



INTERNATIONAL
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COVID-19 — Test for the World's Legal Systems

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Outcomes



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OUTCOMES

WHO

1. Since the beginning of the COVID-19 pandemic, the World Health Organization (WHO) has published an impressive list of temporary recommendations on case-finding, treatment, and prevention of the spread of the disease, as well as scientific data which forms the basis for the WHO's position. These recommendations are non-binding, time-limited (may be terminated at any time and shall automatically expire three months after their issuance), and risk-specific.
2. The COVID-19 pandemic has revealed current problems in the international public health such as absence of preventive measures and emergency preparedness, lack of infection control tools, basic medical care shortage, unprotectedness of vulnerable groups, and aggravation of inequalities.
3. The WHO has analyzed the state of emergency and outlined its position on the sustainability of health systems, achieving universal health coverage, and health security. It also drew attention to the necessity to help people with chronic diseases. The WHO links the states' readiness to new challenges with public confidence towards state's action, such as vaccination and restrictions.
4. For updated health policy, the states should pay attention to improving the emergency preparedness systems, providing essential health services (including to those with chronic diseases) during the state of emergency. The states shall also keep in mind that the state of emergency risks management is a common good in public health and requires public funding and administration.
5. The COVID-19 epidemic has revealed gaps in The International Health Regulations (IHR) 2005 such as the narrow scope of application (primarily focused on reporting), lack of effective control mechanism over enforcement, a persistent need to enhance the communication between multisectoral¹ administrative stakeholders and operational stakeholders, as well as a need for strengthening communication between the National Focal Points and other stakeholders.
6. The WHO has initiated the IHR 2005 revision process based on the proposal for amendments submitted by the USA. The changes relate to the expansion of the powers of the WHO and its Director-General, greater responsiveness and awareness of the international community about possible state of emergency in public health, consultations between the WHO and the relevant international agencies while developing temporary recommendations, shortening the amendments rejection period, and establishing of a Compliance Committee.
7. Beside recognition the urgent need for revision of the IHR 2005, in 2021, the WHO decided to develop a new international treaty (convention) on pandemics. The WHO presented the first working draft of the pandemic treaty in July 2022. The project has demonstrated the adherence to the so-called One Health approach. This approach is defined as "multisectoral actions that recognize the importance of animal health, human health and environmental health working together to achieve better public health outcomes".

¹ The term "multisectoral" refers to the involvement of different sectors of the economy in the fight against COVID-19. Governments have had to make evidence-based decisions and coordinate preparedness and response across sectors. Successful activities included pooling of resources of sectoral ministries, engaging the private sector, and using effective coordination structures. The decentralized multisectoral risks and emergency management system integrated into local structures has provided the necessary flexibility at the local level for efficient regulation in an ever-changing situation.

8. The draft treaty on pandemics seeks to improve national procedures, namely accelerate emergency measures introduction and ensure the availability of the essential pandemic-response products (medicines, protection equipment). It differs from the amendments to the IHR 2005, which insist on changes at the universal level, through the expansion of the WHO Director-General's executive emergency powers. Besides, the authors of the first draft treaty on pandemics call to establish a comprehensive system for access and benefit sharing, by building upon or adapting mechanisms and/or principles contained in existing or previous instruments – such as the Convention on Biodiversity and its Nagoya Protocol.

UNCITRAL

9. Since 2020, the United Nations Commission on International Trade Law (UNCITRAL) has been actively exploring the topic of COVID-19 to determine how measures imposed by states to mitigate the effects of the pandemic have affected the international trade. It also identified gaps and obstacles to cross-border trade and investments that could be overcome through possible upcoming work of UNCITRAL. The UNCITRAL documents adopted in 2021-2022 are a logical continuation of the questions related to overcoming the COVID-19 consequences discussed in 2020.

10. The discussion shows that many of UNCITRAL texts can be useful for the states during restoration of economics in the face of unprecedented crisis caused by COVID-19. Besides that, the COVID-19 pandemic has accelerated the transfer of business processes to the online. Consequently, UNCITRAL will continue to develop legal instruments to assist states in improving their legal framework and stability towards global economic shocks and in overcoming their consequences.

