13/20A05563/sq> (the date of access: March 30, 2021). This measure was implemented by the Ministerial Decree of October 19, 2020, of the Ministry of public administration. URL: https://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2020-10-28&atto.codiceRedazionale=20A05940&elenco30giorni=true (the date of access: March 30, 2021).

157. Indeed, by the Decree of the President of the Council of Ministers of October 24, 2020,⁷¹² cinemas, theaters and concert halls, gyms, swimming pools, spas and wellness, as well as bingo halls, casinos and amusement arcade on the whole national territory have been shut down.

158. Sports competitions of international and national relevance have not been suspended, with the condition of being carried out without an audience.

159. Museums and other places of culture (including libraries) have been shut down in the light of the Decree of the President of the Council of Ministers of November 3, 2020.⁷¹³ The measure is still in force.

2.3. Support Measures for Industrial and Non-Productive Sectors and Population

160. Like in the first phase of the COVID-19 pandemic (**paras. 155–158 of Annex 3 to the Analytical Report**), the Italian Government has approved new measures to support the economy and social welfare in favor of families and workers most affected by the restrictions.

161. Four Decree-Laws⁷¹⁴ (called “Decree Ristoro”) followed one after another and were subsequently transposed and converted into Law No. 176 of December 18, 2020.⁷¹⁵

162. To sum up, the support measures have provided: funding for self-employed workers, as well as for workers in the sports sector and agricultural sector engaged in product supply activities; additional support funds for the entertainment sector and tourism sector; support measures for companies; indemnities and tax relief for workers most affected by the restrictions to contain the spread of COVID-19 virus. Moreover, company employers are prevented from firing their employees.⁷¹⁶

163. A family policy measure is provided for working parents living in a “red” zone where the majority of schools are closed: a “babysitter bonus” or, as an alternative, the possibility to take an extraordinary leave with the recognition of an indemnity equal to 50% of the monthly salary for employed parents.

164. As far as the COVID-19 tracing app “Immuni” (**para. 160 of Annex 3 to the Analytical Report**), the Decree of the President of the Council of Ministers of October 18, 2020, has provided the obligation for the local health unit to update the tracing app, uploading identification codes (in compliance with privacy rules) of patients tested positive for COVID-19, in order to facilitate the pandemic monitoring.

⁷¹² The Decree of the President of the Council of Ministers of October 24, 2020. URL: <https://www.gazzettaufficiale.it/eli/id/2020/10/25/20A05861/sg> (the date of access: March 30, 2021).

⁷¹³ The Decree of the President of the Council of Ministers of November 3, 2020. URL: https://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2020-11-04&atto.codiceRedazionale=20A06109 (the date of access: March 30, 2021).

⁷¹⁴ The Decree-Law No. 137 of October 28, 2020. URL: <https://www.gazzettaufficiale.it/eli/id/2020/10/28/20G00166/sg> (the date of access: March 30, 2021); the Decree-Law No. 149 of November 9, 2020. URL: <https://www.gazzettaufficiale.it/eli/id/2020/11/09/20G00170/sg> (the date of access: March 30, 2021); the Decree-Law No. 154 of November 23, 2020. URL: <https://www.gazzettaufficiale.it/eli/id/2020/11/23/20G00175/sg> (the date of access: March 30, 2021); the Decree-Law No. 157 of November 30, 2020. URL: <https://www.gazzettaufficiale.it/eli/id/2020/11/30/20G00183/sg> (the date of access: March 30, 2021).

⁷¹⁵ The Law No. 176 of December 18, 2020. URL: <https://www.gazzettaufficiale.it/eli/id/2020/12/24/20G00197/sg> (the date of access: March 30, 2021).

⁷¹⁶ This measure was extended until June 2021.

3. Court Practice With Respect to the COVID-19 Pandemic

165. Many court decisions concern the allocation of powers and competences between the State and the regions in the management of the COVID-19 pandemic.

166. It is noteworthy that the Constitutional Court has been called upon to rule on the constitutionality of the regional Law No. 11 adopted on December 9, 2020.⁷¹⁷ This law allowed certain social and economic activities in the region Valle d'Aosta in derogation of the prohibitions laid down by the State legislation related to the COVID-19 pandemic. In this regard, it was challenged by the Government on the ground that it infringed a number of constitutional parameters, providing mainly for the exclusive competence of the State in matters of international prophylaxis, public safety, and security.

167. The Constitutional Court has ruled in favor of the Government since the COVID-19 pandemic fails entirely within the exclusive competence of the State, pursuant to Article 117 of the Italian Constitution by way of international prophylaxis and in accordance with the principle of subsidiarity. Allowing local measures that can be characterized by less rigor can have a negative impact on a national level, compromising the public interest for health and uniform national management of the pandemic.

168. Still, on the subject of the conflict between the State and the regions in the management of the pandemic, one challenge involved the positioning of regions in the respective risk zones. In some cases, the Presidents of the regions decided on their initiative on the level of risk of the regional territory, as in the Abruzzi region. According to the Ordinance No. 106 of December 7, 2020, the region of Abruzzi was moving to a lower risk zone (from "red" to "orange") in violation of the ministerial provisions. The Ordinance of the President of the Abruzzi region has been challenged by the Government. The Administrative Court of the Abruzzi region⁷¹⁸ has suspended the Ordinance on the ground of the current legislation, according to which it is up to the Ministry of Health to decide the level of risk of each region supported by the scientific data. According to the Court, regions can adopt measures that are more extensive only if there is an agreement of the Ministry of Health. Still, according to the Administrative Court of Abruzzi region, within a multi-central State, the Administrative Court must guarantee the different levels of government and the respect of their sphere of competence.⁷¹⁹

169. On the same subject, the region of Sardinia challenged the Ordinance of the Minister of Health of January 22, 2021, placing the regional territory in the "orange" zone (from low risk to medium risk). According to the claimant, there were insufficient grounds for the region to remain in the "orange" zone. The Regional Administrative Court of Sardinia, with the Decree No. 25 of February 2, 2021,⁷²⁰ rejected the appeal, stating that the Order was adopted on the basis of scientific data, automatic detectors, indicating, for example, the virus transmissibility index and the state of the health system, reiterating that technical information is unquestionable, except when manifestly illogical.

⁷¹⁷ Constitutional Court. *Government v. Valle d'Aosta region*. Ordinance No.4 of January 14, 2021. URL: <https://www.cortecostituzionale.it/actionSchedaPronuncia.do> (the date of access: March 30, 2021).

⁷¹⁸ Administrative Court of Abruzzi. *Government v. Abruzzi region*. Decree of December 11, 2020. URL: <https://www.camera.it/temiap/2020/12/13/OCD177-4728.pdf> (the date of access: March 30, 2021).

⁷¹⁹ Ibid. Para. 6.

⁷²⁰ Administrative Court of Sardinia. *Sardinia region v. Ministry of Health*. Decree of February 2, 2021. URL: http://www.salute.gov.it/imgs/C_17_monitoraggi_13_3_fileNazionale.pdf (the date of access: March 30, 2021).

170. Another interesting dispute concerned the challenge of the Order of the region of Lazio,⁷²¹ which made flu vaccination compulsory on its territory for all persons aged 65 and over, as well as for social and health care personnel, in order to relieve pressure on the healthcare system and contain COVID-19. The Order was challenged by some associations in defense of citizens, claiming the lack of competence of the region, the unreasonableness, and illogicality of the measure, as well as the violation of the right of self-determination, pursuant to Article 32 of the Italian Constitution, which implies the possibility for each person to freely choose in respect of acts involving his or her body and expectations of health and life, including the refuse of health treatment, within the limits established by law. The Court upheld the appeal based on the COVID-19 law that recognizes the adoption of restrictive measures by the regions only in matters that are not within the competence of the State, not including the matter of compulsory vaccination.⁷²² According to the Administrative Court of Lazio, it is up to the State to balance values that are equally protected by the Constitution, such as the right to self-determination and the right to health, which will result in an obligation or recommendation. The principles of health protection represent precisely the balancing of opposing fundamental values.⁷²³

171. Other challenges were brought against containment measures concerning the closure of casinos and gambling halls provided by the Decree of the President of the Council of Ministers of January 14, 2021, replacing the Decree of the Council of Ministers of December 3, 2020. The measure was contested in the first and second instances mainly on the grounds of the lack of a specific assessment of the risk of increased contagion for the opening of these activities.

172. The Council of State, with the Decree No. 884 of February 22, 2021,⁷²⁴ rejected the application for suspension, stating that, despite the fact that the decree revealed the doubtfulness and incompleteness of the preliminary assessment, the precautionary principle of public health prevails. However, it called for the adoption of containment measures based on complete scientific risk assessments and data specific to each activity subject to restriction, since the mere reference to the precautionary principle itself and the “non-essential” nature of the activity is not sufficient.

173. As far as the containment measures applied to personal services, the suspension of beauty centers has been challenged by representatives of the personnel working there. They argued the illogicality of the measure, which suspends beauty centers while keeping hairdressers in the “red” zone open. According to them, there was no valid reason for the measure to justify this unequal treatment, given that in the first phase of the pandemic both activities were restricted. The Regional Administrative Court of Lazio, with the decision No. 1862 of February 16, 2021,⁷²⁵ ruled in favor of the appeal, stating that the measure lacks motivation since the discrimination between the activities of hairdressers and barbers and those of beauty

⁷²¹ The Ordinance of the President of the Lazio region No. Z00031 of April 17, 2020. URL: <http://www.regione.lazio.it/rl/coronavirus/wp-content/uploads/sites/72/Ordinanza-Z00031-17-04-2020.pdf> (the date of access: March 30, 2021).

⁷²² Administrative Court of Lazio. *Government v. Lazio region*. Decision of October 2, 2020. URL: <https://www.giustizia-amministrativa.it/en/web/guest/dcsnpr> (the date of access: March 30, 2021) .

⁷²³ The Administrative Court of Lazio, in support of its decision, cited the jurisprudence of the Constitutional Court, according to which the issue of compulsory vaccination is one of the principles of health protection falling within the exclusive competence of the State in order to guarantee homogeneous measures throughout the national territory.

⁷²⁴ Council of State. *Italbet Company v. Government*. Decree of February 22, 2021. URL: https://www.giustizia-amministrativa.it/portale/pages/istituzionale/visualizza?nodeRef=&schema=cds&nrg=202101551&nomeFile=202100884_16.html&subDir=Provvedimenti (the date of access: March 30, 2021).

⁷²⁵ Administrative Court of Lazio. *Confestetica v. Government*. Decision of February 16, 2021. URL: <http://www.dirittoegiustizia.it/allegati/16/0000090386/TAR Lazio sez I sentenza n 1862 21 depositata il 15 febbraio.html> (the date of access: March 30, 2021).

centers is not supported by any preliminary investigation or scientific evidence. The Court quoted what the European Commission said about the measures based on the precautionary principle — they should be proportionate to the chosen level of protection, non-discriminatory in their application, consistent with similar measures already taken, based on an examination of the potential benefits and costs of action or lack of action.

174. Other case law involved decisions on the balance between the right to study and the protection of the right to health, both of which are of constitutional interest.⁷²⁶ In many cases, in order to contain the spread of the virus, the Presidents of the regions have adopted more restrictive measures than the national ones, providing distance learning solutions.

175. Overall, administrative jurisprudence had allowed the right to education to be curtailed by more restrictive regional measures only in cases where scientific evidence proved a direct cause-effect link between an upsurge in contagions and educational activities at hand.

176. Indeed, the Council of State, with the Decree No. 6453 of November 10, 2020,⁷²⁷ has rejected the appeal for suspension of the monocratic Decree of the Administrative Court of first instance which did not grant the claim for the suspension of the Order No. 89 of November 5, 2020, of the President of the Campania Region, in so far as it provides for the suspension of educational activities in the presence of children in nursery and primary schools. The regional measure was challenged by some parents who claimed the violation of their children's right to study and their compromised right to work since they could not leave their children alone. The decision was taken on the ground that no decisive evidence was adduced in favor of the alleged unreasonableness of the measure, which was aimed at preventing the spread of the virus as strictly as possible within a territory with a high risk of infection. Therefore, in this case, the reading of the scientific data allowed for compression of the right to study of children attending nursery and primary school, as well as the right to work of their parents, who were unable to carry out their ordinary work activities, prevailing the collective interest of health.

177. In the same wake, the Council of State, with the Decree No. 18 of January 11, 2021,⁷²⁸ has confirmed what had been established by the Administrative Court of first instance, which had suspended the Ordinance of the Calabria region providing for distance learning for all schools in the corresponding territory. In this case, the lack of scientific data proving an increase in the number of COVID-19 cases due to the educational activities in presence did not justify the adoption of regional measures more restrictive than the national ones, which, moreover, place the concerned region in a low-risk zone.⁷²⁹

⁷²⁶ See Articles 32 and 34 of the Italian Constitution.

⁷²⁷ Council of State. Decree of November 10, 2020. URL: <https://www.giustizia-amministrativa.it/en/web/quest/dcsnpr> (the date of access: March 30, 2021).

⁷²⁸ Council of State. Decree of January 11, 2021. URL: <https://www.giustizia-amministrativa.it/en/web/quest/dcsnpr> (the date of access: March 30, 2021)

⁷²⁹ The same guideline concerning the balance between the right to study and the right to health is shown in subsequent rulings on the matter; for instance, see Administrative Court of Lombardy region. Decree No. 32 of January 13, 2021. URL: <https://www.giustizia-amministrativa.it/en/web/quest/dcsnpr> (the date of access: March 30, 2021); Administrative Court of Emilia Romagna region. Decree No. 30 of January 15, 2021. URL: <https://www.giustizia-amministrativa.it/en/web/quest/dcsnpr> (the date of access: March 30, 2021); Administrative Court of Friuli Venezia Giulia region. Decree No. 7 of January 15, 2021. URL: <https://www.giustizia-amministrativa.it/en/web/quest/dcsnpr> (the date of access: March 30, 2021); Administrative Court of Campania region. Decree No. 142 of January 20, 2021. URL: <https://www.giustizia-amministrativa.it/en/web/quest/dcsnpr> (the date of access: March 30, 2021).

178. On the subject of fundamental human rights, it is worth noting the Court of Cassation's Decision No. 27917 of October 7, 2020,⁷³⁰ sixth section, concerning the possible conflict between prisoner's health conditions and the prison regime in view of the risk to get COVID-19. Here as well, scientific evidence prevails. The incompatibility between prisoner's health conditions and the prison regime must be proven on the ground of specific elements revealing factors of real and concrete danger, also in the light of specific preventive measures adopted in the institution to ensure a safe distance between prisoners with a precarious health condition.

179. Finally, it is worth noting the position of the Italian Data Protection Authority on a sensitive issue that will certainly be the challenge of future legal debates: whether it is compulsory to inform the public about COVID-19 vaccination.⁷³¹

180. Concerning the work environment, the Italian Data Protection Authority has clarified that the employer may not obtain, even with the consent of the employee or through the competent doctor, the names of vaccinated staff or copies of vaccination certificates, pursuant to the current legal framework. The employee's consent cannot be a condition for the lawfulness of data treatment in such cases. The Italian Data Protection Authority called for a legislative intervention on that matter, to achieve a fair balance between the public interest and the individual interest in confidentiality.⁷³²

⁷³⁰ Court of Cassation. Decision of October 7, 2020. URL: https://images.go.wolterskluwer.com/Web/WoltersKluwer/%7B795e1015-960c-4348-a089-490fb9235921%7D_cassazione-penale-sentenza-27917-2020.pdf (the date of access: March 30, 2021).

⁷³¹ Garante per la protezione dei dati personali. Trattamento di dati relativi alla vaccinazione anti COVID-19 nel contesto lavorativo. URL: <https://www.garanteprivacy.it/documents/10160/0/FAQ+-+Trattamento+di+dati+relativi+alla+vaccinazione+anti+Covid-19+nel+contesto+lavorativo+-+versione+vademecum.pdf/ba389a97-5cc5-6bd5-fef7-debe613524c6?version=1.0> (the date of access: March 30, 2021).

⁷³² Ibid.

IV. Spain

Summary

181. The first state of alarm ended in Spain on June 21, 2020.⁷³³ From June 2020 onwards, Spanish regions (Autonomous Communities) were returned jurisdiction over health-related policies, over which the Spanish regions normally have jurisdiction (**para. 177 of Annex 3 to the Analytical Report**).⁷³⁴

182. Hence, all measures adopted in the period examined in this report (from September 2020 to March 2021) have been passed within the context of the ordinary territorial distribution of powers between the State and the Autonomous Communities that exist in Spain. Since the Spanish Constitution offers the Autonomous Communities the possibility of assuming jurisdiction over health matters (Article 148.1 (xxi)), this means that most of the restrictions taken in order to contain the spread of the virus have been passed by the Autonomous Communities.

183. The second COVID-19 wave started in Spain around September–October 2020, peaked in November in most Autonomous Communities, and was soon followed by the third wave, which started in December 2020 and peaked in January–February 2021. This situation forced the Autonomous Communities to take the necessary measures in order to prevent and deal with the surge in COVID-19 cases. Although full lockdown similar to the one that took place during the first wave has not taken place, some Spanish regions have closed down certain economic sectors during especially critical periods of time. Adopting these measures at the regional and not at the national level has led to a wider variety of restriction levels throughout Spain.

184. In addition, since many of the protective measures taken by the Autonomous Communities entailed restricting fundamental rights and freedoms and courts refused to approve some of those restrictions, it was eventually necessary for the Central Government to pass a Decree declaring another state of alarm, which provided the Autonomous Communities with the necessary basis to dictate certain rules, such as setting curfews or closing regional borders.

185. The Spanish Government has set a vaccination strategy that it constantly updates. The vaccination strategy has divided the population into different groups in order to prioritize and administer the vaccine.⁷³⁵ The vaccination strategy started with public and private health professionals and residents of retirement homes. It then continued with other frontline workers such as police forces, fire fighters, and teachers, as well as general population starting from the elderly people and moving on down age groups.⁷³⁶

⁷³³ La Moncloa. Estado de Alarma. URL: <https://www.lamoncloa.gob.es/covid-19/Paginas/estado-de-alarma.aspx> (the date of access: March 19, 2021).

⁷³⁴ Royal Decree-Law No. 21/2020 of June 9, 2020, on urgent prevention, containment, and coordination measures to deal with the health crisis caused by COVID-19. URL: <https://www.boe.es/buscar/act.php?id=BOE-A-2020-5895> (the date of access: March 19, 2021).

⁷³⁵ Ministerio de Sanidad. Estrategia de Vacunación Covid-19 en España. URL: <https://www.mscbs.gob.es/profesionales/saludPublica/ccayes/alertasActual/nCov/vacunaCovid19.htm> (the date of access: March 21, 2021).

⁷³⁶ Ibid.

1. Evolution of the Measures Taken in the Fight Against the COVID-19 Pandemic

Emergency Laws and Regulations

186. In order to allow the Autonomous Communities to take measures that entailed restricting fundamental rights and freedoms, so that they could protect the public health system if surges in COVID-19 contagion took place, the Spanish Parliament passed Act No. 3/2020 on procedural and organizational measures to deal with COVID-19 in the field of the Administration of Justice.⁷³⁷ This Act, *inter alia*, modified Act No. 29/1998 of July 13, 1998, regulating the Administrative Jurisdiction and introduced two new provisions. On the one hand, it established that High Courts of Justice had to confirm the regulations adopted through urgent procedures by local and regional authorities in order to restrict the fundamental rights and freedoms recognized in Articles 14–32 of the Spanish Constitution with the objective of protecting public health.⁷³⁸ On the other hand, it established that the National High Court had to confirm the regulations adopted through urgent procedures by the Central Government which restrict fundamental rights and freedoms in order to protect public health.⁷³⁹ Administrative Courts of First Instance held jurisdiction over these procedures before these modifications were put in place. However, this led to situations of judicial control over measures even when they did not affect fundamental rights and it was therefore decided that granting jurisdiction over these cases to higher courts would provide a more unified and coherent judicial response (**para. 200 of Annex 3 to the Analytical Report**).

187. In principle, with the introduction of the provisions contained in the Act No. 3/2020 and the legal framework offered by the Spanish health legislation, it was presumed that it would be possible for the Autonomous Communities to introduce provisions that would restrict fundamental rights and freedoms without the need for the Central Government to declare another state of alarm. Hence, when the second COVID-19 wave began in Spain, many Autonomous Communities started adopting regulations that restricted fundamental rights and freedoms through this procedure. However, several Superior Courts of Justice in different Autonomous Communities refused to confirm the taken regulatory measures as they deemed the restrictions lacked sufficient legal backdrop (**paras. 239–276 of Annex 4 to the Analytical Report**).⁷⁴⁰

188. In order to provide the Autonomous Communities with the necessary legal backdrop to take measures that restrict fundamental rights and freedoms, in October 2020, the Government declared the

⁷³⁷ Act No. 3/2020 of September 18, 2020, on procedural and organizational measures to deal with COVID-19 in the field of the Administration of Justice. URL: <https://www.boe.es/buscar/act.php?id=BOE-A-2020-10923> (the date of access: March 15, 2021).

⁷³⁸ Act No. 29/1998 of July 13, 1998, regulating the Administrative Jurisdiction. Article 10.8. URL: <https://www.boe.es/buscar/act.php?id=BOE-A-1998-16718> (the date of access: March 15, 2021).

⁷³⁹ *Ibid.* Article 11.1.i).

⁷⁴⁰ See, for instance, Superior Court of Justice of Madrid, Administrative Chamber, Resolution No. 128/2020 of October 8, 2020. URL: [https://www.poderjudicial.es/search/documento/AN/9272380/Real Decreto alarma sanitaria Covid-19/20201009](https://www.poderjudicial.es/search/documento/AN/9272380/Real%20Decreto%20alarma%20sanitaria%20Covid-19/20201009) (the date of access: March 21, 2021) and Superior Court of Justice of the Basque Country, Administrative Chamber, Resolution No. 32/2020 of October 22, 2020. URL: [https://www.poderjudicial.es/search/documento/AN/9288630/Real Decreto alarma sanitaria Covid-19/20201023](https://www.poderjudicial.es/search/documento/AN/9288630/Real%20Decreto%20alarma%20sanitaria%20Covid-19/20201023) (the date of access: March 21, 2021).

second nationwide state of alarm through the Royal Decree No. 926/2020.⁷⁴¹ This state of alarm was initially declared for 15 days but then extended until May 2021 by the Royal Decree No. 956/2020.⁷⁴²

189. Article 2 of the Royal Decree No. 926/2020 establishes that, even though under the state of alarm the competent authority is the Central Government, powers are delegated to the Presidents of the Autonomous Communities so that they can decide whether they want to reduce or set further restrictions on the freedom of movement of people, the right to assembly (right to meet), and the right to attend places of worship.⁷⁴³

2. Measures Taken in the Fight Against the COVID-19 Pandemic

2.1. General Measures

National Borders

190. Spanish national borders were closed to non-essential travel from outside the EU and Schengen area since July 17, 2020.⁷⁴⁴ The Resolution declaring this border closure established a list of countries whose citizens were not subject to the travel and border closure restrictions. This list has been constantly updated. When the COVID-19 incidence level significantly increases in a country, it is removed from the list. The border closure is currently in force until April 30, 2021, after the Resolution establishing the border closure was extended and updated for the tenth time on March 29, 2021.⁷⁴⁵

191. Regardless of the place of origin, from July 1, 2020, when arriving to Spain from other countries, it is compulsory to fill a health control form that must be presented at the Health Control at the airport or port of arrival in Spain.⁷⁴⁶

192. In addition, if the country of origin is categorized as a risk country, a negative PCR diagnostic test for COVID-19, carried out up to 72 hours before arrival in Spain, must also be presented. The list of risk countries is updated every 15 days.⁷⁴⁷

⁷⁴¹ Royal Decree No. 926/2020 of October 25, 2020, declaring the state of alarm to contain the spread of infections caused by SARS-CoV-2. URL: <https://www.boe.es/buscar/doc.php?id=BOE-A-2020-12898> (the date of access: March 15, 2021).

⁷⁴² Royal Decree No. 956/2020 of November 3, 2020, extending the state of alarm declared by Royal Decree No. 926/2020 of October 25, 2020, declaring a state of alarm to contain the spread of infections caused by SARS-CoV-2. URL: <https://www.boe.es/buscar/doc.php?id=BOE-A-2020-13494> (the date of access: March 15, 2021).

⁷⁴³ Ibid. Article 2.

⁷⁴⁴ Order INT/657/2020 of July 17, 2020, amending the criteria for the application of a temporary restriction on non-essential travel from third countries to the European Union and associated Schengen countries for reasons of public order and public health due to the health crisis caused by COVID-19. URL: <https://www.boe.es/buscar/act.php?id=BOE-A-2020-8099> (the date of access: March 30, 2021).

⁷⁴⁵ Ibid.

⁷⁴⁶ Article 3 of the Resolution of November 11, 2020, of the Directorate-General for Public Health on health checks to be carried out at points of entry into Spain. URL: <https://www.boe.es/buscar/act.php?id=BOE-A-2020-14049> (the date of access: March 30, 2021).

⁷⁴⁷ Ibid. Article 5

Regional, Local Borders, and Curfew

193. When the second wave began in Spain, the Interterritorial Council of the National Health System, which all Autonomous Communities are part of, met and decided to lock down municipalities of more than 100,000 inhabitants with especially high levels of COVID-19 incidence.⁷⁴⁸ According to Article 65 of the Act No. 16/2003, this Council has the power to adopt binding decisions in situations of a health crisis (**para. 184 of Annex 3 to the Analytical Report**).⁷⁴⁹ The Health Ministry then passes the agreements reached in the Council and the measures agreed upon implemented by the relevant regional health authorities. Catalonia, Galicia, Andalusia, the Community of Madrid, and the Autonomous City of Ceuta voted against this agreement reached by the Council.⁷⁵⁰ However, due to its binding nature, they all had to follow it.

194. Nonetheless, since the measures involved restricting fundamental rights, regional governments still had to ask the relevant courts for confirmation. In the case of Madrid, which was at that time one of the regions in Spain with the highest levels of contagion, the Superior Court of Justice did not confirm the measures (**paras. 239–276 of Annex 4 to the Analytical Report**).⁷⁵¹

195. The stance taken by the Court, in combination with the difficulties that the Central Government was having in reaching an agreement with the regional Government of Madrid regarding the restrictions that should be implemented in the Community of Madrid, led the central Government to pass a decree that declared a state of alarm applicable only to the region of Madrid.⁷⁵²

196. The central Government declared a state of alarm in those municipalities of the region of Madrid where the level of contagion was particularly high. The source declaring this state of alarm was the Royal Decree No. 900/2020.⁷⁵³ This Decree banned entering and exiting the municipalities of Alcobendas, Alcorcón, Fuenlabrada, Getafe, Leganés, Madrid, Móstoles, Parla, and Torrejón de Ardoz.

197. The Royal Decree No. 926/2020 established the second state of alarm on the whole Spanish territory, as well as the prohibition to move between the territories of Autonomous Communities.⁷⁵⁴ It also

⁷⁴⁸ Resolution of September 30, 2020, of the Health State Secretary, publicizing the Agreement of the Interterritorial Council of the National Health System on the Declaration of Coordinated Actions in Public Health to respond to situations of special risk due to uncontrolled transmission of infections caused by SARS-Cov-2, dated September 30, 2020. URL: <https://www.boe.es/buscar/doc.php?id=BOE-A-2020-11590> (the date of access: March 19, 2021).

⁷⁴⁹ Act No. 16/2003 on the Cohesion and Quality of the National Health System. URL: <https://www.boe.es/buscar/act.php?id=BOE-A-2003-10715> (the date of access: March 19, 2021).

⁷⁵⁰ Section 4 of Resolution of September 30, 2020, of the Health State Secretary, publicizing the Agreement of the Interterritorial Council of the National Health System on the Declaration of Coordinated Actions in Public Health to respond to situations of special risk due to uncontrolled transmission of infections caused by SARS-Cov-2, dated September 30, 2020. URL: <https://www.boe.es/buscar/doc.php?id=BOE-A-2020-11590> (the date of access: March 19, 2021).

⁷⁵¹ Superior Court of Justice of Madrid, Administrative Chamber, Resolution 128/2020 of October 8, 2020. URL: <https://www.poderjudicial.es/search/AN/openDocument/4508ffdf28c886ff/20201009> (the date of access: March 19, 2021).

⁷⁵² Madrid, en estado de alarma. El Consultor de los Ayuntamientos. October 9, 2020. URL: <https://elconsultor.laley.es/Content/Documento.aspx?params=H4sIAAAAAAEAMtMSbF1jTAAkNTMwsLI7Wy1KLizPw8WyMDIwNDawNLkEBmWqVLfnJIZUGqbVpiTnEqAPG75UE1AAAAWKE> (the date of access: March 21, 2021).

⁷⁵³ Royal Decree No. 900/2020 of October 9, 2020, declaring a state of alarm to respond to situations of special risk due to uncontrolled transmission of infections caused by SARS-CoV-2. URL: <https://www.boe.es/buscar/act.php?id=BOE-A-2020-12109> (the date of access: March 15, 2021).

⁷⁵⁴ Royal Decree No. 926/2020 of October 25, 2020, declaring a state of alarm to contain the spread of infections caused by SARS-CoV-2. URL: <https://www.boe.es/buscar/act.php?id=BOE-A-2020-12898> (the date of access: March 15, 2021).

established that each regional government could decide on closing the borders of geographical areas within the Autonomous Community, such as municipalities.⁷⁵⁵ As delegated authorities, the presidents of Autonomous Communities may choose to open up the borders of their region.⁷⁵⁶

198. The Royal Decree No. 926/2020 set a curfew and banned all circulation on public roads and spaces from 23:00 until 6:00. The Decree allowed regional governments to modify the limitation determining that the start time of the limitation provided for in the decree is between 22:00 and 00:00 hours and the end time of said limitation is between 5:00 and 7:00.⁷⁵⁷

199. Throughout the months of October and November, most of the Autonomous Communities declared their closure and it was not possible to enter or leave them except with justified causes (for employment or health purposes, for instance).⁷⁵⁸ The Autonomous Communities that remain closed are: Galicia, Asturias, Cantabria, the Basque Country, La Rioja, Navarra, Aragón, Catalonia, Castilla la Mancha, Castilla León, the Valencian Community, Murcia, Andalusia, and the Autonomous Cities of Ceuta and Melilla.⁷⁵⁹

200. As a general rule, the regulations closing down the borders of the Autonomous Communities were initially declared for two weeks and then progressively extended. The borders of the aforementioned regions could be, in principle, closed until the state of alarm is lifted in Spain in May 2021.⁷⁶⁰

201. When the incidence level became particularly high in certain areas, several Autonomous Communities also closed the borders of municipalities or health areas during limited periods of time. These border closures have taken different forms:

- in Aragón, the regional government has been periodically closing the borders of different municipalities.⁷⁶¹ These decisions are being made with account to the cumulative incidence in each municipality;

⁷⁵⁵ Ibid. Article 6.2.

⁷⁵⁶ Ibid. Article 10.

⁷⁵⁷ Ibid. Article 5.

⁷⁵⁸ See, for instance, Decree No. 27/2020 of October 26, 2020, of the President of the Principality of Asturias, adopting measures to contain the spread of infections caused by SARSCoV-2 in the framework of the state of alarm. URL: <https://sede.asturias.es/bopa/2020/10/26/20201026Su1.pdf> (the date of access: March 17, 2021); Decree-Law No. 7/2020 of October 19, 2020, of the Government of Aragon, establishing the legal regime of health warning for the control of the COVID-19 pandemic in Aragon. URL: <https://www.boe.es/buscar/act.php?id=BOA-d-2020-90411&p=20201019&tn=1#ci-2> (the date of access: March 17, 2021); Decree No. 15/2020 of October 30, 2020, adopting temporary and exceptional measures in the Valencian Community, as a consequence of the health crisis caused by COVID-19 and under the declaration of the state of alarm. URL: https://www.dogv.gva.es/datos/2020/10/30/pdf/2020_9091.pdf (the date of access: March 17, 2021); Presidential Decree No. 8/2020 of 29 October establishing measures in the Autonomous Community of Andalusia in application of Royal Decree No. 926/2020 of October 25, 2020, declaring a state of alarm to contain the spread of infections caused by SARS-COV-2. URL: <https://www.juntadeandalucia.es/boja/2020/572/1> (the date of access: March 17, 2021).

⁷⁵⁹ Dónde se puede viajar: Comunidades con cierre perimetral y restricciones de movilidad entre provincias. El Mundo. April 9, 2021. URL: <https://www.elmundo.es/espana/2021/04/07/606d8380fc6c83c7348b4621.html> (the date of access: March 17, 2021).

⁷⁶⁰ The regulatory instruments cited in the previous footnotes are the first ones that were adopted in order to close down the borders of each Autonomous Community. Several regulations were adopted in every region afterwards in order to extend the duration of border closures.

⁷⁶¹ Decree-Law No. 8/2020 of October 21, 2020, of the Government of Aragon, modifying warning levels and declaring the containment of certain territorial areas in the Autonomous Community of Aragon. URL: <https://www.boe.es/buscar/act.php?id=BOA-d-2020-90415> (the date of access: March 17, 2021).

- in the Valencian Community, during February, all municipalities of over 50,000 inhabitants had their borders closed only during the weekends.⁷⁶²

202. The Balearic and Canary Islands, Extremadura, and Madrid generally remain open. However, this does not mean that there are no control or restrictions in those Autonomous Communities. For example:

- the Community of Madrid had periodically closed down those health areas within its territory in which the incidence level was very high;⁷⁶³
- the Canary Islands requests individuals visiting the region to have tested negative for COVID-19 72 hours prior to their arrival in the region. Hotels, touristic apartments, and related businesses are charged with the responsibility of ensuring that their guests comply with the said rule.⁷⁶⁴

203. The measures regarding border closures significantly changed during the winter holidays (from December 23 to January 6, 2020) in some Autonomous Communities:

- certain Autonomous Communities temporarily opened their borders during the winter holidays but only in order to reunite family members during this period. This was, for example, the case of the Region of Murcia;⁷⁶⁵
- some of the regions that had closed down municipalities or geographical areas opened up internal regional borders during this period. Those include, for example, Andalusia⁷⁶⁶ and Cantabria;⁷⁶⁷

⁷⁶² Decree No. 2/2021 of January 24, 2021, of the President of the Generalitat, limiting the presence of groups of people in public and private spaces, extending the measure restricting the entry and exit of people from the territory of the Valencian Community and limiting, during weekends and public holidays, the entry and exit of municipalities and groups of municipalities with a population of more than 50,000 inhabitants. URL: https://www.doqv.gva.es/datos/2021/01/25/pdf/2021_670.pdf (the date of access: March 19, 2021).

⁷⁶³ See, for example, Order 1465/2020 of October 30, 2020, of the Regional Health Secretary, modifying Order No. 1405/2020 of October 22, 2020, of the Regional Health Secretary, adopting specific temporary and exceptional measures for public health reasons for the containment of COVID-19 in certain areas, as a result of epidemiological developments. URL: <https://www.codem.es/Adjuntos/CODEM/Documentos/Informaciones/Publico/d0386888-e45e-43bc-bcfa-da85b7d9507f/326171AD-F028-4796-8CCB-2B02A2443DA2/07ef0e07-d19a-4018-bfe1-3b3163d87ab6/07ef0e07-d19a-4018-bfe1-3b3163d87ab6.PDF> (the date of access: March 17, 2021).

⁷⁶⁴ Decree-Law No. 17/2020 of October 29, 2020, on extraordinary measures in the field of tourism to deal with the effects of the health and economic crisis caused by the pandemic caused by COVID-19. URL: <https://boe.es/buscar/pdf/2020/BOC-j-2020-90440-consolidado.pdf> (the date of access: March 19, 2021).

⁷⁶⁵ Presidential Decree No. 11/2020 of December 22, 2020, updating the restrictive measures adopted under Royal Decree No. 926/2020 of October 25, 2020, declaring a state of alarm to contain the spread of infections caused by SARS-COV-2. URL: <https://www.borm.es/services/anuncio/ano/2020/numero/7470/pdf?id=790195> (the date of access: March 16, 2021).

⁷⁶⁶ Andalusian Government Gazette. Extraordinary issue No. 88 - Friday, December 11, 2020. URL: <https://www.juntadeandalucia.es/boja/2020/588/BOJA20-588-00061.pdf> (the date of access: March 16, 2021).

⁷⁶⁷ Decree No. 13/2020 of December 17, 2020, of the President of the Autonomous Community, adopting measures to limit the freedom of movement of persons at night; limiting the stay of groups of persons in public and private spaces; and limiting the entry and exit of persons from the territory of Cantabria. URL: <https://boc.cantabria.es/boces/verAnuncioAction.do?idAnuBlob=356678> (the date of access: March 16, 2021).

- other regions opened their borders or kept them open but closed down the municipalities or geographical areas within them in which there was an especially high level of COVID-19 incidence. This was the case with the Canary Islands;⁷⁶⁸
- Extremadura⁷⁶⁹ and Madrid, which have generally kept their borders open so far, specifically closed them down for the winter holidays but allowed travel in order to reunite with family members. In Madrid, this authorization was also extended to “close ones”.⁷⁷⁰ Since no specific definition of what “close ones” was provided by the regulatory instrument, the possibility of traveling to the Community of Madrid was, in fact, hardly restricted.

Transport

204. Autonomous Communities have jurisdiction over transport routes that take place within their territory. Regional Governments,⁷⁷¹ local authorities,⁷⁷² and public transportation companies⁷⁷³ have established maximum capacity rules for both public and private means of transportation.

Public Health

205. The Royal Decree-Law No. 29/2020 allows the Autonomous Communities to:

- carry out exceptional hiring procedures;
- force health professionals to practice in a different field of medical specialty to the one they normally practice in; and

⁷⁶⁸ Decree No. 91/2020 of December 16, 2020, of the President, establishing new specific measures of an extraordinary nature during the preparation and celebration of the Christmas holidays on the island of Tenerife, in application of Royal Decree No. 926/2020 of October 25, 2020, declaring a state of alarm, to contain the spread of infections caused by SARS-CoV-2. URL: <http://www.gobiernodecanarias.org/boc/2020/261/index.html> (the date of access: March 16, 2021).

⁷⁶⁹ Presidential Decree No. 29/2020 of December 20, 2020, restricting the exceptional public health measures against COVID-19 for the Christmas holidays and cancelling Presidential Decree No. 27/2020 of December 11, 2020, establishing exceptional public health measures against COVID-19 for the Christmas holidays, in application of Royal Decree No. 926/2020 of October 25, 2020, declaring a state of alarm to contain the spread of infections caused by SARS-CoV-2. URL: <http://doe.gobex.es/pdfs/doe/2020/2441o/2441o.pdf> (the date of access: March 16, 2021).

⁷⁷⁰ Decree No. 42/2020 of December 18, 2020, of the President of the Community of Madrid, establishing limitation measures for the celebration of the Christmas holidays in the Community of Madrid, adopted to deal with COVID-19, in application of Royal Decree No. 926/2020 of October 25, 2020, of the Council of Ministers, declaring a state of alarm to contain the spread of infections caused by SARS-CoV-2. URL: http://www.bocm.es/boletin/CM_Orden_BOCM/2020/12/19/BOCM-20201219-1.PDF (the date of access: March 16, 2021).

⁷⁷¹ Resolution SLT/716/2021 of March 12, 2021, extending and modifying the public health measures for the containment of the epidemic outbreak of the COVID-19 pandemic in the territory of Catalonia. URL: <https://dogc.gencat.cat/ca/document-del-dogc/?documentId=895571> (the date of access: March 16, 2021).

⁷⁷² El Ayuntamiento de Murcia limita el aforo de autobuses y tranvías urbanos en 1/3. Europapress. March 16, 2021. URL: <https://www.europapress.es/murcia/noticia-ayuntamiento-murcia-limita-aforo-autobuses-urbanos-tranvia-20200316173325.html> (the date of access: March 20, 2021).

⁷⁷³ EMT refuerza las medidas especiales contra la COVID-19. EMT. November 16, 2020. URL: <https://emtvalencia.info/es/2020/11/emt-refuerza-las-medidas-especiales-contra-la-covid-19/> (the date of access: March 20, 2021).

- modify some of their working conditions if the health crisis requires it. These modifications may involve, for instance, making them work in a hospital or health center different from the one they are assigned to.⁷⁷⁴

206. Several Autonomous Communities have taken measures to modify working conditions and expanded their public health surveillance and warning systems in order to adapt them to the specific needs of the COVID-19 pandemic and mainly focus on risk groups.⁷⁷⁵

Education

207. The Royal Decree-Law No. 31/2020 of September 29, 2020, adopting urgent measures in the field of non-university education established that all non-university education must be carried out physically but provided educational centers with the possibility of modifying learning objectives and curricula in order to adapt them to the needs generated by the COVID-19 pandemic.⁷⁷⁶

208. Specific aid and support programs for semi-public and public schools and organizations that carry out extracurricular activities have been set up in some Autonomous Communities to ensure that all educational centers have the necessary resources to continue providing their services if part of a school or the whole school were to close down at some point. These support measures are also aimed at ensuring that children from families with fewer resources have full access to education.⁷⁷⁷

209. Universities have mainly adopted a hybrid model. During periods in which there had been a very high incidence level, certain regions had closed down universities and carried out classes through online platforms.⁷⁷⁸

Freedom of Religion

210. In general, the Autonomous Communities have set restrictions to the number of individuals that may attend places of worship to around 30–50% of maximum capacity. Restrictions have also been set regarding the maximum number of individuals that can attend worship activities in open spaces. The

⁷⁷⁴ Royal Decree-Law No. 29/2020 of September 29, 2020, on urgent measures regarding telework in Public Administrations and human resources in the National Health System to tackle the health crisis caused by COVID-19. URL: <https://www.boe.es/buscar/act.php?id=BOE-A-2020-11415> (the date of access: March 20, 2021).

⁷⁷⁵ See, for example, Decree No. 10/2021 of February 26, 2021, amending Decree No. 15/1997 of January 23, 1997, creating and regulating the Epidemiological Surveillance Network in the Autonomous Community of the Balearic Islands. URL: https://noticias.juridicas.com/base_datos/CCAA/690329-d-10-2021-de-26-feb-ca-illes-balears-modificacion-del-decreto-15-1997-de.html (the date of access: March 20, 2021).

⁷⁷⁶ Royal Decree-Law No. 31/2020 of September 29, 2020, adopting urgent measures in the field of non-university education <https://www.boe.es/buscar/doc.php?id=BOE-A-2020-11417> (the date of access: March 20, 2021).

⁷⁷⁷ See, for instance, Decree-Law No. 2/2021 of January 12, 2021, on extraordinary aid in the field of leisure education and extracurricular activities to deal with the consequences of COVID-19 (Catalonia). URL: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2021-4243 (the date of access: March 18, 2021); Decree-Law No. 23/2020 of September 15, 2020, establishing extraordinary and urgent measures in the field of education and support for the Andalusian aquaculture sector, in view of the situation caused by the coronavirus (COVID-19). URL: <https://www.boe.es/buscar/doc.php?id=BOJA-b-2020-90380> (the date of access: March 18, 2021).

⁷⁷⁸ See, for example, Article 6 of the Order of November 8, 2020 modulating warning levels 3 and 4 as a consequence of the critical epidemiological situation resulting from COVID-19 in the Autonomous Community of Andalusia. URL: <https://www.juntadeandalucia.es/boja/2020/577/6> (the date of access: March 14, 2021) and Article 12 of Resolution SLT/2546/2020 of October 15, 2020, adopting new public health measures to contain the epidemic outbreak of the COVID-19 pandemic in the territory of Catalonia. URL: <https://portaldogc.gencat.cat/utillsEADOP/PDF/8248/1816959.pdf> (the date of access: March 18, 2021).

possibility of carrying out these activities is always conditional on the possibility of maintaining social distancing between attendees.⁷⁷⁹

Penalties

211. Some Autonomous Communities have set specific penalty and sanctioning regimes for non-compliance with prevention and containment measures. For instance, the Canary Islands,⁷⁸⁰ Castilla León,⁷⁸¹ and Navarra.⁷⁸²

212. These rules all follow the same logic and introduce three types of offenses (minor, serious, and very serious). Minor offenses include, for example, not wearing a mask or wearing it incorrectly or not complying with social distancing rules by restaurant owners. Serious offenses include, for example, the infringement of maximum capacity rules in restaurants. Very serious offenses include, for example, opening up businesses that have been mandated to close down.⁷⁸³

213. Minor offenses can be punished with a penalty of EUR 100 to EUR 3,000; serious offenses can be punished with a penalty of EUR 3,001 to EUR 60,000 and very serious offenses can be punished with a penalty of EUR 60,001 to EUR 600,000.⁷⁸⁴

214. These regulatory instruments follow the general framework set by the Organic Act No. 4/2015 for the protection of citizens' security,⁷⁸⁵ which was the Act used by authorities to sanction for non-compliance with COVID-19 rules during the first wave. However, these regulations modify the quantities regarding

⁷⁷⁹ See, for example, Article 3 of the President's Decree No. 16/2020 of November 4, 2020, on additional specific measures to contain the spread of infections caused by SARS-CoV-2 in the Autonomous Community of La Rioja. URL: https://ias1.larioja.org/boletin/Bor_Boletin_visor_Servlet?referencia=14407641-1-PDF-534432-X and Article 6 of Resolution SLT/2546/2020 of October 15, 2020, adopting new public health measures to contain the epidemic outbreak of the COVID-19 pandemic in the territory of Catalonia. URL: <https://portaldogc.gencat.cat/utillsEADOP/PDF/8248/1816959.pdf> (the date of access: March 18, 2021).

⁷⁸⁰ Decree-Law No. 14/2020 of September 4, 2020, establishing the sanctioning regime for non-compliance with COVID-19 prevention and containment measures in the Autonomous Community of the Canary Islands. URL: <https://www.boe.es/buscar/pdf/2020/BOC-j-2020-90365-consolidado.pdf> (the date of access: March 15, 2021).

⁷⁸¹ Decree-Law No. 7/2020 of July 23, 2020, establishing the specific sanctioning regime for non-compliance with the health prevention and containment measures to deal with the health crisis situation caused by COVID-19 in the Community of Castilla y León: <https://www.saludcastillayleon.es/institucion/en/resumen-bocyl-legislacion-sanitaria/decreto-ley-7-2020-23-julio-establece-regimen-sancionador-e> (the date of access: March 15, 2021).

⁷⁸² Decree-Law No. 9/2020 of September 16, 2020, establishing the system of penalties for non-compliance with the health prevention and containment measures to deal with the health crisis caused by COVID-19, in the Autonomous Community of Navarra. URL: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2020-12900 (the date of access: March 15, 2021).

⁷⁸³ Decree-Law No. 14/2020 of September 4, 2020, establishing the sanctioning regime for non-compliance with COVID-19 prevention and containment measures in the Autonomous Community of the Canary Islands. URL: <https://www.boe.es/buscar/pdf/2020/BOC-j-2020-90365-consolidado.pdf> (the date of access: March 15, 2021); Decree-Law No. 7/2020 of July 23, 2020, establishing the specific sanctioning regime for non-compliance with the health prevention and containment measures to deal with the health crisis situation caused by COVID-19 in the Community of Castilla y León. URL: <https://www.saludcastillayleon.es/institucion/en/resumen-bocyl-legislacion-sanitaria/decreto-ley-7-2020-23-julio-establece-regimen-sancionador-e> (the date of access: March 15, 2021); Decree-Law No. 9/2020 of September 16, 2020, establishing the system of penalties for non-compliance with the health prevention and containment measures to deal with the health crisis caused by COVID-19, in the Autonomous Community of Navarra. URL: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2020-12900 (the date of access: March 15, 2021).

⁷⁸⁴ Ibid.

⁷⁸⁵ Organic Act No. 4/2015 for the protection of citizens' security. URL: <https://boe.es/buscar/act.php?id=BOE-A-2015-3442> (the date of access: March 30, 2021).

serious and very serious offenses as the Organic Act No. 4/2015 for the protection of citizens' security sets penalties for serious offenses from EUR 3,001 to EUR 30,000 and for very serious offenses from EUR 30,001 to EUR 600,000.

Measures Adopted With the Objective of Returning to the Normal Functioning of Services After the COVID-19 First Wave

215. The Act No. 3/2020⁷⁸⁶ establishes the preferential processing of certain proceedings that directly arise from the COVID-19 health crisis and those that have been affected by its consequences. This Act also establishes a series of measures to enable the development of many court hearings and other types of procedures that require the intervention of judicial bodies through electronic means.⁷⁸⁷

216. Regional public administrations have passed rules in order to expand the functioning of the e-Administration and ensure that as many administrative procedures are carried out through electronic means. For instance, in Andalusia, all of the paperwork involved in public employment calls is carried out through electronic means now.⁷⁸⁸

217. Some regions have adopted rules regulating telework in the public sector in order to ensure that public services continue working and being delivered. For instance, the Community of Madrid adopted the Decree No. 79/2020 of September 16, 2020, which regulates the modality of providing services under the teleworking regime in the Administration of the region of Madrid.

2.2. Containment Measures Regarding Industrial and Non-Productive Sectors

218. Several Autonomous Communities temporarily closed down businesses, such as gyms and restaurants, for a limited period of time when the cumulative incidence was very high. Amongst the regions

⁷⁸⁶ Act No. 3/2020 of September 18, 2020, on procedural and organizational measures to deal with COVID-19 in the field of the Administration of Justice. URL: <https://www.boe.es/buscar/act.php?id=BOE-A-2020-10923> (the date of access: March 15, 2021).

⁷⁸⁷ Ibid.

⁷⁸⁸ Decree-Law No. 27/2020 of October 22, 2020, adopting, on an extraordinary and urgent basis, various measures as a result of the situation caused by the coronavirus (COVID-19). URL: <https://www.boe.es/buscar/act.php?id=BOJA-b-2020-90417&p=20201022&tn=1> (the date of access: March 18, 2021).

that have adopted these measures are Catalonia,⁷⁸⁹ the Valencian Community,⁷⁹⁰ the Basque Country,⁷⁹¹ and Galicia.⁷⁹²

219. Other regions, such as Andalusia, have opted for closing down businesses in specific municipalities or areas where the incidence of COVID-19 had been especially high. In this sense, the Order of November 8, 2020, modulating COVID-19 warning levels 3 and 4 as a consequence of the critical epidemiological situation resulting from COVID-19 in the Autonomous Community of Andalusia, placed the province of Granada in the highest possible level of warning, thereby, closing businesses, such as gyms, shopping centers, theaters, and restaurants.⁷⁹³

220. Opening time for different types of businesses, particularly for bars and restaurants, as well as retail shops, has been constantly shifting. Depending on the region and time period, such organizations were allowed to either maintain their normal opening schedule (as long as they respected the night circulation ban) or their opening hours were limited and they had been forced to close earlier in order to prevent them from serving dinners.⁷⁹⁴

221. Museums, theaters, and cinemas were also closed in some cases when the COVID-19 incidence level had heavily increased, and it is mandatory to wear a mask inside such places at all times.⁷⁹⁵

⁷⁸⁹ Resolution No. SLT/1/2021 of January 4, 2021, extending and modifying the public health measures for the containment of the epidemic outbreak of the COVID-19 pandemic in the territory of Catalonia. URL: <https://portaldogc.gencat.cat/utillsEADOP/PDF/8309/1830247.pdf> (the date of access: March 19, 2021).

⁷⁹⁰ Decree No. 2/2021 of January 24, 2021, of the President of the Generalitat, which limits the stay of groups of people in public and private spaces, extends the measure restricting the entry and exit of people from the territory of the Comunitat Valenciana and limits, during weekends and public holidays, the entry and exit of municipalities and groups of municipalities with a population of more than 50,000 inhabitants. URL: http://www.dogv.qva.es/portal/ficha_disposicion.jsp?L=1&sig=000676%2F2021 (the date of access: March 19, 2021).

⁷⁹¹ Decree No. 4/2021 of January 22, 2021, of the Lehendakari, on the third amendment of Decree No. 44/2020 of December 10, 2020, on the consolidation into a single text and updating of specific prevention measures, in the context of the declaration of the state of alarm, as a result of the evolution of the epidemiological situation and to contain the spread of infections caused by SARS-CoV-2. URL: <https://www.poderjudicial.es/search/openDocument/1286da023d243b04> (the date of access: March 19, 2021).

⁷⁹² Order of January 26, 2021 establishing specific prevention measures as a consequence of the evolution of the epidemiological situation resulting from COVID-19 in the Autonomous Community of Galicia. URL: https://www.xunta.gal/dog/Publicados/excepcional/2021/20210126/2549/AnuncioC3K1-260121-7_es.html (the date of access: March 19, 2021).

⁷⁹³ Junta de Andalucía. Orden de 8 de noviembre de 2020, por la que se modulan los niveles de alerta 3 y 4 como consecuencia de la situación crítica epidemiológica derivada del COVID-19 en la Comunidad Autónoma de Andalucía. URL: <https://www.juntadeandalucia.es/boja/2020/577/6> (the date of access: March 14, 2021).

⁷⁹⁴ See, for example, Resolution of January 19, 2021, of the Regional Minister for Universal Health and Public Health, establishing exceptional and additional measures in the Comunitat Valenciana as a result of the worsening of the health crisis situation caused by COVID-19. URL: http://dogv.qva.es/datos/2021/01/20/pdf/2021_530.pdf (the date of access: March 19, 2021).

⁷⁹⁵ See, for example, Article 4 of Order of January 26, 2021, establishing specific prevention measures as a consequence of the evolution of the epidemiological situation resulting from COVID-19 in the Autonomous Community of Galicia. URL: https://www.xunta.gal/dog/Publicados/excepcional/2021/20210126/2549/AnuncioC3K1-260121-7_es.html (the date of access: March 19, 2021).

222. The maximum capacity of all businesses serving clients has been reduced, generally from 30 to 50% of normal capacity.⁷⁹⁶

2.3. Containment Measures Regarding Population

Social Gatherings

223. Rules for the number of people that can be at social gatherings have been constantly modified since September of 2020. These rules focus on the number of people who can be in public and private spaces and the number of households (which are labeled as living groups) that can come together.⁷⁹⁷

Other Restrictions

224. It is mandatory to wear masks at all times in closed and open spaces. Masks can only be removed while eating or drinking.⁷⁹⁸ In some cases, regions have established more flexible measures regarding the use of masks when practicing sports.⁷⁹⁹

225. Many regions have temporarily banned smoking in public and open spaces, including bars or restaurant terraces.⁸⁰⁰

2.4. Support Measures for Industrial and Non-Productive Sector

Measures Adopted by the Central Government

226. The Central Government has adopted several regulatory instruments that establish the possibility of providing economic aid to sectors that have been particularly affected by the COVID-19 pandemic. For example:

⁷⁹⁶ See, for example, Resolution of November 5, 2020, of the Regional Secretary of Health, adopting measures of the Organic Law No. 3/1986 of April 14, 1986, on Special Public Health Measures, to contain the spread of COVID-19 in the territorial scope of the autonomous community of Castilla-La Mancha. URL: https://docm.castillalamancha.es/portaldocm/descargarArchivo.do?ruta=2020/11/06/pdf/2020_9126.pdf&tipo=rutaDocm (the date of access: March 19, 2021).

⁷⁹⁷ See, for example, Article 1.2 of the Resolution of October 24, 2020, of the Regional Department of Universal Health and Public Health, agreeing on additional exceptional measures in the Valencian Community, as a consequence of the health crisis situation caused by COVID-19. URL: http://dogv.gva.es/datos/2020/10/24/pdf/2020_8861.pdf (the date of access: March 19, 2021).

⁷⁹⁸ Act No. 2/2021 of March 29, 2021, on urgent prevention, containment, and coordination measures to deal with the health crisis caused by COVID-19. URL: <https://www.boe.es/buscar/act.php?id=BOE-A-2021-4908> (the date of access: March 30, 2021).

⁷⁹⁹ See, for example, Resolution of February 26, 2021, of the Regional Department Universal Health and Public Health, establishing measures relating to the use of masks for the containment of the epidemic outbreak of the COVID-19 pandemic. URL: http://dogv.gva.es/datos/2021/02/27/pdf/2021_1932.pdf (the date of access: March 30, 2021).

⁸⁰⁰ See, for example, Article 11 of the Foral Decree-Law No. 8/2020 of August 17, 2020, approving extraordinary measures in the Community of Navarre to respond to the special risk situation arising from the increase in the number of positive cases of COVID-19. URL: <https://www.boe.es/boe/dias/2020/09/29/pdfs/BOE-A-2020-11364.pdf> (the date of access: March 30, 2021); Resolution of February 25, 2021, of the Regional Department of Universal Health and Public Health, by which new measures are agreed, as a consequence of the health crisis situation caused by COVID-19. URL: http://dogv.gva.es/datos/2021/02/26/pdf/2021_1854.pdf (the date of access: March 16, 2021).

- the Royal Decree No. 866/2020 of September 29, 2020, regulates the direct granting of subsidies to various bodies and entities in the tourism sector as it has been one of the economic sectors that are suffering the most from the consequences of the COVID-19 pandemic;⁸⁰¹
- the Royal Decree No. 883/2020 of October 6, 2020, specifically establishes the regulatory bases for the granting of subsidies for the COVID-19 health crisis in the cut flower and ornamental plant sector.⁸⁰²

Measures Adopted at the Regional Level

227. Economic measures to support the economic sectors that have been most heavily hit by the health crisis have been adopted, including, for example, the following:

- in Andalusia, economic measures have been adopted to provide aid to industrial SMEs affected by the consequences of the health crisis⁸⁰³ and to the aquaculture sector;⁸⁰⁴
- in the Valencian Community, the Decree-Law No. 15/2020 of October 23, 2020, provided for economic aid to compensate the losses suffered due to the COVID-19 pandemic by companies engaged in regular inter-urban public transport of passengers and travelers within the region.⁸⁰⁵

228. Measures have been taken in order to simplify all types of procedures to initiate economic activities and expand or renovate industrial installations and businesses in general. Some aid has been specifically directed towards the tourism sector. As an example, this type of measure was adopted by the Decree-Law No. 15/2020 of September 10, 2020, on urgent measures to boost the primary, energy, tourism, and territorial sectors of the Canary Islands.⁸⁰⁶

229. Autonomous Communities have also issued authorizations for businesses to expand the types of services they offer. For example, the Decree-Law No. 8/2020 of September 3, 2020, amending Law No. 7/2006 of October 2, 2020, on Public Entertainment and Recreational Activities of the Community of

⁸⁰¹ Royal Decree No. 866/2020, of September 29, 2020, which regulates the direct granting of subsidies to various bodies and entities in the tourism sector by the Ministry of Industry, Trade and Tourism, during the 2020 budget year. URL: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2020-11422 (the date of access: March 16, 2021).

⁸⁰² Royal Decree No. 883/2020, of October 6, 2020, establishing the regulatory bases for the granting of subsidies for the COVID-19 health crisis in the cut flower and ornamental plant sector. URL: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2020-11882 (the date of access: March 16, 2021).

⁸⁰³ Decree-Law No. 27/2020 of October 22, 2020, adopting, on an extraordinary and urgent basis, various measures as a result of the situation caused by COVID-19. URL: <https://www.boe.es/buscar/doc.php?id=BOJA-b-2020-90380> (the date of access: March 15, 2021).

⁸⁰⁴ Decree-Law No. 23/2020 of September 15, 2020, establishing extraordinary and urgent measures in the field of education and support for the Andalusian aquaculture sector, in view of the situation caused by the COVID-19. URL: <https://www.boe.es/buscar/doc.php?id=BOJA-b-2020-90380> (the date of access: March 19, 2021).

⁸⁰⁵ Decree Law No. 15/2020, of October 23, 2020, of the Valencian Government, on measures to compensate companies engaged in regular interurban public transport of passengers and travelers by road for general use in the Valencian Community. URL: http://doqv.qva.es/datos/2020/10/30/pdf/2020_9091.pdf (the date of access: March 19, 2021).

⁸⁰⁶ Decree-Law No. 15/2020 of September 10, 2020, on urgent measures to boost the primary, energy, tourism, and territorial sectors of the Canary Islands. URL: <https://www.boe.es/buscar/act.php?id=BOC-j-2020-90372> (the date of access: March 16, 2021).

Castilla y León provides businesses registered as carrying out restaurant and hotel activities with the possibility to expand their business scope to leisure and entertainment activities.⁸⁰⁷

230. Tourism promotion programs have also been adopted. These programs provide all citizens within each region with the possibility of requesting that up to 50% of their hotel costs for any trip carried out within the territory of the Autonomous Community where they reside be covered by the regional government (limits are set regarding the maximum amount that can be granted to each person).⁸⁰⁸ The objective of this measure is to promote tourism and boost the economic activity of hotels and other tourism-related businesses.

231. Measures have been adopted to promote telework by setting up financial aid to specifically help companies adapt to teleworking strategies. For instance, the region of Castilla la Mancha has adopted the Decree No. 61/2020 of September 29, 2020, regulating the direct award of subsidies aimed at self-employed workers and SMEs to promote remote working as a form of work organization.⁸⁰⁹

232. Financial aid measures have also been adopted to help businesses, in particular, SMEs, to pay for the lease of establishments where they carry out their activity.⁸¹⁰

2.5. Support Measures for Population

Measures Adopted by the Central Government

233. The Royal Decree-Law No. 28/2020 of September 22, 2020, on teleworking⁸¹¹ and the Royal Decree-Law No. 29/2020⁸¹² regulate telework in both public and private sector. The objective of these rules is to ensure that workers' rights are respected when teleworking.

234. The Royal Decree-Law No. 30/2020 of September 29, 2020, on social measures in defense of employment⁸¹³ has extended specific unemployment benefits for workers employed at companies that had

⁸⁰⁷ Decree-Law No. 8/2020 of September 3, 2020, amending the Law No. 7/2006 of October 2, 2020, on Public Entertainment and Recreational Activities of the Community of Castilla y León. URL: <https://www.boe.es/buscar/act.php?id=BOCL-h-2020-90363> (the date of access: March 16, 2021).

⁸⁰⁸ For example, Decree No. 156/2020 of October 16, 2020, of the Council, approving the regulatory bases and the direct granting of aid for the "Bono Viaje Comunitat Valenciana" program, to encourage the demand for domestic tourist services affected by COVID-19. URL: http://dogv.gva.es/datos/2020/10/17/pdf/2020_8557.pdf (the date of access: March 18, 2021).

⁸⁰⁹ Decree No. 61/2020, of September 29, 2020, which regulates the direct granting of subsidies aimed at self-employed workers and SMEs to promote telecommuting as a work organization modality, on the occasion of the COVID-19 health crisis. URL: https://docm.castillalamancha.es/portaldocm/descargarArchivo.do?ruta=2020/10/06/pdf/2020_7204.pdf&tipo=rutaDocm (the date of access: March 18, 2021).

⁸¹⁰ See, for instance, Decree Law No. 34/2020 of October 20, 2020, on urgent measures to support economic activity carried out in leased business premises (Catalonia). URL: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2020-14371 (the date of access: March 19, 2021).

⁸¹¹ Royal Decree-Law No. 28/2020 of September 22, 2020, on teleworking. URL: <https://www.boe.es/buscar/act.php?id=BOE-A-2020-11043> (the date of access: March 15, 2021).

⁸¹² Royal Decree-Law No. 29/2020 of September 29, 2020, on urgent measures regarding telework in Public Administrations and human resources in the National Health System to tackle the health crisis caused by COVID-19. URL: <https://www.boe.es/buscar/act.php?id=BOE-A-2020-11415> (the date of access: March 20, 2021).

⁸¹³ Royal Decree-Law No. 30/2020 of September 29, 2020, on social measures in defense of employment. URL: <https://www.boe.es/buscar/act.php?id=BOE-A-2020-11416> (the date of access: March 20, 2021).

to halt or reduce temporarily their activity due to the COVID-19 pandemic. This regulatory instrument has also established specific benefits that could be requested by self-employed individuals that had to halt or reduce their activity due to the COVID-19 pandemic. The sunset clause for this measure was set for January 31, 2021 (**paras. 207–210 of Annex 3 to the Analytical Report**). However, it was extended until May 31, 2021 through the adoption of the Royal Decree-Law No. 2/2021 of January 26, 2020, on the reinforcement and consolidation of social measures in defense of employment.⁸¹⁴

235. The Spanish Government has also extended the temporary suspension of those eviction procedures that might affect vulnerable individuals and families.⁸¹⁵

Measures Adopted at the Regional Level

236. The Autonomous Communities have also established specific rules to provide economic aid to self-employed individuals affected by the health crisis and to individuals who have become temporarily unemployed due to sector-specific lockdowns that took place after September 2020. These economic benefits were compatible with other support and aid systems provided at the national level (**paras. 234–235 of Annex 4 and paras. 201, 207–209 of Annex 3 to the Analytical Report**).⁸¹⁶

237. Rules have been adopted to provide families with different forms of support and financial aid for children, elderly people, individuals with disabilities, or those who are dependent on others and in any way must remain at home due to having been tested positive for COVID-19 or having been in contact with someone who has tested positive. For example, in Castilla León, the Decree-Law No. 9/2020 of September 10, 2020, has adopted extraordinary measures to support individuals and families for the home care of minors, dependent persons, or persons with disabilities, who must be confined to their homes due to the COVID 19 pandemic.⁸¹⁷

238. Measures have also been adopted in order to extend the social safety net aimed towards protecting individuals in vulnerable situations and at risk of social exclusion:

- some of the Autonomous Communities that did not have rules establishing a Minimum Vital Income have passed regulatory instruments in order to ensure that individuals and households that had no form of income obtained a minimum monthly economic aid.⁸¹⁸ If each regional

⁸¹⁴ Royal Decree-Law No. 2/2021, of January 26, 2020, on the reinforcement and consolidation of social measures in defense of employment. URL: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2021-1130 (the date of access: March 20, 2021).

⁸¹⁵ Royal Decree-Law No. 37/2020 of December 22, 2020, on urgent measures to address situations of social and economic vulnerability in the field of housing and transport. URL: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2020-16824 (the date of access: March 18, 2021).

⁸¹⁶ See, for example, Order of the Regional Department of Employment, Research and Universities, of regulatory bases for subsidies aimed at self-employed workers to alleviate the economic losses caused by COVID-19 (Murcia). URL: <https://www.borm.es/services/anuncio/ano/2020/numero/2203/pdf?id=784683> (the date of access: March 20, 2021).

⁸¹⁷ Decree-Law No. 9/2020, of September 10, 2020, adopting extraordinary measures to support individuals and families for the home care of minors, dependent persons, or persons with disabilities who must be confined to their homes due to the COVID-19 pandemic. URL: <https://bocyl.jcyl.es/boletines/2020/09/11/pdf/BOCYL-D-11092020-1.pdf> (the date of access: March 15, 2021).

⁸¹⁸ See, for instance, Act No. 3/2020 of October 27, 2020, on urgent social measures aimed at people in a situation of vulnerability as a result of the health crisis caused by COVID-19 and amending the Law 16/2019 of May 2, 2019, on social services in the Canary Islands. URL: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2020-14545 (the date of access: March 15, 2021).

government decides to allow it, the regional Minimum Vital Income may be compatible with the equivalent form of aid regulated by the Spanish Government;⁸¹⁹

- financial aid measures have also been adopted and extended in order to provide individuals with help by paying their housing rental contracts.⁸²⁰

3. Court Practice With Respect to the COVID-19 Pandemic

3.1. Court Resolutions Regarding the Declaration of the State of Alarm

239. Several claims regarding the declaration of the state of alarm were brought before courts in Spain.

240. In the Spanish Constitutional Court's Resolution of December 11, 2020,⁸²¹ the Court rejected the application for the special protection of fundamental rights through which the plaintiff (who is a Member of the Spanish Parliament) attempted to appeal the content of the Royal Decree No. 926/2020, which declared the second state of alarm, and the Royal Decree No. 956/2020, which extended the state of alarm from October 2020 to May 2021. Although the Royal Decrees that constitute the formal regulatory instruments to declare the state of alarm have the form of a regulation issued by the Council of Ministers and, thus, in principle, do not have an equal value to a legislative Act, due to the particular nature of this regulatory instrument they can be considered as a legislative Act.

241. Since Congress must meet (and met) right after the state of alarm was declared and it must vote in favor of extending the time limit beyond 15 days (which the Spanish Congress also voted for repeatedly) and also considering that the state of alarm is precisely foreseen by the Constitution as a state of exceptionality in the legal system, the Court considered that the Royal Decrees No. 926/2020 and No. 956/2020 must be treated as regulatory instruments with the force of law. Since regulatory instruments with the force of law can only be appealed through a claim of unconstitutionality before the Constitutional Court and not through the procedure for the special protection of fundamental rights, the plaintiff's claim was rejected (Articles 161–162 of the Spanish Constitution).

242. The Supreme Court had already issued a similar resolution in May 2020 regarding the Royal Decree No. 463/2020, which declared the first state of alarm (**paras. 187–198 of Annex 3 to the Analytical Report**). The Supreme Court declared that it had no jurisdiction to determine the legality of the declaration of the state of alarm because as stated in the previous paragraph, it is the Constitutional Court that has this jurisdiction.⁸²²

⁸¹⁹ Las comunidades autónomas ultimán distintas fórmulas para hacer convivir sus rentas básicas con el Ingreso Mínimo Vital. Infolibre. 16.03.2021. URL: https://www.infolibre.es/noticias/politica/2020/06/13/de_complementacion_sustitucion_integra_las_rentas_a_tonicas_preparan_para_convivencia_con_ingreso_minimo_vital_107704_1012.html (the date of access: March 30, 2021).

⁸²⁰ See, for example, Citizen Guide on measures regarding housing in the context of the COVID-19 crisis. Community of Madrid. URL: https://www.comunidad.madrid/sites/default/files/doc/vivienda/guia_medidas_covid_19_-_1_de_octubre_de_2020_v6_b.pdf (the date of access: March 18, 2021).

⁸²¹ Constitutional Court Resolution, December 11, 2020, Appeal No. 5344/2020. URL: https://www.tribunalconstitucional.es/NotasDePrensaDocumentos/NP_2020_114/P_5344-2020.pdf (the date of access: March 18, 2021).

⁸²² Supreme Court (Administrative Section) Resolution No. 2478/2020 of May 4, 2020, Appeal No. 99/2020. URL: <https://www.poderjudicial.es/search/AN/openDocument/ee23a58112d68659/20200508> (the date of access: March 18, 2021).

243. 52 members of the Spanish Parliament lodged an unconstitutionality appeal of the Royal Decree No. 926/2020 and the Royal Decree No. 956/2020. The Court admitted the appeal for an examination in its resolution of December 17, 2020.⁸²³ The Spanish Constitutional Court is still examining the case and has not yet issued a final judgment.

3.2. Resolutions Confirming or Rejecting the Adoption of Measures by Regional Governments

244. Since the Act No. 3/2020 was passed, the Superior Courts of Justice have had to issue resolutions on the lawfulness of the measures taken by the Autonomous Communities to deal with the pandemic and restricting the fundamental rights of individuals (Articles 14–32 to the Spanish Constitution).⁸²⁴ In this context, most court rulings have confirmed the legal instruments adopting the measures. However, there are some specific cases in which the adoption of certain measures was rejected. These instances mainly took place before the second state of alarm and are described below.

Measures Establishing Curfew

245. Several Autonomous Communities began setting night mobility restrictions from October 2020.

246. In Castilla León, the said restriction was first established by the region's Governmental Agreement No. 73/2020.⁸²⁵ The Superior Court of Justice of Castilla León rejected the adoption of said measure⁸²⁶ when the Government applied for its authorization:

- the Court argued that the restrictions to fundamental rights that could be adopted were only those allowed by the Spanish health legislation;
- according to the Court, this regulatory context and in particular Organic Act No. 3/1986 on Special Measures on Public Health does not provide a sufficient legal backdrop to such a restrictive measure of the right to free movement of people;
- Article 3 of Organic Act No. 3/1986 establishes that "In order to control transmissible diseases, the health authority may, in addition to general preventive actions, take appropriate measures for the control of sick persons, persons who are or have been in contact with them and the immediate environment, as well as those considered necessary in case of risk of a contagious

⁸²³ Constitutional Court Resolution, December 17, 2020, Appeal No. 5342/2020. URL: https://www.tribunalconstitucional.es/NotasDePrensaDocumentos/NP_2020_109/P_5342-2020.pdf (the date of access: March 18, 2021).

⁸²⁴ See Articles 10.8 and 11.1.i of the Act No. 29/1998 of July 13, 1998, regulating the Administrative Jurisdiction added by the Act No. 3/2020. URL: <https://www.boe.es/buscar/act.php?id=BOE-A-1998-16718> (the date of access: March 19, 2021).

⁸²⁵ Agreement No. 73/2020 of October 23, 2020, of the Government of Castilla y León partially and temporarily restricting the freedom of movement of persons in the Community of Castilla y León for very serious public health reasons, affecting certain measures of the plan of prevention and control measures to deal with the health crisis caused by COVID-19 in the Community of Castilla y León, approved by Agreement No. 46/2020 of August 20, 2020, of the Junta de Castilla y León. URL: <https://www.saludcastillayleon.es/institucion/en/recopilacion-normativa/salud-publica/epidemiologia/acuerdo-73-2020-23-octubre-junta-castilla-leon-limita-parci> (the date of access: March 19, 2021).

⁸²⁶ Superior Court of Justice of Castilla León, Administrative Chamber, Resolution No. 273/2020 of October 25, 2020. URL: <https://www.poderjudicial.es/search/AN/openDocument/506eec83045ff20f/20201026> (the date of access: March 18, 2021).

nature.” However, the Court considered that this provision did not provide for the adoption of such heavy restrictions on the fundamental rights of all individuals within the territory of the Autonomous Community;

- the Court considered that, in order to take such a restrictive measure, it is necessary to base it on the legal framework offered by a declaration of the state of alarm. In this context, it is relevant to point out that this particular court resolution was issued the day before the Royal Decree No. 926/2020 entered into force, declaring the second state of alarm and a nationwide curfew.

247. In the Valencian Community, night mobility restrictions were set on October 24, 2020. The Court resolution authorizing these measures was issued on October 27, 2020.⁸²⁷

- the main difference between this case and the case regarding curfew measures in Castilla León was that the resolution of the Superior Court of Justice of the Valencian Community was issued after the Royal Decree No. 926/2020 entered into force;
- however, in both cases, the regional Governments adopted curfew measures before the nation-wide curfew was adopted by the central Government through the Royal Decree No. 926/2020;
- the resolution issued by the Superior Court of Justice of the Valencian Community also entered the discussion on whether the health legal framework offers a sufficient legal backdrop for the Governments of Autonomous Communities to take measures that restrict fundamental rights in the context of a health crisis;
- the Court contended that it is vital to take into consideration that the measures examined do not entail the absolute suspension of fundamental rights but their restriction. It means that the possibility of exercising the fundamental rights affected (namely, the freedom of movement) is not completely precluded but just partially restricted;
- the Court also indicated that the very reason why the Organic Act No. 3/1986 is an Organic Act and not an Ordinary Act, is that it regulates the possibility of restricting fundamental rights;⁸²⁸
- in this case, the Court argued that Article 3 of the Organic Act No. 3/1986 does, in fact, provide a sufficient legal basis for regional Governments to take measures that restrict the fundamental rights of citizens. In particular, Article 3 states that “In order to control transmissible diseases, the health authority may, in addition to general preventive actions, take ... [those measures] considered necessary in case of risk of a contagious nature.” Thus, the Court considered that this provision left the door open to take measures such as night movement restrictions.

⁸²⁷ Superior court of Justice of the Valencian Community, Administrative Chamber, Resolution No. 142/2020 of October 27, 2020. URL: <https://www.poderjudicial.es/search/AN/openDocument/c619fbc751c62345/20201028> (the date of access: March 19, 2021).

⁸²⁸ In Spain, fundamental rights can only be regulated through Organic Acts, which require the favorable vote of the absolute majority of Parliament.

Measures Closing the Borders of the Autonomous Communities

248. All Courts have upheld the decisions of regional Governments to close the borders of the Autonomous Communities.

249. Navarra and La Rioja were the only two cases of regional Governments that decided to close their borders before the Royal Decree No. 926/2020 declared the second state of alarm. Although this decision could have been controversial, in both cases, the regional Superior Courts of Justice confirmed this measure as they considered that the restrictions to fundamental rights were proportional and adequate in order to deal with the growing number of COVID-19 cases.⁸²⁹

250. However, the Superior Court of Justice of Navarra did criticize the regional Government for not requesting prior authorization when adopting the measures and in its resolution advised the regional Government to request prior authorization from the court instead of ratification of measures in the future.

Other Measures Restricting Freedom of Movement of People

251. Some Autonomous Communities have had geographical areas within their borders closed down. These decisions have received a mixed response from Courts, which, in several cases, have rejected confirming the decision to close down certain areas or municipalities.

252. The Superior Court of Justice of Madrid in its resolution of October 8, 2020,⁸³⁰ considered that the closure of certain municipalities of the Community of Madrid ordered by the Spanish Health Ministry⁸³¹ and executed by the Health Department of Madrid⁸³² lacked sufficient legal basis.

253. The decision to lock down municipalities of more than 100,000 inhabitants with an especially high level of COVID-19 incidence was based on the agreement reached at the Interterritorial Council of the National Health System. Catalonia, Galicia, Andalusia, the Community of Madrid, and the Autonomous City of Ceuta voted against this agreement, however, due to its binding nature, they all had to follow through with it (**paras. 193–194 of Annex 4 to the Analytical Report**).

254. The Court considered that, even though Article 65 of the Act No. 16/2003 does provide the aforementioned Interterritorial Council with the power to adopt binding decisions that must be

⁸²⁹ Superior Court of Justice of La Rioja, Administrative Chamber, Resolution No. 97/2020 of October 24, 2020. URL: <https://www.poderjudicial.es/search/AN/openDocument/d72b55d96c42eda6/20210222> (the date of access: March 15, 2021); Superior Court of Justice of Navarra, Administrative Chamber, Resolution No. 170/2020 of October 22, 2020. URL: <https://www.poderjudicial.es/search/AN/openDocument/89c7ca0535b3993e/20201026> (the date of access: March 15, 2021).

⁸³⁰ Superior Court of Justice of Madrid, Administrative Chamber, Resolution No. 128/2020, October 8, 2020. URL: <https://www.poderjudicial.es/search/AN/openDocument/4508ffdf28c886ff/20201009> (the date of access: March 19, 2021).

⁸³¹ Resolution of September 30, 2020, of the Health State Secretary, publicizing the Agreement of the Interterritorial Council of the National Health System on the Declaration of Coordinated Actions in Public Health to respond to situations of special risk due to uncontrolled transmission of infections caused by SARS-Cov-2, dated September 30, 2020. URL: <https://www.boe.es/buscar/doc.php?id=BOE-A-2020-11590> (the date of access: March 19, 2021).

⁸³² Order No. 1273/2020 of October 1, 2020, of the Regional Department of Health, establishing preventative measures in certain municipalities of the Community of Madrid in execution of the Order of the Minister of Health, of September 30, 2020, which approves coordinated actions in public health. URL: <https://www.bocm.es/boletin/CM Orden BOCM/2020/10/02/BOCM-20201002-200.PDF> (the date of access: March 15, 2021).

implemented by the relevant health authorities at the regional level, the Act does not provide the Council with the possibility of making decisions that involve restrictions on fundamental rights.

255. The Superior Court of Justice of Aragón also rejected closing down the borders of the municipality La Almunia de Doña Godina where the level of COVID-19 incidence was very high. In this case, the Court based its ruling on the fact that Article 3 of the Organic Act No. 3/1986 does not provide public authorities with the power to adopt such a heavy restriction of such fundamental right as the freedom of movement (Article 19 of the Spanish Constitution).⁸³³ In that case, the measure adopted did not result from the aforementioned agreement reached by the Interterritorial Council. The regional Government of Aragón took this measure due to the growing concern with the spread of COVID-19 in the aforementioned municipality.

256. Conversely, the Superior Court of Justice of Castilla León confirmed the decision adopted by the regional Government to close the borders of certain municipalities which met the criteria set by the agreement adopted by the Interterritorial Council.⁸³⁴ In this case, the Court considered that the measure, which restricted fundamental rights, was proportional and sufficiently backed by the health legal framework and the Interterritorial Council's agreement. This decision stands in stark contrast with the decision adopted by this very Court which rejected night mobility restrictions.⁸³⁵ The difference between both decisions is the fact that, in this case, fundamental rights were restricted in a more specific manner that addressed more precisely the risk that existed in certain geographical areas.

Measures Restricting the Right to Assembly (Right to Meet)

257. Regional Governments have restricted the right to assembly (recognized by Article 21 of the Spanish Constitution) by limiting the number of individuals who can meet in public and private spaces.

258. Courts had mostly confirmed the adoption of this type of measure. For instance, the Superior Court of Justice of Castilla León confirmed the measures adopted by the regional Government which limited the number of people who could meet.⁸³⁶ The Court considered that, given the high levels of the spread of COVID-19, this measure was justified and proportional. In addition, the Court came to the conclusion that the health legal framework authorized the regional Government to adopt a measure that restricted fundamental rights in this way due to the fact that this restriction was very specific.

259. Contrariwise, the Superior Court of Justice of the Basque Country considered that the Spanish health legal framework does not provide sufficient legal basis to limit the right to assembly to six people in the pandemic context.⁸³⁷ As it happened with most of the court resolutions that confirmed or rejected the measures adopted by regional Governments in the procedure set by Article 10.8 of the Act No. 29/1998

⁸³³ Superior Court of Justice of Aragón, Administrative Chamber, Resolution No. 89/2020, October 10, 2020. URL: <https://www.poderjudicial.es/search/AN/openDocument/741bcdd2845f86b0/20210204> (the date of access: March 15, 2021).

⁸³⁴ Superior Court of Justice of Castilla León, Administrative Chamber, Resolutions No. 245/2020 and No. 274/2020, October 9, 2020. URL: <https://www.poderjudicial.es/search/AN/openDocument/89d555d4978b1d8e/20201013> and <https://www.poderjudicial.es/search/AN/openDocument/f72d83373eaa2547/20201013> (the date of access: March 15, 2021).

⁸³⁵ Superior Court of Justice of Castilla León, Administrative Chamber, Resolution No. 273/2020 of October 25, 2020. URL: <https://www.poderjudicial.es/> (the date of access: March 15, 2021).

⁸³⁶ Superior Court of Justice of Castilla León, Administrative Chamber, Resolution No. 245/2020 of October 9, 2020. URL: <https://www.poderjudicial.es/search/AN/openDocument/89d555d4978b1d8e/20201013> (the date of access: March 15, 2021).

⁸³⁷ Superior Court of Justice of the Basque Country, Administrative Chamber, Resolution No. 32/2020 of October 22, 2020. URL: <https://www.poderjudicial.es/search/AN/openDocument/9a7ad397bcf82f9c/20201023> (the date of access: March 20, 2021).

(introduced by the Act No. 3/2020) (paras. 186–187 of Annex 4 to the Analytical Report), the provision that the Court examined in this case in order to determine whether the measure adopted had sufficient legal basis was Article 3 of the Organic Act No. 3/1986. The Court considered that this provision only allows the restriction of the fundamental rights of individuals who have contracted a contagious illness and those who have been in close contact with them. Hence, it is not possible to generally restrict the right to assembly.

3.3. Resolutions Regarding Claims Against Measures Adopted or the Action (or Inaction) of Public Authorities

Claims Regarding General Measures

Freedom to Conduct a Business

260. When it came to courts confirming measures that limited business opening times or closed down a whole sector altogether, the judiciary confirmed the actions adopted by regional Governments. However, courts' response was more varied when specific claims were filed in order to request the adoption of precautionary measures that provisionally quashed the measures adopted by regional Governments. Hence, even though in these cases most courts upheld the measures adopted, there were also some examples when the request filed by representatives of certain economic sectors for reopening of their businesses was accepted.

261. On March 11, 2021, the regional Government in the Valencian Community decided to lift some of the restrictions that had been in place since January 2020, therefore, allowing businesses, such as gyms and the interior of restaurants, to open. However, the Government decided to keep recreational and gambling establishments closed. The trade union representing the workers of establishments and spaces dedicated to recreational and gambling activities appealed this decision and requested the Superior Court of Justice of the Valencian Community to grant a precautionary measure that allowed the reopening of said businesses. The Court rejected the request as it considered the Government's decision to be sufficiently well-argued.⁸³⁸

262. However, the Superior Court of Justice of the Basque Country allowed reopening bars and restaurants which were closed by the regional Government through the adoption of the Decree No. 4/2021 of the Regional President.⁸³⁹ The specific provision that was appealed by several Associations of the hospitality industry refers to the mandate that all bars and restaurants remain closed in municipalities with more than 5,000 inhabitants when the cumulative incidence rate of positive cases of COVID-19 in the last 14 days is more than 500 per 100,000 inhabitants. In this case, the Court considered that the restrictions that had already been imposed on these businesses, such as ensuring that there is a distance of 1.5 meters between tables, that tables are not occupied by more than four people and an occupancy does not exceed 50%, had already proven sufficient to limit the spread of COVID-19.

⁸³⁸ Superior Court of Justice of the Valencian Community, Administrative Chamber, Resolution No. 94/2021 of March 17, 2021. URL: <https://www.poderjudicial.es/search/AN/openDocument/5361e23ab5286ea1/20210323> (the date of access: March 20, 2021).

⁸³⁹ Decree No. 4/2021 of January 22, 2021, of the Lehendakari, on the third amendment of Decree No. 44/2020 of December 10, 2020, on the consolidation into a single text and updating of specific prevention measures, in the context of the declaration of the state of alarm, as a result of the evolution of the epidemiological situation and to contain the spread of infections caused by SARS-CoV-2. URL: https://www.legegunea.euskadi.eus/x59-preview/es/contenidos/decreto/bopv202100365/es_def/index.shtml (the date of access: March 20, 2021).

Night Mobility Restrictions

263. In January 2021, the Government of Castilla León decided to set night mobility restrictions starting at 20:00, which is not allowed by Royal Decree No. 926/2020 and Royal Decree No. 956/2020 (**paras. 197–198 of Annex 4 to the Analytical Report**). As previously indicated, according to Royal Decree 926/2020, a nationwide night mobility restriction is set, at least, from 23:00 until 6:00. However, regional Governments can decide to increase the time frames, moving up or pushing back the starting time one hour (to 22:00 or 00:00) and moving up or pushing back the starting time one hour (to 5:00 or 7:00).

264. Thus, when Castilla León decided to move up the starting time for the night mobility restrictions even further than what is allowed by the Royal Decree No. 926/2020, the Central Government decided to appeal this decision before the Spanish Supreme Court. The Spanish Government also requested a precautionary measure to halt the effectiveness of the decision made by the regional Government of Castilla León.

265. The Spanish Supreme Court granted the precautionary measure as it considered that, in principle, regional Governments did not have the power to move the time frame for night mobility restrictions beyond what is allowed by the Royal Decree No. 926/2020. The Court considered that, if it did not grant the precautionary measure and waited for its final decision, the Spanish Government's appeal would be meaningless as the restriction to the fundamental right to free movement would have already taken place.⁸⁴⁰ A final judgment has not yet been issued.

Suspension of Electoral Processes

266. In September 2020, the Spanish Supreme Court banned the Catalan President from office as he refused to take down a pro-independence symbol from a public building.⁸⁴¹ The Catalan Parliament tried to elect a new President but failed to do so. The Statute of Autonomy of Catalonia establishes that, if after two months of the first vote in Parliament to elect a president, no one is chosen, the Parliament shall be dissolved and new elections shall be called.

267. Hence, on December 21, 2020, the Catalan Parliament was dissolved and elections were called through the Decree No. 147/2020.⁸⁴² The Spanish Electoral Law mandates that the latest date when an election can be celebrated is 54 days after it was called.⁸⁴³ However, on January 15, 2021, the acting President of Catalonia issued the Decree No. 1/2021 suspending the call for the election.⁸⁴⁴ This Decree established that, if conditions were appropriate, the election would take place on May 30, 2021. The reasons provided were that, in the context of the COVID-19 pandemic, it was not possible to ensure that political

⁸⁴⁰ Spanish Supreme Court, Administrative Chamber, Resolution of February 16, 2021. URL: <https://www.poderjudicial.es/search/AN/openDocument/62eba54d70c96604/20210217> (the date of access: March 20, 2021).

⁸⁴¹ Spanish Supreme Court, Criminal Chamber, Judgment No. 477/2020 of September 28, 2021. URL: <https://www.poderjudicial.es/search/AN/openDocument/dec4236d1d386b09/20201006> (the date of access: March 20, 2021).

⁸⁴² Decree No. 147/2020 of December 21, 2020, on the automatic dissolution of the Parliament of Catalonia and the call for elections. URL: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2020-16676 (the date of access: March 17, 2021).

⁸⁴³ Article 42 of the Organic Act No. 5/1985 of June 19, 1985, on the General Electoral Regime. URL: <https://www.boe.es/buscar/act.php?id=BOE-A-1985-11672> (the date of access: March 20, 2021).

⁸⁴⁴ Decree No. 1/2021 of January 15, 2021, which suspends the holding of the elections to the Parliament of Catalonia on February 14, 2021 due to the health crisis resulting from the pandemic caused by COVID-19. URL: <https://www.boe.es/buscar/doc.php?id=BOE-A-2021-674> (the date of access: March 20, 2021).

rights could be properly exercised nor that the rights to life and bodily integrity of those who went to vote or participated in the organization of the election.⁸⁴⁵

268. A series of civil society groups appealed the Decree through the special procedure for the protection of fundamental rights.

269. The Court declared the nullity of the Decree No. 1/2021. The Court considered that there was no *force majeure* and that the decision to suspend the election was not proportional as the appropriate safety measures could be set up when the election was carried out. The Court also considered that there was no legal instrument that foresaw the possibility of suspending electoral processes and the acting President of Catalonia, therefore, lacked jurisdiction in making this decision and passing the Decree by which the election was suspended.⁸⁴⁶

Claims Regarding Decisions That Result From the Application of General Measures

Penalties and Sanctions Imposed for Non-Compliance With COVID-19 Measures

270. One of the most controversial issues regarding the implementation of COVID-19 related measures has been the procedure followed and legal basis in order to impose sanctions for failing to comply with regulations adopted to protect individuals during the pandemic.

271. In particular, from September 2020 onwards, a series of judgments have quashed the penalties imposed on individuals for leaving their homes without justification during the time when all of Spain was in full lockdown (from March until May 2020).

272. In many cases, since there was no specific regulatory instrument foreseeing the offenses for which individuals could be charged for not complying with the mobility ban and other measures, law enforcement agents generically charged these citizens with the offense of disobeying authority.

273. The Royal Decree No. 463/2020, by which the state of alarm was declared, did not specify the sanctions that should be imposed for the infringement of the obligations established in the Decree.

274. The Decree referred to Article 10 of the 1981 Organic Act that regulates the states of alarm, emergency, and siege in Spain.⁸⁴⁷ It establishes that “failure to comply with or resistance to the orders of the competent authority in the state of alarm shall be punishable in accordance with what is provided for by law,” but does not make a specific remission to any law. Since Article 10 of the 1981 Organic Act does not specify what the applicable sanctions are, law enforcement agents based most of the sanctions on the provisions of the Organic Act No. 4/2015 for the protection of citizen security, which establishes that disobeying authorities constitutes a serious offense.⁸⁴⁸

⁸⁴⁵ Ibid.

⁸⁴⁶ Superior Court of Justice of Catalonia, Administrative Chamber, Judgment of February 1, 2021. URL: http://www.juntaelectoralcentral.es/cs/jec/documentos/tsjc_sentencia_121_2021_01_02_2021.pdf (the date of access: March 17, 2021).

⁸⁴⁷ Organic Act No. 4/1981 of June 1, 1981, regulating the states of alarm, exception, and siege. URL: <https://www.boe.es/buscar/act.php?id=BOE-A-1981-12774> (the date of access: March 15, 2021).

⁸⁴⁸ Article 36.6 of the Organic Act No. 4/2015 of March 30, 2015, on the protection of citizen security. URL: <https://www.boe.es/buscar/act.php?id=BOE-A-2015-3442> (the date of access: March 20, 2021).