11. As part of the UNCITRAL's research on the impact of COVID-19 on the international trade law the destabilization of the global economy and international trade was analyzed. A proposed online platform to exchange experience in the area of taking action on COVID-19 was also considered.

12. The Secretariat's research showed that a number of measures implemented by states affected contractual obligations, possible insolvencies, access to credit, and facilitating digitalization at various levels of the trade finance, transaction and transport chains.

13. Moreover, UNCITRAL removed the legal gap in the investment contract law concerning the state's right to regulate in exceptional circumstances. In particular, two concepts were discussed: the security exception (the need for the state to deviate from contractual norms in order to protect the essential interests of its security, for instance, in a case of emergency threatening the nation) and the necessity defense (i. e., a situation when the state violates a contractual norm because it is the only way to protect an essential interest from a great and imminent danger). In addition, some difficulties have been identified in the application of these concepts, including the high threshold to be fulfilled and the diverging interpretation by tribunals.

14. Among UNCITRAL's further plans are:

- accelerating the digitalization processes (training users, improving identification systems);
- creating texts on identification data management, electronic transactions, digital trade, digital payments, and digital assets (including cryptocurrencies);
- development of a special insolvency regime and easy access to funding for micro-, small- and medium-sized enterprises (MSMEs);
- improvement of adaptation mechanisms to the economic situation of public-private partnership agreements;

- creating of digital procurement systems, including tools to make transactions during emergencies;
- development a universal mechanism for disputes regulation, including by expanding the use of high tech (artificial intelligence, asynchronous hearings, online platforms) while preserving the fundamental principles of international arbitration (party autonomy and discretion of the arbitral tribunal during the proceeding);
- encouraging women's participation in an economic life and development of women's entrepreneurship.

UNCTAD

15. The United Nations Conference on Trade and Development (UNCTAD) has prepared a number of publications and analytical notes to assist states in addressing the impact of the COVID-19 epidemic on such areas as production, trade, foreign direct investment, and economic growth.

WTO

16. In June, trade ministers adopted the Ministerial Decision on the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). It confirms the right of members over the next five years to override the exclusive effect of patents and provide greater scope to take direct action to diversify production of COVID-19 vaccines through clarifications of existing flexibilities and a targeted waiver.² The countries have decided to use the subject matter of the patent to produce and supply COVID-19 vaccines without the consent of the patent holder. In addition, members intend to expand the scope of the Ministerial Decision to cover the production and supply of COVID-19 diagnostics and therapeutics.

17. The World Trade Organization (WTO) considers awareness to be an important factor in combating the pandemic. A COVID-19 information portal has been created. It provides up-to-date information concerning trade, including WTO member notifications, the virus' impact on export and import, and the way the multilateral trading system has responded to the pandemic. WTO also prepares reports on COVID-19's impact on world trade, creates industry research and holds information-sharing sessions between representatives of WTO members and observers.

18. The WTO cooperates with other international organizations, such as International Monetary Fund (IMF), WHO, and World Intellectual Property Organization (WIPO). The WTO-IMF cooperation has established a system to track vaccine commerce, while WTO, WHO, and WIPO in their cooperation hold workshops on innovation and access to COVID-19 diagnostics.

EU

19. Combating the COVID-19 pandemic remains one of the European Union's (EU) priorities. The epidemic has revealed problems in the EU's organization and functioning in emergencies, so the EU will improve its preparedness system to prevent future crises. Closer cooperation among the EU institutions is expected. The EU also seeks to help member states coordinate their national reciprocal measures by mobilizing all available resources, including providing objective information on the virus' spread, effective containment efforts, and measures taken to redress the economic and social damage caused by the pandemic.

20. The EU is developing three main programs to deal with the consequences of COVID-19: the "Next Generation EU", the "Recovery plan for Europe", and the "Coronavirus Response". Green development,

² Members discuss extending MC12 TRIPS Decision to COVID-19 diagnostics and therapeutics. / Site WTO. URL: https://www.wto.org/english/news_e/news22_e/trip_13oct22_e.htm.

digitalization, and coordination of restrictive measures are essential issues in the post-pandemic recovery process.