275. However, courts decided that it was not possible to consider that an individual had incurred the offense of disobeying authority if there was no explicit mandate expressed by the agents, which the individual then disobeyed.⁸⁴⁹

Vaccination

276. In several cases, courts had to intervene in order to mandate retirement homes to administer the COVID-19 vaccination of elderly individuals who are incapacitated. The courts took into consideration the fact that the effects on public health cannot be considered in these cases because vaccination is voluntary. However, considering the limited capacity of the individuals that were to be vaccinated, the courts ordered the respective retirement homes to administer the vaccine.⁸⁵⁰

277. On February 26, 2021, the Government of Galicia modified the Health Law of Galicia providing for fines of up to EUR 60,000 for those who refuse to vaccinate without justification.⁸⁵¹ On March 30, 2021, the Central Government filed an appeal to the Constitutional Court of Spain claiming unconstitutionality of the adopted law as it “imposes restrictions and limitations on fundamental rights that, as determined by Article 81 of the Spanish Constitution, are reserved to an Organic Law of the State.”⁸⁵²

⁸⁴⁹ See, for instance, Administrative Court of Vigo [section 1] Judgment No.201/2020 of October 19, 2020. URL: <https://www.poderjudicial.es/search/openDocument/7e0c18f8873d663b> (the date of access: March 15, 2021).

⁸⁵⁰ Court of 1st Instance No.17 of Seville, Resolution No.47/2021 of January 15, 2021. URL: <https://www.poderjudicial.es/search/AN/openDocument/e4d171bc79308a1e/20210208> (the date of access: March 15, 2021); Court of 1st Instance No. 6 of Santiago de Compostela, Resolution No. 55/2021 of January 19, 2021. URL: <https://www.poderjudicial.es/search/AN/openDocument/c0db985cceedc29/20210210> (the date of access: March 15, 2021); Court of 1st Instance No. 6 of Santiago de Compostela, Resolution No. 60/2021 of January 20, 2021. URL: <https://www.poderjudicial.es/search/AN/openDocument/2f096421289bbd27/20210122> (the date of access: March 15, 2021).

⁸⁵¹ Xunta de Galicia. Ley No. 8/2021, de 25 de febrero, de modificación de la Ley No. 8/2008, de 10 de julio, de salud de Galicia. DOG Núm. 39 de 26 de febrero de 2021. URL: https://www.xunta.gal/dog/Publicados/2021/20210226/AnuncioC3B0-240221-0001_es.html (the date of access: March 30, 2021).

⁸⁵² RTVE. El Gobierno lleva al Constitucional la ley gallega que abre la puerta a la obligatoriedad de la vacuna contra la COVID. March 30, 2021. URL: <https://www.rtve.es/noticias/20210330/gobierno-lleva-tc-ley-gallega-vacunacion-obligatoria/2084152.shtml> (the date of access: March 30, 2021).

V. Sweden

Summary

278. The Swedish response to the COVID-19 pandemic is grounded in personal responsibility and evidence-based advice and recommendations from the competent authorities, a strategy that has remained throughout the pandemic. Sweden has largely remained an open society and few repressive measures have been undertaken in relation to the population in order to enforce the strategy so far. However, the legislator has seen fit to temporarily grant the government more leeway to be able to take more repressive restrictions and shut-downs of certain spaces, if necessary.

279. The second wave of the pandemic in Sweden has led to new measures being taken in the form of new legislation, new measures regarding the spread of the virus, as well as measures in order to stimulate the strained economy in the many branches particularly hit by the pandemic (**paras. 258, 262, 267 of Annex 3 to the Analytical Report**).

280. A new temporary law, the Pandemic Act, was enacted in 2021 to give the government the powers necessary to close or restrict access to public spaces, such as airports, train stations, sports facilities, shopping malls, and others. The Pandemic Act makes it possible for the government, at least in theory, to essentially introduce a full lockdown of the society.

281. Most restrictions established through government ordinances have been extended and, in some cases, amended, for example, the travel bans issued by the government and the prohibition to visit nursing homes, conversion aid, and short-time work allowance (**paras. 254–255, 267 of Annex 3 to the Analytical Report**).

282. Several new ordinances regarding, for example, turnover-based support for sole traders and for trading and limited partnerships, which have suffered losses due to the pandemic have been issued by the government.

1. Evolution of the Measures Taken in the Fight Against the COVID-19 Pandemic

283. The COVID-19 pandemic is continuing to put a strain on several vital sectors of society, not only within health care but also in many industries, in particular, the hospitality and entertainment industries, transportation, and others. This has resulted in both new measures and the extensions of measures already in place at all levels of society. The Swedish Parliament, the Riksdag, has introduced new legislation to provide the government with temporary extraordinary powers to tackle the spread of the disease, but it is too early to predict what impact the new law will have due to ongoing vaccinations and the decrease of the spread of the disease.

2. Measures Taken in the Fight Against the COVID-19 Pandemic

284. A new temporary Pandemic Act (*pandemilagen*) was adopted in January 2021 and will be in force until September 2021.⁸⁵³ The legislative procedure was conducted according to the regular procedures for

⁸⁵³ Lag (2021:4) om särskilda begränsningar för att förhindra spridning av sjukdomen COVID-19. URL: <https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-20214-om-sarskilda-begransningar-for-att-sfs-2021-4> (the date of access: March 31, 2021); Preparatory works: Prop. 2020/21:79. En tillfällig COVID-19-lag. URL: https://www.regeringen.se/48d0af/contentassets/be61e037907843518f7c41d490dd2e78/prop.-2020_21_79.pdf (the date of access: March 31, 2021).

law making according to the Constitution, including the procedure of referral, as well as the request for an opinion from the Council on Legislation.

285. The Pandemic Act gives the government the powers necessary to close or restrict access to public spaces, such as spaces for public transport, domestic air traffic, leisure and cultural activities, as well as trading places. This was the power it did not have before. The need for such powers in order to prevent the spread of the coronavirus has become evident during the pandemic. According to the law, the government can also delegate the power to municipalities to restrict certain areas within their geographical mandate, such as parks or bathing places. The scope of the Pandemic Act also covers certain spaces for private gatherings, such as a party room in an apartment building or a clubhouse.

286. The new Act also places responsibilities on owners of such spaces to take the measures necessary to prevent crowding. The Pandemic Act complements the CDA and the Public Order Act (1993:1617) and takes precedence over them. The law does not generally regulate disease control and prevention in dining places and similar venues, since there is already temporary legislation in this area (**paras. 261–262 of Annex 3 to the Analytical Report**).⁸⁵⁴ Nevertheless, further restrictions can be imposed even regarding such businesses if it is necessary in regard to situations that fall outside of the scope of the legislation in place.⁸⁵⁵

287. The law has been made temporary due to the fact that it can result in significant infringements concerning human rights.⁸⁵⁶ Consequently, the law can only be applied during the pandemic and if it is deemed necessary and the measures are proportionate. This also means that the law can be reenacted in case of future pandemics.

288. Breaches of the Pandemic Act can be punished with fines. The Act does not prescribe any specific amounts, but if such fines are introduced they need to be in accordance with the proportionality principle. At present, no such fines have been introduced.

289. The Pandemic Act has made some ordinances unnecessary, for example, an ordinance with a prohibition concerning holding public meetings and events. In such cases, the ordinances have been revoked.⁸⁵⁷

290. The Pandemic Act makes it possible for the government, at least in theory, to essentially introduce a full lockdown.

291. The government has, with the support of the new law, issued an ordinance regarding special limitations for the prevention of the spread of COVID-19, the so-called Limitation Ordinance (*begränsningsförordningen*). Through the ordinance, the government has also delegated certain powers to the PHA, the County Administrative Boards, and certain municipalities concerning the issuance of

⁸⁵⁴ Lag (2020:526) om tillfälliga smittskyddsåtgärder på serveringsställen; Förordning (2020:527) om tillfälliga smittskyddsåtgärder på serveringsställen. URL: https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/laq-2020526-om-tillfalliga-smittskyddsatgarder_sfs-2020-526 (the date of access: March 31, 2021); see FAQ by the Swedish Food Agency in English for businesses regarding measures to prevent the spread of COVID-19. URL: <https://www.livsmedelsverket.se/en/food-and-content/bacteria-viruses-parasites-and-mold/coronavirus-pandemic-questions-and-answers/businesses-coronavirus> (the date of access: March 31, 2021).

⁸⁵⁵ Prop. 2020/21:79. P. 23.

⁸⁵⁶ Ibid. P. 21.

⁸⁵⁷ Förordning (2020:114) om förbud mot att hålla allmänna sammankomster och offentliga tillställningar (*förbudsförordningen*). URL: https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/forordning-2020114-om-forbud-mot-att-halla_sfs-2020-114 (the date of access: March 31, 2021).

regulations and recommendations regarding the prevention of crowding in the named spaces. In the case of local regulations by municipalities, such measures are to be adopted in consultation with the Medical Officer of the Region and the PHA. Regulations issued with the support of the Pandemic Act, unless it concerns the expiration of a restriction or prohibition, will be scrutinized by the Parliament within a week of their introduction.

292. Temporary legislation that was introduced during the first wave of the pandemic, such as a law regulating disease control and prevention in dining places and similar venues, has been extended until May 2021 (**paras. 261–262 of Annex 3 to the Analytical Report**).⁸⁵⁸

293. Most of the measures have been introduced through ordinances and recommendations in different fields that are presented below.

The Hospitality Industry

294. Temporary restrictions have been introduced regarding the hospitality industry which prohibits serving alcohol between 22:00 and 11:00,⁸⁵⁹ with the exception of homes for the elderly people and minibars in hotel rooms.⁸⁶⁰ The restrictions, as well as the span of the opening hours, have been extended several times.

295. According to the temporary Pandemic Act, the government has the power to shut down all dining places and similar venues if the epidemiological situation deteriorates, which may take precedence over these regulations.

Transport

296. In March 2020, Sweden introduced its first ban on non-essential travel to Sweden from countries outside the EU. The entry ban does not apply to citizens, or their families, of EU/EEA countries, the UK, Switzerland, Andorra, Monaco, San Marino, the Vatican or for travels to Sweden from the EU/EEA Area. The entry ban has been extended during the course of the pandemic on several occasions (**para. 254 of Annex 3 to the Analytical Report**).

297. In addition to this, further travel bans have been deemed necessary. In December 2020, the government issued an ordinance regarding a temporary travel ban concerning Denmark and the UK. In January 2021, a temporary travel ban regarding Norway was introduced. There are certain exceptions to the bans, for instance, regarding cross-border commuters, urgent family matters, facilitation of transports of goods, and asylum seekers. For most of the exceptions to be applicable, the person in need of entering the country will, according to the ordinance, have to submit proof of a negative COVID-19 test, which must

⁸⁵⁸ Lag (2020:526) om tillfälliga smittskyddsåtgärder på serveringsställen. URL: https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2020526-om-tillfalliga-smittskyddsatgarder_sfs-2020-526 (the date of access: March 31, 2021).

⁸⁵⁹ During the period from December 24, 2020 to February 28, 2021, the prohibition was applied to the time period between 20:00 and 11:00. This has been extended into March 2021 as well. URL: <https://www.regeringen.se/pressmeddelanden/2021/02/forlangning-av-det-tillfalliga-alkoholforbudet> (the date of access: March 31, 2021).

⁸⁶⁰ Förordning (2020:956) om tillfälligt förbud mot servering av alkohol. URL: <https://www.regeringen.se/4909c0/contentassets/1ce208debe2b49bdbc04a1c857b6936/forslag-till-forordning-om-fortsatt-qiltighet-.pdf> (the date of access: March 31, 2021).

have been carried out within 72 hours before the entry into Sweden. The time frame for testing has later been changed to 48 hours.⁸⁶¹

298. At the beginning of 2021, a general entry ban was introduced for foreign nationals who cannot present a negative test result for COVID-19 upon entry into Sweden, regardless of where they are traveling from.⁸⁶² Restrictions regarding travel to Sweden from Denmark, Norway, and the UK are however still in force.

299. As for domestic transportation, including regional and local transportation, there is a recommendation by the PHA, which was issued on April 1, 2020,⁸⁶³ stating that individuals should not travel by public transport, train, or airplane, but instead travel by foot, bike, or car.⁸⁶⁴

300. If traveling by public transport is necessary, the PHA has issued recommendations on January 7, 2021, concerning the use of face masks by travelers from the age of 13 during rush hours, which has later been changed to be applicable to all times of travel.⁸⁶⁵

301. Further measures regarding public transportation and domestic air traffic can be taken to prevent the spread of the disease in accordance with the temporary Pandemic Act. This comprises not only restrictions in regard to limitations on the number of persons able to travel at the same time but also temporary prohibitions for any such transportation.

Care for Elderly People

302. Early on during the pandemic, the government issued an ordinance that bans visits to nursing homes.⁸⁶⁶ This ordinance has been temporarily paused and later reinstated. At present, the government

⁸⁶¹ Förordning (2020:1258) om tillfälligt inreseförbud vid resor från Danmark eller Förenade Kungariket till Sverige; Förordning om ändring i förordningen (2020:1258) om tillfälligt inreseförbud vid resor från Danmark, Norge eller Förenade kungariket till Sverige. URL: https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/forordning-2020127-om-tillfalligt-inreseforbud_sfs-2020-127 (the date of access: March 31, 2021).

⁸⁶² Förordning om ändring i förordningen (2020:127) om tillfälligt inreseförbud i Sverige, 3 a §. See the government's press release in English. URL: <https://www.government.se/press-releases/2021/02/negative-covid-19-test-required-for-entry-into-sweden> (the date of access: March 31, 2021).

⁸⁶³ The Public Health Agency of Sweden's regulations and general guidelines relating to everyone's responsibility to prevent COVID-19 infections. URL: <https://www.folkhalsomyndigheten.se/the-public-health-agency-of-sweden/communicable-disease-control/covid-19/regulations-and-general-guidelines/> (the date of access: March 31, 2021).

⁸⁶⁴ The Swedish strategy in response to the COVID-19 pandemic in English. URL: <https://www.Government.se/articles/2020/04/strategy-in-response-to-the-covid-19-pandemic/> (the date of access: March 31, 2021); The Swedish strategy in different languages. URL: <https://www.regeringen.se/regeringens-politik/regeringens-arbete-med-anledning-av-nya-coronaviruset/strategi-med-anledning-av-det-nya-coronaviruset---andra-sprak/> (the date of access: March 31, 2021).

⁸⁶⁵ The Public Health Agency of Sweden's regulations and general guidelines relating to everyone's responsibility to prevent COVID-19 infections.

⁸⁶⁶ Förordning (2020:979) om förbud mot besök i särskilda boendeformer för äldre för att förhindra spridningen av sjukdomen COVID-19. URL: https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/forordning-2020979-om-tillfalligt-forbud-mot_sfs-2020-979 (the date of access: March 31, 2021).

has extended the ordinance to May 31 through a new ordinance of February 11, 2021 (**para. 255 of Annex 3 to the Analytical Report**).⁸⁶⁷

303. The Pandemic Act also adds other possible measures intended to prevent the spread of COVID-19 in nursing homes or other similar living spaces.

2.1. Containment Measures Regarding Population

304. During the “second wave”, the government has issued a ban on gatherings of more than 8 people.⁸⁶⁸ There is however some exception to funerals, where 20 people are allowed to gather. In some cases, as many as 300 people can gather if the organizer is prepared to take certain measures to prevent crowding and ensuring appropriate social distancing and other necessary measures.⁸⁶⁹ Initially, the government banned public gatherings of 500 people (**para. 258 of Annex 3 to the Analytical Report**).⁸⁷⁰ This was changed to 50 people during the course of the pandemic.⁸⁷¹ The competent authorities, such as the PHA, have issued several recommendations on how to implement the ban.⁸⁷²

305. The Pandemic Act was introduced to reduce crowding as it has been a central issue for the Swedish government during the COVID-19 pandemic. Prior to this law, a temporary law regarding the hospitality industry (**para. 294 of Annex 4 to the Analytical Report** and **para. 259 of Annex 3 to the Analytical Report**) was enacted, creating legal obligations for owners of restaurants, coffee shops, bars, canteens, dining places, and similar venues, to provide conditions for social distancing, organize entry lines, as well as to facilitate hand washing and the use of hand sanitizers and so on.⁸⁷³

2.2. Support Measures for Industrial and Non-Productive Sectors

306. During the fall of 2020, the government introduced turnover-based support for sole traders and for trading and limited partnerships that have suffered losses due to the pandemic. Turnover support can be received retroactively for periods ranging from March 2020. Businesses eligible to turnover support need to have a certain minimum level of turnover loss (30–40% depending on the period), the relevant

⁸⁶⁷ See <https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/forordning-2020979-om-tillfalligt-forbud-mot-sfs-2020-979> (the date of access: March 31, 2021); Information in English by the Public Health Agency. URL: <https://www.livsmedelsverket.se/en/food-and-content/bacteria-viruses-parasites-and-mold/coronavirus-pandemic-questions-and-answers/businesses-coronavirus> (the date of access: March 31, 2021).

⁸⁶⁸ Förordning [2021:8] om särskilda begränsningar för att förhindra spridning av sjukdomen COVID-19. URL: <https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/forordning-20218-om-sarskilda-begransningar-sfs-2021-8> (the date of access: March 31, 2021).

⁸⁶⁹ Ibid. Paras. 1–2. Information in English. URL: <https://www.krisinformation.se/en/hazards-and-risks/disasters-and-incidents/2020/official-information-on-the-new-coronavirus/restriktioner-och-forbud> (the date of access: March 31, 2021).

⁸⁷⁰ Ordinance on a prohibition against holding public gatherings and events. URL: <https://www.government.se/articles/2020/03/ordinance-on-a-prohibition-against-holding-public-gatherings-and-events> (the date of access: March 31, 2021).

⁸⁷¹ Förordning (2020:162) om ändring i förordningen (2020:114) om förbud mot att hålla allmänna sammankomster och offentliga tillställningar.

⁸⁷² Information till arrangörer av evenemang och sammankomster med anledning av COVID-19. URL: <https://www.folkhalsomyndigheten.se/smittskydd-beredskap/utbrott/aktuella-utbrott/covid-19/verksamheter/information-till-arrangorer-av-evenemang/> (the date of access: March 31, 2021).

⁸⁷³ Lag (2021:4) om särskilda begränsningar för att förhindra spridning av sjukdomen COVID-19.

losses need to be related to the COVID-19 pandemic, and the owners must use all necessary means to get coverage via insurance companies, damages and so on.⁸⁷⁴

307. In the wake of the introduction of the Pandemic Act, which made it possible for the government to temporarily shut down certain activities, the government proposed an ordinance ensuring support for businesses that are forced to close down (*nedstängningsstöd*). The ordinance will apply retroactively from the date of entry into force of the Pandemic Act.⁸⁷⁵ At present, the government is awaiting a decision from the EU Commission regarding the compatibility with the provisions for state aid in the Treaty of the Functioning of the European Union. The ordinance is expected to enter into force at the beginning of April 2021.⁸⁷⁶

2.3. Support Measures for Population

308. The Swedish Work Environment Authority and the PHA have been delegated the power to introduce regulations regarding preventive measures due to the spread of COVID-19 in workplaces.

309. Furthermore, the government gave the task of increasing its control measures in workplaces in high-risk branches concerning the spread of the COVID-19 in order to ensure that employers are taking necessary precautions needed and providing employees with the protective equipment that they need to the Swedish Work Environment Authority.⁸⁷⁷

2.4. Evaluation Measures

310. Evaluation measures have been taken fairly early during the pandemic. The general idea of the Government is that the Swedish response has to be continuously evaluated by an audit commission (*Coronakommissionen*), which was appointed on June 30, 2020. The commission is comprised of different experts and scientists from different fields with the mission to scrutinize the overall response to the COVID-19 pandemic. The commission has a broad mandate to investigate and evaluate the measures taken by the government, government authorities, regions, and municipalities. The Commission will also make international comparisons in relation to the Swedish measures (**para. 262 of Annex 3 to the Analytical Report**).⁸⁷⁸

⁸⁷⁴ Förordning (2020:893) om omsättningsstöd för till enskilda näringsidkare (has been extended). Förordning (2021:208) om omsättningsstöd till handelsbolag för mars 2020-februari 2021. URL: <https://www.government.se/press-releases/2020/11/turnover-based-support-to-be-introduced-for-sole-traders/> (the date of access: March 31, 2021).

⁸⁷⁵ Promemoria. Socialdepartementet S2021/01499, Tillfälliga nedstängningar och förbud för att förhindra spridning av sjukdomen COVID-19. P. 20.

⁸⁷⁶ Finansdepartementet remitterar förslaget till nedstängningsstöd. URL: <https://www.regeringen.se/pressmeddelanden/2021/03/finansdepartementet-remitterar-forslaget-till-nedstangningsstod/> (the date of access: March 31, 2021).

⁸⁷⁷ Fler kontroller av riskutsatta arbetsplatser i pandemin. URL: <https://www.regeringen.se/pressmeddelanden/2021/01/fler-kontroller-av-riskutsatta-arbetsplatser-i-pandemin/> (the date of access: March 31, 2021).

⁸⁷⁸ Dir. 2020:74. Utvärdering av åtgärderna för att hantera utbrottet av virus som orsakar sjukdomen COVID-19. URL: https://www.regeringskansliet.se/49f46d/contentassets/593c32df14114d9c81eeba9c96e26e41/dir2020_74.pdf (the date of access: March 31, 2021).

311. The Corona Commission published its first investigation report at the end of 2020. The report concerned the care of elderly people.⁸⁷⁹ It concluded that the strategy of protecting the elderly has failed, being ill-prepared and ill-equipped. The situation was caused by several deficiencies of a structural nature, relating, for example, to the organization of the care for elderly people and the regulatory framework. For moving forward there is a need for higher staffing levels, greater expertise, and reasonable working conditions. The responsibility for these flaws rests ultimately with the government, but also with previous governments since the named shortcomings were known long before the outbreak of the pandemic.⁸⁸⁰ Following the investigation of the Corona Commission, the government has initiated a new investigation into a law on the care of the elderly that will deal with these problems.⁸⁸¹

312. The Commission is currently working on its second report which is expected to be presented toward the end of October 2021. The investigative work includes evaluation of the health care system's abilities to handle the outbreak of COVID-19, testing, contact tracing, vaccination measures, cooperation between the public and the private sector, international cooperation, digitalization efforts, and so on.

313. There have also been other evaluation investigations carried out by Swedish authorities, commissioned by the government, such as by the Swedish Post and Telecom Authority. Their report evaluated the digital transformation of the society due to the pandemic, but also made proposals for the future government's action in 36 areas involving 66 possible measures. One of the overall takeaways of the report is to join forces in further efforts to promote digital participation.⁸⁸²

3. Court Practice With Respect to the COVID-19 Pandemic

314. At the moment, there is no public information concerning any claims lodged with the courts on the containment measures taken to mitigate the COVID-19 crisis. This is certainly linked to the fact that the Swedish response to the pandemic has been built around information and recommendations instead of legally binding provisions.⁸⁸³

315. The introduction of the pandemic law might change this situation, but it is also very recent. To date, it is unclear to what extent it will be applied, especially because of ongoing vaccinations. However, the spread has increased, which means that the law can be used to carry out certain shutdowns that might be contested in court in the future. The fact that businesses will probably receive economic support if they are shutdown, may decrease the inclination to contest such measures in court.

316. Furthermore, there are no reported court cases in regard to the temporary law that was introduced to prevent crowding in restaurants, bars, dining places, and similar venues, creating legal

⁸⁷⁹ SOU 2020:80. Äldreomsorgen under pandemin. URL: http://www.sou.gov.se/wp-content/uploads/2020/12/SOU_2020_80_%C3%84ldreomsorgen-under-pandemin_webb.pdf (the date of access: March 31, 2021).

⁸⁸⁰ Ibid.

⁸⁸¹ Dir. 2020:142. En äldreomsorgslag. URL: https://www.regeringen.se/4b045d/contentassets/d293ade08bf04354af244b335b9a4795/dir2020_142.pdf (the date of access: March 31, 2021).

⁸⁸² Report PTS-ER-2021:1. *Digital omställning till följd av COVID-19*. Summary in English. P. 10–14.

⁸⁸³ Hirschfeldt J. Svensk krishantering i fredstid, Svensk Juristtidning 2020. P. 1169.

obligations for owners of such businesses to prevent COVID-19 from spreading.⁸⁸⁴ For this purpose, supervision is carried out by the municipalities as part of their mission regarding disease prevention and control and, if necessary, with police assistance. Business owners are not required to pay a fee for the supervision, which is normally required in regard to this type of control, due to the strained economic situation for the restaurant industry in general.⁸⁸⁵ The shutdowns orders concerning restaurants that act in breach of the law have so far been limited in time to just a couple of days.

317. Consequently, the reason that there are no reported court cases is probably due to the fact that the time periods for shutdown are very short, the businesses are not forced to pay control fees, and taking a case to a court to contest such limited repressive measures can be costly.

318. At the end of March 2021, it was reported that around 5,000 appeals were filed in just a couple of days regarding decisions of the Swedish Agency for Economic and Regional Growth (*Tillväxtverket*) on conversion aid and short-time work allowance to the Administrative County Courts. This is due to a delay in the handling of the obligatory re-examination of appealed decisions by the Agency. The Agency has thus far made 80,000 decisions related to conversion aid and short-time work allowance.⁸⁸⁶

⁸⁸⁴ Lag [2020:526] om tillfälliga smittskyddsåtgärder på serveringsställen. URL: https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2020526-om-tillfalliga-smittskyddsatgarder_sfs-2020-526 (the date of access: March 31, 2021); Förordning (2020:527) om tillfälliga smittskyddsåtgärder på serveringsställen. URL: https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/forordning-2020527-om-tillfalliga_sfs-2020-527 (the date of access: March 31, 2021); Prop. 2019/20:172.

⁸⁸⁵ Ibid.

⁸⁸⁶ Tillväxtverket har brutit mot förvaltningslagen – över fem tusen överklaganden på hög. URL: <https://www.svt.se/nyheter/granskning/ug/tillvaxtverket-har-brutit-mot-forvaltningslagen-over-fem-tusen-overklaganden-pa-hog> (the date of access: March 31, 2021).

VI. The United Kingdom

Summary

319. From September 2020 and until March 2021, there was no radical change of approach in how the UK uses the law to regulate the COVID-19 pandemic. The same approach continues to apply, which is that the Government constantly makes incremental changes in the law in response to new scientific information, changes in the prevalence of coronavirus in the country, and the need or perceived need for political action. In overview, the higher the rate of transmission in the country is, the stricter the containment measures adopted by the Government are. The biggest public health change was the beginning of what appears to be a very successful roll-out of vaccines in the UK. This has led all 4 nations within the UK to produce what is termed a “road map” out of lockdown — a plan setting out when the containment measures will be gradually relaxed.

320. There were cases that challenged the legality of the entirety of the coronavirus containment measures, or else challenged one particular aspect of them. The courts exercised deference to the decisions of the Government during the crisis. Provided that Executive action was broadly within the spectrum of reasonable behavior, the courts did not rule it unlawful. The courts used the traditional judicial criteria that official action must be lawful, rational, necessary, and proportionate and applied these to the pandemic. The Government has been required to prove its case, rather than simply making an assertion of legality, but the courts have given a degree of latitude to the Government. Only in one case did the courts rule that a piece of secondary legislation was unlawful. The courts will not automatically rule in favor of the Government, but so far they generally find it to be acting lawfully.

1. Evolution of the Measures Taken in the Fight Against the COVID-19 Pandemic

Legislative Framework

Primary Legislation

321. Since September 2020, there has been little change in the strategic approach taken in the use of primary legislation to regulate the pandemic.

322. The most important primary legislation for regulating the pandemic remains the Public Health Act. The vast majority of the containment measures have been enacted using the powers set out in this Act. This Act applies to England and Wales only. But analogous legislation also exists for Northern Ireland (the Public Health Act (Northern Ireland) 1967) and for Scotland (the Coronavirus Act 2020, which contains a Schedule setting out the same powers for Scotland as for England, Wales, and Northern Ireland). There are no differences of substance between these 4 pieces of primary legislation and each of the 4 countries in the UK continues to use these pieces of primary legislation in the same way (**paras. 283–314 of Annex 3 to the Analytical Report**).

323. There are then other pieces of primary legislation which are also used to regulate the pandemic: the Coronavirus Act 2020, the Coronavirus (Scotland) Act 2020, the Coronavirus Scotland (No. 2) Act 2020. They have remained largely unchanged since September 2020. These statutes all contain built-in review provisions every 6 months. The last 6-month review in Parliament took place at the end of March 2021.

324. Concluding this consideration of primary legislation, there are many other pre-existing and non-emergency statutes that have been used to make secondary legislation during the pandemic. These are “ordinary” statutes in the sense that they existed before the pandemic, and they are non-emergency statutes in the sense that they were not enacted in response to an emergency. For example, the ordinary

Acts of Parliament which regulate the payment of social security benefits to citizens have been used to make regulations that increase payments during the pandemic. In total, the powers contained in 118 different Acts of Parliament have been used to make secondary legislation on coronavirus.⁸⁸⁷

325. Overall, there has been very little change since September 2020 in terms of the primary legislation used to regulate the pandemic. In terms of presentation of, and access to, this primary legislation, there have been some modest improvements of the official Government website on legislation.⁸⁸⁸ It is now easier to see the general framework of the legislation for each of the 4 nations of the UK and the key pieces of coronavirus legislation.

Secondary Legislation

326. Since September 2020, there has been little change in the strategic use of secondary legislation to regulate the pandemic. There has been a significant change in the volume of secondary legislation and in the content of that legislation, but the changes in the content have been incremental rather than radical.

327. As of March 2021, the Government has laid a total of 404 coronavirus-related pieces of secondary legislation before the Westminster Parliament. The Northern Ireland Government has laid 179 coronavirus-related pieces of secondary legislation before the Northern Ireland Assembly. The Scottish Government has laid 150 before the Scottish Parliament and the Welsh Government has laid 133.⁸⁸⁹ There may be a few additional pieces of secondary legislation that have not been counted, but in general, the Government's figures are accurate.

328. In terms of the change since September 2020, the rate of production of coronavirus regulations is roughly the same as of March 2021.⁸⁹⁰

329. There is a direct correlation between the severity of the measures imposed by secondary legislation and the rate of transmission of coronavirus in the country. With the transmission rates being relatively low over summer and the beginning of fall 2020, the number of restrictions in the containment measures was also relatively low. When transmission rates began to rise again in fall and winter 2020, the containment measures increased. As of March 2021, the containment measures remain at their highest levels, but the plan is that they will be relaxed when transmission rates decrease as the effects of vaccination are felt.

330. Changes in secondary legislation since September 2020 have been rapid and incremental. This means that small changes are made to legislation on a regular basis. For example, the original regulation of travel to the UK required all travelers to give information to the authorities on their arrival in the UK (**para. 316 of Annex 3 to the Analytical Report**). And as certain countries increased rates of coronavirus,

⁸⁸⁷ For a full consideration of the primary legislation used to make secondary legislation, see the Coronavirus Statutory Instruments Dashboard, updated March 2021, as prepared by the Hansard Society. URL: <https://www.hansardsociety.org.uk/publications/data/coronavirus-statutory-instruments-dashboard> (the date of access: March 31, 2021).

⁸⁸⁸ The official government website on legislation. URL: <https://www.legislation.gov.uk/> (the date of access: March 31, 2021).

⁸⁸⁹ Ibid. The methodology for counting pieces of secondary legislation is that the word "coronavirus" appears in the title of the legislation.

⁸⁹⁰ Detailed data on the number and type of secondary legislation enacted can be seen on the coronavirus dashboard of the Hansard Society. URL: <https://www.hansardsociety.org.uk/publications/data/coronavirus-statutory-instruments-dashboard> (the date of access: March 31, 2021).

additional requirements were added to arrivals from those countries, for example, self-isolation for travelers upon arrival in the UK, or providing evidence that they had a negative test for coronavirus.⁸⁹¹

331. In terms of the procedure for making secondary legislation on coronavirus (**para. 295 of Annex 3 to the Analytical Report**), there has been little change. There continues to be widespread use of the term “urgent procedure”, which means that legislation is made and comes into force before it has been voted upon by Parliament. This goes against the standard practice where secondary legislation does not come into force until Parliament has first agreed to it. Although these procedures have been used and criticized since the start of the pandemic, the criticism has grown. In September 2020, the Bingham Centre for the Rule of Law argued against the continued use of this procedure, stating that:

“Prior parliamentary approval helps with many things. It can correct mistakes before they are made. It can help to disseminate the content of these rules more widely. It can provide a proper forum for debate on the delicate balance between public health, civil liberties and the economy. And it can give greater democratic legitimacy to the rules. Furthermore, legislation needs to be accessible to those who are obliged to follow it. This requires publication of lockdown regulations well in advance of them coming into force.”⁸⁹²

332. The pressure against this use of the urgent procedure came to a head in September 2020 when the “Brady amendment” was introduced into Parliament. The amendment (named after the MP Graham Brady who introduced it) would have required the Government to first obtain the consent of Parliament before any coronavirus regulations came into effect.⁸⁹³ For various procedural reasons, the actual “Brady amendment” was not voted on. However, the Government did make a concession and undertook that in the future, no coronavirus rules would come into effect unless Parliament had first voted on them, except in true cases of emergency. In practice, although the Government waited on some occasions for Parliament to vote before bringing new coronavirus regulations into effect, it did not do this on all occasions.

333. In terms of differences in the content of the coronavirus legislation between the 4 nations of the UK, it remains largely the same in March 2021 as it was in September 2020. That is to say, each jurisdiction does broadly the same thing (see the **Table in para. 310 of Annex 3 to the Analytical Report**). There are some minor differences in the precise detail of the lockdown rules, but the overall approach is the same. The only larger differences are that different jurisdictions sometimes relax or tighten restrictions at different rates.

⁸⁹¹ See, e.g., the Health Protection (Coronavirus, International Travel) (England) Regulations 2020, as revised. URL: <https://www.legislation.gov.uk/uksi/2020/568/contents> (the date of access: March 31, 2021). These particular Regulations have been amended on at least 30 separate occasions.

⁸⁹² *Cormacain R.* Parliamentary Scrutiny of Coronavirus Lockdown Regulations: A Rule of Law Analysis (Bingham Centre for the Rule of Law, September 28, 2020). URL: <https://binghamcentre.biicl.org/publications/parliamentary-scrutiny-of-coronavirus-lockdown-regulations-a-rule-of-law-analysis> (the date of access: March 31, 2021).

⁸⁹³ For a more detailed consideration of the Brady Amendment, see The Institute for Government. The extension of coronavirus powers and the Brady amendment. September 29, 2020. URL: <https://www.instituteforgovernment.org.uk/explainers/coronavirus-powers-brady-amendment> (the date of access: March 31, 2021).

2. Measures Taken in the Fight Against the COVID-19 Pandemic

2.1. General Measures

Education

334. Schools were closed, but they are now in the process of re-opening. Schools in England re-opened on March 8, 2021. Some schools in Wales have re-opened recently, while the rest are re-opening in April. Some schools in Northern Ireland re-opened in March, with the rest planned to re-open in April. Some schools in Scotland have already re-opened, and the rest should re-open by the end of April.

2.2. Containment Measures Regarding Industrial, Non-Productive Sectors and Population

335. Containment measures were increased throughout the UK in December 2020 across all sectors. This meant that all shops (except for essential businesses) and all entertainment venues were shut down. People were not allowed to leave their homes except for essential reasons. No mixing of different households inside homes is permitted unless there is a compelling health or social reason.

336. The containment measures were brought in via secondary legislation. The current iterations of these rules for each of the 4 countries in the UK are:⁸⁹⁴

- the Health Protection (Coronavirus, Restrictions) (All Tiers) England Regulations 2020;
- the Health Protection (Coronavirus Restrictions) (No. 5) Wales Regulations 2020;
- the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) Scotland Regulations 2020;
- the Health Protection (Coronavirus, Restrictions) (No. 2) Regulations (Northern Ireland) 2020.

337. Originally there was an attempt to have different restrictions in different regions of each country, with higher restrictions in places with higher coronavirus rates. This was the “tier” system. In England, there were three different tiers, and different parts of England were placed in different tiers. Scotland had five tiers. Since December 2020 and the intensification of the containment measures, most of the UK has been in the highest tier, meaning that there has been essentially a nationwide full lockdown.

338. There are also specific containment measures requiring citizens to wear facemasks in public places. The current iterations of these rules for each of the 4 countries in the UK are:⁸⁹⁵

- the Health Protection (Coronavirus, Wearing of Face Coverings in a Relevant Place) (England) Regulations 2020;

⁸⁹⁴ All these Regulations can be found at the official government website on legislation. URL: <https://www.legislation.gov.uk/coronavirus> (the date of access: March 31, 2021).

⁸⁹⁵ These Regulations can all be accessed via the official government website on legislation. URL: <https://www.legislation.gov.uk/coronavirus> (the date of access: March 31, 2021).

- the Health Protection (Coronavirus, Wearing of Face Coverings) Regulations (Northern Ireland) 2020;
- face coverings for Wales and Scotland are contained in the general Health Protection Regulations referred to above.

339. All the above Regulations are subject to frequent minor and incremental change. They have been updated since September 2020 (**para. 317 of Annex 3 to the Analytical Report**).

Measures Related to Travel to the United Kingdom

340. Although there were some restrictions on travel to the UK before September 2020 (**para. 316 of Annex 3 to the Analytical Report**), these restrictions have been considerably enhanced and extended.

341. Each nation in the UK has taken a slightly different approach, but in broad terms, there are the following requirements:

- entry is prohibited from “red list” countries with an exception for UK nationals;
- information requirement — people arriving in the UK must provide the authorities with information about where they are traveling from, how they traveled, and where they are staying in the UK;
- negative test requirement — people arriving in the UK must have evidence of a negative test for coronavirus;
- testing requirement — people arriving in the UK must book a travel test package;
- self-isolation requirement — people arriving in the UK must self-isolate for a period upon arrival in the country.⁸⁹⁶

342. These rules vary depending on the country that the person is arriving from. The higher coronavirus rates in the country the person is coming from, the greater the restrictions (countries are categorized in terms of risk as being “red list”, “amber list”, or “green list”). There are a large number of exemptions, for example, for diplomats, elite sportspersons, and aircraft crew.

343. These Regulations are being constantly amended, for example, by adding new restrictions, varying exemptions, or re-categorizing countries into a different list.

⁸⁹⁶ These Regulations are: The Health Protection (Coronavirus, International Travel) (England) Regulations 2020, The Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020, The Health Protection (Coronavirus) (International Travel) (Scotland) Regulations 2020, The Health Protection (Coronavirus, Public Health Information for Passengers Travelling to Scotland) Regulations 2020, The Health Protection (Coronavirus, International Travel) Regulations (Northern Ireland) 2020, and The Health Protection (Coronavirus, Public Health Advice for Persons Travelling to Northern Ireland) (No. 2) Regulations (Northern Ireland) 2020. All accessible via official government website on legislation. URL: <https://www.legislation.gov.uk/coronavirus> (the date of access: March 31, 2021).

2.3. Support Measures for Industrial, Non-Productive Sectors and Population

344. In broad terms, support measures to individuals and businesses have continued since September 2020. There has been increasing political pressure to reduce the support given by the Government to the public due to the strain on public finances. But by and large financial support continues to be given to businesses and individuals. It includes furlough payments from the Government to individuals who are temporarily not working, additional payments to those on social security benefits, and payments to those who have had to self-isolate because of coronavirus and cannot work from home (**para. 345 of Annex 3 to the Analytical Report**).⁸⁹⁷

The Roadmap

345. The Roadmap is the name given to the plan for reducing containment measures. Each part of the UK has a slightly different roadmap. The following is the proposed Roadmap for England.⁸⁹⁸ The lifting of restrictions is not guaranteed, and if transmission rates increase, the restrictions will not be lifted.

Stage 1:

- schools are open;
- two people from different households can meet outside;
- some visitors are allowed to care homes for the elderly;
- from the end of March, up to 6 people can meet outside, some outdoor sports can resume.

Stage 2:

- all shops are allowed to open;
- restaurants and pubs can serve food and alcohol outdoors;
- sports centers are open.

Stage 3:

- up to 30 people can meet outdoors and up to 6 people can meet indoors;
- restaurants and pubs can serve indoors;
- indoor and outdoor entertainment venues are open;
- hotels are open;
- all indoor sports can open.

⁸⁹⁷ See more details on the Government's official coronavirus webpage. URL: www.gov.uk/coronavirus (the date of access: March 31, 2021).

⁸⁹⁸ COVID-19 Response — Spring 2021 (Summary). February 22, 2021. URL: <https://www.gov.uk/government/publications/covid-19-response-spring-2021/covid-19-response-spring-2021-summary?priority-taxonomy=774cee22-d896-44c1-a611-e3109c8e8eae> (the date of access: March 31, 2021).

Stage 4:

- end of lockdown.

3. Court Practice With Respect to the COVID-19 Pandemic

3.1. Cases Challenging the Legality of the Coronavirus Containment Measures

*Dolan v. Secretary of State for Health And Social Care*⁸⁹⁹

346. This was a decision of the Court of Appeal for England and Wales, which is the 2nd highest tier of court in the UK. The argument was that lockdown regulations (i.e. the main containment measures) were unlawful as they were *ultra vires*, meaning that they were outside the power contained in the Public Health Act. If the case had succeeded, many containment measures would have been ruled unlawful. The Court of Appeal ruled that the lockdown regulations were lawful and within the power of the Secretary of State to make. The court also ruled that there was no breach of human rights law in the regulations.

*Francis v. The Secretary of State for Health And Social Care*⁹⁰⁰

347. This was a decision of the Divisional Court for England and Wales. As with *Dolan* (**para. 346 of Annex 4 to the Analytical Report**), the argument was that the containment measures regulations, so far as they relate to the obligation to self-isolate, were unlawful. The court ruled that the regulations were lawful, having considered the text of the regulations and the purpose for which they were made. The court also ruled that the regulations were a proportionate interference with the rights of the individual.

*Hussain v. Secretary of State for Health & Social Care (Rev 1)*⁹⁰¹

348. This was a decision of the Administrative Court for England and Wales. The argument was that the prohibition or restriction on the opening of places of worship (a mosque in this case) was unlawful. On an interim basis, the court ruled that the regulations were lawful and did not breach human rights law. Again, on an interim basis, the court ruled that the measures were proportionate. This was only an interim judgment, and the case has permission to proceed to a full trial.

3.2. Cases Relating to Other Coronavirus Regulations

349. Cases have also been brought challenging the lawfulness of other legislation (other than the containment measures) that has been enacted in response to the pandemic. The cases have sought to interpret the meaning of some of these regulations.

⁸⁹⁹ [2020] EWCA Civ 1605. URL: <https://www.judiciary.uk/wp-content/uploads/2020/12/Dolan-v-SSHSC-judgment-011220-.pdf> (the date of access: March 31, 2021).

⁹⁰⁰ [2020] EWHC 3287 (Admin). URL: <https://www.bailii.org/ew/cases/EWHC/Admin/2020/3287.html> (the date of access: March 31, 2021).

⁹⁰¹ [2020] EWHC 1392 (Admin). URL: <https://www.judiciary.uk/wp-content/uploads/2020/06/Transcript-of-Judgment-CO-1846-2020-Hussain-v-SS-for-Health-Social-Care.pdf> (the date of access: March 31, 2021).

Article 39 v. Secretary of State for Education⁹⁰²

350. This was a decision of the Court of Appeal for England and Wales. The claim was that the Adoption and Children (Coronavirus) (Amendment) Regulations 2020 were unlawful due to the procedure which had been adopted in making them. The Court of Appeal ruled that there was insufficient consultation before these Regulations were made and that the Regulations were therefore unlawful. The presence of the pandemic was not a sufficient excuse for curtailing proper consultation.

Adiatu v. Her Majesty's Treasury⁹⁰³

351. This was a decision of the Divisional Court on whether the coronavirus-inspired Job Retention Scheme was unlawful because of discrimination. The Scheme was made under the authority of the Coronavirus Act 2020. The court ruled that the Scheme was lawful and that the courts should not interfere in matters of policy that were for the Government to decide. There was a wide margin of appreciation for the Government, and its actions were justified.

Shaw v. Secretary of State for Education⁹⁰⁴

352. This was a decision of the Divisional Court on the lawfulness of regulations which reduced the obligations upon the Government in respect of disabled children as it related to their educational needs. The regulations were the Special Educational Needs and Disability (Coronavirus) (Amendment) Regulations 2020. The court ruled that the regulations were lawful.

Leigh v. Commissioner of Police of the Metropolis⁹⁰⁵

353. This was a decision of the Divisional Court on the interpretation of the containment measures as they apply to outdoor gatherings where the purpose of the gathering is a political protest. In this case, the protest was a vigil in commemoration of a female victim of male violence, and more generally about violence against women. The containment measures regulations did not contain an express exception which would have allowed outdoor gatherings if the purpose of the gathering was a protest. The court held that the concept of "reasonable excuse" in the regulations encompassed the human right to protest and assemble.

3.3. Other Cases Related to the Pandemic

Christian Concern v. Secretary of State for Health And Social Care⁹⁰⁶

354. This was a decision of the Court of Appeal for England and Wales. It challenged the temporary authorization, made as a response to the pandemic, that allowed certain types of abortions to take place at

⁹⁰² [2020] EWCA Civ 1577. URL: <https://www.judiciary.uk/wp-content/uploads/2020/11/R-Article-39-v-SSE-judgment.pdf> (the date of access: March 31, 2021).

⁹⁰³ [2020] EWHC 1554 (Admin). URL: <https://www.judiciary.uk/wp-content/uploads/2020/06/Adiatu-v-HM-Treasury-Judgment.pdf> (the date of access: March 31, 2021).

⁹⁰⁴ [2020] EWHC 2216 (Admin). URL: <https://www.bailii.org/ew/cases/EWHC/Admin/2020/2216.html> (the date of access: March 31, 2021).

⁹⁰⁵ [2021] EWHC 661 (Admin). URL: <https://www.judiciary.uk/wp-content/uploads/2021/03/Leigh-Ors-v-The-Commissioner-of-the-Police-of-the-Metropolis-12.03.21JUD-1.pdf> (the date of access: March 31, 2021).

⁹⁰⁶ [2020] EWCA Civ 1239. URL: <https://www.judiciary.uk/wp-content/uploads/2020/09/R-Christian-Concern-v-SSHSC-judgment.pdf> (the date of access: March 31, 2021).

the home of a pregnant woman. The argument was based upon what was, and what was not contained in the Coronavirus Act 2020. The court held that the temporary authorization was lawful because it was within the powers of the Government to do so in response to the pandemic.

Financial Conduct Authority v. Arch Insurance⁹⁰⁷

355. This is a decision of the UK Supreme Court — the highest court in the UK. It was on the meaning of the business interruption test and whether if a person was insured for “business interruption” they could make a valid insurance claim if the interruption was caused by coronavirus. Although the answer depends on the specifics of individual insurance policies, in broad terms business interruption caused by coronavirus satisfied the business interruption test and consequently, those claims are covered by the insurance policy.

Practice Directions and Court Guidance

356. There have been many practice directions and guidance notes issued by all courts throughout the UK stating the special measures that will apply to court proceedings during the pandemic.⁹⁰⁸ These allow for greater use of video and audio proceedings, as well as changes to the protocol for court sittings.

⁹⁰⁷ [2021] UKSC 1. URL: <https://www.supremecourt.uk/cases/uksc-2020-0177.html> (the date of access: March 31, 2021).

⁹⁰⁸ Coronavirus (COVID-19) advice and guidance. URL: <https://www.judiciary.uk/coronavirus-covid-19-advice-and-guidance/> (the date of access: March 31, 2021).

VII. The USA

Summary

357. Annex 3 to the Analytical Report covers the general legal and regulatory framework for emergencies and pandemics and details the specific measures taken by the United States in the fight against COVID-19 at both the federal and state level (**paras. 346–392 of Annex 3 to the Analytical Report**).

358. Annex 3 to the Analytical Report covers the state of the COVID-19 crisis from the beginning of the pandemic through the end of August 2020 (**paras. 365–392 of Annex 3 to the Analytical Report**). After an initial surge of cases in late April and a summer surge of cases following the partial reopening of businesses, the deadliest wave of COVID-19 cases in the United States began in late October 2020 and carried on through the winter. This third surge prompted states to postpone reopening plans, continue remote learning for students, and impose new restrictions to slow outbreaks, especially in new hotspot locations in southern, southwestern, and midwestern states. While the United States faced record-high daily death rates during December, hope emerged as the Food & Drug Administration approved the authorization of two COVID-19 vaccines for public emergency use. The Pfizer vaccine was approved for emergency use on December 11, 2020, and the Moderna vaccine was approved for emergency use a week later on December 18, 2020.⁹⁰⁹ With the support of the federal government to ensure the necessary supply of the vaccines for all Americans, the responsibility of vaccine deployment was left up to the states, so the processes varied from state to state, though all states established tiered plans prioritizing those most at risk and essential frontline workers.

359. The change in presidential administrations at the beginning of 2021 brought a sea of change in the level of federal government involvement in mitigating the spread of COVID-19 and distributing vaccines. The Biden Administration immediately created the position of a COVID-19 response coordinator to orchestrate the federal response and a COVID-19 Health Equity Task Force within the Department of Health and Human Services to provide recommendations on mitigating health inequities caused by the pandemic.⁹¹⁰ President Biden set an ambitious goal to vaccinate 100 million Americans during the first 100 days of his presidency and was on track to surpass that goal by the end of March.⁹¹¹ Even with an accelerated vaccination rollout by the new presidential administration, by February 1, 2021, the Centers for

⁹⁰⁹ U.S. Food & Drug Administration. Pfizer-BioNTech COVID-19 Vaccine. December 11, 2020. URL: <https://www.fda.gov/emergency-preparedness-and-response/coronavirus-disease-2019-covid-19/pfizer-biontech-covid-19-vaccine> (the date of access: March 19, 2021); U.S. Food & Drug Administration. Moderna COVID-19 Vaccine. December 18, 2020. URL: <https://www.fda.gov/emergency-preparedness-and-response/coronavirus-disease-2019-covid-19/moderna-covid-19-vaccine> (the date of access: March 19, 2021).

⁹¹⁰ Executive Order 13987, Executive Office of the President. January 20, 2021. URL: <https://www.federalregister.gov/documents/2021/01/25/2021-01759/organizing-and-mobilizing-the-united-states-government-to-provide-a-unified-and-effective-response> (the date of access: March 19, 2021); Executive Order on Ensuring an Equitable Pandemic Response and Recovery, The White House Briefing Room. January 21, 2021. URL: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/21/executive-order-ensuring-an-equitable-pandemic-response-and-recovery/> (the date of access: March 19 2021).

⁹¹¹ Covid: Biden vows 100m vaccinations for US in first 100 days // BBC. December 9, 2020. URL: <https://www.bbc.com/news/world-us-canada-55238092> (the date of access: March 20, 2021); Biden says well ahead of goal of delivering 100 million vaccines shots in 100 days // Reuters. March 11, 2021. URL: <https://www.reuters.com/article/us-usa-biden-coronavirus/biden-says-well-ahead-of-goal-of-delivering-100-million-vaccine-shots-in-100-days-idUSKBN2B4057> (the date of access: March 20, 2021).

Disease Control and Prevention reported 442,317 deaths attributable to COVID-19⁹¹² in the United States, higher than any other nation.⁹¹³

360. While the end of February saw a slight decrease in case numbers in the United States, variant strains of the coronavirus began to spread across the country. On February 27, 2021, the Food & Drug Administration authorized yet another vaccine for emergency use, the Johnson & Johnson vaccine, which, unlike the Pfizer and Moderna vaccines, only requires one dose for full efficacy.⁹¹⁴ Despite the decreasing number of hospitalizations by the end of February, scientists continue to warn against states reopening too soon with the race between vaccinations and variant stains from the United Kingdom, Brazil, and South Africa spreading across the country.⁹¹⁵

1. Evolution of the Measures Taken in the Fight Against the COVID-19 Pandemic

1.1. Emergency Laws and Regulations

361. Annex 3 to the Analytical Report covers the general emergency laws of the United States (**paras. 348–364 of Annex 3 to the Analytical Report**). There have been no changes to procedures on emergencies or new authorities granted at the federal level since September 2020. Several states are in the process of restructuring their respective emergency powers and processes, mostly spurred by legislative challenges to the executive's use of emergency powers during COVID-19, as discussed below.

1.2. Non-Judicial Challenges to Public Health Authority

362. State governors and their respective public health officials operated with seemingly broad authority during the initial COVID-19 outbreak in the spring of 2020. Individual state emergency powers and procedures vary from state to state but are typically proscribed in state law or the state's Constitution (**paras. 360–362 of Annex 3 to the Analytical Report**). The events of 2020 caused most states to re-examine their emergency powers and procedures, with at least 30 states introducing measures to limit governors' or health board's powers during the ongoing pandemic or future public health emergencies.⁹¹⁶ These measures were adopted by ten states: Arkansas, Colorado, Hawaii, Kansas, Kentucky, Michigan, Mississippi, Oklahoma, Pennsylvania, and Utah.⁹¹⁷ The measures served as a legislative check on the executive power within the state during a time of emergency. For example, Utah and Kansas both enacted

⁹¹² Centers for Disease Control and Prevention. Trends in Number of COVID-19 Cases and Deaths in the US Reported to CDC, by State/Territory. URL: <https://covid.cdc.gov/covid-data-tracker/#datatracker-home> (the date of access: March 19, 2021).

⁹¹³ World Health Organization. World Health Organization (COVID-19) Dashboard. URL: <https://covid19.who.int/table> (the date of access: March 20, 2021).

⁹¹⁴ U.S. Food & Drug Administration. Janssen COVID-19 Vaccine. February 27, 2021. URL: <https://www.fda.gov/emergency-preparedness-and-response/coronavirus-disease-2019-covid-19/janssen-covid-19-vaccine> (the date of access: March 19, 2021).

⁹¹⁵ U.S. is in a 'race against time' with new coronavirus variants, scientists warn // NBC News. January 28, 2021. URL: <https://www.nbcnews.com/science/science-news/u-s-race-against-time-new-coronavirus-variants-scientists-warn-n1255963> (the date of access: March 19, 2021).

⁹¹⁶ National Conference of State Legislatures. Legislative Oversight of Emergency Executive Powers. URL: <https://www.ncsl.org/research/about-state-legislatures/legislative-oversight-of-executive-orders.aspx> (the date of access: March 19, 2021).

⁹¹⁷ Ibid.

laws adding notification requirements and legislative approval before the state governor can declare a state of emergency.⁹¹⁸

363. This trend continued into 2021, with around 32 state legislatures considering bills or resolutions that would limit the emergency power or spending of the executive branch or even local authorities within their state during a public health emergency.⁹¹⁹ For example, a Tennessee House bill prohibits local governments from classifying businesses as essential.⁹²⁰ In December, the American Legislative Exchange Council, a nonpartisan membership organization of state legislators, published the Emergency Power Limitation Act, a model law for states to follow to limit the public health authority of state or local officials.⁹²¹

2. Measures Taken in the Fight Against the COVID-19 Pandemic

2.1. General Measures

364. At the federal level, President Trump's original declaration on March 13, 2020, of an emergency under the authority of the National Emergencies Act remains in effect (**para. 366 of Annex 3 to the Analytical Report**).⁹²² The declaration was extended by President Biden on February 24, 2021.⁹²³ This declaration will stay in effect for at least one year unless terminated by a joint resolution of Congress or a proclamation by the President. The President may again choose to renew the declaration as well, by providing notice to Congress and publishing the renewed proclamation in the Federal Register (**para. 359 of Annex 3 to the Analytical Report**).⁹²⁴ Likewise, the Public Health Emergency originally declared on January 31, 2020, by the Secretary of Health and Human Services under the authority of the Public Health Service Act (**para. 365 of Annex 3 to the Analytical Report**) remains in effect after being renewed on October 2, 2020, and most recently on January 7, 2021.⁹²⁵ The Public Health Emergency will remain in effect

⁹¹⁸ Ibid.

⁹¹⁹ Ibid.

⁹²⁰ Local Solutions Support Center. Under the Cover of Covid: A Survey of 2020-2021 State Preemption Trends. URL: <https://static1.squarespace.com/static/5ce4377caeb1ce00013a02fd/t/6010dd55027c241063e37840/1611717980992/UndertheCoverofCOVID.pdf> TN HB 37 (the date of access: March 19, 2021).

⁹²¹ Emergency Power Limitation Act. American Legislative Exchange Council. December 3, 2020. URL: <https://www.alec.org/model-policy/emergency-power-limitation-act/> (the date of access: March 19, 2021).

⁹²² Centers for Medicare & Medicaid Services. Current emergencies. URL: <https://www.cms.gov/About-CMS/Agency-Information/Emergency/EPRO/Current-Emergencies/Current-Emergencies-page> (the date of access: March 19, 2021).

⁹²³ The White House Briefing Room. A Letter on the Continuation of the National Emergency Concerning the Coronavirus Disease 2019 (COVID-19) Pandemic. February 24, 2021. URL: <https://www.whitehouse.gov/briefing-room/statements-releases/2021/02/24/a-letter-on-the-continuation-of-the-national-emergency-concerning-the-coronavirus-disease-2019-covid-19-pandemic/> (the date of access: March 19, 2021).

⁹²⁴ National Emergencies Act, Sections 201 and 301. ASTHO Legal Preparedness Series Emergency Authority & Immunity Toolkit. ASTHO: Association of State and Territorial Health Officials. URL: <https://www.astho.org/Programs/Preparedness/Public-Health-Emergency-Law/Emergency-Authority-and-Immunity-Toolkit/National-Emergencies-Act,-Sections-201-and-301-Fact-Sheet/> (the date of access: March 19, 2021).

⁹²⁵ U.S. Centers for Medicare & Medicaid Services. Current emergencies. URL: <https://www.cms.gov/About-CMS/Agency-Information/Emergency/EPRO/Current-Emergencies/Current-Emergencies-page> (the date of access: March 19, 2021).

for at least another 90 days until it is either renewed or terminated by the Secretary of Health and Human Services.⁹²⁶

365. At the state level, all state declarations of emergency (**para. 369 of Annex 3 to the Analytical Report**) remain in effect except for the declaration by the state of Alaska, which expired on February 14, 2021.⁹²⁷

366. Despite the loosening of most travel restrictions among states over the late summer, the United States borders with Canada and Mexico still remain closed to non-essential travel (**para. 370 of Annex 3 to the Analytical Report**).⁹²⁸ With the sharp rise in cases beginning in late October and continuing throughout the winter, the CDC issued travel advisories and strongly urged against holiday gatherings and travel, but the Trump Administration did not implement any new federal mandates or lockdowns.⁹²⁹

367. This changed with the Biden Administration, which promptly issued an Executive Order on international travel shortly after the inauguration. This Order required travelers entering the United States from another country to provide proof of a recent negative test prior to entry and further required compliance with all CDC guidelines, including self-quarantine upon arrival.⁹³⁰ President Biden also reinstated travel restrictions for non-United States citizens traveling from Brazil, South Africa, and much of Europe due to the spread of the variant strains of the coronavirus.⁹³¹

368. Several states still have travel restrictions in place in 2021, requiring travelers from states with high positivity rates to quarantine upon arrival, though most of these states will accept a negative test result instead of the mandated quarantine (**para. 371 of Annex 3 to the Analytical Report**).⁹³²

369. In the fall, most schools in the United States began the new academic year operating remotely or with a combination of in-person and remote learning. With many calling for the full reopening of schools to mitigate the negative impact of remote learning on students, President Biden issued an Executive Order supporting the reopening and continuing operation of schools and early childhood education for in-person learning.⁹³³ Yet school operations continue to vary greatly from state to state, with many schools attempting

⁹²⁶ 42 U.S.C. § 247d.

⁹²⁷ Boston University School of Public Health. Tracking COVID-19 Policies. April 1, 2020. URL: <https://www.bu.edu/sph/2020/04/01/tracking-covid-19-policies/> (the date of access: March 20, 2021).

⁹²⁸ US borders with Canada, Mexico to remain closed to nonessential travel through April 21 // USA Today. March 18, 2021. URL: <https://www.usatoday.com/story/travel/news/2021/03/18/us-border-closures-canada-mexico-extended-through-april-21/4751145001/> (the date of access: March 19, 2021).

⁹²⁹ CDC pleads with Americans to avoid Thanksgiving travel // AP. November 19, 2020. <https://apnews.com/article/cdc-guidelines-thanksgiving-holidays-597a53e6cd8a7565c8f1433e6a3e2efd> (the date of access: March 19, 2021).

⁹³⁰ Executive Order 13998. Executive Office of the President. January 21, 2021. URL: <https://www.federalregister.gov/documents/2021/01/26/2021-01859/promoting-covid-19-safety-in-domestic-and-international-travel> (the date of access: March 19, 2021).

⁹³¹ The White House Briefing Room. Proclamation on the Suspension of Entry as Immigrants and Non-Immigrants of Certain Additional Persons Who Pose a Risk of Transmitting Coronavirus Disease. January 25, 2021. URL: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/25/proclamation-on-the-suspension-of-entry-as-immigrants-and-non-immigrants-of-certain-additional-persons-who-pose-a-risk-of-transmitting-coronavirus-disease/> (the date of access: March 19, 2021).

⁹³² Boston University School of Public Health. Tracking COVID-19 Policies. April 1, 2020.

⁹³³ Executive Order 14000. Executive Office of the President. January 21, 2021. URL: <https://www.federalregister.gov/documents/2021/01/26/2021-01864/supporting-the-reopening-and-continuing-operation-of-schools-and-early-childhood-education-providers> (the date of access: March 19, 2021).

to reopen with more testing and teachers receiving vaccinations by the end of February 2021 (**para. 374 of Annex 3 to the Analytical Report**).

2.2. Containment Measures Regarding Industrial and Non-Productive Sector

Industrial Sector

370. In terms of containment measures in the industrial sector, the Essential Critical Infrastructure Workers Guidance, which was designed to help essential work safely continue for ongoing critical infrastructure operations and originally released on March 18, 2020 (**para. 375 of Annex 3 to the Analytical Report**), was updated on December 16, 2020, to support prioritization decisions related to COVID-19 vaccines.⁹³⁴ Specifically, these updates identify the essential workers, such as healthcare providers and first responders, who require specialized risk management strategies so that they can work safely and receive priority under their respective state's vaccination plans.⁹³⁵

Non-Productive Sector

371. Containment measures in the non-productive sector continue to largely vary from state to state (**paras. 377–379 of Annex 3 to the Analytical Report**), though by February 2021 most states were tending to relax containment measures on a regional basis as the case numbers trended downwards. Most states are now allowing elective medical procedures to proceed and are continuing to lift capacity restrictions on restaurants. At correctional facilities, after every state halted in-person visitation during the spring of 2020, ten states have since resumed visitation in state prisons.⁹³⁶

2.3. Containment Measures Regarding Population

372. Most containment measures aimed at the general population occurred at the state level (**paras. 380–384 of Annex 3 to the Analytical Report**). After September 2020, gathering bans tended to loosen up, with some states beginning to allow a limited number of fans at sporting events.

373. Almost all state stay-at-home orders were lifted by the late summer with the most recent stay-at-home order coming to an end in the state of California.⁹³⁷ New Mexico temporarily re-enacted its statewide

⁹³⁴ The Cybersecurity and Infrastructure Security Agency. Identifying Critical Infrastructure During COVID-19. March 18, 2020. URL: <https://www.cisa.gov/identifying-critical-infrastructure-during-covid-19> (the date of access: March 19, 2021); Cybersecurity & Infrastructure Security Agency. Guidance on the Essential Critical Infrastructure Workforce. URL: <https://www.cisa.gov/publication/guidance-essential-critical-infrastructure-workforce> (the date of access: March 19, 2021).

⁹³⁵ Cybersecurity & Infrastructure Security Agency. Guidance on the Essential Critical Infrastructure Workforce.

⁹³⁶ Boston University School of Public Health. Tracking COVID-19 Policies. April 1, 2020.

⁹³⁷ Ibid.

order closing all in-person services for non-essential activities for two weeks in November 2020 but then began reopening county by county in January 2021.⁹³⁸

374. After partially reopening non-essential businesses on a regional basis in most states over the summer, states began issuing reclosure orders in November with a sharp rise in cases. Nine states reclosed restaurants, 12 states reclosed bars, and seven states reclosed gyms.⁹³⁹ By February 2021, all states seemed to be at some level of reopening for non-essential businesses and restaurants statewide, to varying degrees. States are enforcing capacity limits and face mask requirements on patrons and restricting restaurants to outdoor dining only in some localities. Gyms, movie theaters, and bars remain closed in several states, though these facilities began to open up more widely across the country towards the end of February.

375. By September 2020, especially as they began to partially reopen, most states had some sort of face mask requirement, whether for employees of restaurants and businesses, patrons within a restaurant or business, or all people when out in public. In late January, the Biden Administration issued an Executive Order requiring mask-wearing on federal property and in all forms of public transportation.⁹⁴⁰ This impacted airports, commercial aircraft, trains, ferries, and busses. In 2020, 38 states had some type of public face mask mandate⁹⁴¹ with five states ending their face mask mandates in 2021.⁹⁴²

2.4. Support Measures for Industrial and Non-Productive Sectors

Industrial Sector

376. Under the authority of the Defense Production Act (**para. 356 of Annex 3 to the Analytical Report**), President Biden issued an Executive Order supporting a sustainable public health supply chain and increasing supply for pandemic response.⁹⁴³ This order requires executive branch leaders to assess the availability of critical materials, treatments, and supplies and enabled them to utilize the authority of the Defense Production Act to fill any identified shortfalls.⁹⁴⁴

⁹³⁸ N.M. hits 'reset,' re-enacting most heightened level of statewide public health restrictions. Office of the Governor Michelle Lujan Grisham. November 13, 2020. URL: <https://www.governor.state.nm.us/2020/11/13/n-m-hits-reset-re-enacting-most-heightened-level-of-statewide-public-health-restrictions/> (the date of access: March 19, 2021); Office of the Governor Michelle Lujan Grisham. Department of Health county map update January 27: Seven reach Yellow Level, on county at Green Level. January 27, 2021. URL: <https://www.governor.state.nm.us/2021/01/27/department-of-health-county-map-update-jan-27-seven-reach-yellow-level-one-county-at-green-level/> (the date of access: March 19, 2021).

⁹³⁹ Boston University School of Public Health. Tracking COVID-19 Policies. April 1, 2020.

⁹⁴⁰ Executive Order on Protecting the Federal Workforce and Requiring Mask-Wearing. The White House Briefing Room. January 20, 2021. URL: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-protecting-the-federal-workforce-and-requiring-mask-wearing/> (the date of access: March 19, 2021).

⁹⁴¹ Boston University School of Public Health. Tracking COVID-19 Policies. April 1, 2020.

⁹⁴² Ibid.

⁹⁴³ Executive Order on a Sustainable Public Health Supply Chain. The White House Briefing Room. January 21, 2021. URL: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/21/executive-order-a-sustainable-public-health-supply-chain/> (the date of access: March 19, 2021).

⁹⁴⁴ Ibid.

377. President Biden issued another Executive Order on worker health and safety, requiring the issuance of science-based guidance to help keep workers safe from COVID-19 exposure.⁹⁴⁵ The order required a review of the Occupational Safety and Health Administration pandemic standards, launching a national program to focus on enforcement efforts related to COVID-19 violations in the workplace.⁹⁴⁶

Non-Productive Sector

378. The Coronavirus Response and Relief Supplemental Appropriations Act of 2021, a second stimulus COVID-19 relief measure, was approved by Congress on December 21, 2020, and signed into law on December 27, 2020, by President Trump.⁹⁴⁷ It included a second round of funding for small business loans through the Paycheck Protection Program initiated by the first stimulus relief measure earlier in 2020 (**paras. 388–392 of Annex 3 to the Analytical Report**).⁹⁴⁸

379. Through February, Congress and President Biden worked to get a third stimulus COVID-19 measure passed, which would provide more funding for the Paycheck Protection Program, including an expansion of eligibility criteria for the Program, and would support the creation of a new grant program for restaurants and bars.⁹⁴⁹

2.5. Support Measures for Population

380. After an extension in August through December 31, 2020, the student loan forgiveness measure was extended by the Trump Administration on December 4, 2020, through January 31, 2021.⁹⁵⁰ This measure was further extended by the Biden Administration through a directive issued on January 20, 2021, through at least September 30, 2021.⁹⁵¹

381. The Coronavirus Response and Relief Supplemental Appropriations Act of 2021 was signed into law on December 27, 2020, by President Trump and featured direct payments of USD 600 to U.S. citizens.⁹⁵²

⁹⁴⁵ Executive Order 13999. Executive Office of the President. January 21, 2021. URL: <https://www.federalregister.gov/documents/2021/01/26/2021-01863/protecting-worker-health-and-safety> (the date of access March 19, 2021).

⁹⁴⁶ Ibid.

⁹⁴⁷ The Consolidated Appropriations Act, 2021. Rules Committee Print 116-68. December 21, 2020. URL: <https://rules.house.gov/sites/democrats.rules.house.gov/files/BILLS-116HR133SA-RCP-116-68.pdf> (the date of access: March 19, 2021).

⁹⁴⁸ Ibid.

⁹⁴⁹ A guide to what you can expect from the \$1.9 trillion Senate stimulus // CNN. March 6, 2021. URL: <https://www.cnn.com/2021/03/04/politics/senate-stimulus-package-what-to-expect-guide/index.html> (the date of access: March 20, 2021).

⁹⁵⁰ Federal Student Aid, An Office of the U.S. Department of Education. Coronavirus and Forbearance Info for Students, Borrowers, and Parents. URL: <https://studentaid.gov/announcements-events/coronavirus> (the date of access: March 19, 2021).

⁹⁵¹ The White House Briefing Room. Pausing Federal Student Loan Payments. January 20, 2021. URL: <https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/pausing-federal-student-loan-payments/> (the date of access: March 19, 2021); Federal Student Aid, An Office of the U.S. Department of Education. Coronavirus and Forbearance Info for Students, Borrowers, and Parents. URL: <https://studentaid.gov/announcements-events/coronavirus> (the date of access: March 19, 2021).

⁹⁵² The Consolidated Appropriations Act, 2021. Rules Committee Print 116-68. December 21, 2020.

The third stimulus COVID-19 relief bill would feature direct payments of USD 1,400 to U.S. citizens and would expand unemployment benefits.⁹⁵³

3. Court Practice With Respect to the COVID-19 Pandemic

Summary

382. The United States is seeing numerous court challenges against COVID-19 measures and challenges to emergency authority in general, with many lawsuits brought at both the federal court and state court level. Most lawsuits tend to be challenging the emergency authority of the state governor, especially when it relates to the prolonged closure of businesses without legislative approval. Other lawsuits challenge restrictions on businesses as a violation of Constitutional freedoms. Aside from a few state decisions described below, these lawsuits have not been overly successful, with most courts deferring to the emergency power of the executive during an emergency.⁹⁵⁴

383. Many of the estimated 300 lawsuits brought by businesses or religious groups against COVID-19 measures claim a violation of Constitutional rights.⁹⁵⁵ During the spring and summer of 2020, the majority of these suits were not successful, with lower court decisions often relying on the precedent set by the *Jacobson v. Massachusetts* decision from 1905, which provided deference to state orders during a public health emergency after the U.S. Supreme Court upheld a state law mandating the smallpox vaccination of adults which included penalties of fines and imprisonment for noncompliance.⁹⁵⁶ Still, a growing number of challenges to COVID-19 restrictions blocking religious freedom have been successful, coinciding with the change to a more conservative-leaning Supreme Court beginning in the fall of 2020.

3.1. Background on the United States Judicial System

384. The United States Constitution establishes three branches of the federal government: the executive branch, the legislative branch, and the judiciary branch. For the judiciary branch, the Constitution details the authority of the federal court system, specifying that the federal court hears cases centered around a federal law or a violation of the Constitution itself. The Constitution also establishes the Supreme Court as the highest court in the United States.

385. Traditionally, federal cases start at one of the 94 district courts spread across the country, and any appeals from these decisions are brought before one of the 13 federal circuit courts. The United States Supreme Court, made up of nine justices, can then choose to hear appeals from the circuit court decisions or appeals from state courts on matters relating to federal law or the Constitution.

386. Separate from the federal court system, each state has its own court system. The structure and jurisdiction of each state's court system vary from state to state, but each state has the highest court that hears cases on appeal.

⁹⁵³ The American Rescue Plan Act of 2021. 117th Congress, House Resolution 1319. URL: <https://www.congress.gov/bill/117th-congress/house-bill/1319/text> (the date of access: March 20, 2021).

⁹⁵⁴ Challenges to COVID-19 Lockdowns Have Been Mostly Losing in Court // The Wall Street Journal. February 13, 2021. URL: <https://www.wsj.com/articles/challenges-to-covid-19-lockdowns-have-been-mostly-losing-in-court-11613212200> (the date of access: March 20, 2021).

⁹⁵⁵ Ibid.

⁹⁵⁶ Legal Challenges to State COVID-19 Orders. ASTHO Report. October 20, 2020. URL: <https://www.astho.org/ASTHOReports/Legal-Challenges-to-State-COVID-19-Orders/10-20-20/> (the date of access: March 19, 2021).

387. At both the state and federal level, court decisions tend to be based on precedent, which means that the courts rely on previous rulings with similar sets of facts and apply standards or rules established by the previous decisions.

3.2. Court Challenges During the COVID-19 Pandemic

Challenging the Public Health Authority of the Executive

388. Several state court challenges were brought during the pandemic challenging the public health authority of the state executive branch, typically the state governor or public health officer. These challenges generally allege an overreach of executive power, claiming the state executives were exceeding their authority or failing to obtain the legislative or judicial oversight required by the state's constitution or emergency laws in issuing COVID-19 orders. Several of these cases claim that a public health emergency falls outside of the state's emergency powers under the law.⁹⁵⁷

389. The most famous example of a court challenge to public health authority occurred early on in the pandemic. In *Wisconsin Legislature v. Secretary-Designee Andrea Palm*, the Wisconsin legislature filed suit claiming an extension to the state stay-at-home order by the state health officer exceeded her authority in that position.⁹⁵⁸ On May 13, 2020, the Wisconsin Supreme Court ruled in favor of the legislature and held that because the stay-at-home order extension did not go through the proper emergency rulemaking procedures set under state law, it was unenforceable.⁹⁵⁹ This effectively lifted the statewide stay-at-home order in Wisconsin.

390. By October 2020, it was estimated that just under 1,000 lawsuits were filed in the United States challenging the use of state executive authority related to COVID-19 orders.⁹⁶⁰ Emergency powers and processes vary from state to state, so the success of these lawsuits depends on the makeup of that individual state's laws and constitution. For example, in October 2020, the Michigan Supreme Court ruled that the Governor violated the state's Constitution by not seeking the required legislative approval for additional targeted COVID-19 orders.⁹⁶¹

Challenging Constitutionality of COVID-19 Restrictions

391. There are also many cases challenging the constitutionality of COVID-19 restrictions, both at the state and federal court level, with several cases making it all the way up to the United States Supreme Court.

392. In *South Bay United Pentecostal Church, et al., v. Newsom*, a California church filed for an injunction seeking to prevent enforcement of a California Executive Order by the Governor of California, Gavin Newsom. The church claimed that the religious gathering restrictions in the Executive Order were a violation of their rights under the Free Exercise Clause of the First Amendment.⁹⁶² A federal district court

⁹⁵⁷ Ibid.

⁹⁵⁸ *Wisconsin Legislature v. Secretary-Designee Andrea Palm*, 2020 WI 42, Case No. 2020AP765-OA. May 13, 2020. URL: <https://www.wicourts.gov/sc/opinion/DisplayDocument.pdf?content=pdf&seqNo=260868> (the date of access: March 20, 2021).

⁹⁵⁹ Ibid.

⁹⁶⁰ Legal Challenges to State COVID-19 Orders. ASTHO Report. October 20, 2020.

⁹⁶¹ *Midwest Institute of Health, PLLC v. Whitmer*, Docket No. 161492. October 2, 2020.

⁹⁶² Legal Challenges to State COVID-19 Orders. ASTHO Report. October 20, 2020.

first denied the church's request for a temporary injunction, applying the standards used in previous Free Exercise Clause rulings, finding that the restrictions from the Governor were neutral, rationally based to protect the safety, and applied generally.⁹⁶³ The Ninth Circuit Court affirmed the decision by the district court on appeal, also finding the restrictions to be neutral, generally applicable, and rationally based.⁹⁶⁴ The case was then heard by the United States Supreme Court, which in a 5-4 decision issued on May 29, 2020, affirmed the rulings of the lower courts, finding the restrictions in the Executive Order consistent with the Free Exercise Clause.⁹⁶⁵ The majority opinion stated that the restriction also applied to secular businesses and deferred to state officials to make judgments on the needs for public health.⁹⁶⁶

393. But on February 5, 2021, the California church sought another injunction against a statewide order banning indoor religious services issued with the spike in cases, and this time the more conservative-leaning Supreme Court, with a 6-3 decision blocked California's public health order.⁹⁶⁷ The reasoning for the majority opinion and shift away from the precedent set by the May 2020 decision was not extensively explained by the court, but stated that religion was being targeted for differential treatment under the California order.⁹⁶⁸ Later that month, after Santa Clara County in California refused to stop enforcing the ban on indoor religious services, the United States Supreme Court in a 6-3 decision ordered the county to stop enforcing the ban in *Gateway City Church v. Newsom*.⁹⁶⁹

394. This follows the trend set in November 2020, when the United States Supreme Court, in a 5-4 decision, voted to block a New York restriction on indoor religious services.⁹⁷⁰ In *Roman Catholic Diocese of Brooklyn, New York v. Cuomo*, the majority opinion felt that the burden on indoor religious services was not neutral in that at the same time, the state was allowing people to go to secular buildings.⁹⁷¹

395. Aside from challenges based on religious worship, there were numerous lawsuits brought by restaurants and businesses against closure orders, challenging the constitutionality of those restrictions.

396. In *Friends of Danny Devito v. Wolf*, the Supreme Court of Pennsylvania rejected the petition by a group of business owners seeking to vacate the governor's non-essential business closure on April 13, 2020.⁹⁷² The claimants argued that the closure order violated their constitutional rights to free speech, assembly, and judicial review, but the court ruled that order was reasonably necessary in light of the public

⁹⁶³ Ibid.

⁹⁶⁴ Ibid.

⁹⁶⁵ *South Bay United Pentecostal Church, et al., v. Newsom*, 140 U.S. 1613 (2020).

⁹⁶⁶ Ibid.

⁹⁶⁷ Ibid.

⁹⁶⁸ Ibid. The Network for Public Health Law. URL: <https://www.networkforphl.org/resources/south-bay-united-pentecostal-church-v-newsom-2/> (the date of access: March 20, 2021).

⁹⁶⁹ *Gateway City Church, et al., v. Newsom*, No. 20A138 (2021).

⁹⁷⁰ *Roman Catholic Diocese of Brooklyn, New York v. Cuomo*, 592 U.S. (2020).

⁹⁷¹ Ibid.

⁹⁷² *Friends of Danny Devito v. Wolf*, No. 68 MM 2020, S. Ct. PA, Mid. Dist. April 13, 2020.

health emergency.⁹⁷³ The claimants appealed this decision and on May 6, 2020, the United States Supreme Court declined to block enforcement of the order.⁹⁷⁴

397. In Michigan, a lawsuit was brought to the United States District Court by a restaurant trade association to federal court alleging a violation of the Commerce Clause and Equal Protections Clause in the Constitution caused by the ban on indoor dining. The restaurant trade association sought to win a restraining order or injunction against the ban that would prevent enforcement. On December 2, 2020, the United States District Court for the Western District of Michigan dismissed the lawsuit, stating their reliance on public health decisions made by the government officials.⁹⁷⁵

398. On November 18, 2020, the U.S. District Court for the District of Maryland dismissed a suit brought by Maryland businesses and religious leaders seeking to stop the governor's order closing businesses and banning large gatherings. The claimants felt this order was a violation of the First Amendment rights to religious freedom and assembly, as well as a violation of the Equal Protection Clause, since the order allowed for differential treatment for larger businesses deemed essential. The District Court ruling dismissing the lawsuit relied on the precedent set by the May 29, 2020 Supreme Court decision in *South Bay United Pentecostal Church, et al., v. Newsom* and the historic precedent set by *Jacobson v. Massachusetts* in that the plaintiffs failed to show that the order had no substantial relation to protecting public health and stating that it was not the role of the court to second guess public health policy choices.⁹⁷⁶

399. While the majority of lawsuits challenging COVID-19 measures related to business closures have failed to succeed in court, a number of lawsuits brought by religious organizations challenging closures that impacted religious worship were ultimately successful. In addition to the number of challenges brought by state legislatures against the public health authority of the executive branch within states, the United States has seen and likely will continue to see court challenges against state governor and public health officer authority.

⁹⁷³ Ibid.

⁹⁷⁴ Supreme Court declines to lift Pennsylvania's stay-at-home order // CBS News. May 8, 2020. URL: <https://www.cbsnews.com/news/supreme-court-pennsylvania-stay-at-home-order-businesses/> (the date of access: March 20, 2021).

⁹⁷⁵ *Michigan Restaurant & Lodging Association, et al., v. Gordon*, U.S. District Court Western District of Michigan Southern Division, No. 1:20-cv-1104. December 2, 2020.

⁹⁷⁶ *Antietam Battlefield KOA, et al., v. Hogan*, Civil Action No. CCB-20-1130 (D. Md.). May 20, 2020.

VIII. China

Summary

400. Apart from several small-scale local outbreaks that attracted prompt government responses, the epidemic in China generally abated since March 2020 and its control and prevention have entered a normalized stage.

401. No significant legislative changes regarding COVID-19 have taken place so far, although an overhaul of the existing legal system on public health has been placed on the legislature's agenda of 2021.

402. New measures for normalized control of COVID-19 nationwide mainly concentrate on gradual relaxation of containment measures according to the risk rating of different areas (which are categorized as involving low, medium, or high risk). It is noteworthy that by February 18, 2021, all areas of high risks in China were eliminated.⁹⁷⁷

403. For the moment, there is no public information on cases successfully challenging general government measures taken to mitigate the COVID-19 crisis, as such claims are not admissible according to the Administrative Litigation Law.

1. Measures Taken in the Fight Against the COVID-19 Pandemic

1.1. General Measures

404. According to a notice by the State Council in April 2020, gradual relaxation of containment measures should follow three general principles:

- 1) restrictions for public places and workings space should be relaxed according to the local emergency response level and rating of the COVID-19 risks;
- 2) particular attention should be paid to control of risks in special institutions, such as elderly care institutions, children's welfare homes, prisons, mental health and medical institutions;
- 3) containment measures at key places, such as air transportation and port quarantine, should be enhanced, and key groups of the population (including elderly people, children, students, medical workers and others) should be afforded special care.⁹⁷⁸

405. These principles generally remained as the overall strategy supplemented with more detailed central guidance.

Public Transport

406. Regarding international transport, severe restrictions are still imposed to reduce the risk of imported cases. In June 2020, the Civil Aviation Administration of China issued the Notice on adjusting

⁹⁷⁷ All High-risk Areas Across the Country Are Cleared // Xinhua News. URL: http://www.gov.cn/xinwen/2021-02/18/content_5587641.htm (the date of access: April 7, 2021).

⁹⁷⁸ State Council. Notice on further doing a good job in the prevention and control of the new coronavirus pneumonia epidemic of key populations in key units and key units. April 6, 2020. URL: http://www.gov.cn/zhengce/content/2020-04/08/content_5500241.htm (the date of access: April 7, 2021).

international passenger flights, which replaced the previous notice that was issued in March,⁹⁷⁹ and permitted more companies to operate international passenger routes to a chosen port city.⁹⁸⁰ This Notice also stipulated circuit breaker and incentive measures based on the nucleic acid tests of passengers after the arrival of the inbound flights. The flight control, however, was tightened again in September 2020 by a Civil Aviation Administration's notice which required that for three categories of inbound international flights with high risks the passenger load rate should not exceed 75%.⁹⁸¹ Since July 2020, international passengers are also required to take the nucleic acid test prior to their boarding.⁹⁸²

407. Most domestic public transportation has been resumed, and in June 2020 the Ministry of Transport issued an updated version of Guide for the regional and rated prevention and control of the new corona pneumonia epidemic in passenger terminals and transportation vehicles, which laid down differentiated and quantified requirements of disinfection, ventilation, transport organization, and personnel protection measures applied to areas of different levels of risks.⁹⁸³

1.2. Containment Measures Regarding Industrial and Non-Productive Sector

408. All restrictions on business and production have been lifted, and the government's focus has been on guiding enterprises and public institutions to adopt protective measures at the workspace (**para. 435 of Annex 3 of the Analytical Report**).⁹⁸⁴ The catering sector has gradually resumed since March 2020. Restrictions on tourism and cinemas started to be lifted in 2020. On July 14, 2020, the Ministry of Culture and Tourism issued a new notice resuming cross-provincial tours and increased the upper limit of visitor volume of tourist attractions from 30% to 50% of their maximum volume.⁹⁸⁵ From July, tourist attractions are allowed to open indoor places as long as precautionary measures are taken properly. International tours have not been resumed yet. On July 16, 2020, the China Film Administration issued a new notice along

⁹⁷⁹ Civil Aviation Administration of China. Notice on further reducing international passenger flights during the epidemic prevention and control period. March 26, 2020. URL: http://www.gov.cn/zhengce/zhengceku/2020-03/27/content_5496232.htm (the date of access: April 7, 2021).

⁹⁸⁰ Civil Aviation Administration of China. Notice on adjusting international passenger flights. June 4, 2020. URL: http://www.gov.cn/zhengce/zhengceku/2020-06/04/content_5517160.htm (the date of access: April 7, 2021).

⁹⁸¹ News website of the Civil Aviation Administration of China. September 1, 2020. URL: http://www.gov.cn/xinwen/2020-09/01/content_5539008.htm (the date of access: April 7, 2021).

⁹⁸² Announcement of the Civil Aviation Administration, the General Administration of Customs, and the Ministry of Foreign Affairs on the boarding of passengers on flights to China with a negative COVID-19 nucleic acid test certificate. July 20, 2020. URL: http://www.gov.cn/zhengce/zhengceku/2020-07/21/content_5528639.htm (the date of access: April 7, 2021).

⁹⁸³ Ministry of Transport. Guide for the regional and rated prevention and control of the new coronavirus pneumonia epidemic in passenger terminals and transportation vehicles (fourth edition). June 12, 2020. URL: http://www.gov.cn/zhengce/zhengceku/2020-06/15/content_5519551.htm (the date of access: April 7, 2021).

⁹⁸⁴ Novel coronavirus pneumonia joint prevention and control mechanism of the State Council. Notice on issuing the guidelines for prevention and control measures for the resumption of work and production of enterprises and institutions in different risk regions. April 9, 2020. URL: http://www.gov.cn/zhengce/content/2020-04/09/content_5500685.htm (the date of access: April 7, 2021).

⁹⁸⁵ Notice of the General Office of the Ministry of Culture and Tourism on promoting the expansion and resumption of business of tourism enterprises. July 14, 2020. URL: http://www.gov.cn/zhengce/zhengceku/2020-07/14/content_5526872.htm (the date of access: April 7, 2021).

with an operational guide on epidemic prevention and control,⁹⁸⁶ which allowed cinemas in low-risk areas to resume business since July 20, 2020 (**para. 436 of Annex 3 of the Analytical Report**). Decisions of resumption of school classes are determined by local governments guided by the opinions of local epidemic control experts and the Ministry of Education. According to clarifications issued by the Ministry of Education in June 2020,⁹⁸⁷ only schools in low-risk areas fully equipped with epidemic control conditions could resume classes in staggered time, and students were to be regularly tested with body temperature (**para. 433 of Annex 3 of the Analytical Report**).

1.3. Containment Measures Regarding Population

409. Most containment measures for the population were relaxed, although requirements of social distancing and use of QR code system are retained (**paras. 437–439 of Annex 3 of the Analytical Report**).

410. The novel coronavirus pneumonia joint prevention and control mechanism of the State Council issued the Notice on ensuring precise health management and promoting orderly population flow on June 25, 2020, which directed the local prevention and control mechanisms to implement the following:

- local authorities should rate the epidemic risks scientifically and define the prevention and control areas legally and precisely to the smallest units of the population (such as buildings, wards, residential communities, natural villages), and adopt comprehensive measures to restrict population flow and conduct nucleic acid testing and health monitoring;
- individuals should form good sanitary habits and lifestyle such as one-meter social distancing, frequent handwashing, mask-wearing, and others;
- for areas of medium or high risks, unnecessary population movement should be reduced and gathering should be avoided. For cross-area traveling individuals with previous travel or residence history in areas of medium or high risks, it is required to provide the “green health code” or a certificate showing a negative result of nucleic acid test 7 days prior to their arrival at the new place. Otherwise, they will be required to be quarantined for 14 days for medical observation;
- for areas of low risks, individuals with “green health code” can freely move and should avoid traveling to medium or high-risk areas;
- measures for health management should be adopted scientifically, precisely, and in accordance with legal requirements. Unreasonable restrictive measures other than those necessary for normalized control and prevention must be rectified promptly;

⁹⁸⁶ China Film Administration. Notice of orderly advancing the reopening of movie theaters under the normalization of epidemic prevention and control. July 16, 2020. URL: http://www.gov.cn/zhengce/zhengceku/2020-07/16/content_5527363.htm (the date of access: April 7, 2021).

⁹⁸⁷ Ministry of Education. 20 questions about resuming school and class under normalization of epidemic prevention and control. June 12, 2020. URL: http://www.moe.gov.cn/jyb_xwfb/moe_1946/fj_2020/202006/t20200612_465535.html (the date of access: April 7, 2021).

- for health management of individuals leaving Beijing, Notice on doing a good job in the health management service of novel coronavirus pneumonia for persons leaving Beijing⁹⁸⁸ shall apply.⁹⁸⁹

411. Several special arrangements were directed by the National Health Commission in late December 2020 to prepare for the epidemic control during the Chinese New Year.⁹⁹⁰ Family gatherings were supposed to be limited to 10 or less people, and festival shows, sports competitions, or fairs were subject to a strict approval process and all equipped with body temperature monitoring arrangements. Compared to measures above (**para. 410 of Annex 4 of the Analytical Report**), stricter requirements such as approval by local epidemic control headquarter and nucleic acid test taken with 72 hours were also imposed on cross-area travel.

1.4. Support Measures for Industrial and Non-Industrial Sectors

412. The government has issued a lot of preferential policies of tax and fee levy to support industrial and non-industrial sectors. Many of the measures continue to stay effective. For example, in March 2021, the Ministry of Finance and State Administration of Taxation jointly issued an Announcement on extending the implementation period of some preferential tax policies⁹⁹¹ and an Announcement on continuing the implementation of partial tax and fee preferential policies in response to the epidemic,⁹⁹² which extended several previous tax or fee reduction policies for medical workers,⁹⁹³ individual industry and commerce households,⁹⁹⁴ film industry, and others.⁹⁹⁵ Various support measures for enterprises, such as financial

⁹⁸⁸ Novel coronavirus pneumonia joint prevention and control mechanism of the State Council. Notice on doing a good job in the health management service of novel coronary pneumonia for persons leaving Beijing. June 19, 2020. URL: http://www.gov.cn/xinwen/2020-06/19/content_5520691.htm (the date of access: April 7, 2021).

⁹⁸⁹ Novel coronavirus pneumonia joint prevention and control mechanism of the State Council. Notice on ensuring precise health management and promoting orderly population flow. June 25, 2020. URL: http://www.gov.cn/xinwen/2020-06/25/content_5521982.htm (the date of access: April 7, 2021).

⁹⁹⁰ Novel coronavirus pneumonia joint prevention and control mechanism of the State Council. Notice on doing a good job in the prevention and control of the new coronary pneumonia epidemic during the New Year's Day and spring festival in 2021. December 30, 2020. URL: http://www.gov.cn/xinwen/2020-12/30/content_5575601.htm (the date of access: April 7, 2021).

⁹⁹¹ Ministry of Finance, State Administration of Taxation. Announcement on extending the implementation period of some preferential tax policies. March 15, 2021. URL http://www.gov.cn/zhengce/zhengceku/2021-03/23/content_5595076.htm (the date of access: April 7, 2021).

⁹⁹² Ministry of Finance, State Administration of Taxation. Announcement on continuing the implementation of partial tax and fee preferential policies in response to the epidemic. March 17, 2021. URL: http://www.gov.cn/zhengce/zhengceku/2021-03/23/content_5595078.htm (the date of access: April 7, 2021).