21. The EU intends to invest in environmentally-friendly technology, roll out greener vehicles and public transport, and improve the energy efficiency of buildings and public spaces. Particular attention will be paid to improving water quality, reducing waste and plastic litter, creating green spaces in cities, as well as increasing the use of renewable energy and making farming more environmentally-friendly.

22. The digitalization is reflected in the development of ultra-fast connectivity, digital identification, better control over personal data, the use of artificial intelligence to fight climate change, and improvements in healthcare, education, and transport.

23. The EU has established a new Health Emergency Preparedness and Response Authority (HERA). Previously, such work was not carried out at the level of the Union, the states did it independently. It shall work to strengthen coordination within the EU, contribute to reinforcing the global health emergency preparedness, and address vulnerabilities and strategic dependencies. The HERA shall be responsible for assessment of health threats, data collection, procurement, and promoting advanced research.

24. The EU has implemented a joint procurement system of vaccines against COVID-19. Thus, the European Commission enters into Advance Purchase Agreements with vaccine manufacturers in accordance with requests from member states. It is then the responsibility of the states themselves to conclude an agreement with a particular manufacturing company and to purchase the vaccines as soon as they prove to be safe, effective and available.

25. The EU engages in programs to help other countries combat COVID-19, including Team Europe, the EU-US partnership, as well as COVAX (worldwide initiative for COVID-19 Vaccines Global Access).

26. Since July 1, 2021, the Digital COVID Certificate has been introduced in the EU, whereby a person with a valid EU Digital COVID Certificate should not be subject to additional restrictions. In February 2022, the Commission extended the Regulation on the EU Digital COVID Certificate until June 30, 2023. Just as any other restrictions on the free movement of individuals within the EU imposed to limit the spread of SARS-CoV-2, the requirement to present digital certificates must be lifted as soon as the epidemic situation allows.

27. By a separate decision, the EU recognizes the equivalence of COVID-19 certificates issued by third countries and digital certificates issued by member states. To do this, the European Commission adopts an implementing act establishing that the certificates are issued by a third country in accordance with standards and technological systems that are interoperable with the trust framework for the EU Digital COVID Certificate and that allow for the verification of the authenticity, validity and integrity of the certificate, and which contain the data set out in the Annex to Regulation 2021/953. Based on the EU decisions on equivalence, 48 non-EU countries (and territories) have acceded to the EU Digital Certificate system.

EAEU

28. The Eurasian Economic Union (EAEU) has issued several measures aimed at a rapid response to the spread of coronavirus infection. However, they do not extend as broadly as the EU measures. The main existing EAEU measures are information and knowledge exchange. Abolished measures used during the beginning of the pandemic are customs measures, e.g., a prohibition of the export of medical products and certain food products from EAEU countries, and an exemption from import duties on medical devices. The main actions to combat COVID-19 were taken by the EAEU states at the national level.



Normative Approach to Regulating the Consequences of a Pandemic

29. Since 2021, there is no new constitutional changes related to COVID-19 in the countries reviewed (France, Germany, Italy, Spain, Sweden, the UK). Meanwhile, adjustments are made to the existing regulation of emergencies.

30. The introduction or cancellation of certain measures during the period reviewed depends on the disease situation and the success of vaccination campaigns in the particular country. Some of the temporary regulations introduced at the beginning of the pandemic are no longer in force, and some are still valid. Decisions about extensions are difficult to predict and are taken case-by-case. In most countries, the state of emergency has been lifted or is maintained temporarily in some areas. Some temporary measures are transferred to the provisions of existing laws that are applied permanently (France, Italy, Spain, Germany, and the UK).

31. In contrast to other countries, the **United States** maintains a state of emergency.

32. In **China**, an extensive legislative process was underway, which resulted in the adoption of the new Biosecurity Law of the PRC, which came into force on April 15, 2021. The Law focuses on the creating of a centralized system to counter biological threats covering the strict preventive monitoring of infectious diseases in plants and animals.