⁹⁹³ Announcement of the Ministry of Finance and the State Administration of Taxation on personal income tax policies for the prevention and control of the pneumonia. February 6, 2020. URL: <http://www.chinatax.gov.cn/chinatax/n810341/n810755/c5143466/content.html> (the date of access: April 7, 2021).

⁹⁹⁴ Announcement of the Ministry of Finance and the State Administration of Taxation on supporting individual industrial and commercial households' value-added tax policies for resuming work and business. February 28, 2020. URL: <http://www.chinatax.gov.cn/chinatax/n810341/n810755/c5145325/content.html> (the date of access: April 7, 2021).

⁹⁹⁵ Announcement of the Ministry of Finance and the State Administration of Taxation on taxation support policies for film and other industries. May 13, 2020. URL: <http://www.chinatax.gov.cn/chinatax/n810341/n810755/c5149893/content.html> (the date of access: April 7, 2021).

subsidies, reduction of administrative fees, remittals of unemployment insurances were also adopted by local governments.⁹⁹⁶

2. Court Practice With Respect to the COVID-19 Pandemic

413. According to the Administrative Litigation Law of PRC,⁹⁹⁷ lawsuits against government policies do fall into the scope of accepted cases by courts, and normative documents intended for general application can only be collaterally attacked if a specific administrative act grounded on that documents is challenged in the first place. This means that general orders, resolutions, and decisions issued by local epidemic control headquarters are not amendable to judicial review.

414. Regarding the judicial review of specific administrative acts for epidemic control, several provincial courts (which are high courts below the Supreme People's Court in China) have addressed several issues to guide adjudication by lower courts.⁹⁹⁸ The relevant principles and rules are not systematically articulated. Still, it is possible to report courts' approaches to several main issues:

- regarding general principles of reviewing the legality of government acts, in determining whether the adopted measures are reasonable and necessary for the epidemic control, courts are supposed to defer to the administrative agencies' primary judgment based on advice by medical experts, and the people's courts are supposed not to second guess the administrative bodies' judgment in hindsight by referring to consequences of those measures;
- the legal requirement of procedural regularity tends to be subordinated to administrative expediency. Where emergency management measures such as closures and mandatory isolations are proved necessary for epidemic prevention and control and there is no manifest violation of law, the people's courts are supposed to support administrative bodies to implement such measures. Even if the relevant approval procedures have not been fulfilled due to an emergency, so long as formalities have been completed afterwards in accordance with the law, the administrative acts should not be held as illegal;
- in determining whether administrative acts of requisitioning houses, equipment, vehicles, and other materials required for emergency rescue are legal, the people's courts are supposed to scrutinize whether the scope and extent of requisition are suitable for its purpose, whether the legal procedures are complied with, and whether compensation is reasonable.

415. Overall, the courts' approaches are oriented to facilitate the effective control of the epidemic, and so far no case has been known for successfully challenging government measures as illegal.

⁹⁹⁶ The General Office of the Beijing Municipal People's Government. Notice on "several measures to support small, medium and micro enterprises and individual industrial and commercial households in normalizing epidemic prevention and control and accelerating recovery and development". March 19, 2021. URL: http://www.gov.cn/xinwen/2021-03/19/content_5593888.htm (the date of access: April 7, 2021).

⁹⁹⁷ Administrative Litigation Law of the PRC 2017. Articles 12, 53, 64. URL: http://www.npc.gov.cn/zgrdw/npc/xinwen/2017-06/29/content_2024894.htm (the date of access: April 7, 2021).

⁹⁹⁸ The Zhejiang High People's Court Administrative Division. Notice on the issuing of the "answers to several Specific Questions on the Trial of Administrative Cases Involving the Prevention and Control of the Novel Coronary pneumonia epidemic". February 27, 2020. URL: <http://www.hs1s.cc/index.php?s=news&c=show&id=182> (the date of access: April 7, 2021); Answers to several questions about legal applications in cases concerning novel coronary cases by Hunan High People's Court. February 28, 2020 URL: https://www.thepaper.cn/newsDetail_forward_6221510 (the date of access: April 7, 2021); Series of questions and answers by Shanghai Higher People's Court on the application of law in cases involving the novel coronavirus pneumonia epidemic. May 8, 2020. URL: https://www.sohu.com/a/393859710_800348 (the date of access: April 7, 2021).

IX. The Russian Federation

Summary

416. During the period under review, normative acts of general application were drafted and adopted at the federal level.

417. Due to the improved epidemiological situation, several restrictive measures, including those at the level of the subjects of the Russian Federation, were lifted, the term of some support measures for population, industrial and non-productive sectors was extended, and new support measures were introduced.

1. Evolution of the Measures Taken in the Fight Against the COVID-19 Pandemic

418. In December 2020, the Law “On Biological Safety” was adopted.⁹⁹⁹ It establishes the regulatory framework in the field of biological safety and a set of measures for the protection of the population. The provisions of the Law on Biological Safety apply, in particular, to the relations pertaining to the spread of COVID-19, since the emergence, importation, and spread of new and/or previously unknown infections in the Russian Federation are considered to be biological threats (hazards) by the law.

419. Law on Biological Safety provides a regulatory framework for combating the spread of infectious diseases and, in particular:

- defines the powers of state authorities of the Russian Federation and the subjects of the Russian Federation;
- enshrines measures to combat the spread of infectious diseases;
- establishes principles for the formation of a biosafety information system.

420. The exercise of control (supervision) in the field of ensuring biological safety is entrusted to the existing executive authorities.¹⁰⁰⁰

421. On January 4, 2021, the Presidential Decree No. 12, which establishes the procedure for state authorities to prevent the threat of emergencies associated with the spread of dangerous infectious diseases, was signed into law.¹⁰⁰¹

422. Presidential Decree No. 12 defines the powers of:

- the Government of the Russian Federation to create the Coordination Council to prevent the threat of emergencies associated with the importation into the Russian Federation and the spread of dangerous infectious diseases on its territory;

⁹⁹⁹ Federal Law No. 492-FZ of December 30, 2020, “On biological safety in the Russian Federation”. URL: <https://rg.ru/2021/01/11/bio-dok.html> (the date of access: March 25, 2021).

¹⁰⁰⁰ Explanatory note to the draft of the Federal Law No. 850485-7 “On biological safety in the Russian Federation”.

¹⁰⁰¹ Decree of the President of the Russian Federation No. 12 of January 4, 2021, “On approval of the procedure for public authorities to prevent the threat of emergencies associated with the importation into the territory of the Russian Federation and the spread of dangerous infectious diseases on the territory of the Russian Federation”. URL: <http://publication.pravo.gov.ru/Document/View/0001202101040020> (the date of access: March 25, 2021).

- the Coordination Council to create the Operational Headquarters based on a resolution of the Rospotrebnadzor;
- the Operational Headquarters to develop and approve an action plan to prevent the spread of dangerous infectious diseases, prepare proposals for the establishment of restrictive measures, and conduct an awareness campaign;
- the Rospotrebnadzor to establish one of the risk levels and response measures corresponding to it.

423. Presidential Decree No. 12 also defines a list of measures to prevent and counter the spread of infectious diseases, corresponding to three different levels of risk, and identifies the authorities responsible for their implementation.

424. Each of the risk levels indicates the prevalence of dangerous infectious diseases:

- the first level — the spread occurs on the territory of foreign countries but there is a risk of importation into the territory of the Russian Federation;
- the second level — isolated cases and local disease outbreaks have been reported on the territory of the Russian Federation;
- the third level — there has been an epidemic spread within the territory of one or several subjects of the Russian Federation.

425. In December 2020, the Government of the Russian Federation adopted the order approving an action plan to develop and reinforce the system of sanitary and epidemiological supervision for 2021–2028.¹⁰⁰²

426. Implementation of the action plan is aimed at:

- maintaining a stable sanitary-epidemiological situation, including during the spread of infections;
- accelerating the response to threats to the sanitary-epidemiological welfare of the population;
- developing a system of bodies and organizations carrying out the state sanitary-epidemiological supervision.

427. The basic normative legal acts regulating issues related to the spread of the new coronavirus infection had not been changed during the period under review (**paras. 478–486 of Annex 3 to the**

¹⁰⁰² Order of the Government of the Russian Federation No. 3680-p of December 30, 2020, "On approval of the action plan ('roadmap') to develop and strengthen the system of federal state sanitary-epidemiological supervision for 2021–2028". URL: <http://government.ru/docs/41271/> (the date of access: March 25, 2021).

Analytical Report).¹⁰⁰³

428. At the level of the subjects of the Russian Federation, some restrictive measures were mitigated: mandatory self-isolation was abolished, the working conditions of organizations whose operation involves the mass attendance of citizens were changed (Table 7, Table 8).

2. Measures Taken in the Fight Against the COVID-19 Pandemic

2.1. General Measures

Transport

429. International transportation was restricted (para. 489 of Annex 3 to the Analytical Report).

430. Some of the restrictive measures previously adopted in this area have been repealed or substantially modified, in particular:

- the decision criteria for the resumption of international traffic have been updated;¹⁰⁰⁴
- additional measures to reduce the risks of the COVID-19 spread when operating rail traffic have been identified;¹⁰⁰⁵
- regular international flights with Armenia, Azerbaijan, Belarus, Cuba, Egypt, Finland, Germany, Greece, India, Japan, Kazakhstan, Korea, Kyrgyzstan, Qatar, Serbia, Singapore, Sri

¹⁰⁰³ Federal Law No. 68-FZ of December 21, 1994, "On protection of population and territories from emergency situations of natural and man-made disasters". URL: <http://www.kremlin.ru/acts/bank/7352> (the date of access: March 25, 2021); Resolution of the Government of the Russian Federation No. 304 of May 21, 2007, "On the classification of emergency situations of natural and anthropogenic disasters". URL: <http://pravo.gov.ru/proxy/ips/?docbody=&nd=102114119> (the date of access: March 25, 2021); Federal Law No. 52-FZ of March 30, 1999, "On the sanitary and epidemiological welfare of the population". URL: <http://www.kremlin.ru/acts/bank/13636> (the date of access: March 25, 2021); Resolution of the Chief State Sanitary Doctor of the Russian Federation No. 9 of March 30, 2020, "On ensuring the isolation regime to prevent the spread of COVID-2019". URL: <https://rg.ru/2020/04/01/rospotrebнадзор-post9-site-dok.html> (the date of access: March 25, 2021).

¹⁰⁰⁴ Decision of the Operational Headquarters to prevent the importation and spread of the new coronavirus infection in the Russian Federation of January 28, 2021. URL: <http://government.ru/news/41412/> (the date of access: March 25, 2021).

¹⁰⁰⁵ Resolution of the Chief State Sanitary Doctor of the Russian Federation on Railway Transportation No. 10 of October 30, 2020 (as amended on November 16, 2020), "On additional measures to reduce risks of the COVID-2019 spread in winter railway passenger transportation during the seasonal rise in the incidence of acute respiratory viral infections in 2020–2021". URL: http://www.consultant.ru/document/cons_doc_LAW_366742/ (the date of access: March 25, 2021).

Lanka, Syria, Tajikistan, the UAE, Uzbekistan, Venezuela, Vietnam have been resumed on a reciprocal basis;¹⁰⁰⁶

- the decision to increase the number of regular flights with some of the above-mentioned States has been made;¹⁰⁰⁷
- the flights to foreign countries from airports located on the territory of some subjects of the Russian Federation have been resumed since April 1, 2021;¹⁰⁰⁸
- the railway service with the Republic of Belarus has been resumed;¹⁰⁰⁹
- the suspension of air traffic to and from the UK has been extended until April 16, 2021.¹⁰¹⁰

431. Most of the adopted decisions are of unlimited duration.

Public Health

432. The following measures have been adopted in the healthcare sphere:

- on January 18, 2021, mass vaccination of the population was launched¹⁰¹¹ — for this purpose, the procedure for vaccinating adults against COVID-19 has been developed;¹⁰¹²
- new recommendations on the organization of anti-epidemic regime in hospitals regarding the treatment of patients with COVID-19 have been developed;¹⁰¹³

¹⁰⁰⁶ International air flights have been resumed with the above-mentioned States pursuant to: Order of the Government of the Russian Federation No. 228-p of February 3, 2021. URL: <http://publication.pravo.gov.ru/Document/View/0001202102040003> (the date of access: March 25, 2021); Decision of the Operational Headquarters to prevent the importation and spread of the new coronavirus infection in the Russian Federation of January 28, 2021. URL: <http://government.ru/news/41412/> (the date of access: March 25, 2021); Order of the Government of the Russian Federation No. 136-p of March 25, 2021. URL: <http://static.government.ru/media/files/wAhCC0V00Mzv3b0Mhrxu3tLaAThZ1Dmx.pdf> (the date of access: March 25, 2021); Order of the Government of the Russian Federation No. 2649-p of October 14, 2020. URL: <http://publication.pravo.gov.ru/Document/View/0001202010150059> (the date of access: March 25, 2021); Order of the Government of the Russian Federation No. 2406-p of September 20, 2020. URL: <http://publication.pravo.gov.ru/Document/View/0001202009210027> (the date of access: March 25, 2021).

¹⁰⁰⁷ Decision of the Operational Headquarters to prevent the importation and spread of the new coronavirus infection in the Russian Federation of March 25, 2021. URL: <http://government.ru/news/41820/> (the date of access: March 25, 2021).

¹⁰⁰⁸ Ibid.

¹⁰⁰⁹ Order of the Government of the Russian Federation No. 228-p of February 3, 2021.

¹⁰¹⁰ Decision of the Operational Headquarters to prevent the importation and spread of the new coronavirus infection in the Russian Federation of March 16, 2021. URL: <http://government.ru/news/41747/> (the date of access: March 25, 2021).

¹⁰¹¹ Meeting of the President of the Russian Federation with members of the Government of the Russian Federation. URL: <http://www.kremlin.ru/events/president/news/64886> (the date of access: March 25, 2021).

¹⁰¹² Letter of the Ministry of Health of the Russian Federation No. 1/и/No. 1-9601, "On the vaccination procedure of the adult population against COVID-19". URL: http://www.consultant.ru/document/cons_doc_LAW_373824/ (the date of access: March 25, 2021).

¹⁰¹³ Guideline (approved by the Chief State Sanitary Doctor of the Russian Federation of January 18, 2021), "Recommendations on organization of anti-epidemic measures in medical organizations providing medical care to patients with the new coronavirus infection (COVID-19) (suspected case) in hospital conditions". URL: http://www.consultant.ru/document/cons_doc_LAW_374488/ (the date of access: March 25, 2021).

- the period of preferential duty on medical supplies has been extended until March 31, 2021;¹⁰¹⁴
- the period of support measures to remove barriers for the importation of medical supplies has been extended until March 31, 2021;¹⁰¹⁵
- a procurement ban on foreign-made masks for the purposes of purchasing for state and municipal needs as well as for the needs of national defense and state security has been established;¹⁰¹⁶
- a procedure for conducting an experiment on recording medical certificates of death in the Unified State Health Information System has been defined;¹⁰¹⁷
- practical recommendations for the operation of gas-fired oxygen supply systems in medical institutions have been given;¹⁰¹⁸
- a procedure for carrying out medical and pharmaceutical activities without the necessary permits has been defined;¹⁰¹⁹
- additional funding for hospitals and clinics has been allocated from the federal budget.¹⁰²⁰

433. The listed measures are of a temporary nature and are limited to a specific date or the end of the spread of the coronavirus infection.

Education

434. Due to the improvement of the epidemiological situation, the heads of higher educational

¹⁰¹⁴ Decision of the Council of the Eurasian Economic Commission No. 86 of October 1, 2020, "On amendments to the decision of the Council of the Eurasian Economic Commission No. 130 of November 27, 2009, and the Decision of the Council of the Eurasian Economic Commission No. 21 of March 16, 2020". URL: http://www.consultant.ru/document/cons_doc_LAW_94243/ (the date of access: March 25, 2021).

¹⁰¹⁵ Ibid.

¹⁰¹⁶ Resolution of the Government of the Russian Federation No. 2241 of December 23, 2020, "On amendments to the resolution of the government of the Russian Federation No. 616 of April 30, 2020". URL: <http://publication.pravo.gov.ru/Document/View/0001202012250085> (the date of access: March 25, 2021).

¹⁰¹⁷ Resolution of the Government of the Russian Federation No. 2161 of December 18, 2020, "On conducting an experiment to develop approaches to improve the quality and connectivity of data on population mortality contained in state information resources and the recording of information on medical certificates of death (perinatal death) through a unified state information system in the field of health care". URL: <http://publication.pravo.gov.ru/Document/View/0001202012220044> (the date of access: March 25, 2021).

¹⁰¹⁸ Letter of the Roszdravnadzor No. 01/i108/21 of January 29, 2021, "On practical recommendations for the operation of gas-fired oxygen supply systems in healthcare facilities". URL: <https://sudact.ru/law/pismo-roszdravnadzora-ot-29012021-n-01i-10821-o/> (the date of access: March 25, 2021).

¹⁰¹⁹ Order of the Ministry of Health of the Russian Federation No. 58n of February 8, 2021, "On the peculiarities of admission of individuals to medical activity and (or) pharmaceutical activity without a specialist certificate or certificate of specialist accreditation and (or) in specialties not stipulated by a specialist certificate or certificate of specialist accreditation in 2021 (registered with the Ministry of Justice of Russia No. 62490 of February 15, 2021)". URL: <http://publication.pravo.gov.ru/Document/View/0001202102150018> (the date of access: March 25, 2021).

¹⁰²⁰ Order of the Government of the Russian Federation No. 728-p of March 23, 2021. URL: <http://static.government.ru/media/files/GLInCwdSiWJkOaGYuktQAc3iVXlGa8GA.pdf> (the date of access: March 25, 2021).

institutions have been instructed to organize the educational process in a full-time mode whilst taking measures to prevent the spread of the new coronavirus infection.¹⁰²¹

435. The Ministry of Education of the Russian Federation has issued recommendations for the use of information technology during the spread of the new coronavirus infection. In particular, recommendations provide for the creation and use of an e-learning environment for remote education.¹⁰²²

436. The procedure for passing final state certification by school graduates has been simplified.¹⁰²³

437. Around RUB 14 billion have been allocated from the Reserve Fund of the Government of the Russian Federation to support medical, scientific, and educational institutions.¹⁰²⁴

438. The previously adopted measures (**para. 494 of Annex 3 to the Analytical Report**) continue to be applied. In particular, possibilities for distance learning and remote meetings of dissertation councils remain in place.

2.2. Containment Measures Regarding Industrial and Non-Productive Sectors

439. Senior officials (heads of the supreme executive State authorities) of the subjects of the Russian Federation were recommended to:

- take sanitary-epidemiological measures, including containment measures;
- prohibit legal entities and individual entrepreneurs to hold entertainment events and provide catering services from 23:00 to 06:00.¹⁰²⁵

440. The Ministry of Construction, Housing and Utilities of the Russian Federation has developed recommendations for the prevention of COVID-19 among construction workers, which comprise a number of restrictive measures and shall be applied at all enterprises engaged in construction, reconstruction of

¹⁰²¹ Order of the Ministry of Science and Higher Education of the Russian Federation No. 63 of January 28, 2021, "On the organization of the educational process in educational institutions of higher education with an allowance for risk of the spread of the new coronavirus infection". URL: https://minobrnauki.gov.ru/documents/?ELEMENT_ID=28713 (the date of access: March 25, 2021).

¹⁰²² Letter of the Ministry of Education of Russia No. GD-1736/03 of October 12, 2020, "On recommendations for the use of information technology". URL: http://www.consultant.ru/document/cons_doc_LAW_366383/ (the date of access: March 25, 2021); Decree of the President No. 316 of May 11, 2020, "On determination of the procedure for the renewal of measures on ensuring sanitary and epidemiological welfare of the population in subjects of the Russian Federation in connection with the distribution of the new coronavirus infection [COVID-19]". URL: <http://publication.pravo.gov.ru/Document/View/0001202005110002> (the date of access: March 25, 2021).

¹⁰²³ Resolution of the Government of the Russian Federation No. 256 of February 26, 2021, "On the peculiarities of the state final certification of educational programs of basic general and secondary general education in 2021". URL: <http://publication.pravo.gov.ru/Document/View/0001202103010015> (the date of access: March 25, 2021).

¹⁰²⁴ Order of the Government of the Russian Federation No. 3154-p of November 28, 2020. URL: <http://publication.pravo.gov.ru/Document/View/0001202012010028> (the date of access: March 25, 2021).

¹⁰²⁵ Resolution of the Chief State Sanitary Doctor of the Russian Federation No. 31 of October 16, 2020 (as amended on November 13, 2020), "On additional measures to reduce risks of the COVID-2019 spread during the seasonal rise in the incidence of acute respiratory viral infections and flu" (registered with the Ministry of Justice of Russia No. 60563 of October 26, 2020). URL: https://www.rospotrebnadzor.ru/region/korono_virus/post.php (the date of access: March 25, 2021).

capital construction objects, and landscaping in order to prevent the spread of COVID-19. In addition, supplementary recommendations applicable in conditions of increased epidemiological risks have been developed.¹⁰²⁶ They provide for the introduction of new containment measures in the event of deterioration of the sanitary-epidemiological situation.

441. Sanitary-epidemiological rules for the prevention of the new coronavirus infection, which provide for the implementation of a set of activities to prevent the spread of the infection by the Rospotrebnadzor, have been extended until January 1, 2022. The following measures are envisaged with regard to organizations and individual entrepreneurs: ensuring disinfection regime, identification of persons with signs of infectious diseases, restriction or cancellation of departure from the Russian Federation, temporary cessation of catering and retail trade enterprises, transition to a remote operation mode.¹⁰²⁷

442. The main restrictive measures are still being taken at the level of the subjects of the Russian Federation based on the sanitary-epidemiological situation in the respective territory. Failure to comply with the containment measures entails administrative responsibility (**paras. 499–501 of Annex 3 to the Analytical Report**).

2.3. Containment Measures Regarding Population

443. Given that containment measures regarding population are established by the authorities of the subjects of the Russian Federation, they can differ between regions (**paras. 502–503 of Annex 3 to the Analytical Report**). At the same time, administrative responsibility for violation of legislation in the field of ensuring sanitary-epidemiological welfare of the population remains in force throughout the Russian Federation (**para. 504 of Annex 3 to the Analytical Report**).

2.4. Support Measures for Industrial and Non-Productive Sectors

444. In addition to the support measures previously adopted at the federal level (**para. 507 of Annex 3 to the Analytical Report**), new legal acts have been adopted, providing, among other things, for the following:

- lower insurance premiums for organizations and individual entrepreneurs included in the register of SMEs;¹⁰²⁸

¹⁰²⁶ Letter of the Ministry of Construction of the Russian Federation No. 49501-IF/03 of December 3, 2020, "On sending Recommendations on the COVID-19 prevention among construction industry workers (regulation) and Additional recommendations on COVID-19 prevention during increased epidemiological risks". URL: http://www.consultant.ru/document/cons_doc_LAW_370427/ (the date of access: March 25, 2021).

¹⁰²⁷ Resolution of the Chief State Sanitary Doctor of the Russian Federation No. 15 of May 22, 2020 (as amended on November 13, 2020), "On approval of sanitary and epidemiological regulations 3.1.3597-20 'Prevention of the new coronavirus infection (COVID-19)'" (registered with the Ministry of Justice of Russia No. 58465 of May 26, 2020). URL: <https://rg.ru/2020/05/27/rospotrebnadzor-post15-site-dok.html> (the date of access: March 25, 2021).

¹⁰²⁸ Federal Law No. 102-FZ of April 1, 2020, "On amendments to parts one and two of the Tax Code of the Russian Federation and certain legislative acts of the Russian Federation". URL: <https://rg.ru/2020/04/03/fz102nk-dok.html> (the date of access: March 25, 2021).

- extension of tax payment deadlines for the entities included in the register of SMEs and operating in the most affected sectors, as well as for the socially oriented non-profit organizations;¹⁰²⁹
- restarting the program on preferential loans for the enterprises operating in the least recovered sectors¹⁰³⁰ of the economy;¹⁰³¹
- allocating subsidies to private zoos, circuses, dolphinariums, and aquariums;¹⁰³²
- extension of the support program for airlines suffering losses due to the spread of the new coronavirus infection.¹⁰³³

445. In addition to the measures adopted at the federal level, regional support measures have also been taken (Table 7, Table 8).

2.5. Support Measures for Population

446. In addition to the previously adopted measures (para. 511 of Annex 3 to the Analytical Report), the following measures have been taken:

- the program of preferential mortgage loans for the purchase of real estate on the primary market has been extended;¹⁰³⁴
- the tourist “cashback” program providing a partial refund of the cost of traveling within Russia has been renewed;¹⁰³⁵

¹⁰²⁹ Resolution of the Government of the Russian Federation No.1791 of November 7, 2020. URL: <http://publication.pravo.gov.ru/Document/View/0001202011130013> (the date of access: March 25, 2021).

¹⁰³⁰ These sectors include physical and recreational activities, hotel business, museums, zoos, film rentals, tourist and health resort organizations, catering services, the organization of conferences and exhibitions, art, sports, recreation and entertainment spheres.

¹⁰³¹ Resolution of the Government of the Russian Federation No.279 of February 27, 2021. URL: <http://publication.pravo.gov.ru/Document/View/0001202103010038> (the date of access: March 25, 2021).

¹⁰³² Order of the Government of the Russian Federation No.2896-p of November 7, 2020. URL: <http://static.government.ru/media/files/eP3a5C9wh89f0ibKrHRFvMT5BhUwy8pC.pdf> (the date of access: March 25, 2021).

¹⁰³³ Resolution of the Government of the Russian Federation No.2048 of December 9, 2020. URL: <http://publication.pravo.gov.ru/Document/View/0001202012140074> (the date of access: March 25, 2021); Resolution of the Government of the Russian Federation No.2067 of December 10, 2020. URL: <http://publication.pravo.gov.ru/Document/View/0001202012140078> (the date of access: March 25, 2021).

¹⁰³⁴ Resolution of the Government of the Russian Federation No.1732 of October 24, 2020. URL: <http://publication.pravo.gov.ru/Document/View/0001202010280021> (the date of access: March 25, 2021).

¹⁰³⁵ Resolution of the Government of the Russian Federation No.1567 of September 30, 2020. URL: <http://publication.pravo.gov.ru/Document/View/0001202010010007> (the date of access: March 25, 2021).

- the Bank of Russia has given recommendations on temporary waiver of foreclosure and forced eviction of debtors from foreclosed residential premises¹⁰³⁶ on the restructuring of loans (credits) to individuals and SMEs;¹⁰³⁷
- one-time payment to families with children under the age of 8 in the amount of RUB 5,000;¹⁰³⁸
- the list of payments to medical and other workers involved in the provision of medical care for the diagnosis and treatment of the new coronavirus infection has been expanded;¹⁰³⁹
- a number of terms concerning the stay or residence of foreign citizens and stateless persons in the Russian Federation have been suspended.¹⁰⁴⁰

¹⁰³⁶ Information letter of the Bank of Russia No. IN-06-59/177 of December 24, 2020, "On the extension of certain measures to limit the consequences of the spread of the coronavirus infection (COVID-19)". URL: https://www.cbr.ru/StaticHtml/File/59420/20201224_in_06_59-177.pdf (the date of access: March 25, 2021).

¹⁰³⁷ Information letter of the Bank of Russia No. IN-06-59/178 of December 24, 2020, "On the loan restructuring (credits) to individuals and SMEs". URL: https://www.cbr.ru/StaticHtml/File/59420/20201224_in_06_59-178.pdf (the date of access: March 25, 2021).

¹⁰³⁸ Resolution of the Government of the Russian Federation No. 2141 of December 17, 2020, "On approval of the regulations for making payments under Decree of the President of the Russian Federation No. 797 of December 17, 2020, 'On a one-time payment to families with children'". URL: <http://publication.pravo.gov.ru/Document/View/0001202012180028> (the date of access: March 25, 2021).

¹⁰³⁹ Resolution of the Government of the Russian Federation No. 1896 of November 23, 2020, "On state social support in 2020–2021 of medical and other workers, military personnel performing military service under the contract and under conscription, employees having special ranks and serving in institutions and bodies of the criminal enforcement system, persons serving in the troops of the national guard of the Russian Federation and having special ranks of police, employees of bodies of internal affairs of the Russian Federation, military personnel of rescue military formations, employees and workers of the federal fire-fighting service as well as employees of the Ministry of the Russian Federation for Civil Defense, Emergencies and Elimination of Consequences of Natural Disasters, organizations, institutions, military units, management bodies, territorial bodies of the federal executive authorities providing medical assistance (participating in providing, providing medical assistance) for diagnosis and treatment of the new coronavirus infection (COVID-19), medical workers coming into contact with patients with a diagnosed new coronavirus infection". URL: <http://publication.pravo.gov.ru/Document/View/0001202011240041> (the date of access: March 25, 2021); Resolution of the Government of the Russian Federation No. 1762 of October 30, 2020, "On state social support in 2020–2021 of medical and other workers of medical and other organizations (their structural subdivisions) providing medical assistance (participating in the provision, providing medical care) for the diagnosis and treatment of the new coronavirus infection (COVID-19), medical workers in contact with patients diagnosed with the new coronavirus infection (COVID-19), amendments to the Temporary Rules for recording information to prevent the spread of the new coronavirus infection". URL: <http://publication.pravo.gov.ru/Document/View/0001202010310004> (the date of access: March 25, 2021); Resolution of the Government of the Russian Federation No. 2276 of December 26, 2020, "On additional state social support in January 2021 for workers, military personnel, employees, and other persons entitled to special social payments established by the Resolutions of the Government of the Russian Federation No. 1762 of October 30, 2020 and No. 1896 of November 23, 2020 and the peculiarities of these special social payments for January 2021". URL: <http://publication.pravo.gov.ru/Document/View/0001202012290033> (the date of access: March 25, 2021).

¹⁰⁴⁰ Decree of the President of the Russian Federation No. 274 of April 18, 2020 (as amended on January 2, 2021), "On temporary measures to regulate the legal status of foreign citizens and stateless persons in the Russian Federation in connection with the threat of the further spread of the new coronavirus infection (COVID-19)". URL: http://www.consultant.ru/document/cons_doc_LAW_350638/ (the date of access: March 25, 2021).

3. Court Practice With Respect to the COVID-19 Pandemic

3.1. Judicial Practice of the Constitutional Court of the Russian Federation and Constitutional (Statutory) Courts of the Subjects of the Russian Federation

447. On December 25, 2020, the CC RF issued the Resolution¹⁰⁴¹ recognizing that subparagraph 3 of paragraph 5 of the Resolution of the Governor of Moscow Oblast¹⁰⁴² is not inconsistent with the Constitution of the Russian Federation.

448. According to the applicant, the disputed provisions, which imposed an obligation to restrict a stay outside one's place of residence, had been adopted in excess of authority and disproportionately restricted the right to freedom of movement.

449. The CC RF concluded that such restrictions were a temporary administrative and legal measure employed to prevent the occurrence and development of emergency situations as well as to reduce the incidence of the coronavirus infection.

450. In accordance with the position of the CC RF, the introduction of such measures prior to the governor being given such powers was an operative anticipatory regulation, which was later legitimized by acts of a higher level.

451. The CC RF noted that the disputed provisions were adopted in conjunction with other provisions of constitutional and sectoral regulation, and their operation had the constitutionally justified purpose of protecting public health amid the spread of infection in the subjects of the Russian Federation.

452. Having drawn attention to the need to maintain a balance between the protection of life and health of citizens and the rights and freedoms of an individual citizen, the CC RF indicated that the restrictions were proportionate as manifested in establishing exceptions and eliminating the need to choose between compliance with the Decree and work attendance in connection with the Decree of the President of the Russian Federation No. 206 of March 25, 2020, "On declaring the non-working days in the Russian Federation".¹⁰⁴³

¹⁰⁴¹ Resolution of the CC of the Russian Federation No. 49-P of December 25, 2020, "On the case on the review of constitutionality of the subparagraph 3 of paragraph 5 of the Resolution of the Governor of Moscow Oblast 'On the introduction of the high alert mode in Moscow Oblast for administrative bodies and forces of the Moscow Oblast system of emergency prevention and response and some measures to prevent the spread of novel coronavirus infection (COVID-2019) on the territory of Moscow Oblast'" pursuant to the request of the Protvinsky Town Court of Moscow Oblast". URL: <http://publication.pravo.gov.ru/Document/View/0001202012290002> (the date of access: March 25, 2021).

¹⁰⁴² Subparagraph 3 of paragraph 5 of the Resolution of the Governor of Moscow Oblast "On the introduction of the high alert mode in Moscow Oblast for administrative bodies and forces of the Moscow Oblast system of emergency prevention and response and some measures to prevent the spread of novel coronavirus infection (COVID-2019) on the territory of Moscow Oblast" pursuant to the request of the Protvinsky Town Court of Moscow Oblast".

¹⁰⁴³ Decree of the President of the Russian Federation No. 206 of March 25, 2020, "On declaring the non-working days in the Russian Federation". URL: <http://publication.pravo.gov.ru/Document/View/0001202003250021> (the date of access: March 25, 2021).

453. On November 5, 2020, the Constitutional Court of the Komi Republic adopted a Resolution¹⁰⁴⁴ that declared paragraph 11 of the Decree of the Head of the Komi Republic,¹⁰⁴⁵ which imposed a ban on holding mass events in the region, consistent with the Constitution of the Komi Republic.

454. A group of deputies made an inquiry to verify the constitutionality of the provisions of the Decree of the Head of the Komi Republic in connection with their adoption outside the competence of the relevant authority.

455. The Constitutional Court of the Komi Republic has concluded that the power to introduce a high alert mode and to implement restrictive measures against citizens and organizations belongs to the discretion of the Head of the Komi Republic and is in systemic connection with the prescriptions of Russian legislation.

456. The introduction of restrictive measures pursued the constitutionally significant objective to protect the population and the lives and health of citizens amid the spread of the coronavirus infection that, according to the Constitutional Court of the Komi Republic, could not be regarded as a violation of the Constitution of the Komi Republic.

3.2. Explanations of the Supreme Court of the Russian Federation

457. On February 17, 2021, The Supreme Court of the Russian Federation issued the Review No. 3 on selected issues of court practice related to the application of legislation and measures to fight the spread of the new coronavirus infection (COVID-19) in the Russian Federation.¹⁰⁴⁶ It contains the following conclusions:

- a court is entitled to postpone the trial if a witness, specialist, or expert is unable to attend the trial due to restrictive measures;
- inability to perform enforcement actions due to the adoption of restrictive measures can be a ground for their postponement or suspension of enforcement proceedings;
- corporate employees that provide medical assistance in diagnosis and treatment of the new coronavirus infection, including medical workers who had contact with patients diagnosed with the new coronavirus infection when performing their duties, are entitled to social benefits;
- sub-tenants are entitled to apply for rent deferral pursuant to Part 1 of Article 19 of the Federal Law No. 98-FZ;
- the tenant is entitled to apply for a deferral pursuant to Part 1 of Article 19 of the Federal Law No. 98-FZ after an agreement to reduce the rent is reached;

¹⁰⁴⁴ Resolution of the Constitutional Court of the Komi Republic of November 5, 2020, in the case on the review of constitutionality of the paragraph 11 of the Decree of the Head of the Komi Republic No. 16 of March 15, 2020, "On the introduction of the high alert mode" on request of the deputies of the State Council of the Komi Republic, IA Bogdanov, EV Dyachkova and O. Mikhailov. URL: http://ksrk.rkomi.ru/content/18196/2020.11.06_Постановление%20КС%20ПК%20от%2005.11.2020.pdf (the date of access: March 25, 2021).

¹⁰⁴⁵ Decree of the Head of the Komi Republic No. 16 of March 15, 2020 (as amended on September 30, 2020, No. 109), "On the introduction of the high alert mode". URL: <https://docs.cntd.ru/document/570933790?marker> (the date of access: March 25, 2021).

¹⁰⁴⁶ Approved by the Presidium of the Supreme Court of the Russian Federation on February 17, 2021. URL: <http://www.supcourt.ru/documents/all/29689/> (the date of access: March 25, 2021).

- owners and utilizers of non-residential premises in apartment buildings are subject to a moratorium on the calculation of penalties established by the Resolution of the Government of the Russian Federation No. 424 of April 2, 2020, "On the provision of utilities to owners and users of premises in apartment buildings and residential buildings";
- the current legislation does not provide for a mandatory pre-trial procedure for disputes on charging the funds under a contract on the sale of a tourist product if the trip has not taken place due to the spread of COVID-19;
- the tour operator is obliged to return to the customer the sum paid in case of temporary incapacity to labor for more than 2 months in a row, any part of which took place from July 24, 2020;
- the customer has a right to claim the termination of the contract on the sale of a tourist product and demand a refund if the customer is over 65 at the time of such a request;
- the customer is entitled to refund the carriage fee if she or he acquires a group I or II disability¹⁰⁴⁷ before the expiration of 3 years from the departure date of the flight or before the date of air transportation;
- the carrier does not pay penalties for refusing to perform the contract in the event of a threat and/or occurrence of certain emergency situations, the introduction of a state of high alert mode, or an emergency situation in the entire territory of the Russian Federation;
- the penalty accrued due to the breach of the terms regarding the transfer of a co-funded facility to a construction co-investor does not include the amount accrued for the period from April 3, 2020, to January 1, 2021;
- individuals are obliged to pay taxes within the established deadlines unless otherwise stipulated by law;
- the current legislation does not provide for a mandatory pre-trial procedure for disputes on challenging the tax authorities' refusal to grant subsidies, as well as the tax authorities' inaction in relation to applications for subsidies for SMEs operating in the most affected sectors of the Russian economy amid the deteriorating situation as a result of the spread of the new coronavirus infection;
- a person infected with COVID-19 or who had contact with such a person and is obliged by virtue of a ruling or order to comply with sanitary-epidemiological rules may be prosecuted under Article 236 of the Criminal Code of the Russian Federation for a violation of the imposed restrictions;
- criminal trials requiring urgent consideration may be conducted entirely via videoconference (even if the parties object);

¹⁰⁴⁷ Pursuant to point 2 of paragraph 10 of the Resolution of the Government of the Russian Federation No. 991 of July 6, 2020 (as amended on August 31, 2020), "On approval of Regulation on the peculiarities of the contract of carriage of passengers by air, including the right of the carrier to unilaterally change the terms of such contract or refuse its performance, as well as the order and terms of refund of the payment for air transportation in the threat and/or emergency situations, introduction of the high alert or emergency situations on the entire territory of the Russian Federation". URL: <http://publication.pravo.gov.ru/Document/View/0001202007070053> (the date of access: March 25, 2021).

- a petition for the preventive measure of pretrial detention may be considered via videoconferencing systems;
- the need to ensure the sanitary-epidemiological safety of the court session participants cannot be a reason for holding a closed court session;
- repeal of a regulatory act containing mandatory rules of conduct during the introduction of a high alert mode or repeal of its specific provisions may constitute grounds for terminating proceedings on an administrative offense stipulated by Article 20.6.1 of the Code of Administrative Offenses of the Russian Federation or canceling the decision taken on the case of the offense to impose an administrative penalty if it has not been executed;
- foreign citizens or stateless persons cannot be held administratively liable due to evasion of the administrative punishment in the form of administrative expulsion from the Russian Federation¹⁰⁴⁸ in the form of controlled independent departure from the Russian Federation during the period from March 15, 2020, to June 15, 2021.

¹⁰⁴⁸ See Part 3 of Article 20.25 of the Code of Administrative Offenses of the Russian Federation No. 195-FZ of December 30, 2001 (as amended on December 30, 2020).