33. Common regulation approaches include delegating pandemic regulations competence from the government to regions. **Germany**, for example, has greatly contributed to overcoming legal uncertainty in the division of competence between different levels of government. In particular, some articles have formed a procedure for the introduction of measures to restrain the spread of infection, clarified the list of constitutional rights that can be limited at the federal level, and established the duration of such measures, reducing the scope of arbitrary action of the Federation. Sovereign federated states set their own restrictions, which vary according to the epidemic situation. The powers of the federated states were agreed upon with the Federation through a new mechanism of conferences and subsequent agreements between the federated states and the Federation, not foreseen by the Constitution. Accordingly, the federated states were granted the authority to impose new restrictions depending on the epidemic situation, within the limits established by the conference.

Measures to Combat the Spread of COVID-19

34. Many states have decreased their restrictive measures against the COVID-19 pandemic, such as the mask regime and self-isolation, commensurate with reducing the incidence (**France, Germany, Italy, Spain, Sweden, the UK, the USA, and Russia**). Nevertheless, the mask regime remains mandatory in medical and educational institutions as well as in air and intercity public transport (**France, Germany, and Italy**). Transport restrictions are also reduced (**France, Italy, Spain, the USA, and Russia**).

35. However, there are measures specific to certain countries. In **Spain**, for example, in July 2021, the General Directorate of Public Health issued a decree establishing an Information System where information on the laboratory diagnostic tests necessary for monitoring the pandemic caused by COVID-19 must be transmitted.

36. The imposition of special regimes in certain areas in some countries is one of the measures to prevent the pandemic. In **Germany**, for example, there were specific areas with a high risk of virus transmission, where special rules applied, in particular the obligation of self-imposed quarantine for 10 days. At the same time, the quarantine could be terminated upon providing proof of vaccination or a negative test result. **China** also maintains a zoning system in populated areas. In case of a local COVID-19 outbreak, the populated area is divided into high, medium, and low risk zones. People in high-risk zones are forbidden to leave their residence; in medium-risk zones, people are forbidden to leave areas defined by the local authorities; in low-risk zones, people are allowed to move freely, but must comply with personal safety measures (e.g., wear masks).

37. In general, the level of the COVID-19 prevention measures in **China** remains high and relatively stringent. The common policy to control the spread of COVID-19 does not involve “coexistence” with the disease, in contrast to the policy of the EU states and the USA, and aims at the rapid detection of all infection cases to prevent further increase in the disease incidence among the population. This also includes a system of mandatory treatment for COVID-19. In particular, compulsory isolation requirements in medical facilities for persons with confirmed, symptomatic or suspected COVID-19 infection are maintained. In addition, self-isolation at home is compulsory after centralized isolation. In case of local increase in the incidence of the disease, local authorities have the power to close the area to enter and exit completely, and shutdown public transport and enterprises. Quarantine requirements also apply to all people arriving from abroad. In addition, there is a grading system for air flights (domestic and international, including both passenger and cargo flights) based on the risk of the disease spread (low, medium, high). China also criminalizes the violation of quarantine measures.

38. The common tendency of most countries to reduce restrictive measures is due to the fact that, first, many countries have achieved a high vaccination rate (**France** — 92.2 %; **Italy** — 90.1 %; **Spain** — 90 %; **Sweden** — 75 %; **the UK** — 75.3 %; **the USA** — 67.5 %; **Russia** — 56 %). Secondly, subsequent virus strains are weakening (i.e., the percentage of severe disease is decreasing). Thirdly, the omicron virus version has been contagious enough to increase significantly the population immunization rate.

Vaccination

39. The core measure in the fight against pandemic since 2021 is vaccination of the citizens in all countries. In most of the countries it is unforced, but in the others there are requirements on compulsory vaccination of certain vulnerable groups of citizens such as medical staff, teaching staff, public assistance and home care personnel, medical students, public officials (France, Italy, the USA).

40. In November 2021, **Sweden** passed a law that contains provisions for equivalent compensation for injuries caused by the approved vaccine against COVID-19. Damages are covered by pharmaceutical insurance, but to the extent that the insurer does not pay full compensation for the caused damage, the state pays. The legal act is effective since December 1, 2021, and is retroactive.

Measures of Support

41. In 2021-2022, countries continue to pursue post-epidemic economic recovery programs to support both individuals and business actively. Previously imposed temporary measures remain in effect and are updated to provide effective assistance to those affected by coronavirus restrictions. Among the cancelled measures are mainly those provided because of the lockdowns (Sweden, the USA).