TABLE 1. PUBLIC “EMERGENCY” RESPONSE REGIME IN FRANCE, GERMANY, ITALY, SPAIN

Criteria	France	Germany	Italy	Spain
Fundamental law	Constitution	Constitution	Constitution	Constitution
Term used	<ul style="list-style-type: none"> • Exceptional circumstances (Article 16) — a serious or immediate threat to “the institutions of the Republic, the independence of the Nation, the integrity of its territory or the fulfillment of its international commitments” and the “proper functioning of the constitutional public authorities” must be interrupted; • State of siege (Article 36) — in case of an imminent threat resulting from a foreign war or an armed insurrection; implies the transfer of public order 	Emergency Constitution — a state of internal emergency which is declared in order to avert an imminent danger to the existence or free democratic basic order of the Federation or of a land	<p>State of a war (Article 78) — no definition.</p> <p>No other state of emergency is regulated by the Constitution</p>	State of alarm, emergency, siege — situations of catastrophe, health crises, paralysis of public services (the only time it has been declared before was during an air traffic controllers' strike), and shortage of basic necessities



Criteria	France	Germany	Italy	Spain
	and police powers to the military authority			
Competent authorities	<ul style="list-style-type: none"> • Exceptional circumstances — President upon consultation of the Prime Minister, the Presidents of the Houses of Parliament and the Constitution Council before enacting each measure; • State of siege — Council of Ministers 	Federal Government / to issue instructions to land governments	<ul style="list-style-type: none"> • Parliament / to declare a state of war and vest the Government with the necessary powers. The President of the Republic shall make declarations of wars as have been agreed by the Parliament; • Government / to issue an act for bodies of the regions, metropolitan cities, provinces, and municipalities if the latter fail to comply with international rules and treaties or EU legislation, or in the case of grave danger for public safety and security, or whenever such action is necessary to preserve legal or economic unity and in particular to guarantee the basic level of benefits relating to civil and social entitlements, regardless of the geographic borders 	Government (by means of a decree agreed upon by the Council of Ministers)



Criteria	France	Germany	Italy	Spain
			of local authorities (the State has the exclusive legislative powers in a matter of international prophylaxis); issue a temporary measure (Decree-law), in case of necessity and urgency (such a measure shall lose effect from the beginning if it is not transposed into law by the Parliament within 60 days of its publication)	
Time limit	<ul style="list-style-type: none"> • Exceptional circumstances — no time limit; • State of siege — specified by the decree 	Not specified	Not specified	Maximum 15 days with a possibility of extension
Constitutionality	Absence of substantive constitutional provisions (in relation to the “state of health emergency”)	Absence of substantive constitutional provisions (COVID-19 is a hazard neither to the free democratic order nor to the existence of the Federation or a land so that a state of internal emergency cannot legally be declared within the narrow boundaries	Absence of substantive constitutional provisions	Yes, according to Article 116.2



Criteria	France	Germany	Italy	Spain
		of Article 91 of the German Constitution)		
Pre-COVID-19 legislation	<ul style="list-style-type: none"> • Law No. 55-385 of April 3, 1955, modified by the Ordinance No. 60-372 of April 15, 1960; • Law No. 2015-1501 of November 20, 2015 	<ul style="list-style-type: none"> • Federal Infection Protection Act (FIPA); • Disaster Protection Act — in 16 lands 	<ul style="list-style-type: none"> • Law No. 833 of 1978 (on the Establishment of the National Health Service); • Law No. 106/1982 on the Approval and execution of the IHR 2005; • National Plan for Preparedness and Response to an Influenza Pandemic (2006); • Civil protection code (Legislative Decree No. 1 of January 2, 2018) 	<ul style="list-style-type: none"> • Organic Law No. 3/1986 of April 14, 1986, on Special Measures in Public Health Issues; • Organic Law No. 4/1981 of June 1, 1981, on state of alarm, state of emergency, and state of siege; • Law No. 33/2011 of October 4, 2011 (the General Law on Public Health); • Act No. 17/2015 of July 9, 2015, on the National Civil Protection System
Term used	State of emergency	<ul style="list-style-type: none"> • No term is provided in the FIPA; • State of disaster — in 16 lands 	State of emergency	State of alarm, emergency, and siege
Definition	State of emergency — imminent peril resulting from serious violations of the public order or when events present	<ul style="list-style-type: none"> • No definition used in the FIPA; 	<ul style="list-style-type: none"> • State of emergency — emergencies connected with disasters of natural origin or deriving from 	<ul style="list-style-type: none"> • State of Alarm (on the basis of essential goods stock-outs in the whole national territory or in a

Criteria	France	Germany	Italy	Spain
	<p>the quality of public calamity by their nature and their importance</p>	<ul style="list-style-type: none"> State of disaster — damaging event which endangers or substantially impairs the life, health, or vital supplies of numerous people, animals, natural resources, or substantial material assets to such an unusual extent that the resulting threat to public safety can only be effectively countered if the competent authorities and services, organizations and deployed forces work together under the uniform overall management of the competent civil protection authority 	<p>human activity that can be faced by means of actions that can be implemented by the individual bodies and administrations that are competent in an ordinary way; emergencies connected with natural or man-made disasters which by their nature or extension require a coordinated response by several bodies or administrations as they must be faced through the deployment of extraordinary means to be implemented for a predefined period of time, regulated by the Regions and autonomous provinces;</p> <ul style="list-style-type: none"> Emergencies of national importance connected with natural origin or man-made disasters which, by reason of their intensity or extension, must, with immediate 	<p>certain region), the government may issue necessary orders or decide to intervene in such services or mobilize its personnel in order to ensure the functioning of affected services;</p> <ul style="list-style-type: none"> State of Emergency (which may be requested on the basis of serious alteration of essential public services, among others), the government may intercept any kind of communications provided that it is necessary to clarify alleged criminal offenses or to maintain public order; State of Siege, the government directing military and defense policies, shall assume all exceptional prerogatives



Criteria	France	Germany	Italy	Spain
			intervention, be faced with extraordinary means and powers to be employed during limited and predefined periods of time	
Special criteria for emergency	Imminent danger can be identified resulting from serious breaches of public order; events that constitute a public calamity by their nature and importance	<ul style="list-style-type: none"> • An epidemic situation of national importance determined by Federal Parliament; • Damaging event; • Spread of a threatening communicable disease 	Imminent danger to the population	<ul style="list-style-type: none"> • Catastrophes, calamities, or public disasters (earthquakes, floods, fires, big accidents, etc.); • Health crises (epidemics, serious contamination situations, etc.); • Interruption of public services that are essential to the community or situations of a shortage of basic commodities
Duration period	12 days, unless prorogued or changed by the law	Not specified	12 months with a possibility of extension up to 12 months	15 days with a possibility of extension
Extension of powers	Yes, to the executive branch	<ul style="list-style-type: none"> • Federal Ministry of Health acts in a framework of an epidemic situation of national importance; • Federal Parliament declares an epidemic of national importance / determines the conditions 	Yes, to the executive branch (in a framework of an emergency situation of national importance)	Yes, to health authorities: the health authorities of the various public administrations may, within the scope of their powers, adopt the measures provided for in this Law when so required for urgent or necessary health reasons



Criteria	France	Germany	Italy	Spain
		for an epidemic situation to be considered no longer existing		(Organic Law 3/1986 of April 14, on Special Measures in Public Health)
Competent authorities	<ul style="list-style-type: none"> • State's representant in the departments / to reduce the freedom of movement at certain time and place; • Minister of Interior Affairs / house arrest of any individual presenting a threat to the public order and safety; • Council of Ministers / dissolving any group or association presenting threat and spaces of public gathering; • Minister of Interior Affairs or representant in the departments / closure of theaters or bars by order 	<ul style="list-style-type: none"> • Federal Parliament / to declare an epidemic of national importance / determine the conditions for an epidemic situation to be considered no longer existing; • Federal Ministry of Health / ensuring the supply of medical products 	<ul style="list-style-type: none"> • Government / management of the state of emergency; • Council of Ministers / to declare emergency / appointment of the Extraordinary Commissioner; • Ministry of Health / to issue decrees in matters of health, within a framework of emergency of national importance; • Extraordinary Commissioner / implementation and coordination of the measures needed to contain and fight the COVID-19; • Regional, local authorities / implementation of regulations; 	<ul style="list-style-type: none"> • Health authorities (Ministry of Health) / imposing personal obligations on retired and trainee health workers; requisitions of goods; duties on the population to collaborate with the police, etc. Regional health and emergency laws also contain similar provisions; • State and regional authorities / extraordinary powers to deal with pandemics; • Government / competent body (all civil authorities, members of the police forces of the autonomous and local councils, other civil servants and workers are placed under the direct authority of the Spanish Government)



Criteria	France	Germany	Italy	Spain
			<ul style="list-style-type: none"> • Prefect / implementation and coordination of the measures at provincial level 	
Established procedure to take emergency measures	By a decree adopted by the Council of Ministers	By a decision of the Federal Parliament	By a decree adopted by the Council of Ministers (by the executive)	By a Governmental decree agreed upon by the Council of Ministers
COVID-19 legislation	<ul style="list-style-type: none"> • Decree No. 2020-260 of March 16, 2020, modified by the Decree No. 2020-279 of March 19, 2020 (declaration of a lockdown); • Law No. 2020-290 of March 23, 2020 (state of health emergency) 	<ul style="list-style-type: none"> • Act Regulating Special Powers of Action in the Context of an Epidemic Situation of National or Nationwide Scope and Defining Responsibilities under the Infection Protection Act — North Rhine-Westphalia; • Regulation on Protection against New Infections with the Coronavirus SARS-CoV-2; • Corona Travel Regulation; • Regulation on Childcare; • Federal Infection Protection Act (amended) 	<ul style="list-style-type: none"> • Decree-Law No. 6 of February 23, 2020, replaced by Law No. 13 of March 5, 2020; • Decree No. 371 of February 5, 2020; • Decree No. 640 of February 27, 2020; • Decree-Law No. 18 of March 17, 2020 (“Cura Italia”); • Decree-Law No. 23 of April 8, 2020 (“Liquidità”); • Decree-Law No. 34 of May 19, 2020 (“Rilancio”) 	<ul style="list-style-type: none"> • Royal Decree No. 463/2020 of March 14, 2020 (extending Decree — Royal Decree No. 492/2020 of April 24, 2020); • Royal Decree-Law No. 21/2020 of June 9, 2020, on urgent prevention, containment, and coordination of measures to deal with the health crisis caused by COVID-19
Term used	State of health emergency	An epidemic situation of national importance	State of emergency	State of alarm — in order to deal with the health

Criteria	France	Germany	Italy	Spain
				emergency caused by the COVID-19
Competent authorities	<ul style="list-style-type: none"> • Prime Minister / to restrict the freedom of movement, take measures on isolations, quarantine, closure of businesses and/or places of public gathering, requisition of goods/services, control of prices; • Minister of Health / organization of public health service 	<ul style="list-style-type: none"> • Government of the Land / to submit to the Land Parliament a report on the measures taken, including the promulgated ordinances and decrees, together with an assessment of the situation; • Land Parliament / to declare an epidemic situation; • Land Ministry of Health / confiscation and disposal of medical, nursing or sanitary equipment, including raw materials, and medical and nursing care equipment; • Local authorities / enforcement of the regulations; • Federal Government / to regulate the import of 	<ul style="list-style-type: none"> • Council of Ministers / to adopt a decree to take measures; • The Italian National Institute of Health / monitoring the development of COVID-19 situation; • State Ministry of Health / supervision of public health service, issuing restrictive measures to safeguard public health; • Extraordinary Commissioner / coordination and implementation of national measures on the whole territory; • Regional, local authorities / implementation of regulations 	Central government / to declare a state of alarm



Criteria	France	Germany	Italy	Spain
		protective equipment independently		
Sunset clause	Specified in legislation	2 months	Not specified	Not specified
Decision-making mode	Centralized	Decentralized	Centralized	Centralized



TABLE 2. PUBLIC “EMERGENCY” RESPONSE REGIME IN SWEDEN, UK, USA, CHINA, RUSSIA

Criteria	Sweden	UK	USA	China	Russia
Fundamental law	Constitutional laws	No written Constitution	Constitution	Constitution	Constitution
Term used	Constitutional readiness – a civilian crisis in peacetime is to be handled according to the ordinary legislative procedure	There is no legal meaning attached to “emergency” but in some laws, certain powers can be exercised if it is “urgent”	Not specified	State of emergency – definition not specified	State of emergency – attempts to change the constitutional order of the Russian Federation by violent means; natural and man-made emergencies, environmental emergencies, including epidemics and epizootics resulting from accidents, natural hazards, disasters, natural and other disasters
Competent authorities	<ul style="list-style-type: none"> • Riksdag or the Government / adopting ordinary legislation during civilian crises; • Authorities at state, regional, and 	Westminster Parliament (for UK wide measures, and for measures applying to England). Scottish Parliament (for Scotland), Northern Ireland Assembly (for	<ul style="list-style-type: none"> • President / Executive emergency powers (including presidential emergency powers); • States / “police powers” – to 	<ul style="list-style-type: none"> • National People’s Congress Standing Committee / to decide a state of emergency; • President and the State Council / to 	President or the Government of the Russian Federation with immediate notification to the Council of Federation and the State Duma

Criteria	Sweden	UK	USA	China	Russia
	municipal level / cooperation in times of crisis	Northern Ireland) and Senedd Cymru (for Wales). Government Departments and Ministers also have individual powers within their normal fields of competence	enforce public health interventions like isolation, quarantine, and other laws to mitigate the spread of an infectious disease like COVID-19 during a pandemic; <ul style="list-style-type: none"> Local governments / to declare local emergencies 	decide and declare a state of emergency; <ul style="list-style-type: none"> State Council / to solely decide and declare a state of emergency on sub-parts of provincial areas 	
Time limit	Not specified	All emergency powers have a time limit after which they will automatically expire, from 1 month up to 2 years. These time limits can generally be extended	Not specified	Not specified	30 days, in some territories — 60 days
Constitutionality	No substantive constitutional provisions	No written constitution, so no specific test of “constitutionality”. However the legality of many of the regulations has been tested in court, and in most cases they	No substantive constitutional provisions	No substantive constitutional provisions	Article 56 of the Constitution of the Russian Federation



Criteria	Sweden	UK	USA	China	Russia
		measures have been found lawful			
Pre-COVID-19 legislation	<ul style="list-style-type: none"> Swedish Communicable Diseases Act (2004:168); Act on Municipalities and County Councils Measures Ahead of and During Extraordinary Situations During Peace Time and Times of High Preparedness (2006:544) 	<ul style="list-style-type: none"> Civil Contingencies Act 2004: applies throughout the UK and designed to be used during emergencies; Public Health (Control of Disease) Act 1984: applies to England / Wales only <p>It should be noted that the Civil Contingencies Act has not been used as a basis for the response to the COVID-19 pandemic. The UK Parliament enacted the Coronavirus Act 2020 on the basis of the Public Health (Control of Disease) Act 1984</p>	<ul style="list-style-type: none"> National Emergencies Act; Public Health Service Act; Robert T. Stafford Disaster and Emergency Assistance Act (the Stafford Act); Defense Production Act 	<ul style="list-style-type: none"> Emergency Response Law 2007; Prevention and Treatment of Infectious Diseases Law 2013; Regulation on Responses to Public Health Emergencies 2011 (administrative regulation by the State Council); National Response Plan for Public Health Emergencies 2006 (normative document by the State Council); Local level: Response Plans for Public Health Emergencies at provincial, prefectural, and county levels (normative 	<ul style="list-style-type: none"> Federal Law No. 68-FZ of December 21, 1994, "On the Protection of the Population and Territories from Natural and Technogenic Emergency Situations"; Federal Law No. 52-FZ of March 30, 1999 "On the sanitary-epidemiological well-being of the population"

Criteria	Sweden	UK	USA	China	Russia
				documents by local governments)	
Term used	<ul style="list-style-type: none"> Public health hazard; Preparedness for extraordinary situations 	Emergencies	<ul style="list-style-type: none"> Public health emergency; Disaster, emergency, emergency disaster (e.g., New York) 	<ul style="list-style-type: none"> Emergency incidents; Public health emergency 	<ul style="list-style-type: none"> An emergency; The mode of operation of management bodies and forces of the unified state system of prevention and liquidation of emergency situations; High alert mode; Restrictive measures (quarantine)
Definition	<ul style="list-style-type: none"> Public health hazard — a disease that is dangerous to public health and society; Preparedness for extraordinary situations — a serious disturbance or imminent risk of a 	An event or situation which threatens serious damage to human welfare in a place in the United Kingdom, an event or situation which threatens serious damage to the environment of a place in	<ul style="list-style-type: none"> Public health emergency — a disease or disorder that presents a public health emergency; Disaster, emergency, emergency disaster 	<ul style="list-style-type: none"> Emergency incidents — natural disasters, accidental disasters, public health incidents, or social safety incidents that take place by accident, has caused or might cause 	<ul style="list-style-type: none"> An emergency — situation in a certain territory resulting from an accident, natural hazard, catastrophe, spread of a disease posing a danger to others, natural or other

Criteria	Sweden	UK	USA	China	Russia
	<p>serious disturbance in important societal functions and requires urgent action by a municipality or a region</p>	<p>the United Kingdom, or war, or terrorism, which threatens serious damage to the security of the United Kingdom</p>	<p>— a public health emergency, including significant outbreaks of infectious diseases or bioterrorist attacks, otherwise exists</p>	<p>serious social damage and needs the adoption of emergency response measures;</p> <ul style="list-style-type: none"> • Public health emergency — sudden outburst of a serious contagious disease, colonial disease of unknown causes, important alimentary or occupational toxicosis that has caused or may cause severe effect on the health of the general public and to other incidents that severely affect the health of the general public 	<p>disaster which may cause or have caused human casualties, damage to human health or the environment, significant material losses, and disturbance of people's living conditions;</p> <ul style="list-style-type: none"> • The mode of operation of management bodies and forces of the unified state system of prevention and liquidation of emergency situations — depending on the situation, the order of organization of activities of management bodies and forces of the unified state system of prevention and liquidation of



Criteria	Sweden	UK	USA	China	Russia
					<p>emergencies and the main activities carried out by the said bodies and forces in the daily operation mode with the introduction of a regime of high preparedness;</p> <ul style="list-style-type: none"> • High alert mode — associated with the threat of an emergency and can be introduced depending on the situation, the forecasting of the threat of an emergency, and the occurrence of an emergency; • Restrictive measures (quarantine) — restrictive measures (quarantine), including administrative, health, veterinary,



Criteria	Sweden	UK	USA	China	Russia
					and other measures aimed at preventing the spread of infectious diseases and providing for a special regime of economic and other activities, restricting the movement of people, vehicles, goods, and animals
Special criteria for emergency	Danger to public health and society, cause of a serious disturbance	Serious damage to human welfare	The disease causes a public health emergency	Actual or potential serious social damage and need for the adoption of emergency response measures	Spread of a disease posing a danger
Duration period	Not specified	Different powers have different durations, ranging from 30 days, up to 2 years before they will expire	Not specified	Not specified	Not specified
Extention of powers	Yes, the temporary provisions in the Communicable Diseases Act relating to the Government's competence to adopt provisions in the field of	No: <ul style="list-style-type: none"> no general power to declare an emergency, and nor is there any requirement for such a declaration 	Yes: <ul style="list-style-type: none"> President / expanded authority — 123 statutory powers that are activated and available to the 	Yes, little limits on government powers	Yes, the Government of the Russian Federation; the highest officials of the subjects of the Russian Federation / to take all necessary measures

Criteria	Sweden	UK	USA	China	Russia
	<p>disease control were in force between April 18 and June 30, 2020</p>	<p>before emergency powers are exercised;</p> <ul style="list-style-type: none"> • there is a minor additional power which applies in cases of "urgency". The criteria are that there is "an urgent need" but that there is "insufficient time" for the regular procedure to be followed. This is a limited power which means that a Minister can do something by way of a written direction, rather than by regulations. A "direction" will have the force of law for this purpose, but it does not fall within the normal hierarchy of norms; • Parliament can amend the 	<p>President when a national emergency declared;</p> <ul style="list-style-type: none"> • Secretary of Health and Human Services / authorization of the use of an unapproved drug, device, or biological product or unapproved use of an approved drug, device, or biological product 		



Criteria	Sweden	UK	USA	China	Russia
		<p>emergency regulations – this is very unusual as in normal practice Parliament only accepts or rejects secondary legislation, it never amends it</p>			
Competent authorities	<ul style="list-style-type: none"> • All competent authorities at all state levels; • Public Health Agency and the National Board of Health and Welfare / coordinating 	<ul style="list-style-type: none"> • Minister (either UK wide or for Wales, Scotland and Northern Ireland) can specify that a particular thing is or isn't an emergency by order; • Order in Council (meaning they are made in the name of the Crown) or by a senior Minister of the Crown. A senior Minister means the Prime Minister, the Chancellor of the Exchequer or a Secretary of State – in essence, the most 	<ul style="list-style-type: none"> • President / to declare a national emergency; • Secretary of Health and Human Services / to declare a public health emergency; • State governor / to petition the President to declare a major disaster or emergency for that state; • Federal government / to direct private companies to meet the supply and resource needs for national defense 	<ul style="list-style-type: none"> • Standing Committee of the National People's Congress or the State Council / to make decisions on a state of emergency in accordance with the Constitution and other relevant laws. The State Council has the power to solely decide and declare a state of emergency on sub-parts of provincial areas; • State Council and provincial governments / establishing an <i>ad</i> 	<ul style="list-style-type: none"> • The President / to determine, in accordance with article 80 of the Constitution of the Russian Federation and federal laws, the main directions of state policy and to make other decisions in the area of protection of the population and territories from emergency situations; • The Government / to adopt a decision on the introduction of a regime of high

Criteria	Sweden	UK	USA	China	Russia
		<p>senior members of the UK Executive / most important power is a power to make emergency regulations — can only be made by a senior Minister of the Crown if it would not be possible to make them by way of Order in Council without a serious delay</p>		<p><i>hoc</i> headquarters for handling public health emergencies at both national and provincial levels;</p> <ul style="list-style-type: none"> Health department under the State Council / maintaining a list for “especially serious” public health emergencies 	<p>readiness or an emergency situation on the entire territory of the Russian Federation or its part in case of a threat of occurrence and/or an emergency situation of a federal or interregional nature;</p> <ul style="list-style-type: none"> Public authorities of subjects of the Russian Federation / to make decisions on classifying emergency situations that have arisen as regional or intermunicipal, to introduce a state of high alert or state of emergency for the relevant authorities and the forces of the unified state system for the prevention and elimination of



Criteria	Sweden	UK	USA	China	Russia
					emergency situations
Established procedure to take emergency measures	Risk analysis, planning, data collection, and reporting, ensuring readiness, collaboration, and coordination, etc.	Clarifying whether a certain event falls within the definition of an emergency	<ul style="list-style-type: none"> Federal procedure: Under the National Emergencies Act, the President is authorized to declare an emergency. The President is required to transmit the declaration to Congress and must publish the declaration in the Federal Register. The President must specify the provisions of law under which the President or other officials will act to enable statutory emergency authorities; 	Prevention and preparedness, surveillance and warning, response operations and rescue, and post-emergency response rehabilitation and reconstruction	<p>Following the criteria:</p> <ul style="list-style-type: none"> number of people who have died and/or been injured; the amount of environmental damage and material losses (amount of material damage) <p>In accordance with the Decree of the Chief State Sanitary Doctor of the Russian Federation of March 18, 2020, No. 7 "On ensuring the regime of isolation to prevent the spread of COVID-2019" entrusted to the heads of the subjects of the Russian Federation (heads of the highest executive body of</p>

Criteria	Sweden	UK	USA	China	Russia
			<ul style="list-style-type: none"> State procedure: varies from state to state 		government of the subjects of the Russian Federation) to take measures to introduce a high readiness mode and quarantine
COVID-19 legislation	Not adopted	<p>New primary legislation:</p> <ul style="list-style-type: none"> Coronavirus Act 2020 Applies throughout the UK — England / Wales / Scotland / Northern Ireland; Coronavirus (Scotland) Act 2020; Coronavirus (Scotland) (No. 2) Act 2020. Important structural changes were made to the powers and responsibilities of the government: temporary registration of doctors, simplification of the procedure for 	<ul style="list-style-type: none"> No federal legislation relating to emergencies or emergency powers; State declarations of emergency vary from state to state 	Not adopted	<ul style="list-style-type: none"> Federal Law No. 98-FZ of April 1, 2020, "On Amendments to Certain Legislative Acts of the Russian Federation on the Prevention and Elimination of Emergency Situations"; Resolution No. 66 of the Government of the Russian Federation of January 31, 2020, "On introducing amendments to the list of diseases that pose a danger to others"; Resolution No. 285 of the Government of



Criteria	Sweden	UK	USA	China	Russia
		<p>registering births and deaths;</p> <ul style="list-style-type: none"> Corporate Insolvency and Governance Act 2020 (June 2020). Ordinary law changing insolvency rules and an emergency law relaxing some rules of corporate governance. <p>New secondary legislation:</p> <ul style="list-style-type: none"> introduced under the Public Health (Control of Disease) Act 1984; Health Protection (Coronavirus, Restrictions) (England) Regulations 2020; other Regulations on face masks, 			<p>the Russian Federation of March 14, 2020, "On the Coordinating Council under the Government of the Russian Federation for Combating the Spread of New Coronavirus Infections in the Russian Federation";</p> <ul style="list-style-type: none"> Decree of the President of the Russian Federation of March 15, 2020, No. 73-rp "On the working group of the State Council of the Russian Federation to combat the spread of new coronavirus infection caused by 2019-nCoV"



Criteria	Sweden	UK	USA	China	Russia
		<p>domestic travel, international travel.</p> <p>More than 200 new pieces of secondary legislation with “coronavirus” in the title.</p> <p>The English and Welsh regulations were made under the Public Health (Control of Diseases) Act 1984. The Scottish regulations were designed under the Coronavirus Act 2020. The Northern Irish regulations were made under the Public Health Act (Northern Ireland) 1967 (as discussed above, the specific regulation-making powers in the 1967 Act were introduced in the Coronavirus Act 2020)</p>			
Used term	Not adopted	Emergency — no definition	Disaster, emergency, emergency disaster (e.g., New York)	Not adopted	Not adopted



Criteria	Sweden	UK	USA	China	Russia
Competent authorities	Not adopted	<ul style="list-style-type: none"> • A power of the Government to make public health regulations; • A power of a justice of the peace to make an order in respect of an individual 	<ul style="list-style-type: none"> • Secretary of Health and Human Services / declaration of a public health emergency; • President / declaration of emergency; • Local governments / declaration of emergency (disaster emergency) 	Not adopted	<ul style="list-style-type: none"> • Government / to introduce high alert mode and emergency situations / to exercise powers as the coordinating body for the unified state system of prevention and liquidation of emergency situations / the right to establish rules of conduct mandatory for citizens and organizations in case of introduction of an emergency situation or heightened readiness regime / right to exercise the powers of the coordinating body of the unified state system of prevention and liquidation of emergency situations;



Criteria	Sweden	UK	USA	China	Russia
					<ul style="list-style-type: none"> Government authorities of the subjects of the Russian Federation / supplemented by the right to establish rules of conduct that are mandatory for citizens and organizations in case of introduction of a high alert mode or an emergency situation
Sunset clause	Not adopted	2 years after the act is adopted with powers for parliament to bring rules to an end sooner than 2 years. For the secondary legislation, it will expire on average much sooner than 2 years, but with the possibility that the Government can extend the period	Vary between states	Not adopted	Vary between subjects
Decision-making mode	Decentralized	Decentralized	Decentralized	Centralized	Decentralized



TABLE 3. MEASURES TAKEN IN THE FIGHT AGAINST THE COVID-19 PANDEMIC IN FRANCE, GERMANY, ITALY, SPAIN

Criteria	France	Germany	Italy	Spain
General measures				
Definition of a “measure”	Not specified	Any legally relevant action or omission attributable to the lands or the Federation, regardless of its legal form	Immediate action necessary to alleviate an unexpected situation or sudden occurrence of a serious and urgent nature	Not specified
Transport	<ul style="list-style-type: none"> Prohibition for boats carrying more than 100 passengers to stopover or stay within territorial seas according to Article 4 of the Decree No. 2020-293 of March 23, 2020 (abrogated by the Decree No. 2020-545 of May 11, 2020); Prohibition of transportation of people through commercial flights between the mainland and overseas territories and between 	<p>Order by Federal Minister of the Interior, Building, and Community:</p> <ul style="list-style-type: none"> entry restrictions at Germany's Schengen external borders; temporary border controls (enforced by police); travelers without a valid reason to enter Germany were refused entry at internal borders, airports, and seaports 	<p>Decree-law No. 6 of February 23, 2020:</p> <ul style="list-style-type: none"> suspension of freight and passenger transport services, land, rail, inland waters, and local public, including non-scheduled ones, with the exclusion of the transport of essential and perishable goods and without prejudice to any exceptions provided for by the territorially competent Prefects; 	<ul style="list-style-type: none"> Royal Decree No. 463/2020 of March 14, 2020 (extending Decree — Royal Decree No. 492/2020 of April 24, 2020); Royal Decree-Law No. 21/2020 of June 9, 2020, on urgent prevention, containment, and coordination measures to deal with the health crisis caused by COVID-19;



Criteria	France	Germany	Italy	Spain
	<p>overseas territories, except for cases of emergencies, serious justification related to family matters or professional obligation according to Article 5 of the Decree No. 2020-293 of March 23, 2020 (abrogated by the Decree No. 2020-617 of May 22, 2020);</p> <ul style="list-style-type: none"> Disinfection of public transport according to Article 6 of the Decree No. 2020-293 of March 23, 2020 (abrogated by the Decree No. 2020-545 of May 11, 2020) 		<ul style="list-style-type: none"> suppression of interregional car services and rail, air, and sea transport services, on the basis of actual needs and for the sole purpose of ensuring the minimum essential services 	<ul style="list-style-type: none"> Order No. PCM/205/2020 of March 10, 2020: <ul style="list-style-type: none"> state-owned road, rail, air, and maritime public passenger transport services reduce their total supply of operations; suspension of international air communication
Public health	<ul style="list-style-type: none"> Requisition of masks stocks for respiratory protection and anti-spray according to Article 1 of the Decree No. 2020-247 of March 13, 2020, and then article 12 of the decree No. 2020-293 of March 23, 2020 (abrogated 	<ul style="list-style-type: none"> Confiscation and disposal of medical, nursing or sanitary equipment, including raw materials, and medical and nursing care equipment by Land Ministry of Health; 	<p>Decree-Law No. 18 of March 17, 2020 ("Cura Italia"): the Government adopted specific measures to empower the production and supply of medical devices and personal protective equipment by increasing the level of</p>	<p>Royal Decree No. 463/2020 of March 14, 2020 (extending Decree — Royal Decree No. 492/2020 of April 24, 2020). The Minister for Health may:</p> <ul style="list-style-type: none"> issue the orders necessary to ensure the supply of the market and the operation of the

Criteria	France	Germany	Italy	Spain
	<p>by the Decree No. 2020-545 of May 11, 2020);</p> <ul style="list-style-type: none"> • Requisition of any health structure and any service or any professional needed for its functioning according to Article 12-1 of the Decree No. 2020-293 of March 23, 2020 (abrogated by the Decree No. 2020-545 of May 11, 2020); • Requisition of any planes and professionals necessary to their functioning to guarantee the transit of sanitary products and protection equipment according to Article 12(1) of the Decree No. 2020-293 of March 23, 2020 (abrogated by the Decree No. 2020-545 of May 11, 2020); • Creation of a system of information to collect personal data, process and exchange it, if needed, 	<ul style="list-style-type: none"> • Regulation of protective equipment imports by Federal Government 	<p>financing of the standard national health needs</p>	<p>services of the production centers affected by the shortage of products necessary for the protection of public health;</p> <ul style="list-style-type: none"> • intervene in and temporarily occupy industries, factories, workshops, holdings, or premises of any kind, including privately owned health centers, services, and establishments, as well as those operating in the pharmaceutical sector; • temporarily requisition all types of goods and impose mandatory personal services in cases where this is necessary for the adequate protection of public health in the context of this health crisis



Criteria	France	Germany	Italy	Spain
	without the consent of individuals, to fight the spread of the coronavirus (Article 11 of the Law proroguing the state of health emergency of May 11, 2020, and Decree No. 2020-551 of May 12, 2020)			
Education / remote working	<ul style="list-style-type: none"> • Closing of kindergartens, schools and universities in accordance with Article 4 of the Ministry's Order of March 14, 2020; • Remote work — at the discretion of an employer 	<ul style="list-style-type: none"> • Schools and other educational institutions were closed in all lands from March 13, 2020, onwards; • Distance education 	Educational activities in the presence, as well as educational trips, of early childhood education, schools of all levels, universities (except for post-graduate courses connected with the exercise of health professions) have been suspended in the whole national territory, until the end of the school year (Decree of the Council of minister of March 4, 2020)	<ul style="list-style-type: none"> • Suspension of classroom-based educational activities; • Remote educational activities
Competent authorities	<ul style="list-style-type: none"> • The state's representant in the departments / reduction of freedom of movement at certain time and place; 	Federal Minister of the Interior, Building, and Community	<ul style="list-style-type: none"> • Ministry of Health; • Ministry of transport and infrastructure; • Ministry of Education, University, Research; 	<ul style="list-style-type: none"> • Government; • The Minister for Defence; • The Minister for the Interior; • The Minister for Transport, Mobility, and

Criteria	France	Germany	Italy	Spain
	<ul style="list-style-type: none"> Prime Minister / closure of external borders, spaces of public gathering such as theaters or bars 		<ul style="list-style-type: none"> Ministry of Labor and Social Policies; Ministry of the Interior 	<p>the Urban Development Agenda;</p> <ul style="list-style-type: none"> The Minister of Health
Level of government	State (executive)	Federal, Land	State (executive)	State (executive)
Sunset clause	Two months or at the same time as the state of health emergency (Public Health Code)	Specified	Yes, with a possibility of prolongation (each measure adopted provides a sunset clause which may be extended within the framework of the state of emergency)	Yes, with a possibility of prolongation
Containment measures regarding industrial sector				
Regulatory framework	The Law No. 2020-290 delegated the power to adopt ordinances with all necessary measures to the Government	German industry was not subject to general regulations on pandemic control	Decree of the President of the Council of Ministers of March 22, 2020	Royal Decree No. 463/2020 of March 14, 2020 (extending Decree — Royal Decree No. 492/2020 of April 24, 2020)
Scope	<ul style="list-style-type: none"> The industrial sector was deemed to keep a normal business activity; Closure of non-essential production activities 	<ul style="list-style-type: none"> The industrial sector was deemed to keep a normal business activity; Closure of non-essential production activities 	<ul style="list-style-type: none"> The industrial sector was deemed to keep a normal business activity; Closure of non-essential production activities 	<ul style="list-style-type: none"> All retail premises and establishments are closed to the public, except for retailers of food, beverages, essential products and goods, pharmacist and healthcare establishments, veterinary centers or clinics, opticians and

Criteria	France	Germany	Italy	Spain
				<p>sellers of orthopedic supplies, hygienic products, press and stationery, automotive fuels, tobacconists, IT and telecommunications supplies, pet food, e-commerce, telephone or postal sales, dry-cleaners, laundromats, and professional home hairdressing;</p> <ul style="list-style-type: none"> The temporary intervention and occupation of industries, factories, installations or premises of any kind is authorized, including privately owned health centers, services and establishments and those pertaining to the pharmaceutical sector
Competent authorities	Government (Prime Minister)	Federal and land governments	Council of Minister	Government
Level of government	State (executive)	Federal, Land	State (executive)	Central
Sunset clause	Not specified	Not specified	Yes, with a possibility of prolongation (each measure adopted provides a sunset	Yes, with a possibility of prolongation



Criteria	France	Germany	Italy	Spain
			clause which may be extended within the framework of the state of emergency)	
Liability for non-compliance	Not specified	Not specified	Not specified	Yes, in accordance with the Organic Law No. 4/1981 of June 1, 1981
Most affected fields	Non-essential production (air transport, education, hospitality, leisure and entertainment, sports and fitness, and tourism)	Non-essential production (air transport, education, hospitality, leisure and entertainment, sports and fitness, and tourism)	Non-essential production (air transport, education, hospitality, leisure and entertainment, sports and fitness, and tourism)	Non-essential production (air transport, education, hospitality, leisure and entertainment, sports and fitness, and tourism)
Containment measures regarding on-productive sector				
Measure	Closure of spaces opens to the public, e.g., restaurants, bars, shops, or exhibit centers (Article 1 of the executive order of March 14, 2020, completed by the executive order of March 15, 2020, and then Decree No. 2020-293 of March 23, 2020)	Closure of leisure, cultural, sports and entertainment facilities like bars, theaters, cinemas and museums, fairs, exhibitions, fitness studios, solariums, swimming pools, arcades, casinos, betting shops (CoronaSchVO NRW as of March 22, 2020)	<ul style="list-style-type: none"> • Suspension of retail commercial activities, except for the food and basic necessities activities; • Closure of museums and other places of culture; • Other measures include: closure of restaurants and bar services; suspension of personal services (hairdressers, barbers, beauticians) 	The opening to the public of museums, libraries, monuments, archives, and premises or establishments for shows, leisure, or sports, together with any type of festival or public event has been suspended (Royal Decree No. 463/2020 of March 14, 2020 (extending Royal Decree No. 492/2020 of April 24, 2020)



Criteria	France	Germany	Italy	Spain
Containment measures regarding population				
Regulatory framework	Decree No. 2020-260 of March 16, 2020	FIPA	Decree of the President of the Council of Ministers of March 9, 2020	Royal Decree No. 463/2020 of March 14, 2020 (extending Royal Decree No. 492/2020 of April 24, 2020)
Scope	<ul style="list-style-type: none"> • Lockdown; • Ban to social gatherings; • Ban to access parks, public areas; • A distance of at least one meter from any other person 	<ul style="list-style-type: none"> • Quarantine — temporary isolation of people who are infected or suspected of being infected by an infectious disease; • Obligatory wearing a mask; • Ban on contacts — the obligation of staying in public and private areas only with a certain number of persons and keeping a minimum distance of 1.5 meters; • Restrictions on visits to health facilities; • Ban on religious services; • Lockdown 	<ul style="list-style-type: none"> • Lockdown; • Ban to social gatherings; • Ban to access parks, public areas; • A distance of at least one meter from any other person 	<ul style="list-style-type: none"> • Restriction of movement; • Ban for social gathering; • Restriction on close contact (at least 1 meter); • Mandatory masks on the public sidewalks, in open-air spaces and in enclosed areas for public use or that are open to the public, as well as in transport
Competent authorities	Government — the Prime Minister	Federal lands, but usually transferred to the local authorities.	President of the Council of Ministers	Government

Criteria	France	Germany	Italy	Spain
		Quarantine measures are issued at a local level		
Level of government	State (executive)	Federal, lands	State (executive)	State (executive)
Sunset clause	Expires at the same time as the state of health emergency	Vary among lands	Yes, with a possibility of prolongation (date not specified)	Yes, with a possibility of prolongation
Liability for non-compliance	<ul style="list-style-type: none"> • Criminal liability of EUR 135; • Recidivism — up to EUR 1,500; • More than three violations within a month — 6 months in prison and EUR 3,750 of penalty 	<ul style="list-style-type: none"> • Infringements of the restrictions can be sanctioned as an administrative offense from EUR 200 to EUR 25,000; • Quarantine order violations — a prison sentence of up to two years 	<ul style="list-style-type: none"> • Administrative contravention from EUR 400 to EUR 3,000; • Criminal sanctions were provided for those who failed to comply with the absolute obligation of quarantine as they have been infected with the virus 	In accordance with the Organic law No. 4/1981 of June 1, 1981
Support measures for industrial and non-productive sectors				
Regulatory framework	<ul style="list-style-type: none"> • Ordinance No. 2020-323 of March 25, 2020; • Law No. 2020-473 of April 25, 2020 	<ul style="list-style-type: none"> • Act on the Establishment of an Economic Stabilization Fund (Economic Stabilization Fund Act — WSF) of March 27, 2020; • NRW-Emergency-Aid-2020 	<ul style="list-style-type: none"> • “Cura Italia” (released on March 17, 2020, and converted into law No. 27 of April 24, 2020); • “Liquidità” (released on March 17, 2020, and converted into Law No. 40 of June 5, 2020); 	<ul style="list-style-type: none"> • Resolution of June 16, 2020, of the State Secretariat for the Economy and Business Support, Ministry of Economic Affairs and Digital Transformation for loans granted to companies and the self-employed;

Criteria	France	Germany	Italy	Spain
			<ul style="list-style-type: none"> • “Rilancio” (released on May 19, 2020) 	<ul style="list-style-type: none"> • Guarantee Line, approved by the Council of Ministers as of July 3, 2020; • Royal Decree-Law No. 25/2020 of July 3, 2020; • Royal Decree-Law No. 8/2020 of March 17, 2020; • Royal Decree-Law No. 17/2020 of May 5, 2020
Scope	<p>Industrial sector. Solidarity fund for small companies (ordinance No. 2020-317 of March 25, 2020).</p> <p>Foreign SME can benefitate from this fund if it has its tax residency in France</p>	<ul style="list-style-type: none"> • Billion-euro aid program of the Federal Government; • State loans; • Emergency financial assistance in the form of direct grants to alleviate economic hardship and to secure the existence and continuation of small commercial enterprises, the self-employed, and members of the liberal professions; 	<p>The health sector, industrial sector, labor:</p> <ul style="list-style-type: none"> • access to credit; • liquidity support, export, internationalization, and investment; • incentives and contributions for sanitization and increased safety at work, indemnity of self-employed workers; • incentives for workers in the entertainment 	<ul style="list-style-type: none"> • Financial aid to companies; • Loans to SMEs in the tourism sector and related activities; • Promoting the implementation of new business investment projects, particularly for environmental sustainability and digitalization; • Financial support to solvent strategic non-financial companies;



Criteria	France	Germany	Italy	Spain
		<ul style="list-style-type: none"> • Guarantees and other warranties for bank loans and recapitalizations; • Restaurants benefit from a reduced VAT rate on food, and in addition, they receive certain tax breaks. <p>Foreign participation in the company is irrelevant: the decisive requirement is that the company has its registered head office in Germany</p>	<p>industry and agricultural sector;</p> <ul style="list-style-type: none"> • the possibility for workers who have at least one child under the age of 14 to require the remote working. <p>Companies with foreign shares are eligible for support measures as long as they are registered in Italy and pay taxes there</p>	<ul style="list-style-type: none"> • Abroad package of fiscal measures, aid, and measures to make unemployment coverage more flexible for the cultural sector; • Suspension of the regime of liberalization of foreign direct investment in Spain in certain strategic sectors affecting public order, public security, and public health (critical infrastructure; critical technologies and dual-use goods; supply of essential inputs, in particular energy; sectors with access to sensitive information; media). <p>Foreign SME can beneficiate from this fund if it has its tax residency in Spain</p>
Competent authorities	Government	Federal Finance and Economics Ministers	Government	Council of Ministers
Level of government	State (executive)	Federal	State (executive)	State (executive)



Criteria	France	Germany	Italy	Spain
Sunset clause	Yes, with a possibility of prolongation	Yes, with a possibility of prolongation	Yes, with a possibility of prolongation	Yes, with a possibility of prolongation
Support measures for population				
Regulatory framework	<ul style="list-style-type: none"> • Decree No. 2020-568 of May 14, 2020; • Ordinance No. 2020-324 of March 25, 2020; • Decree No. 2020-519 of May 5, 2020 	Second Corona Tax Aid Act (as an amendment to the VAT Act)	"Cura Italia"	<ul style="list-style-type: none"> • Royal Decree-Law No. 9/2020 of March 27, 2020, which adopts complementary measures, in the field of employment, to mitigate the effects of COVID-19; • Resolution of June 16, 2020, of the State Secretariat for the Economy and Business Support, Ministry of Economic Affairs and Digital Transformation for loans granted to companies and the self-employed
Scope	<ul style="list-style-type: none"> • Unemployment allowances; • Mechanism of partial unemployment; • Direct State aid 	<ul style="list-style-type: none"> • Cut on Value Added Tax; • Raise of child benefits; • Short-time working allowance 	<ul style="list-style-type: none"> • Allowances; • Mechanism of partial unemployment; • Direct State aid 	<ul style="list-style-type: none"> • Adoption of labor measures to make the procedures for the suspension of contracts and reduction of working hours (ERTEs) due to force majeure more flexible;

Criteria	France	Germany	Italy	Spain
				<ul style="list-style-type: none"> • Prolongation of leasing contracts; • Granting loans to self-employed in the tourism sector and related activities, as well as for the purchase of motorized road transport vehicles for professional use; • Enshuring a minimum vital income
Competent authorities	Government	Federal Parliament and Federal Council	Government	Council of Ministers
Level of government	State (executive)	Federal	State (executive)	Central
Sunset clause	Yes, with a possibility of prolongation	Yes, with a possibility of prolongation	Yes, with a possibility of prolongation	Yes, with a possibility of prolongation



TABLE 4. MEASURES TAKEN IN THE FIGHT AGAINST THE COVID-19 PANDEMIC IN SWEDEN, UK, USA, CHINA, RUSSIA

Criteria	Sweden	UK	USA	China	Russia
General measures					
Definition of a “measure”	Not specified	Not specified	Not specified	Not specified	Not specified
Transport sector	Not specified	<ul style="list-style-type: none"> • Wearing face coverings whilst using public transport in England; • Advise against all non-essential travel 	<ul style="list-style-type: none"> • A travel ban for foreign nationals originating from China; • Travel bans from Iran for foreign nationals and a travel advisory warning for areas in Italy and South Korea; • Travel bans from European Union countries for foreign nationals; • Closure of the physical United States borders with Canada and Mexico 	International flights have been significantly reduced	<ul style="list-style-type: none"> • Bans on entry and exit from the territory; • No air travels; • Limited transport traffic across the border

Criteria	Sweden	UK	USA	China	Russia
			to non-essential travel		
Public health	Not specified	Procurement of personal protective equipment, improving testing	<ul style="list-style-type: none"> • Increased infection control; • Environmental surface cleaning; • Use of recommended personal protective equipment; • Optimizing Personal Protective Equipment (PPE) supplies 	<ul style="list-style-type: none"> • International passengers upon arrival are concentrated and placed under a 14-day quarantine at designated places for medical observation at their own costs; • Nucleic acid test 	<ul style="list-style-type: none"> • Regulation of the price of medicinal products; • Remote retail trade in medicinal products; • Simplifying procedures for state registration of medical devices; • Establishing the specifics of implementing the basic compulsory health insurance program; • Budget allocations for the implementation of priority measures in the healthcare sector
Education / remote working	Distance education for secondary schools and partial closure of universities due to the spread of COVID-19	<ul style="list-style-type: none"> • Closure of educational establishments — the Coronavirus Act; 	No nationwide school closure, most states ordered the closure of schools shortly after the national emergency	Suspension of work, business, and school classes	<ul style="list-style-type: none"> • Closure of educational establishments;

Criteria	Sweden	UK	USA	China	Russia
		<ul style="list-style-type: none"> Distance education was activated 	<p>declaration. Several governors announced these closures via press conference, while some states left the details up to local boards of superintendents and educations to handle</p>		<ul style="list-style-type: none"> Distance education was activated
Competent authorities	Public Health Agency / issuing recommendations	Government	<ul style="list-style-type: none"> President / Executive emergency powers (including presidential emergency powers); States / “police powers” – to enforce public health interventions like isolation, quarantine, and other laws to mitigate the spread of an infectious disease like COVID-19 	<ul style="list-style-type: none"> Chinese Central Government / control to reduce interpersonal contact and cut off means of transmission, general containing measures: community-based quarantine, traffic control, suspension of business and school classes; Wuhan Municipal Headquarter for Prevention and Control of Novel Coronavirus Pneumonia / lockdown; 	<ul style="list-style-type: none"> Government; Government authorities of the subjects of the Russian Federation

Criteria	Sweden	UK	USA	China	Russia
				<ul style="list-style-type: none"> State Council / decision to block a large-sized city only can be made after the city is declared an epidemic area (was not done so in Wuhan) 	
Level of government	State (independent from administration)	Central	President (executive), State, local (e.g., for schools)	State (executive), local (e.g., Wuhan)	Federal, regional (subjects)
Sunset clause	No	Yes, with a possibility of prolongation	Vary among states	Vary among different localities	Indicated the temporary nature of the restrictions or established in some cases the terms of the support measures or the restrictions imposed
Containment measures regarding industrial sector					
Regulatory framework	Not specified	<ul style="list-style-type: none"> Public Health (Control of Diseases) Act 1984 (for England and Wales); Coronavirus Act 2020 (for Scotland); Public Health Act (Northern Ireland) 1967 (for Northern Ireland). 	<ul style="list-style-type: none"> Federal level: National Emergencies Act, Defense Production Act; State level: varies by state 	Notice Regarding the Issuance of Guidelines for the Prevention and Control Measures for the Resumption of Production and Work by Enterprises and Institutions in Areas of Different Risks in the Country	Presidential Decree of 2 April 2020 No. 239 "On measures to ensure the sanitary-epidemiological well-being of the population in the Russian Federation in connection with the spread of new coronavirus infection (COVID-19)"

Criteria	Sweden	UK	USA	China	Russia
		<p>The principal regulations are:</p> <ul style="list-style-type: none"> • Health Protection (Coronavirus, Restrictions) (England) Regulations 2020; • Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020; • Health Protection (Coronavirus, Restrictions) (Scotland) Regulations 2020; • Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2020; • Health Protection (Coronavirus, Restrictions) (Leicester) Regulations 2020 			



Criteria	Sweden	UK	USA	China	Russia
		(for a local lockdown in Leicester)			
Scope	Not specified	The industrial sector was deemed to keep a normal business activity closure of non-essential production activities	The industrial sector was deemed to keep a normal business activity closure of non-essential production activities	The industrial sector was deemed to keep a normal business activity closure of non-essential production activities	The industrial sector was deemed to keep a normal business activity closure of non-essential production activities
Competent authorities	Not specified	Governments of the 4 nations of the UK separately	The United States Department of Homeland Security Cybersecurity & Infrastructure Security Agency	<ul style="list-style-type: none"> State Council / to declare a state of emergency; Local governments / to assess epidemic risks in each county-based unit, grade risk into low, medium, or high level, and accordingly formulate differentiated measures for epidemic control and restoration of economic and social order 	<ul style="list-style-type: none"> Government; Government authorities of the subjects of the Russian Federation
Level of government	Not specified	National governments	Federal agency (executive)	State (executive), local	Federal, regional
Sunset clause	Not specified	A 6-month expiry clause (with every 21 or 28 days)	Yes	Vary among different localities	Indicated the temporary nature of the support

Criteria	Sweden	UK	USA	China	Russia
		to determine if they are still necessary)			measures or established in some cases the terms
Liability for non-compliance	Not specified	Non-compliance with the regulations is a criminal offense. The only punishment is a fine not exceeding level 5 on the standard scale. A level 5 fine is currently £5,000. A person cannot be imprisoned for non-compliance. The £5,000 maximum fine can only be imposed by a court. For repeat offences or for the most serious offences, the fines can rise to a maximum of £10,000	Not specified	Civil, administrative, and/or criminal liabilities	At the federal level, additional administrative and criminal liability was established for violations of the law during the pandemic
Most affected fields	Not specified	Non-essential production (air transport, education, hospitality, leisure and entertainment, sports and fitness, and tourism)	Non-essential production (air transport, education, hospitality, leisure and entertainment, sports and fitness, and tourism)	Non-essential production; (MSMEs or individual commercial households)	Non-essential production (production of textiles, clothing, vehicles, equipment, furniture, jewelry, film production activities, flower and plant wholesalers, cadastral activities, general and professional education)

Criteria	Sweden	UK	USA	China	Russia
Containment measures regarding non-productive sector					
Measures	<p>Temporary infection control measures at restaurants, coffee shops, bars, canteens, or dining places:</p> <ul style="list-style-type: none"> • social distancing; • organization of entry lines; • hand washing 	<p>Northern Ireland (original rules)</p> <p>Different rules for different categories of business. The categories and definitions are contained, or implied, in the Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2020:</p> <ul style="list-style-type: none"> • businesses selling food/drink for consumption on premises; • non-essential businesses selling goods or providing a service; • other businesses offering goods for sale or hire, or providing library services; • businesses offering holiday 	<ul style="list-style-type: none"> • Restaurants are closed to in-person dining. Takeout or delivery services are available (measures vary among states); • Closure of non-essential businesses, including retail businesses, fitness centers, entertainment, and personal service businesses (measures vary among states) 	<ul style="list-style-type: none"> • Prohibition or restriction of the use of relevant equipment and facilities, closing or restricting the use of relevant places, suspending personnel-intensive activities or production and business activities that may cause harm to expand, and take other protective measures (Prevention and Treatment of Infectious Disease Law); • Fairs, cinema shows, theatrical performances are restricted or suspended 	<p>Presidential Decree of April 2, 2020, No. 239 "On measures to ensure the sanitary-epidemiological well-being of the population in the Russian Federation in connection with the spread of new coronavirus infection (COVID-19)":</p> <ul style="list-style-type: none"> • development and implementation of a set of restrictive and other measures, in particular, to suspend (limit) the activities of individual organizations located in the relevant territory regardless of their legal form of organization and ownership, as well as individual entrepreneurs <p>Measures differ from one subject of the</p>