42. The forms of support are the following:

- loans to affected companies (France, Germany, Spain, Sweden, the USA, Russia, China);
- delays/reliefs on payments and taxes (France, Germany, Spain, Sweden, the USA, Russia, China);
- direct investments to the companies and compensation for expenses (Italy, Sweden, the USA, Russia);
- direct payments to the citizens in the form of subsidies (Germany, Spain, Sweden, Russia).

43. Post-pandemic support measures at the country level are aimed at green development. They include the ongoing subsidies to the power sector, in particular, to power plants generating electricity from renewable energy sources, cogeneration, and waste.

44. There is a wide range of social support measures in **Sweden**. In February 2022, the government issued a regulation under which persons with certain diseases (cancer, heart diseases, etc.) are eligible for COVID-19 preventive health care benefits provided they are unable to work at home.

45. In view of the aggravation of family and gender violence during the lockdown restrictions, states have envisaged additional protective measures and comprehensive social assistance to the victims of such violence. These measures include public information services, preventive programs, consultations (including remote ones), and shelters.

46. In **China**, compared to earlier periods, the number of support measures taken specifically due to the pandemic is very low.

Judicial Practice

47. Due to the pandemic, the courts considered separation of powers between the different levels and branches of government, constitutionality of the introduced measures. Normally, restrictive measures are recognized as proportionate, COVID-19 pandemic is not recognized as a universal force majeure circumstance. The courts undermined attempts of executives and regions to enlarge their powers during the COVID-19 pandemic.

48. In **Germany**, when resolving disputes about the proportionality of restrictive measures, the courts recognize the measures imposed by the states to be proportionate. For example, there is a Supreme Court decision on the issue stating that those affected by the restrictions are not entitled to state compensation for loss of income above the aid that has already been paid. On the vaccination issue, there is also a Federal Administrative Court decision that dismissed Air Force officers' complaint against mandatory vaccination, which, they argued, violated the right to bodily integrity. The Court ruled that vaccination of soldiers is compulsory.

49. In **Italy**, disputes focus on the division of powers between central and regional authorities. The Attorney General challenged the broad powers of the regions to introduce economic support measures. As a result, the Constitutional Court finds them contrary to the exclusive legislative competence of the central authorities of the state.

50. In **Spain** as well, many of court decisions concern the distribution of powers and competences between center and regions in the fight against COVID-19, and between different branches of power. The central government interdicted the attempts of the autonomous communities to broaden the mandate during the COVID-19 pandemic.

51. In the **USA**, there have also been disputes over the division of power between the different branches of government. The Supreme Court called off government's moratorium on evicting tenants. The Court ruled that President Biden's administration had no legal authorities to extend an emergency order accepted by the Congress. Prohibition of eviction was part of a Congress support package related to COVID-19, and then President Trump extended it in 2020. The Court concluded that the Congress must authorize moratorium extension.

52. Among other things, the current situation in the United States with regard to compulsory vaccination is controversial. The US Supreme Court has locked the requirement of President Biden administration and Department of Labor about compulsory vaccination of the large companies' employees. The Court considered that the Occupational Safety and Health Administration had no authority to issue the rule which concerns more than 80 million employees because despite those authorities that Administration received from the Congress, it still has no power to regulate public health in a broader sense. At the same time, the Supreme Court supported the mandate to vaccinate medical staff in the institutions financed from the federal budget.

53. In **Russia**, the Supreme Court clarified that recognition of the spread of a new coronavirus infection as a force majeure is not universal and must be established by reference to a particular case.



54. In addition, the Supreme Court recognized that the circumstances of the incidence of a new coronavirus infection on the territory of the Russian Federation refer to the circumstances threatening the life and safety of the citizens; therefore, they can lead to the administrative or criminal liability.

55. The Constitutional Court of the Russian Federation recognized the measure to establish the obligation of citizens not to leave their place of residence (stay) under conditions of high alert in order to prevent the spread of coronavirus infection as not contradicting the Constitution of the Russian Federation. Violation of such measure entailed administrative liability. Thus, the Court recognized it as proportionate.