Criteria	Sweden	UK	USA	China	Russia
		<p>accommodation (had to shut down completely. There were minor exceptions, for example, accommodation for a person who had no home to go to);</p> <ul style="list-style-type: none"> • places of worship (had to shut down, subject to a few limited exceptions, for example, funerals). <p>Northern Ireland (rules as amended)</p> <p>The original categories as set out above have changed over time. The general thrust of the changes has been to allow more businesses to open. The changes were all made by way of amendment to the original Regulations.</p> <p>England (original rules)</p>			<p>Russian Federation and from the sanitary-epidemiological situation and peculiarities of the spread of COVID-19 in a particular subject of the Russian Federation</p>



Criteria	Sweden	UK	USA	China	Russia
		<p>The same broad categories as Northern Ireland and the same general rules applied in those categories. The English rules were made first and the Northern Ireland rules essentially just copied them.</p> <p>England (rules as amended)</p> <ul style="list-style-type: none"> Businesses selling food/drink for consumption on-premises (the businesses listed in Part 1 of Schedule 2 to the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020. Food and drink cannot be sold for consumption on the premises. There are exemptions which allow for premises to remain open if the 			



Criteria	Sweden	UK	USA	China	Russia
		<p>food and drink are sold for consumption off the premises);</p> <ul style="list-style-type: none"> • Non-essential businesses selling goods or providing a service (have to shut down completely and have to cease providing that service); • Businesses that operate a library service (a library service cannot remain open except for orders that it receives remotely and then delivers to its clients); • Businesses offering holiday accommodation (have to shut down completely); • Places of worship (have to shut down. There are exceptions for 			



Criteria	Sweden	UK	USA	China	Russia
		funerals, childcare operations, and private prayer)			
Containment measures regarding population					
Regulatory framework	Ordinance [2020:162] amending the ordinance (2020:114)	<ul style="list-style-type: none"> • Health Protection (Coronavirus, Restrictions) (England) Regulations 2020; • Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020; • Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020; • Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2020. <p>As with Northern Ireland, these rules have been relaxed over time. The relaxations in</p>	Vary among states	Prevention and Treatment of Infectious Disease Law	<ul style="list-style-type: none"> • Resolution of the Chief State Doctor of the Russian Federation No.3 of January 22, 2008, "On Approval of Sanitary and Epidemiological Rules SP 3.4.2318-08"; • Regional authorities' acts



Criteria	Sweden	UK	USA	China	Russia
		England have been quicker and have gone further than those in Northern Ireland			
Scope	Bans on gatherings of 500 and then 50 people	<ul style="list-style-type: none"> • Restriction of movement; • Restriction on staying overnight in a house other than your own unless you have a reasonable excuse; • Lockdown; • Restriction on public gatherings; • Restrictions on close contact between individuals (2-meter distance) 	<ul style="list-style-type: none"> • Strict social distancing measures; • Face mask requirements; • Ban on social gathering; • Stay-at-home orders. <p>All measures vary among states</p>	<ul style="list-style-type: none"> • Ban on mass gathering; • Mandatory isolation or quarantine; • All buildings in the district, no matter whether there are confirmed or suspected cases of COVID-19, shall be blocked for 14-day and no residents other than medical professionals or those supplying daily necessities shall enter or leave buildings 	<ul style="list-style-type: none"> • Restriction of movement; • Ban for social gathering; • Restriction on close contact (at least 1 meter); • Mandatory masks in the public indoor premises; • Self-isolation; • Prohibition to visit buildings, structures, and facilities intended for holding public events and recreational areas; • Recommendation to reduce personal contacts with other citizens, comply with the self-isolation regime;



Criteria	Sweden	UK	USA	China	Russia
					<ul style="list-style-type: none"> • Duty to maintain a distance of at least 1.5 meters to other citizens (social distance), including in public places and public transport, except in the case of passenger and luggage carriage by a passenger taxi; • Prohibition to leave the place of residence (stay) (with some exceptions); • Mandatory use of personal protective equipment for respiratory organs (masks, respirators) and hands (gloves); • Obligation to inform about the return from abroad
Competent authorities	<ul style="list-style-type: none"> • Government / ban; • Public Health Agency / issuing recommendations 	National Governments	<ul style="list-style-type: none"> • Federal level: Centers for Disease Control and Prevention (Department of 	<ul style="list-style-type: none"> • State Council / declare; • Local governments / assess epidemic risks in each 	<ul style="list-style-type: none"> • President (non-work mode); • Chief State Doctor (self-isolation);

Criteria	Sweden	UK	USA	China	Russia
	on how to implement the ban		Health and Human Services) issuing recommendations (e.g., social distancing); <ul style="list-style-type: none"> States / imposing measures 	county-based unit, grade risk into low, medium or high level, and accordingly formulate differentiated measures for epidemic control and restoration of economic and social order	<ul style="list-style-type: none"> Regional authorities (Mayor) / take measures
Level of government	State (executive and independent)	National	Federal, States	State (executive), local	Federal, regional
Sunset clause	Not specified	Symmetry between all parts of the UK / 6-month expiry clause and a 21/28-day review clause	Not specified	Vary among different localities and sectors	Vary among the regions
Liability for non-compliance	Not specified	Non-compliance with the regulations is a criminal offense which is normally dealt with by way of a fixed penalty notice	Vary among states	Civil, administrative, and/or criminal liabilities	Administrative and criminal liability, vary among the regions

Criteria	Sweden	UK	USA	China	Russia
Support measures for industrial and non-productive sectors					
Regulatory framework	<p>Conversion Aid Act (2020:548) and the adhering ordinance was introduced on July 1, 2020 – compensation for businesses for turnover losses and reorientation support, for example, to simplify a shift in production for a company or for a restaurant to direct its activities to take away services. The company needs to have business in Sweden or be approved for a so-called F-tax certificate in the country. Companies registered in certain states that are on the EU list of non-cooperative jurisdictions for tax purposes are not eligible to conversion aid</p>	<ul style="list-style-type: none"> • Corporate Insolvency and Governance Bill 2020; • The Payments to Farmers (Controls and Checks) (Wales) (Coronavirus) Regulations 2020 	<ul style="list-style-type: none"> • Defense Production Act; • Executive Order on Prioritizing and Allocating Health and Medical Resources to Respond to the Spread of COVID-19. March 18, 2020; • Coronavirus Preparedness and Response Supplemental Appropriations Act (H.R. 6074, Pub. L. 116-123); • Coronavirus Aid, Relief, and Economic Security Act (H.R. 748, Pub. L. 116-136) 	<ul style="list-style-type: none"> • Financial Support for Prevention and Control of Novel Coronavirus Infection; • Notice on Periodic Reduction and Exemption of Corporate Social Insurance Premiums 	<ul style="list-style-type: none"> • Russian Government Resolution “On measures to support systemically important organizations”; • Federal Law No. 102-FZ of April 1, 2020 “On Amendments to Parts One and Two of the Tax Code of the Russian Federation and Certain Legislative Acts of the Russian Federation”; • Resolution of the Government of the Russian Federation No. 409 of April 2, 2020 “On measures to ensure sustainable development of the economy”;

Criteria	Sweden	UK	USA	China	Russia
					<ul style="list-style-type: none"> • Federal Law No. 172-FZ of June 8, 2020 “On Amending Part Two of the Tax Code of the Russian Federation”; • Government Decision No. 685 of May 15, 2020; • Government Decision No. 696 of May 16, 2020; • Government Decision No. 1286-r of May 16, 2020; • Resolution of the Government of the Russian Federation No. 658 of May 12, 2020; • Resolution of the Government No. 576 of April 24, 2020; • List of Instructions of the President following the results of a meeting with



Criteria	Sweden	UK	USA	China	Russia
					members of the Government, etc.
Scope	<ul style="list-style-type: none"> Industrial sector — loan guarantee schemes; Increase in the part-time work allowance with support from the government (temporary). <p>Companies with foreign shares are eligible for support measures as long as they are registered in Sweden and pay taxes there</p>	<ul style="list-style-type: none"> Various statutory obligations in relation to wrongful trading, company filings, AGMs, and general meetings (amongst other things) were relaxed to provide companies and other corporate bodies with greater flexibility in the midst of the current crisis; COVID-19 Corporate Finance Facility; Coronavirus Large Business Interruption Loan Scheme; 	<ul style="list-style-type: none"> Assistance to the healthcare system dealing with surge capacity in response to the coronavirus outbreak by ensuring the production and distribution of ventilators and personal protective equipment; All meat and poultry processors continue operations; Emergency funding for the research and development of vaccines and treatment, public health funding to support the 	<ul style="list-style-type: none"> Preferential interest rate credit; Interest subsidies; Credit loans for small and micro-enterprises; Extended time limit for guarantee recovery or enterprises' waiver of repayment obligation; Preferential loans to key enterprises guaranteeing epidemic prevention and control; Force majeure certificates for enterprises, 	<ul style="list-style-type: none"> Enterprises from the affected sectors, as well as socially oriented NPOs, can obtain a loan; Small and medium entrepreneurs can receive free financial assistance; Interest-free wage loans are provided for companies in the affected industries; Loans at a rate of 8.5% and microcredits for SMEs have been extended; Entrepreneurs are granted a deferred payment of rent

Criteria	Sweden	UK	USA	China	Russia
		<ul style="list-style-type: none"> • Bounce Back Loan Scheme (BBLS) provides financial support to businesses affected; • Coronavirus Business Interruption Loan Scheme supports SMEs with an annual turnover of up to £45 million with access to £5 million of finance in the form of term loans, overdrafts, invoice finance, and asset finance facilities for up to six years; • Coronavirus-related funding schemes. <p>All VAT-registered UK businesses are automatically eligible without application required</p>	<p>response efforts of state and local agencies, medical supplies for surge capacity, loans for small businesses, and funds to assist in the global efforts to combat COVID-19;</p> <ul style="list-style-type: none"> • Aid package providing funding for testing, aid to health care providers, and a second round of funding for small businesses through the paycheck protection loan program through the Small Business Administration; • Extensive monetary support for small businesses. <p>Companies with foreign shares are eligible for support measures as long as they are registered in the USA and pay taxes there</p>	<p>reducing inspection and quarantine costs, and increasing export credit insurance premium subsidies (Zhejiang Province);</p> <ul style="list-style-type: none"> • Exemption of MSMEs from payment of social insurance premiums for maximum 5 months; • Social insurance premiums of large enterprises may be levied in half for maximum 3 months (Province Hubei excluded). <p>At both national and local levels, most support measures do not make a distinction between enterprises with foreign shares and Chinese companies. In Shanghai, it was even particularly emphasized that foreign-invested or</p>	<p>payments on state, municipal, and private property.</p> <p>Companies with foreign equity may receive support if information about them is registered in the unified register of SMEs</p>



Criteria	Sweden	UK	USA	China	Russia
				owned enterprises will be supported by the national regime in connection with COVID-19 related support measures	
Competent authorities	Public Health Agency / issuing recommendations	Government	President, states	Central and local governments	Government, regional authorities
Level of government	State (executive)	Central	Federal, States	State (executive), local	Federal, regional
Sunset clause	Yes, temporary	Yes, with a possibility of prolongation	Vary among states	Vary among different localities	In most cases, the support measures are taken for a fixed period, either during the restrictive measures (3 to 6 months) or until the end of 2020
Support measures for population					
Regulatory framework	Social Insurance Code	The Coronavirus Act 2020	<ul style="list-style-type: none"> Families First Coronavirus Response Act (H.R. 6201, Pub. L. 116-127); Family Medical Leave Act (amended by FFCRA); Emergency Paid Sick Leave Act 	<ul style="list-style-type: none"> Wuhan Municipal Policy Measures to Support the Healthy Development of Private Education Responding to the Novel Coronavirus Pneumonia Epidemic; Urgent Notice on Medical Insurance 	<ul style="list-style-type: none"> Resolution of the Government of the Russian Federation of March 27, 2020, No. 346 "On the Amount of the Minimum and Maximum Unemployment Benefit for 2020";

Criteria	Sweden	UK	USA	China	Russia
			(amended by FFCRA); <ul style="list-style-type: none"> • Coronavirus Aid, Relief, and Economic Security Act (H.R. 748, Pub. L. 116-136) 	for Novel Coronavirus Pneumonia Outbreaks	<ul style="list-style-type: none"> • Resolution of the Government of the Russian Federation No. 844 of June 10, 2020, "On introducing amendments to certain acts of the Government of the Russian Federation", etc.
Scope	<ul style="list-style-type: none"> • Facilitating people's stay at home if they or their children are sick (mainly temporary); • Permanent changes in the Social Insurance Code to give the government a mandate to make decisions regarding parental allowance, sickness benefits, and disease carrier benefits 	<ul style="list-style-type: none"> • Measures taken in respect of personal loans and credit card debt; • Protection of tenants from eviction; • Coronavirus Job Retention Scheme allowing businesses to place employees on a temporary leave of absence (known as furlough) 	<ul style="list-style-type: none"> • Free coronavirus testing; • Extended family medical leave; • Paid sick leave for workers; • Expanded unemployment benefits; • Extensive monetary support for small businesses and direct payments to eligible Americans; • Federal student loan repayments were suspended without 	<ul style="list-style-type: none"> • Reduction of housing rent, encouragement of loan support and deferred interest payment, delay of tax payment, and reduction of social security payment; • Reduced financial costs for treatment; • Employees who work as normal shall be paid no less than the local minimum wages; • The employer shall subsidize living expenses of the 	<ul style="list-style-type: none"> • The amount of unemployment benefit was increased and the period of unemployment benefit was extended by 3 months, but not later than October 1, 2020; • Unemployment benefits are paid to those who lose their job after March 1, 2020, for a maximum period not exceeding 3 months,

Criteria	Sweden	UK	USA	China	Russia
			interest until January 30, 2021	employees who are unable to work as normal, the specific standards are set by provincial governments, ranging from 60% to 100% of local minimum wages	but not later than October 1, 2020; <ul style="list-style-type: none"> Increase of child benefits
Competent authorities	<ul style="list-style-type: none"> Government; Public Health Agency 	Government	Congress and the President (signing act into a law)	<ul style="list-style-type: none"> General Office of the Ministry of Human Resources; State of Council 	Government, regional authorities
Level of government	State (executive and independent)	Central	Federal	State (executive), local	Federal, regional
Sunset clause	Temporary and permanent	Yes	Yes	Vary among different localities	Yes, vary among regions

TABLE 5. RESPONSE TO THE COVID-19 PANDEMIC BY MOSCOW, MOSCOW OBLAST, ST. PETERSBURG, THE REPUBLIC OF TATARSTAN, NIZHNY NOVGOROD OBLAST¹⁰⁴⁹

Criteria	Moscow	Moscow Oblast	St. Petersburg	The Republic of Tatarstan	Nizhny Novgorod Oblast
State authority / competence	Provides for the possibility of establishing restrictive and other measures by acts of senior officials (heads of the supreme executive bodies) of the subjects of the Russian Federation, as well as the introduction of a special order of movement ¹⁰⁵⁰	Provides for the possibility of establishing restrictive and other measures by acts of senior officials (heads of the supreme executive bodies) of the subjects of the Russian Federation, as well as the introduction of a special order of movement.	Provides for the possibility of establishing restrictive and other measures by acts of senior officials (heads of the supreme executive bodies) of the subjects of the Russian Federation, as well as the introduction of a special order of movement	Provides for the possibility of establishing restrictive and other measures by acts of senior officials (heads of the supreme executive bodies) of the subjects of the Russian Federation, as well as the introduction of a special order of movement	Provides for the possibility of establishing restrictive and other measures by acts of senior officials (heads of the supreme executive bodies) of the subjects of the Russian Federation, as well as the introduction of a special order of movement
Legal acts	<ul style="list-style-type: none"> The Decree of the Mayor of Moscow No. 12-UM of March 5, 2020, "On the introduction of a high alert mode" due to the threat of 	<ul style="list-style-type: none"> The Resolution of the Governor of Moscow Oblast No. 108-PG of March 12, 2020, "On the introduction of the high alert mode in Moscow Oblast for 	<ul style="list-style-type: none"> The Resolution of the Government of St. Petersburg No. 121 of March 13, 2020, "On measures to prevent the spread of the novel 	<ul style="list-style-type: none"> The Regulation of the President of the Republic of Tatarstan of March 19, 2020, No. 129 "On the introduction of the high alert 	<ul style="list-style-type: none"> The Decree of the Governor of Nizhny Novgorod Oblast No. 27 of March 13, 2020 "On the introduction of the high alert mode"

¹⁰⁴⁹ The table shows the first response measures of the subjects of the Russian Federation to the spread of coronavirus infection.

¹⁰⁵⁰ Decree of the President of the Russian Federation No. 239 of April 2, 2020, "Concerning measures ensuring the sanitary and epidemiological welfare of the population in the Russian Federation due to the spread of the novel coronavirus infection (COVID-19)".

Criteria	Moscow	Moscow Oblast	St. Petersburg	The Republic of Tatarstan	Nizhny Novgorod Oblast
	<p>spreading of the novel coronavirus infection in Moscow (2019-nCoV);</p> <ul style="list-style-type: none"> The Resolution of the Moscow Government No. 212-PP of March 24, 2020 "On economic support measures under conditions of high alert mode" 	<p>administrative bodies and forces of the Moscow Oblast system of emergency prevention and response and some measures to prevent the spread of novel coronavirus infection (COVID-2019) on the territory of Moscow Oblast";</p> <ul style="list-style-type: none"> The Resolution of the Governor of Moscow Oblast No. 132-PG of March 18, 2020, "On additional risk mitigation measures"; The Regulation of the Governor of Moscow Oblast No. 116-RG of April 3, 2020, "On the establishment of the interministerial operation headquarters to increase sustainability of the 	<p>coronavirus infection in St. Petersburg (COVID-19)";</p> <ul style="list-style-type: none"> The plan of priority measures (actions) to ensure the sustainability of the St. Petersburg economy amid the deteriorating economic environment due to the spread of the novel coronavirus infection (COVID-19); The plan of additional measures (actions) (the second set of support measures) to ensure the sustainability of the St. Petersburg economy amid the deteriorating economic environment due to the spread of the 	<p>mode for the administrative bodies and forces of the territorial subsystem of emergency prevention and response of the Republic of Tatarstan";</p> <ul style="list-style-type: none"> The Resolution of the Cabinet of Ministers of the Republic of Tatarstan No. 208 of March 19, 2020, "On measures to prevent the spread of the novel coronavirus infection in the Republic of Tatarstan"; The Resolution of the Cabinet of Ministers of the Republic of Tatarstan No. 240 of March 31, 2020, "On measures to 	<p>due to the spread of the novel coronavirus infection (COVID-19)";</p> <ul style="list-style-type: none"> The Decree of the Governor of Nizhny Novgorod Oblast No. 53 of April 7, 2020, "On measures to support organizations and individuals affected by the spread of the novel coronavirus infection (COVID-19)"

Criteria	Moscow	Moscow Oblast	St. Petersburg	The Republic of Tatarstan	Nizhny Novgorod Oblast
		Moscow Oblast economy”	novel coronavirus infection (COVID-19)	implement the Resolution of the Cabinet of Ministers of the Republic of Tatarstan No. 208 of March 19, 2020, ‘On measures to prevent the spread of the novel coronavirus infection in the Republic of Tatarstan”	
Terms and definitions	<ul style="list-style-type: none"> • High alert mode; • Stay-at-home (if there is a resolution of the Chief State Sanitary Doctor of the Russian Federation, the Head of the Federal Service for Supervision of Consumer Rights Protection and Human Welfare); • Self-isolation for citizens (aged over 65; citizens who 	<ul style="list-style-type: none"> • High alert mode; • Self-isolation (for example, for persons arriving at the Russian Federation); • Staying at home, self-isolation (for citizens aged over 65 and citizens suffering from certain diseases). <p>The Resolution No. 108-PG does not contain provisions which define these terms</p>	<ul style="list-style-type: none"> • Stay-at-home (if there is a resolution of the Chief State Sanitary Doctor of the Russian Federation, the Head of the Federal Service for Supervision of Consumer Rights Protection and Human Welfare); • Self-isolation for citizens (aged over 65; citizens who arrived from abroad; citizens 	<ul style="list-style-type: none"> • High alert mode; • Self-isolation (for example, for persons staying on the territory of the Russian Federation); • Isolation (stay-at-home). <p>The Regulation No. 129 and the Resolution No. 208 do not contain provisions which define these terms</p>	<ul style="list-style-type: none"> • High alert mode; • Self-isolation (for example, for persons staying on the territory of the Russian Federation, persons over 65); • Isolation. <p>The Decree No. 27 does not contain provisions which define these terms</p>

Criteria	Moscow	Moscow Oblast	St. Petersburg	The Republic of Tatarstan	Nizhny Novgorod Oblast
	<p>arrived from abroad; citizens who live together with self-isolated citizens; citizens with a suspected novel coronavirus infection, as well as infected).</p> <p>The Decree No. 12-UM does not contain provisions which define these terms</p>		<p>who live together with self-isolated citizens; citizens with a suspected novel coronavirus infection, as well as infected).</p> <p>The Resolution No. 121 does not contain provisions which define these terms</p>		
Regulation on the expiration	Regulation on the expiration is not established	Regulation on the expiration is not established	Regulation on the expiration is not established	Regulation on the expiration is not established but the wording "until the sanitary and epidemiological situation improves" is used	Regulation on the expiration is not established

Criteria	Moscow	Moscow Oblast	St. Petersburg	The Republic of Tatarstan	Nizhny Novgorod Oblast
Restrictive measures concerning industrial and non-production sectors	<ul style="list-style-type: none"> • Prohibition of all sports, entertainment, public, and other mass events in the city of Moscow; • Suspension of all leisure, entertainment, cultural events, physical training activities, sports events, exhibition arrangements, educational, advertising, and other similar events with the physical presence of people, as well as the provision of appropriate services, in particular in parks 	<ul style="list-style-type: none"> • Prohibition of all sports, physical training, entertainment, public, and other mass events on the territory of Moscow Oblast; • Suspension of the work of restaurants, cafes, canteens, snack bars, bars, pubs, and other catering enterprises (except for take-out services without the visiting of the premises of such facilities by citizens, as well as food delivery services); • Suspension of the work of retail facilities (except for 	<ul style="list-style-type: none"> • Suspension of the work of retail facilities;¹⁰⁵¹ • Suspension of the regular transportation of passengers and baggage by road and urban land electric transport along municipal and adjacent interregional routes of regular transportation; • Suspension of the work of restaurants, cafes, canteens, snack bars, bars, pubs, and other catering establishments, except for food delivery to houses, 	<ul style="list-style-type: none"> • Prohibition of any leisure, entertainment, cultural, physical culture, sports, exhibition, educational, advertising, and other similar events with the physical presence of people, as well as the provision of appropriate services, in particular, in parks of culture and rest, shopping and entertainment centers, amusement parks and other places of mass gathering; 	<ul style="list-style-type: none"> • Prohibition of all mass events (sports, entertainment, business, public, etc.) on the territory of the Nizhny Novgorod Oblast with the physical presence of people; • Prohibition for the civil registry authorities of Nizhny Novgorod Oblast to conduct state registration of marriage in a solemn ceremony, subject to restrictions on simultaneous presence: in the halls of the state registration of

¹⁰⁵¹ With the exception of pharmacies, retail facilities where contracts for the provision of communication services and the sale of communication means related to these services are concluded, in particular mobile communication facilities, retail facilities for periodicals, retail facilities for motor vehicles (by appointment), retail facilities for motor fuel, filling stations for charging electric vehicles, retail facilities for tobacco products, retail facilities for seeds and fertilizers, specialized retail facilities for furniture (with the exception of retail facilities located in buildings of shopping and entertainment centers, shopping centers), specialized shopping centers where exclusively retail furniture trading is carried out, as well as retail facilities related to the sale of exclusively non-food essential goods and(or) food products.

Criteria	Moscow	Moscow Oblast	St. Petersburg	The Republic of Tatarstan	Nizhny Novgorod Oblast
	<p>of culture and rest, shopping and entertainment centers, amusement parks and other places of mass gathering;</p> <ul style="list-style-type: none"> • Suspension of the work of restaurants, cafes, canteens, snack bars, bars, pubs, and other public catering establishments, except for take-out services without visiting the premises of such facilities by citizens, as well as food delivery service; • Suspension of the work of beauty salons, spa and massage salons, sun parlors, baths, saunas, and other facilities where such services are provided with the 	<p>pharmacies and pharmacy centers, retail facilities, in which contracts for the provision of communication services are concluded and the means of communication associated with such services are sold (including mobile phones, tablets), specialized retail facilities that sell pet products, and retail facilities related to selling food products and (or) non-food essential goods, and except for distance selling of goods, in particular, with the condition of delivery);</p> <ul style="list-style-type: none"> • Suspension of the work of beauty salons, spa, and massage salons, sun parlors, saunas, and 	<p>organizations, and hotel rooms;</p> <ul style="list-style-type: none"> • Prohibition of all theatrical and entertainment, cultural and educational, entertainment, sports, and other mass events with more than 1,000 participants within the territory of St. Petersburg; • Temporary suspension of booking of places, reception and accommodation of citizens in boarding houses, rest homes, health resort organizations (sanatoriums), health and wellness camps for children all-year-round, and other facilities of sanatorium treatment and 	<ul style="list-style-type: none"> • Suspension of the work of various types of enterprises (shopping, shopping and entertainment centers, retail, catering facilities, except for take-out services without visiting the premises of such facilities and food delivery services, as well as beauty salons, spa and massage salons, sun parlors, baths, saunas, and other facilities where such services are provided); • Suspension of the work of state rehabilitation centers, rehabilitation centers for children and adolescents with disabilities, social rehabilitation 	<p>marriage in a solemn ceremony – assuming 1 person per 10 square meters area of the hall, but no more than 10 people, including the host of the ceremony; in open areas for the ceremony;</p> <ul style="list-style-type: none"> • Temporary closure of such leisure facilities as night clubs (discos), dance floors, hookah bars, drinking establishments (cocktail lounges, bars, and beer bars with a predominant service of alcoholic beverages), food areas located in shopping and entertainment centers, children’s playrooms,

Criteria	Moscow	Moscow Oblast	St. Petersburg	The Republic of Tatarstan	Nizhny Novgorod Oblast
	<p>physical presence of a person, except for services provided remotely, in particular, the delivery services;</p> <ul style="list-style-type: none"> • Suspension of the work of clubs and sections within the framework of the "Moskovskoe dolgoletie" program, organization of recreation for citizens, and other similar events 	<p>other facilities where similar services are provided with the physical presence of people;</p> <ul style="list-style-type: none"> • The legal entities and individual entrepreneurs shall ensure the organization of the working regime for employees, in particular, necessary disinfection of contact surfaces (furniture, office equipment, etc.) in all rooms during the day; use of air disinfection equipment in the premises; availability of disinfectants for cleaning premises and hands; restriction of foreign business trips; use of audio and video, intercom for production meetings and solving various 	<p>recreation on the territory of St. Petersburg</p>	<p>departments of integrated social service centers, as well as providing rehabilitation services to disabled people, citizens aged over 65, and children with disabilities;</p> <ul style="list-style-type: none"> • Restriction of the inter-municipal transportation of passengers and baggage (with exception of two routes); • Transportation of goods from the Republic of Tatarstan as well as within its territory is only allowed if there is a certificate issued by the sender organization in the form established by the Cabinet of Ministers 	<p>theaters, operas, music halls, cinemas, concert halls, amusement rides, and other public areas and facilities for recreation and entertainment;</p> <ul style="list-style-type: none"> • Suspension of the operation of retail trade facilities, except for pharmacies and pharmacy points, as well as retail sales of food products (in stores, markets, fairs, as well as on the street in industrial packaging) and (or) non-food essential goods; beauty salons (including hairdressers), spa, beauty and massage salons, tanning salons, baths, saunas,



Criteria	Moscow	Moscow Oblast	St. Petersburg	The Republic of Tatarstan	Nizhny Novgorod Oblast
		issues (if technically possible)		of the Republic of Tatarstan, etc.	swimming pools, fitness centers, and other physical culture facilities, water parks and other facilities where such services are provided with the full-time presence of citizens, etc.
Liability	Administrative liability is established in the Administrative Code of the city of Moscow ¹⁰⁵² for violating the requirements of laws and regulations aimed at introducing and	Administrative responsibility is established in the Law of Moscow Oblast ¹⁰⁵³ for violating the requirements of laws and regulations of Moscow Oblast aimed at	Administrative responsibility is established in the Law of St. Petersburg ¹⁰⁵⁴ for violating the requirements of laws	Administrative responsibility is established in the Law of the Republic of Tatarstan ¹⁰⁵⁵ for violating the requirements of laws	Administrative liability is established for violation of the requirements of regulatory legal acts of Nizhny Novgorod Oblast in accordance with the

¹⁰⁵² The Law of the city of Moscow No. 6 of April 1, 2020, "On amendments to the Articles 2 and 8 of the Law of the city of Moscow No. 77 of December 10, 2003, 'On public stations of order maintenance in the city of Moscow' and the Law of the city of Moscow No. 45 of November 21, 2007, 'The Code of the city of Moscow on administrative offences'".

¹⁰⁵³ The Law of Moscow Oblast No. 53/2020-OZ of April 4, 2020, "On amendments to the Law of Moscow Oblast 'The Code of Moscow Oblast on administrative offences' and suspension of Articles 15.2 and 15.3 of the Law of Moscow Oblast 'The Code of Moscow Oblast on administrative offences'".

¹⁰⁵⁴ The Law of St. Petersburg No. 273-70 of May 31, 2010, "On administrative offences in St. Petersburg".

¹⁰⁵⁵ The Law of the Republic of Tatarstan No. 17-ZRT of April 24, 2020, "On amendments to the Code of the Republic of Tatarstan on administrative offenses" and the Law of the Republic of Tatarstan 'On granting state powers of the Republic of Tatarstan to local authorities of municipalities in the Republic of Tatarstan to determine the list of officials who are authorized to draw up reports on administrative offenses'. Article 1.

Criteria	Moscow	Moscow Oblast	St. Petersburg	The Republic of Tatarstan	Nizhny Novgorod Oblast
	ensuring the high alert mode in the city of Moscow (Article 3.18.1.)	introducing and ensuring the high alert mode within the territory of Moscow Oblast	and regulations of St. Petersburg	and regulations of the Republic of Tatarstan	Administrative Code of the Russian Federation. The list of officials of the regional executive authorities who are authorized to draw up reports on administrative offenses has been approved ¹⁰⁵⁶
Restrictive measures against the population	<ul style="list-style-type: none"> • Mandatory digital passes to move within the territory of the city of Moscow¹⁰⁵⁷; • Mandatory use of individual protective devices for respiratory organs (masks, 	<ul style="list-style-type: none"> • Mandatory digital passes to move within the territory of Moscow Oblast; • Self-isolation (for those who arrived in the Russian Federation and those over 65 years of age), prohibition to leave 	<ul style="list-style-type: none"> • Prohibition on visiting public events, parks, gardens, mini-parks; • Prohibition on visiting the premises of enterprises 	<ul style="list-style-type: none"> • Mandatory digital passes to move within the territory of the Republic of Tatarstan¹⁰⁵⁹; • Self-isolation for citizens over the age of 65, as well as citizens with diseases; 	<ul style="list-style-type: none"> • Self-isolation for citizens over the age of 65, as well as citizens with diseases; • Mandatory use of personal respiratory protection equipment (masks,

¹⁰⁵⁶ The Decree of the Governor of Nizhny Novgorod Oblast No. 45 of March 31, 2020, "On amendments to the Decree of the Governor of Nizhny Novgorod Oblast No. 27 of March 13, 2020".

¹⁰⁵⁷ The Law of St. Petersburg No. 207-44 of April 8, 2020, "On amendments to the Law of St. Petersburg 'On administrative offenses'".

¹⁰⁵⁹ The Resolution of the Cabinet of Ministers of the Republic of Tatarstan No. 240 of March 31, 2020, "On measures to implement the Resolution of the Cabinet of Ministers of the Republic of Tatarstan No. 208 of March 19, 2020, 'On measures to prevent the spread of the novel coronavirus infection in the Republic of Tatarstan'".

Criteria	Moscow	Moscow Oblast	St. Petersburg	The Republic of Tatarstan	Nizhny Novgorod Oblast
	respirators) and hands (gloves) while in public transport\$ when visiting shopping facilities not closed for visiting; at railway transport infrastructure facilities; while visiting buildings, constructsures (premises)	the place of residence (stay); <ul style="list-style-type: none"> • Maintaining a social distance of at least 1.5 meters; • Mandatory use of personal respiratory protection equipment (masks, respirators) in public areas; • Restrictions on visiting religious sites, tourism and recreation, travel 	(organizations) by individuals; ¹⁰⁵⁸ <ul style="list-style-type: none"> • Self-isolation for citizens aged over 65; • Maintaining a social distance of at least 1.5 meters; • Prohibition to leave the place of residence (stay); • Recommendation to abstain from trips to (through) the territory of St. Petersburg; • Recommendation to abstain from trips outside the Russian Federation and within the territory of subjects of the Russian Federation in which the novel coronavirus 	<ul style="list-style-type: none"> • Mandatory use of personal respiratory protection equipment (masks, respirators) and hands (gloves); • Maintaining a social distance of at least 1.5 meters; • Prohibition to leave the place of residence (stay); • Self-isolation for 14 days in case of stay in the Republic of Tatarstan from another subject of the Russian Federation 	respirators) and hands (gloves); <ul style="list-style-type: none"> • Maintaining a social distance of at least 1.5 meters; • Self-isolation for 14 days in case of stay in Nizhny Novgorod Oblast from another subject of the Russian Federation

¹⁰⁵⁸ Except for employees who are not covered by the Decree of the President of the Russian Federation No. 206 of March 25, 2020, "On declaring the non-working days in the Russian Federation".

Criteria	Moscow	Moscow Oblast	St. Petersburg	The Republic of Tatarstan	Nizhny Novgorod Oblast
			infection (COVID-19) cases have been revealed		
Regulation on the expiration	Regulation on the expiration is not established	Regulation on the expiration is not established	The sunset provision for certain measures is established	The sunset provision is not established but the wording “until the sanitary and epidemiological situation improves” is used	Regulation on the expiration is not established
Liability	Administrative fine in the amount of RUB 4,000. For committing an offense repeatedly or using a vehicle — a fine of RUB 5,000 ¹⁰⁶⁰	Administrative fine in the amount of RUB 4,000. For committing an offense repeatedly or using a vehicle — a fine of RUB 5,000 ¹⁰⁶¹	Administrative fine in the amount of RUB 4,000. For committing an offense repeatedly or using a vehicle — a fine of RUB 5,000 ¹⁰⁶²	An administrative fine in the amount of RUB 1,000–4,000. For committing an offense repeatedly or using a vehicle — a fine of RUB 5,000 ¹⁰⁶³	Administrative liability for violation of the requirements of regulatory legal acts of Nizhny Novgorod Oblast in accordance with the Administrative Code of the Russian Federation The list of officials of the regional executive authorities who are

¹⁰⁶⁰ The Law of the city of Moscow No. 6 of April 1, 2020, “On amendments to the Articles 2 and 8 of the Law of the city of Moscow No. 77 of December 10, 2003, ‘On public stations of order maintenance in the city of Moscow’ and the Law of the city of Moscow No. 45 of November 21, 2007, ‘The Code of the city of Moscow on administrative offences’”.

¹⁰⁶¹ The Law of Moscow Oblast No. 37/2016-OZ of May 4, 2016 (in force as of October 5, 2020), “The Code of the Moscow region on administrative offenses” (adopted by the resolution of the Moscow Regional Duma No. 3/162-P of April 14, 2016).

¹⁰⁶² The Law of St. Petersburg No. 273-70 of May 31, 2010, “On administrative offences in St. Petersburg” (as amended as of July 23, 2020).

¹⁰⁶³ The Code of the Republic of Tatarstan on administrative offenses No. 80-ZRT of December 19, 2006 (as amended as of April 24, 2020).

Criteria	Moscow	Moscow Oblast	St. Petersburg	The Republic of Tatarstan	Nizhny Novgorod Oblast
					authorized to draw up reports on administrative offenses has been approved
Support measures for industrial and non-production sectors	<ul style="list-style-type: none"> • Extension of the deadline for the settlement of advance payments of property tax and land tax for the 1st quarter of 2020; • Extension of the deadline for the payment of trade tax for the 1st quarter of 2020; • Exemption from rent, rental payment deferral, exemption from paying 50% of the rental amount; • Economic support of up to 8% per annum on a loan to SMEs from Moscow's budget; 	<ul style="list-style-type: none"> • Expansion of the Microfinance Fund for SMEs by RUB 200 million; • Reduction of the average loan interest rate for SMEs to 6% per annum and the provision of microloans with the principal and interest repayment deferral; • Expansion of the Guarantee Fund of Moscow Oblast; • Increase in the subsidies to reimburse equipment purchase costs from 30% to 50% for SMEs and individual entrepreneurs; • Increase in compensation payments to up to 	<ul style="list-style-type: none"> • Financial, credit, tax, and administrative support measures; • Exempting certain categories of tenants from rent; • Preferential "salary" loans; • Restructuring, loan payment deferral for SMEs; • Financial assistance to companies from affected industries in providing material assistance to employees, etc. 	<ul style="list-style-type: none"> • A set of programs with total funding of RUB 1.3 billion; • Support for economic sectors at risk (ensuring a possibility of participation in federal support); • Support for SMEs (suspension of inspections, temporary rent payment deferral, etc.); • Subsidies to partially reimburse those SMEs that do not carry out activities recognized at the federal level as the "most affected", but whose turnover has been reduced by 	<ul style="list-style-type: none"> • Allocation of RUB 100 million from the budget of Nizhny Novgorod Oblast for preferential loans to SMEs; • Concessional loans, etc.

Criteria	Moscow	Moscow Oblast	St. Petersburg	The Republic of Tatarstan	Nizhny Novgorod Oblast
	<ul style="list-style-type: none"> 50% reduction in payments under contracts for sales activities in a non-stationary retail facility (in the lobbies and subway passages),¹⁰⁶⁴ etc. 	<ul style="list-style-type: none"> 80% to manufacturers of masks and disinfectants; Issuance of Force Majeure Certificates by the Chamber of Commerce and Industry of Moscow Oblast to entrepreneurs that will allow them to postpone the fulfillment of contractual obligations and avoid penalties; Deferral of rent for the use of immovable property owned by Moscow Oblast, as well as land plots owned by Moscow Oblast, or those, state 		<p>more than 30 percent compared to the average monthly turnover in 2019, and also saved the number of jobs by at least 90 percent compared to March 2020 for actual and documented costs associated with the payment of interest under loan agreements</p>	

¹⁰⁶⁴ Resolution of the Moscow Government No. 273-PP of March 31, 2020, "On Amendments to the Resolution of the Moscow Government No. 212-PP of March 24, 2020".

Criteria	Moscow	Moscow Oblast	St. Petersburg	The Republic of Tatarstan	Nizhny Novgorod Oblast
		property of which is not delimited			
Support measures for population	<ul style="list-style-type: none"> • Additional payment for each child under the age of 3; • Increase in unemployment compensations; • Allowance for unemployed citizens for their minor children; • Abolition of payment for major repairs; • Increasing the amount of allowance for children aged 3–7; • One-time social material assistance to the residents of Moscow over the age of 65; 	<ul style="list-style-type: none"> • One-time social financial support to citizens over the age of 65, as well as citizens with particular health conditions; • Social material payments to citizens considered unemployed as prescribed by law; • Social support to certain categories of citizens (families with disabled children with an average income exceeding the minimum subsistence level); • Incentive payments to employees participating in and providing 	<ul style="list-style-type: none"> • One-time social financial support to citizens of retirement age who are self-isolating; • Monthly monetary payments to families whose income does not exceed the minimum subsistence level for each child aged 3–7, etc. 	<ul style="list-style-type: none"> • Monetary payments for the fare, child allowance¹⁰⁶⁵; • Ensuring the work of volunteers for the delivery of medicines, food, and essential goods to certain categories of citizens and the operation of respective hotlines; • Incentive payments to employees of state inpatient social service organizations for special working conditions and additional workload, provision of social services to citizens who have 	<ul style="list-style-type: none"> • Targeted state social support on the basis of a social contract (as part of the project to enhance citizens' real incomes and reduce poverty by half by 2024); • Additional payments to medical staff, etc.

¹⁰⁶⁵ Resolution of the Cabinet of Ministers of the Republic of Tatarstan No. 241 of April 1, 2020, "On the Extension of the Term for the Provision of Certain Social Support Measures".

Criteria	Moscow	Moscow Oblast	St. Petersburg	The Republic of Tatarstan	Nizhny Novgorod Oblast
	<ul style="list-style-type: none"> Material incentives for medical staff and incentive measures for social service workers for special working conditions and additional workload, etc. 	<p>medical assistance to citizens who have been diagnosed with novel coronavirus infection, etc., for special working conditions and additional workload</p>		<p>been diagnosed with novel coronavirus infection and to people at risk of contracting the novel coronavirus infection, etc.</p>	



TABLE 6. RESPONSE TO THE COVID-19 PANDEMIC BY IRKUTSK OBLAST, KALININGRAD OBLAST, KRASNODAR KRAI, PRIMORSKY KRAI, KHABAROVSK KRAI¹⁰⁶⁶

Criteria	Irkutsk Oblast	Kaliningrad Oblast	Krasnodar Krai	Primorsky Krai	Khabarovsk Krai
State authority / competence	Provides for the possibility of establishing restrictive and other measures by acts of senior officials (heads of the supreme executive bodies) of the subjects of the Russian Federation, as well as the introduction of a special order of movement	Provides for the possibility of establishing restrictive and other measures by acts of senior officials (heads of the supreme executive bodies) of the subjects of the Russian Federation, as well as the introduction of a special order of movement	Provides for the possibility of establishing restrictive and other measures by acts of senior officials (heads of the supreme executive bodies) of the subjects of the Russian Federation, as well as the introduction of a special order of movement	Provides for the possibility of establishing restrictive and other measures by acts of senior officials (heads of the supreme executive bodies) of the subjects of the Russian Federation, as well as the introduction of a special order of movement	Provides for the possibility of establishing restrictive and other measures by acts of senior officials (heads of the supreme executive bodies) of the subjects of the Russian Federation, as well as the introduction of a special order of movement
Legal acts	Decree of the Governor of Irkutsk Oblast No. 279-ug of October 12, 2020, "On the High Alert Mode of Operation for the Irkutsk Oblast's Territorial Subsystem of the Unified State System	Resolution of the Government of Kaliningrad Oblast No. 134 of March 16, 2020, "On the Introduction in Kaliningrad Oblast of a High Alert Mode for the	Resolution of the Head of the Administration (Governor) of Krasnodar Krai No. 129 of March 13, 2020 (as amended on July 07, 2020), "On the Introduction of a High Alert Mode in Krasnodar	• Resolution of the Governor of Primorsky Krai No. 21-pg of March 18, 2020, "On Measures to Prevent the Spread of Novel	• Order of the Government of Khabarovsk Krai No. 120-rp of February 13, 2020, "On the Introduction

¹⁰⁶⁶ The table shows the first response measures of the subjects of the Russian Federation to the spread of coronavirus infection.

Criteria	Irkutsk Oblast	Kaliningrad Oblast	Krasnodar Krai	Primorsky Krai	Khabarovsk Krai
	for the Prevention and Management of Emergencies”	Governing Bodies and Forces of the Territorial Subsystem for the Prevention and Management of Emergencies in Kaliningrad Oblast and Certain Measures to Prevent the Spread of Novel Coronavirus Infection in Kaliningrad Oblast”	Krai and Measures to Prevent the Spread of Novel Coronavirus Infection (COVID-19)”	<p>Coronavirus Infection (COVID-2019) in Primorsky Krai”;</p> <ul style="list-style-type: none"> • Order of the Government of Primorsky Krai No. 113-rp of April 3, 2020, “On Activities Directed at Sustainable Economic Development Given the Deterioration in the Economic Situation in Connection with the Spread of Novel Coronavirus Infection”; • Order of the Government of Primorsky Krai No. 106-rp of April 1, 2020 “On Ensuring the Provision of Additional Support Measures under Lease Agreements 	<p>of a High Alert Mode”;</p> <ul style="list-style-type: none"> • Resolution of the Government of Khabarovsk Krai No. 97-pr of March 26, 2020, “On Measures to Prevent the Spread of Novel Coronavirus Infection in Khabarovsk Krai”; • Resolution of the Government of Khabarovsk Krai No. 176-pr of April 29, 2020, “On the Introduction of Additional Measures to Prevent the Spread of Novel Coronavirus Infection in Khabarovsk Krai”; • Resolution of the Governor of Khabarovsk Krai No. 35 of April 13, 2020, “On Approval

Criteria	Irkutsk Oblast	Kaliningrad Oblast	Krasnodar Krai	Primorsky Krai	Khabarovsk Krai
				for Immovable Property Owned by Primorsky Krai”	<p>of the List of Executive Authorities of Khabarovsk Krai and Their Officials Entitled to Draw Up Reports on Administrative Offenses Provided for by Article 20.6.1 of the Code of Administrative Offences of the Russian Federation”;</p> <ul style="list-style-type: none"> • Resolution of the Government of Khabarovsk Krai No. 137-pr of April 8, 2020, “On the Provision of One-time Targeted Assistance to Certain Categories Of Citizens”; • The plan of “Priority Measures to Support Small and Medium-Sized Businesses of Khabarovsk Krai in



Criteria	Irkutsk Oblast	Kaliningrad Oblast	Krasnodar Krai	Primorsky Krai	Khabarovsk Krai
					the Fields of Activity Most Affected Given the Deterioration in the Economic Situation in Connection with the Spread of Novel Coronavirus Infection”
Terms and definitions	<ul style="list-style-type: none"> Isolation (for persons with ARVI symptoms, for employees and students with signs of an infectious disease (fever, cough, etc.), as well as for persons involved in work on a rotational basis for seasonal work); Self-isolation (for example, for those staying in the territory of the Russian Federation, persons over 65). <p>Decree No. 279-ug does not contain provisions which define these terms</p>	<ul style="list-style-type: none"> Isolation at home or an observation facility (within 14 days from the date of return to the Russian Federation). Isolation here means being in a separate room to prevent contact with family members and other persons who are not subjected to isolation; Self-isolation at the place of residence (for citizens over 65, as well as citizens with diseases) 	<ul style="list-style-type: none"> Isolation (within 14 days from the date of return to the Russian Federation); Self-isolation (for citizens over 65, as well as for citizens with: diseases of the endocrine system (insulin-dependent diabetes mellitus), respiratory organs, circulatory system, genitourinary system (chronic kidney disease, stages 3–5); transplanted organs and tissues, malignant 	<ul style="list-style-type: none"> Extraordinary and unavoidable circumstance; High alert mode; Self-isolation; Self-isolation mode. <p>Resolution No. 21-pg does not contain provisions which define these terms</p>	<ul style="list-style-type: none"> High alert mode; Isolation (for people with ARVI symptoms); Self-isolation (for example, for those staying in the territory of the Russian Federation, persons over 65 years of age). <p>Order No. 120 and Resolution No. 97 do not contain provisions which define these terms</p>

Criteria	Irkutsk Oblast	Kaliningrad Oblast	Krasnodar Krai	Primorsky Krai	Khabarovsk Krai
		Resolution No. 134 does not contain provisions which define these terms	neoplasms of any localization. Resolution No. 129 does not contain provisions which define these terms		
Regulation on the expiration	Regulation on the expiration is established, but this period has been repeatedly increased	Regulation on the expiration is established, but this period has been repeatedly increased	Regulation on the expiration is established, but this period has been repeatedly increased	Regulation on the expiration is not established	Regulation on the expiration is not established
Restrictive measures in relation to industrial and non-production sectors	<ul style="list-style-type: none"> • Suspension of the operation of retail trade facilities, with the exception of pharmacies and pharmacy points, as well as retail sales of food products (in stores, markets, fairs, as well as on the street in industrial packaging) and (or) non-food essential goods; • Suspension of operations of beauty salons (including hairdressers), spa, beauty and massage 	<ul style="list-style-type: none"> • Suspension of the operation of retail trade facilities, with the exception of pharmacies and pharmacy points, as well as retail sales of food products (in stores, markets, fairs, as well as on the street in industrial packaging) and (or) non-food essential goods; • Suspension of operations of beauty salons (including hairdressers), spa, 	<ul style="list-style-type: none"> • Suspension of the operation of retail trade facilities, with the exception of pharmacies and pharmacy points, as well as retail sales of food products (in stores, markets, fairs, as well as on the street in industrial packaging) and (or) non-food essential goods; • Suspension of operations of beauty salons (including hairdressers), spa, 	<ul style="list-style-type: none"> • Prohibition to hold large public events with the physical presence of citizens; • prohibition to book rooms, receive and accommodate citizens in hotels and other similar places, except those on business trips or on missions, etc. 	<ul style="list-style-type: none"> • Suspension of the operation of retail trade facilities, with the exception of pharmacies and pharmacy points, as well as retail sales of food products (in stores, markets, fairs, as well as on the street in industrial packaging) and (or) non-food essential goods; • Suspension of the operation of beauty salons (including hairdressers),

Criteria	Irkutsk Oblast	Kaliningrad Oblast	Krasnodar Krai	Primorsky Krai	Khabarovsk Krai
	salons, tanning salons, baths, saunas, swimming pools, fitness centers, and other physical culture facilities, water parks, and other facilities where such services are provided, providing for the full-time presence of a citizen, etc.	beauty and massage salons, tanning salons, baths, saunas, swimming pools, fitness centers, and other physical culture facilities, water parks, and other facilities where such services are provided, providing for the full-time presence of a citizen, etc.	beauty and massage salons, tanning salons, baths, saunas, swimming pools, fitness centers, and other physical culture facilities, water parks, and other facilities where such services are provided, providing for the full-time presence of a citizen, etc.		SPAs, beauty and massage salons, tanning salons, baths, saunas, swimming pools, fitness centers, and other physical culture facilities, water parks, and other facilities where such services are provided, providing for the full-time presence of a citizen, etc.
Liability	Administrative liability for violation of the requirements of regulatory legal acts of Irkutsk Oblast in accordance with the Administrative Code of the Russian Federation	Administrative liability for violation of the requirements of regulatory legal acts of Kaliningrad Oblast in accordance with the Administrative Code of the Russian Federation	Administrative liability for violation of the requirements of regulatory legal acts of Krasnodar Krai in accordance with the Administrative Code of the Russian Federation	The Law of the Primorsky Krai establishes administrative liability ¹⁰⁶⁷ for violating the requirements of regulatory legal acts of Primorsky Krai	Administrative liability for violation of the requirements of regulatory legal acts of Khabarovsk Krai in accordance with the Administrative Code of the Russian Federation
Restrictive measures against the population	<ul style="list-style-type: none"> Maintaining a social distance of at least 1.5 meters; 	<ul style="list-style-type: none"> Maintaining a social distance of at least 1.5 meters; 	<ul style="list-style-type: none"> Maintaining a social distance of at least 1.5 meters; 	<ul style="list-style-type: none"> Mandatory digital passes to move within the territory of Primorsky Krai; 	<ul style="list-style-type: none"> Self-isolation (for those who arrived in the Russian Federation and those over 65 years

¹⁰⁶⁷ Law of Primorsky Krai No. 777-KZ of April 8, 2020, "On Amendments to the Law of Primorsky Krai 'On Administrative Offenses in Primorsky Krai'".

Criteria	Irkutsk Oblast	Kaliningrad Oblast	Krasnodar Krai	Primorsky Krai	Khabarovsk Krai
	<ul style="list-style-type: none"> • Mandatory carrying an identity document in case of being outside the place of residence (stay); • Mandatory use of personal protective equipment (masks, respirators, gloves) when visiting stores and other premises of organizations whose activities are not suspended, as well as when traveling on public transport; • Presentation of an identity document by persons moving within the territory of Irkutsk Oblast, including those traveling by private (official) vehicles, to law enforcement officers, representatives of executive authorities of Irkutsk Oblast authorized to draw up reports on 	<ul style="list-style-type: none"> • Mandatory carrying an identity document in case of being outside the place of residence (stay); • Mandatory use of personal protective equipment (masks, respirators, gloves) when visiting stores and other premises of organizations whose activities are not suspended, as well as when traveling on public transport; • Mandatory refraining from visiting places of a mass congestion of people; • Travel restriction, including for tourism and recreation, etc. 	<ul style="list-style-type: none"> • Mandatory use of personal protective equipment (masks, respirators, gloves) when visiting stores and other premises of organizations whose activities are not suspended, as well as when traveling on public transport; • Mandatory refraining from visiting places of a mass congestion of people; • Travel restriction, including for tourism and recreation, etc.; • Prohibition for persons residing (present) on the territory of Krasnodar Krai to leave their place of residence (stay), except for cases when persons: 	<ul style="list-style-type: none"> • Self-isolation (for those who arrived in the Russian Federation and those over 65 years of age), prohibition to leave the place of residence (stay); • Maintaining a social distance of at least 1.5 meters; • Mandatory use of personal respiratory protection equipment (masks, respirators) in public areas, etc. 	<ul style="list-style-type: none"> of age), prohibition to leave the place of residence (stay); • Maintaining a social distance of at least 1.5 meters; • Mandatory use of personal respiratory protection equipment (masks, respirators) in public areas; • Travel restriction, including for tourism and recreation, etc.

Criteria	Irkutsk Oblast	Kaliningrad Oblast	Krasnodar Krai	Primorsky Krai	Khabarovsk Krai
	<p>administrative offenses;</p> <ul style="list-style-type: none"> • Prohibition for minors to be outside the place of residence (stay) unaccompanied by an adult citizen between 7:00 am and 9:00 pm, and to be unaccompanied by parents (other legal representatives) between 9:00 pm and 7:00 am, etc. 		<ul style="list-style-type: none"> ○ apply for emergency (urgent) medical assistance and cases of other direct threat to life and health; ○ go to or from the places of business (including work), which is permissible pursuant to Decree No. 206 of the President of the Russian Federation of March 25, 2020, "On the Announcement of Non-Working Days in the Russian Federation"; ○ carry out activities which involve movement within the 		



Criteria	Irkutsk Oblast	Kaliningrad Oblast	Krasnodar Krai	Primorsky Krai	Khabarovsk Krai
			<p>territory of Krasnodar Krai, which is permissible pursuant to Decree No. 206 of the President of the Russian Federation of March 25, 2020;</p> <ul style="list-style-type: none"> ○ go to the nearest place of purchase of goods, works, services, the implementation of which is not restricted pursuant to Resolution No. 129; ○ look after incapacitated, partially incapable persons or persons in need of constant care, dependents, deliver 		



Criteria	Irkutsk Oblast	Kaliningrad Oblast	Krasnodar Krai	Primorsky Krai	Khabarovsk Krai
			<p>essential goods to citizens over 65, as well as to citizens with diseases of: the endocrine system (insulin-dependent diabetes mellitus), the respiratory system, the circulatory system, the genitourinary system (chronic kidney disease, stage 3–5); transplanted organs and tissues, malignant neoplasms of any localization;</p> <ul style="list-style-type: none"> ○ take their waste to the nearest waste container; ○ walk their pets at a distance not exceeding 100 		



Criteria	Irkutsk Oblast	Kaliningrad Oblast	Krasnodar Krai	Primorsky Krai	Khabarovsk Krai
			<p>meters from the place of their residence (stay);</p> <ul style="list-style-type: none"> • Prohibition on transit traffic throughout the territories of settlements of Krasnodar Krai, except for driving on highways going through settlements of Krasnodar Krai when no other highways around settlements are available; • Prohibition for persons residing on the territory of Krasnodar Krai to travel by road throughout the territories of the municipalities of Krasnodar Krai, etc. 		



Criteria	Irkutsk Oblast	Kaliningrad Oblast	Krasnodar Krai	Primorsky Krai	Khabarovsk Krai
Regulation on the expiration	Regulation on the expiration is established, but this period has been repeatedly increased	Regulation on the expiration is established, but this period has been repeatedly increased	Regulation on the expiration is established, but this period has been repeatedly increased	Regulation on the expiration is not established	Regulation on the expiration is established, but this period has been repeatedly increased
Liability	Administrative liability for violation of the requirements of regulatory legal acts of Irkutsk Oblast in accordance with the Administrative Code of the Russian Federation	Administrative liability for violation of the requirements of regulatory legal acts of Kaliningrad Oblast in accordance with the Administrative Code of the Russian Federation	Administrative liability for violation of the requirements of regulatory legal acts of Kaliningrad Oblast in accordance with the Administrative Code of the Russian Federation	An administrative fine of RUB 3,000–5,000	<ul style="list-style-type: none"> • Administrative liability for violation of the requirements of regulatory legal acts of Khabarovsk Krai in accordance with the Administrative Code of the Russian Federation; • By Decree No. 35 of the Governor of Khabarovsk Krai of April 13, 2020, "On Approval of the List of executive authorities of Khabarovsk Krai and Their Officials Entitled to Draw Up Reports on Administrative Offenses Provided for in Article 20.6.1 of the Code of Administrative

Criteria	Irkutsk Oblast	Kaliningrad Oblast	Krasnodar Krai	Primorsky Krai	Khabarovsk Krai
					Offenses of the Russian Federation”, officials authorized to draw up reports under Article 20.6.1 of the Code of Administrative Offenses of the Russian Federation (“Failure to Comply With the Rules of Conduct in an Emergency Situation or the Threat of Its Occurrence”) were appointed
Support measures for industrial and non-production sectors	<ul style="list-style-type: none"> • Reduction of the property tax rate for organizations applying the simplified tax system; • Exempting SMEs from rent; • Payment rent deferral under lease agreements for immovable property owned by Irkutsk 	<ul style="list-style-type: none"> • Reduction of the property tax rate for organizations applying the simplified tax system; 	<ul style="list-style-type: none"> • Reduction of the corporate property tax rate; • Reduction of the tax rate in relation to administrative and business centers and shopping centers (malls) and premises therein, etc.; 	<ul style="list-style-type: none"> • Exempting organizations and individual entrepreneurs from the payment of rent for land plots and non-residential facilities owned by the Primorsky Krai; 	<ul style="list-style-type: none"> • Ensuring access of SMEs to financial resources, financial burden reduction; • Reduction of tax rates under the simplified taxation system for SMEs most affected by the spread of novel coronavirus infection;

Criteria	Irkutsk Oblast	Kaliningrad Oblast	Krasnodar Krai	Primorsky Krai	Khabarovsk Krai
	<p>Oblast, concluded before March 18, 2020, when tenants apply with a statement on the need to grant a payment rent deferral;</p> <ul style="list-style-type: none"> • Extension of the deadlines established by Law No. 75-oz of Irkutsk Oblast of October 8, 2007, for the settlement of advance payments of corporate property tax for taxpayers whose main economic activity contained in the Unified State Register 	<ul style="list-style-type: none"> • Advance payments and tax deferral provision;¹⁰⁶⁸ • Subsidies to SMEs,¹⁰⁶⁹ etc. 	<ul style="list-style-type: none"> • Reduction of corporate property tax; • Suspension of inspections, etc. 	<ul style="list-style-type: none"> • Concessional loans to SMEs at 0.5%;¹⁰⁷⁰ • Subsidies; • Reduction of regional tax rates, etc. 	<ul style="list-style-type: none"> • Procurement support; • Property support (rent payment deferral, reduction of rent); • Suspension of inspections, etc.

¹⁰⁶⁸ Resolution of the Government of the Kaliningrad Region No. 215 of April 21, 2020, "On the Extension of the Deadlines for the Payment of Certain Taxes and Advance Tax Payments in Kaliningrad Oblast in 2020".

¹⁰⁶⁹ Decree of the Government of Kaliningrad Oblast No. 205 of April 14, 2020, "On Establishing the Procedure for Providing Subsidies to Legal Entities from the Regional Budget (Save for Subsidies to State (Municipal) Institutions), Individual Entrepreneurs Which Belong to Small and Medium-Sized Businesses with an Average Number of Employees up to 15 People, for Implementation of Activities Related to Entrepreneurial Activity, Partial Financing of Salary Costs and Payroll Charges, Rent Payment for Premises Used for Entrepreneurial Activities in 2020 and on the Allocation of Funds from the Reserve Fund of the Government of the Kaliningrad Region Within the Framework of Activities related to Addressing the Consequences of the Spread of Coronavirus Infection and Preventing the Impact of the Deteriorating Economic Situation on the Development of Economic Sectors in Kaliningrad Oblast".

¹⁰⁷⁰ URL: <http://mb.primorsky.ru/regional-measures>.

Criteria	Irkutsk Oblast	Kaliningrad Oblast	Krasnodar Krai	Primorsky Krai	Khabarovsk Krai
	<p>of Legal Entities (EGRUL) as of March 1, 2020, corresponds to the OKVED code included in the list of industries of the Russian economy, approved by Decree No. 434 of the Government of the Russian Federation of April 3, 2020;</p> <ul style="list-style-type: none"> • Extension of the deadlines for the settlement of advance payments of transport tax for taxpayers whose main economic activity contained in the EGRUL as of March 1, 2020, corresponds to the OKVED code included in the list of industries of the Russian economy, approved by Decree No. 434 of the Government of the 				

Criteria	Irkutsk Oblast	Kaliningrad Oblast	Krasnodar Krai	Primorsky Krai	Khabarovsk Krai
	<p>Russian Federation dated April 3, 2020;</p> <ul style="list-style-type: none"> • Suspension of inspections of companies; • Subsidies to legal entities (except for state (municipal) institutions) and individual entrepreneurs who have decided to introduce a part-time working schedule, etc. 				
Support measures for population	<ul style="list-style-type: none"> • Monthly money payments for children aged 3–7 inclusive (in accordance with Decree No. 199 of the President of the Russian Federation of March 20, 2020, "On Additional Measures of State Support for Families with Children"); • Establishment of incentive payments to 	<ul style="list-style-type: none"> • A one-time measure of social support in the form of social benefits to unemployed citizens and the allocation of funds as part of measures related to preventing the impact of the deteriorating economic situation on the development of economic 	<ul style="list-style-type: none"> • Repayment holiday (for persons whose maximum loan amount is RUB 1.5 million and whose earnings have dropped by 30% or more); • Assistance to single elderly citizens; • Delivery of food packages to low-income citizens; 	<ul style="list-style-type: none"> • Payment of utility bills for certain categories of citizens as regional social supplements to pensions; • Child allowance, monthly monetary payments at the birth (adoption) of a third child or subsequent children as regional social supplements to pensions; 	<ul style="list-style-type: none"> • Of one-time targeted assistance to the population in the amount of RUB 6,000; • Incentive payments to certain categories of employees of public health institutions for the period of high-readiness operation; • Organization of the issuance of

Criteria	Irkutsk Oblast	Kaliningrad Oblast	Krasnodar Krai	Primorsky Krai	Khabarovsk Krai
	<p>certain categories of employees of public health institutions for the period of high-readiness operation — organization of the issuance of personal protective equipment to certain categories of citizens, etc.</p>	<p>sectors, with the prevention and addressing the consequences of the spread of coronavirus infection (RUB 10,000);</p> <ul style="list-style-type: none"> • Monetary payments to families in difficult circumstances in connection with measures related to the prevention and addressing the consequences of the spread of coronavirus infection; • One-time financial assistance to citizens registered with the public employment services, job-seekers, etc. 	<ul style="list-style-type: none"> • One-time payments to low-income families (RUB 5,000); • One-time payments to low-income large families (RUB 10,000); • Extension of discounted public transport tickets 	<ul style="list-style-type: none"> • Extension of social support measures; • Additional incentive payments 	<p>personal protective equipment to certain categories of citizens, etc.</p>

TABLE 7. RESPONSE TO THE COVID-19 PANDEMIC BY MOSCOW, MOSCOW OBLAST, ST. PETERSBURG, THE REPUBLIC OF TATARSTAN, NIZHNY NOVGOROD OBLAST AS OF SEPTEMBER 2020 – MARCH 2021

Criteria	Moscow	Moscow Oblast	St. Petersburg	The Republic of Tatarstan	Nizhny Novgorod Oblast
Legal acts	<ul style="list-style-type: none"> Decree of the Mayor of Moscow No. 68-UM of June 8, 2020 (as amended on March 5, 2021), "On the stages of removing restrictions imposed due to the introduction of a high alert mode";¹⁰⁷¹ Resolution of the Moscow Government 	<ul style="list-style-type: none"> Resolution of the Governor of Moscow Oblast No. 108-PG of March 12, 2020 (as amended on March 12, 2021), "On the introduction of the high alert mode in Moscow Oblast for administrative bodies and forces of the Moscow Oblast system of 	Resolution of the Government of St. Petersburg No. 121 of March 13, 2020 (as amended on March 24, 2021), "On measures to prevent the spread of the novel coronavirus infection in St. Petersburg (COVID-19)" ¹⁰⁷⁶	<ul style="list-style-type: none"> Regulation of the President of the Republic of Tatarstan No. 129 of March 19, 2020, "On the introduction of the high alert mode for administrative bodies and forces of the territorial subsystem of emergency prevention and 	<ul style="list-style-type: none"> Decree of the Governor of Nizhny Novgorod Oblast No. 27 of March 13, 2020 (as amended on March 25, 2021), "On the introduction of the high alert mode" due to the spread of the novel coronavirus infection (COVID-19);¹⁰⁷⁹

¹⁰⁷¹ Decree of the Mayor of Moscow No. 68-UM of June 8, 2020 (as amended on March 5, 2021), "On the stages of removing restrictions imposed due to the introduction of a high alert mode". URL: <https://docs.cntd.ru/document/565046123> (the date of access: March 25, 2021).

¹⁰⁷⁶ Resolution of the Government of St. Petersburg No. 121 of March 13, 2020 (as amended on March 24, 2021), "On measures to prevent the spread of the novel coronavirus infection in St. Petersburg (COVID-19)". URL: <https://www.gov.spb.ru/covid-19/dokument/> (the date of access: March 25, 2021).

¹⁰⁷⁹ Decree of the Governor of Nizhny Novgorod Oblast No. 27 of March 13, 2020 (as amended on March 25, 2021), "On the introduction of the high alert mode" due to the spread of the novel coronavirus infection (COVID-19)". URL: <https://www.government-nnov.ru/?id=17518> (the date of access: March 25, 2021).

Criteria	Moscow	Moscow Oblast	St. Petersburg	The Republic of Tatarstan	Nizhny Novgorod Oblast
	No. 212-PP of March 24, 2020 (as amended on December 25, 2020), "On economic support measures under conditions of a high alert mode" ¹⁰⁷²	emergency prevention and response and some measures to prevent the spread of the novel coronavirus infection (COVID-2019) on the territory of Moscow Oblast"; ¹⁰⁷³ <ul style="list-style-type: none"> Resolution of the Governor of Moscow Oblast No. 408-PG of September 11, 2020 (as amended on December 12, 2020), 		response of the Republic of Tatarstan"; ¹⁰⁷⁷ <ul style="list-style-type: none"> Resolution of the Cabinet of Ministers of the Republic of Tatarstan No. 208 of March 19, 2020 (as amended on November 30, 2020), "On measures to prevent the spread of the novel coronavirus infection 	<ul style="list-style-type: none"> Decree of the Governor of Nizhny Novgorod Oblast No. 53 of April 7, 2020, "On measures to support organizations and individuals affected by the spread of the novel coronavirus infection (COVID-19)"¹⁰⁸⁰

¹⁰⁷² Resolution of the Moscow Government No. 212-PP of March 24, 2020 (as amended on December 25, 2020), "On economic support measures under conditions of high alert mode". URL: <https://www.mos.ru/authority/documents/doc/43571220/> (the date of access: March 25, 2021).

¹⁰⁷³ Resolution of the Governor of Moscow Oblast No. 108-PG of March 12, 2020 (as amended on March 12, 2021), "On the introduction of the high-alert mode in Moscow Oblast for administrative bodies and forces of the Moscow Oblast system of emergency prevention and response and some measures to prevent the spread of the novel coronavirus infection (COVID-2019) on the territory of Moscow Oblast". URL: <https://mosreg.ru/dokumenty/normotvorchestvo/prinyato-gubernatorom/postanovleniya/12-03-2020-16-59-52-postanovlenie-gubernatora-moskovskoy-oblasti-ot> (the date of access: March 25, 2021).

¹⁰⁷⁷ Regulation of the President of the Republic of Tatarstan of March 19, 2020, No. 129 "On the introduction of the high alert mode for the administrative bodies and forces of the territorial subsystem of emergency prevention and response of the Republic of Tatarstan". URL: <https://rg.ru/2020/03/20/tatarstan-rasp129-reg-dok.html> (the date of access: March 25, 2021).

¹⁰⁸⁰ Decree of the Governor of Nizhny Novgorod Oblast No. 53 of April 7, 2020, "On measures to support organizations and individuals affected by the spread of the novel coronavirus infection (COVID-19)". URL: <https://government-nnov.ru/?id=255032> (the date of access: March 25, 2021).

Criteria	Moscow	Moscow Oblast	St. Petersburg	The Republic of Tatarstan	Nizhny Novgorod Oblast
		<p>“On approval of the procedure for granting a one-time measure of social support in the form of social benefits to certain categories of citizens”;¹⁰⁷⁴</p> <ul style="list-style-type: none"> • Law of Moscow Oblast No. 223/2020-OZ of November 24, 2020, “On amendments to the Law of Moscow Oblast ‘On tax rates raised due to the application of the simplified taxation system’ and the Law of the city of Moscow ‘On the patent 		in the Republic of Tatarstan” ¹⁰⁷⁸	

¹⁰⁷⁴ Resolution of the Governor of Moscow Oblast No. 408-PG of September 11, 2020 (as amended on December 12, 2020), “On approval of the procedure for granting one-time measure of social support in the form of social benefits to certain categories of citizens”. URL: <https://mosreg.ru/download/document/1090374> (the date of access: March 25, 2021).

¹⁰⁷⁸ Resolution of the Cabinet of Ministers of the Republic of Tatarstan No. 208 of March 19, 2020 (as amended on November 30, 2020), “On measures to prevent the spread of the novel coronavirus infection in the Republic of Tatarstan”. URL: <https://docs.cntd.ru/document/561776237> (the date of access: March 25, 2021).

Criteria	Moscow	Moscow Oblast	St. Petersburg	The Republic of Tatarstan	Nizhny Novgorod Oblast
		system of taxation in Moscow Oblast ¹⁰⁷⁵			
Restrictive measures in relation to industrial and non-productive sectors	<ul style="list-style-type: none"> Prohibition of any leisure, entertainment, cultural, physical, sports, exhibition, educational, advertising, and other similar events with the physical presence of people, as well as the provision of respective services, in particular, in parks of culture and rest, shopping and entertainment centers, amusement parks, and other places of mass gathering with more than 50% of participants within 	<ul style="list-style-type: none"> Prohibition of all sports and physical activities on the territory of the Moscow Oblast without the approval of the Ministry of Physical Culture and Sports of the Moscow Oblast; Prohibition on visiting buildings, facilities, and constructions by individuals failing to comply with the restrictive measures; Prohibition on visiting shopping and entertainment centers with an area 	<ul style="list-style-type: none"> Obligation to ensure that employees over the age of 65, as well as employees with chronic diseases, work remotely; Prohibition to hold public events; Implementation of activities in certain areas only after receiving a QR-code, confirming the readiness to meet the safe operation standard of an organization, etc. 	<ul style="list-style-type: none"> Prohibition to provide hookah services for smoking; Suspension of the work of nightclubs; Suspension of the work of entertainment events as well as the provision of catering services from 23:00 to 6:00; Responsibility for employers to ensure that employees use personal respiratory protection and to take disinfection measures 	<ul style="list-style-type: none"> Prohibition of mass events, except for sports events with a maximum number of participants not exceeding 300 people, commemoration events not exceeding 50 people, marriage registrations not exceeding 20 and 50 people for indoor and outdoor venues respectively; Suspension of the operation of retail trade facilities, beauty salons (including hairdressers), spa, beauty and massage

¹⁰⁷⁵ Law of Moscow Oblast No. 223/2020-OZ of November 24, 2020, "On amendments to the Law of Moscow Oblast 'On tax rates raised due to the application of the simplified taxation system' and the Law of the city of Moscow 'On the patent system of taxation in the Moscow Oblast'". URL: <https://mosreg.ru/dokumenty/normotvorchestvo/zakony/25-11-2020-15-48-35-zakon-moskovskoy-oblasti-223-2020-oz-o-vnesenii-iz> (the date of access: March 25, 2021).

Criteria	Moscow	Moscow Oblast	St. Petersburg	The Republic of Tatarstan	Nizhny Novgorod Oblast
	<p>the total territory of the event place;</p> <ul style="list-style-type: none"> • Prohibition of all mass events; • Suspension of the work of clubs and sections of the "Moscow Longevity" program in buildings, facilities, and premises; • Requirements to ensure that the body temperature of workers is measured, at least 10% of workers are tested for the new coronavirus infection every 15 days, personal protective equipment is used by workers; • At least 30% of employees, as well as citizens above 65 and citizens with diseases, the list of which was 	<p>of more than 5,000 square meters for individuals with a body temperature over 37 degrees;</p> <ul style="list-style-type: none"> • Prohibition of all mass events; • Requirements for employers to ensure that the body temperature of workers is measured, at least 10% of workers are tested for the new coronavirus infection every 15 days (if staff size exceeds 100 persons), personal protective equipment is used by workers; • Informing employees who travel outside the territory of the Russian Federation about the need to comply with mandatory 			<p>salons, tanning salons, baths, saunas, swimming pools, fitness centers, and other physical culture facilities, water parks and other facilities where such services are provided with the full-time presence of citizens, theaters, zoos, etc.;</p> <ul style="list-style-type: none"> • The obligation to transfer to remote work all employees whose direct participation is not necessary for continuous technological processes, limit contacts between functional groups of the organization, cancel business trips

Criteria	Moscow	Moscow Oblast	St. Petersburg	The Republic of Tatarstan	Nizhny Novgorod Oblast
	determined by the Moscow City Health Department, are recommended to work remotely	requirements by employers			
Restrictive measures against the population	<ul style="list-style-type: none"> • Prohibition to smoke hookahs in restaurants, bars, cafes, and other public places; • Use of personal protective equipment for respiratory organs (masks, respirators) and hands (gloves); • Maintaining a social distance 	<ul style="list-style-type: none"> • Self-isolation for those arriving in the Russian Federation and cohabiting with them; • Maintaining a social distance of at least 1.5 meters, when doing sports of at least 5 meters; • Use of individual protective equipment for respiratory organs (masks, respirators) while in public places; • Doing walks with no more than two people together (if they are not members of the same family); 	<ul style="list-style-type: none"> • Self-isolation for citizens over the age of 65, as well as citizens with chronic diseases; • Use of personal respiratory protective equipment; • Maintaining a social distance of at least 1.5 meters; • Prohibition to attend public events, discos, and nightclubs; • Prohibition to smoke hookahs; • Limited presence at the registration of marriage (up to 40 people) 	<ul style="list-style-type: none"> • Use of personal protective equipment for respiratory organs (masks, respirators) and hands (gloves); • Maintaining a social distance of at least 1.5 meters 	<ul style="list-style-type: none"> • Self-isolation for pregnant women, citizens over 65, as well as citizens with chronic diseases; • Use of personal protective equipment for respiratory organs (masks, respirators) and hands (gloves); • Maintaining a social distance of at least 1.5 meters

Criteria	Moscow	Moscow Oblast	St. Petersburg	The Republic of Tatarstan	Nizhny Novgorod Oblast
		<ul style="list-style-type: none"> Self-isolation with a suspected coronavirus infection or manifestations of acute respiratory viral infections when residing with the above-mentioned persons 			
Support measures for industrial and non-productive sectors	<ul style="list-style-type: none"> Economic support for SMEs up to July 1, 2021, up to 6% per annum on loans received until April 15, 2020, up to 8% per annum on loans received from April 15, 2020; Application of the 2018 cadastral value of the property when calculating the amount of corporate property tax for 2021; 	<ul style="list-style-type: none"> Extension for 2021 of the reduced rate of 10% for persons engaged in activities from the specified list¹⁰⁸¹ and applying the simplified taxation system; Extension of tax vacations for 2021 for some individual entrepreneurs 	<ul style="list-style-type: none"> Exemption of SMEs from payment of transport tax for 2020–2021; Exemption of hotel, tourist, and sanatorium business and landlords from payment of certain taxes for 2020–2021; Exemption, deferral, installment payments on fees under city real estate contracts, including certain tenant contracts, as well as 	<ul style="list-style-type: none"> Rent deferral for SMEs and enterprises of the most affected rent industries due to the use of real estate under real estate rental contracts that is in state ownership of the Republic of Tatarstan; Providing subsidies to regional operators for solid municipal waste management 	<ul style="list-style-type: none"> Exemption of transport operators in municipal and (or) inter-municipal routes of regular transportation in Nizhny Novgorod Oblast from transport tax; Allocation of financial support and subsidies to compensate for the employee compensation and municipal services;

¹⁰⁸¹ Law of Moscow Oblast No. 9/209-OZ of February 12, 2009 (as amended on November 24, 2020), "On tax rates raised due to the application of the simplified taxation system". URL: <https://docs.cntd.ru/document/819085729> (the date of access: March 25, 2021).

Criteria	Moscow	Moscow Oblast	St. Petersburg	The Republic of Tatarstan	Nizhny Novgorod Oblast
	<ul style="list-style-type: none"> Exemption of tenants from rent under contracts of tenancy for non-residential facilities or land plots owned by the city of Moscow and land plots in the city of Moscow, the state ownership of which is not delimited, as well as implementation of other measures 		<p>purchase and sale agreements on city premises;</p> <ul style="list-style-type: none"> Suspension of eviction of actual utilizers of city real estate 		<ul style="list-style-type: none"> Extension of the deadline for the rent payment for SMEs under tenant and land plot agreements that is in state ownership of Nizhny Novgorod Oblast; Subsidies for the organization of children's leisure activities
Support measures for population	<ul style="list-style-type: none"> Delivery of medication that is provided free of charge according to prescriptions; Targeted social assistance via the hotline; Renewal of fare benefits when traveling on public transport; Incentive payments to employees of 	Additional payments to employees, as well as seconded employees of the institutions subordinated to the Ministry of Defense of the Russian Federation, who provided medical care during the high alert mode	Food packages for families with pupils of educational institutions, etc.	<ul style="list-style-type: none"> One-time social financial support to a child from 3 to 7 years old, etc. 	<ul style="list-style-type: none"> Imposing the obligation on telecommunications operators to provide communication services and Internet connection for residents of Nizhny Novgorod Oblast aged over 65 with a zero or negative balance; Additional payments to medical workers, etc.

Criteria	Moscow	Moscow Oblast	St. Petersburg	The Republic of Tatarstan	Nizhny Novgorod Oblast
	medical organizations, etc.				



TABLE 8. RESPONSE TO THE COVID-19 PANDEMIC BY IRKUTSK OBLAST, KALININGRAD OBLAST, KRASNODAR KRAI, PRIMORSKY KRAI, KHABAROVSK KRAI AS OF SEPTEMBER 2020 – MARCH 2021

Criteria	Irkutsk Oblast	Kaliningrad Oblast	Krasnodar Krai	Primorsky Krai	Khabarovsk Krai
Legal acts	<ul style="list-style-type: none"> Decree of the Governor of Irkutsk Oblast No. 279-ug of October 12, 2020 (as amended on March 5, 2021), "On the high alert mode of operation for the Irkutsk Oblast's territorial subsystem of the unified state system for the prevention 	<ul style="list-style-type: none"> Resolution of the Government of Kaliningrad Oblast No. 134 of March 16, 2020 (as amended on March 15, 2021), "On the introduction in Kaliningrad Oblast of a high alert mode for governing bodies and forces of the territorial subsystem for the prevention and management of emergencies in Kaliningrad Oblast and certain measures to prevent the spread of the 	<ul style="list-style-type: none"> Resolution of the Head of the Administration (Governor) of Krasnodar Krai No. 129 of March 13, 2020 (as amended as of March 12, 2021), "On the introduction of a high alert mode in Krasnodar Krai and measures to prevent the spread of novel coronavirus 	<ul style="list-style-type: none"> Resolution of the Governor of Primorsky Krai No. 21-pg of March 18, 2020 (as amended on February 5, 2021), "On measures to prevent the spread of the novel coronavirus infection (COVID- 	<ul style="list-style-type: none"> Order of the Government of Khabarovsk Krai No. 120-rp of February 13, 2020, "On the introduction of a high alert mode";¹⁰⁸⁷ Resolution of the Government of Khabarovsk Krai No. 97-pr of March 26, 2020, "On measures to prevent the spread of the

¹⁰⁸⁷ Order of the Government of Khabarovsk Krai No. 120-rp of February 13, 2020, "On the introduction of a high alert mode". URL: <http://publication.pravo.gov.ru/Document/View/2700202002170005> (the date of access: March 25, 2021).

	and management of emergencies” ¹⁰⁸²	novel coronavirus infection in Kaliningrad Oblast” ¹⁰⁸³	infection (COVID-19)” ¹⁰⁸⁴	2019) in Primorsky Krai”; ¹⁰⁸⁵ <ul style="list-style-type: none"> • Order of the Government of Primorsky Krai No. 113-rp of April 3, 2020 (as amended on October 20, 2020), “On activities directed at sustainable economic development given 	novel coronavirus infection in Khabarovsk Krai”; ¹⁰⁸⁸ <ul style="list-style-type: none"> • Resolution of the Government of Khabarovsk Krai No. 137-pr of April 8, 2020, “On the provision of one-time targeted assistance to certain categories of citizens”;¹⁰⁸⁹ • Resolution of the Government of
--	--	--	---------------------------------------	---	---

¹⁰⁸² Decree of the Governor of Irkutsk Oblast No. 279-ug of October 12, 2020 (as amended on March 5, 2021), “On the high alert mode of operation for the Irkutsk Oblast’s territorial subsystem of the unified state system for the prevention and management of emergencies”. URL: <https://irkobl.ru/coronavirus/covid19-acts.php/945640/> (the date of access: March 25, 2021).

¹⁰⁸³ Resolution of the Government of Kaliningrad Oblast No. 134 of March 16, 2020 (as amended on March 15, 2021), “On the introduction in Kaliningrad Oblast of a high alert mode for the governing bodies and forces of the territorial subsystem for the prevention and management of emergencies in Kaliningrad Oblast and certain measures to prevent the spread of the novel coronavirus infection in Kaliningrad Oblast”. URL: <https://docs.cntd.ru/document/561784213> (the date of access: March 25, 2021).

¹⁰⁸⁴ Resolution of the Head of the Administration (Governor) of Krasnodar Krai No. 129 of March 13, 2020 (as amended as of March 12, 2021), “On the Introduction of a high alert mode in Krasnodar Krai and measures to prevent the spread of novel coronavirus infection (COVID-19)”. URL: <https://docs.cntd.ru/document/561763387> (the date of access: March 25, 2021).

¹⁰⁸⁵ Resolution of the Governor of Primorsky Krai No. 21-pg of March 18, 2020 (as amended on February 5, 2021), “On measures to prevent the spread of the novel coronavirus infection (COVID-2019) in Primorsky Krai”. URL: <https://docs.cntd.ru/document/570709365> (the date of access: March 25, 2021).

¹⁰⁸⁸ Resolution of the Government of Khabarovsk Krai No. 97-pr of March 26, 2020, “On measures to prevent the spread of the novel coronavirus infection in Khabarovsk Krai”. URL: <https://docs.cntd.ru/document/465369132> (the date of access: March 25, 2021).

¹⁰⁸⁹ Resolution of the Government of Khabarovsk Krai No. 137-pr of April 8, 2020, “On the provision of one-time targeted assistance to certain categories of citizens”. URL: <http://publication.pravo.gov.ru/Document/View/2700202004090004> (the date of access: March 25, 2021).

				<p>the deterioration in the economic situation in connection with the spread of the novel coronavirus infection”¹⁰⁸⁶</p>	<p>Khabarovsk Krai No. 364-pr of August 28, 2020 (as amended on March 11, 2021), “On certain restrictions imposed due to the introduction of a high-alert mode during the spread of the novel coronavirus infection”;¹⁰⁹⁰</p> <ul style="list-style-type: none"> • Resolution of the Government of Khabarovsk Krai No. 76-pr of March 19, 2021, “On the removal of certain restrictive measures and the repeal of Resolution of the Government of Khabarovsk Krai No. 444-pr of October 16, 2020, “On the
--	--	--	--	---	---

¹⁰⁸⁶ Order of the Government of Primorsky Krai No. 113-rp of April 3, 2020 (as amended on October 20, 2020), “On activities directed at sustainable economic development given the deterioration in the economic situation in connection with the spread of the novel coronavirus infection”. URL: <https://docs.cntd.ru/document/570720877> (the date of access: March 25, 2021).

¹⁰⁹⁰ Resolution of the Government of Khabarovsk Krai No. 364-pr of August 28, 2020 (as amended on March 11, 2021), “On certain restrictions imposed due to the introduction of a high-alert mode during the spread of the novel coronavirus infection”. URL: <https://docs.cntd.ru/document/465373600> (the date of access: March 25, 2021).

					introduction of additional measures to prevent the spread of the novel coronavirus infection in Khabarovsk Krai” ¹⁰⁹¹
Restrictive measures in relation to industrial and non-productive sectors	<ul style="list-style-type: none"> • Restriction (suspension) of the operation of certain organizations and individual entrepreneurs (catering, health resort organizations, fitness centers, etc.); • Responsibility for employers to implement measures to identify workers with signs of respiratory disease and to take 	<ul style="list-style-type: none"> • Prohibition of mass events; • Suspension of culture leisure activities (except for the facilities where seating is provided and limited to 70%, whilst intervals between events are of at least two hours for disinfection activities), culture and sports, entertainment and educational activities; • Suspension of the operation of nightclubs, children’s playrooms, and children’s entertainment centers; • Suspension of the operation of cinemas with 75% of seats sold; 	<ul style="list-style-type: none"> • Suspension of the operation of clubs and sections and other recreational activities for the elderly citizens; • Suspension of business events with more than 100 participants, and other mass events when seats are more than 30% full; • Suspension of sports events, with the exception of certain cases, including sports activities in gyms 	<ul style="list-style-type: none"> • Suspension of face-to-face events in public places, including social service centers; • Requirement for employers to suspend sending employees on business trips to foreign countries, hold events with the participation of foreign citizens, and to take part in such events; • Requirement for employers to measure the body 	<ul style="list-style-type: none"> • Suspension of provision of hookah smoking services; • Requirement for employers to ensure a disinfection regime for employees and visitors of organizations and facilities

¹⁰⁹¹ Resolution of the Government of Khabarovsk Krai No. 76-pr of March 19, 2021, “On the removal of certain restrictive measures and the repeal of Resolution of the Government of Khabarovsk Krai No. 444-pr of October 16, 2020, ‘On the introduction of additional measures to prevent the spread of novel coronavirus infection in Khabarovsk Krai’”. URL: <http://publication.pravo.gov.ru/Document/View/2700202103220008> (the date of access: March 25, 2021).

	<p>disinfection measures;</p> <ul style="list-style-type: none"> • Prohibition of mass events in educational organizations with the participation of various groups of citizens (classes, study groups, etc.) 	<ul style="list-style-type: none"> • Prohibition to smoke hookahs; • Requirement to hold meetings, seminars, commissions, and other similar events via a remote format; • Requirement for employers to transfer at least 50% of office workers to remote work, suspend sending employees on business trips, implement measures aimed at identifying sick employees, use remote methods of gatherings 	<p>with an area of up to 300 square meters and with an occupancy rate of more than 25% of the capacity of the facility;</p> <ul style="list-style-type: none"> • Prohibition of interschool, inter-municipal sports, cultural, and other events, as well as hookah smoking services; • Requirement for employers to take disinfection measures and measure the body temperature of employees; • Recommendation to transfer employees to remote work; • Limiting the operation of catering facilities from 7:00 to 24:00 local time; 	<p>temperature of employees at their workplaces;</p> <ul style="list-style-type: none"> • Requirement for employers to assist their employees with self-isolation at home; • Prohibition of ceremonial and mourning events with a total number of participants of more than 50 people; • Prohibition to smoke hookahs 	
--	--	---	---	--	--



			<ul style="list-style-type: none"> • Suspension of reservations, admission, and accommodation of children by recreation and health improvement organizations 		
Restrictive measures against the population	<ul style="list-style-type: none"> • Maintaining a social distance of at least 1.5 meters; • Use of personal protective equipment (masks, respirators, gloves); • Mandatory self-isolation for citizens of 65 and over 	<ul style="list-style-type: none"> • Maintaining a social distance of at least 1.5 meters; • Carrying an identity document in case of being outside the place of residence (stay); • Use of personal protective equipment (masks, respirators, gloves); • Registration of marriage with the number of people limited to 10, including employees of civil registry offices; • Obliging citizens to refrain from visiting crowded places and limit travels for tourism and recreation purposes 	<ul style="list-style-type: none"> • Maintaining a social distance of at least 1.5 meters; • Use of personal protective equipment (masks, respirators, gloves) in public places; • Self-isolation for citizens with chronic and other certain diseases during high alert mode 	<ul style="list-style-type: none"> • Maintaining a social distance of at least 1.5 meters; • Use of personal protective equipment for respiratory organs (masks, respirators,) in public places; • Self-isolation, except in specified cases 	Use of personal protective equipment (masks, respirators) in public places
Support measures for industrial and	<ul style="list-style-type: none"> • Reduction of corporate property tax; 	<ul style="list-style-type: none"> • Reduction of corporate property tax; 	<ul style="list-style-type: none"> • Preferential deadline for submission of 	<ul style="list-style-type: none"> • Reduction of the tax rate under 	<ul style="list-style-type: none"> • Reduction of the tax rate under simplified taxation system up to

<p>non-productive sectors</p>	<ul style="list-style-type: none"> • Reduction of the transport tax; • Exemption of SMEs from rent payments; • Suspension of inspections by executive bodies of the Irkutsk region in 2020, etc. 	<ul style="list-style-type: none"> • Extension of the deadline for the tax and rent payment; • Provision of subsidies in 2020 due to the shortfall in profits and payment of earnings 	<p>documents on investment projects;</p> <ul style="list-style-type: none"> • Reduction of corporate property tax; • Establishment of a reduced rate of the simplified taxation system; • Deferral of payment on corporate property tax, transport and land plot taxes, taxes on the simplified tax system, and tax on imputed income; • Deferral on tenant contracts concluded before March 13, 2020 	<p>simplified taxation system to 3%;</p> <ul style="list-style-type: none"> • Subsidies 	<p>3% and 8% for taxpayers who received at least 80% of income from certain types of activities;</p> <ul style="list-style-type: none"> • Reduction of corporate property tax up to 1.1% for certain SMEs; • Reduction of transport tax rate up to 50% of the established one; • Deferral of rent payments for socially oriented non-profit organizations
<p>Support measures for population</p>	<p>Provision of personal protective equipment to certain categories of citizens</p>	<ul style="list-style-type: none"> • Installment arrears plan for capital repair payments; • Non-calculation of penalties due to the arrears in payment of capital repair contributions; 	<ul style="list-style-type: none"> • Support to single elderly citizens, low-income citizens, and families in difficult circumstances; • One-time financial payments to low- 	<ul style="list-style-type: none"> • Allowance for children aged from 3 to 7 years; • Providing the right to free sanatorium treatment for medical workers who have been 	<p>One-time targeted support due to difficult financial circumstances provoked by the measures introduced to combat the spread of the novel coronavirus infection</p>

		<ul style="list-style-type: none"> • Regional one-time payment to unemployed citizens (RUB 10,000); • Monthly payment for children aged from 3 to 7 years, inclusively; • Delivery of food packages, industrial goods, and medicines to elderly citizens who are single and live alone, persons with disabilities of groups I and II 	income families and unemployed citizens	exposed to COVID-19	
--	--	---	---	---------------------	--

