

# I. Social Policy and Social Law in Times of Crisis: An Introduction

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## 1. Crises in the Social Market Economy

The COVID-19 crisis is changing our world. The measures taken to tackle it have not only led to restrictions of freedom and temporary social isolation. They have also plunged the global economy into a deep recession. Even if its extent cannot yet be predicted<sup>1</sup> – it will leave deep scars.

Deliveries are cancelled at short notice, production comes to a standstill, and the demand for products and services suddenly stops. Companies and self-employed persons are affected in different ways. While – as in most crisis situations – some even benefit from it, others are left without a job and income overnight. In any case, the measures taken to fight the pandemic will only be temporary, even if the process may take longer than many expected when the measures were first implemented, and the economy and society will recover. What the long-term repercussions of the interim shutdowns will be and what the ‘New Normal’ will look like is hardly foreseeable today. Nevertheless, in times of crisis it is an obvious strategy not to leave the economy to its own devices, but to maintain instead capacities and to ensure that they can be used again later. However, this can be pursued in different ways and with various degrees of vehemence. In this respect, the corona crisis is no different from any other economic slumps triggered by external shocks.

A look at the development of the unemployment rate before, during and after the financial crisis of 2008, which is shown below, is revealing: The curves can be seen as symbolising different social policy approaches.

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1 In its [Spring 2020 Economic Forecast](#), the European Commission was expecting a corresponding decrease by 7.75% in the euro area, by 7.5% in the EU and by 6.5% in Germany. Projections went down in the [Summer 2020 Economic Forecast](#) with an expected decrease by 8.7% in the euro area, by 8.3% in the EU and by 6.25% in Germany. The [OECD Economic Outlook Interim Report](#) September 2020 came under the header “less pessimistic, but risks and uncertainty remain high” with a forecast of -7.9% for 2020 and +5.1% in the euro area.

The divergence between social models is well reflected in the data for Germany and the USA<sup>2</sup>. While in Germany attempts were made to keep unemployment low through labour and social law measures, the USA banked on “*hire & fire*” or rather, after the beginning of the crisis, on “*fire & hire*”. Of course, it is also crucial how, i.e. in what form and to what extent, support is provided to those who have lost their jobs.<sup>3</sup> More generous compensation payments may, under certain circumstances, balance out this loss. To that effect, “*flexicurity*” has been promoted by the European Commission as a combined model<sup>4</sup> within the framework of the common employment policy, i.e. a shift from “workplace security” to “employment security”. This is intended to allow more flexibility on the labour market and emphasises the link between protection against dismissal and social security, however without providing a uniform model for its concrete balancing. In the context of the European Semester<sup>5</sup>, this goal seems to have lost its significance. It is now pursued to a lesser extent, and other aspects have gained more importance.<sup>6</sup>

In times of crisis-related recessions, balancing employment protection is back on the agenda, but the starting points shift: Whereas the amount of income replacement in the form of social benefits continues to play a role – as higher benefits tend to strengthen social security – it is clear that the question whether, and how, to maintain jobs and companies is not one of organising a social market economy under normal conditions, but rather one of how to react to a major external shock. In other words, in times of crisis it is not only internalising approaches (relying on the existence of employment relationships by restricting dismissals) and externalising approaches (relying on state-organised benefits)<sup>7</sup> to solving the problem that oppose each other. The question is rather whether and how externalising measures are used to tackle the crisis.

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2 OECD Data.

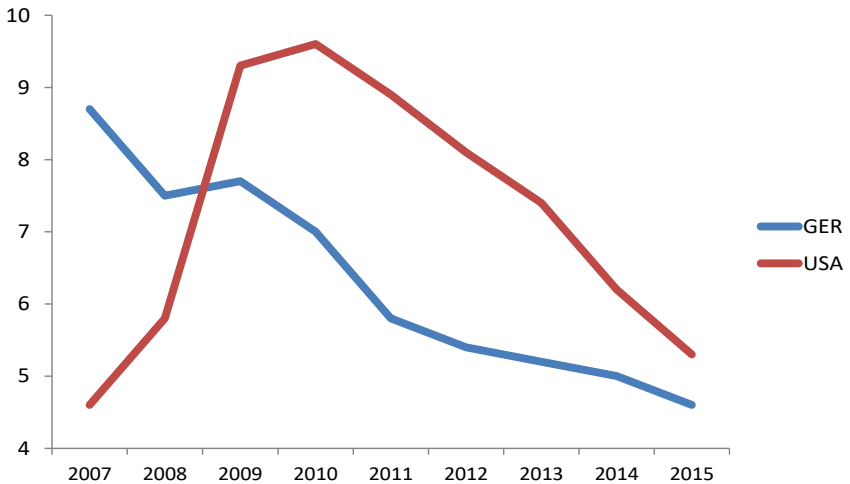
3 Cf. also *Quade, Verantwortung und ihre Zuschreibung im Recht der Arbeitsförderung*, 2009.

4 COM(2007) 359 final.

5 Cf. Annual Strategy for Sustainable Growth 2020, COM(2019) 650 final.

6 Cf. Proposal for a Joint Employment Report from the Commission and the Council accompanying the Communication from the Commission on the Annual Sustainable Growth Strategy 2020, COM(2019) 653 final, pp. 132 f. (the term is mentioned only once in a total of 169 pages).

7 On these variants of social protection, see *Zacher, Grundtypen des Sozialrechts*, in: FS für Zeidler, pp. 571, 579 f.

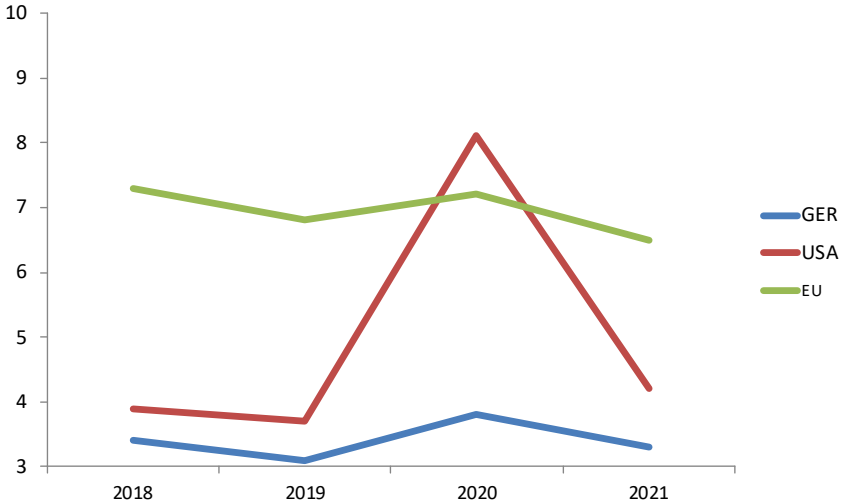


Such measures are particularly revealing in relation to the welfare state and the concrete functioning of social market economies because they combine social policy and other economic policy objectives. This has already been emphasised above for labour market policy: Here, wage replacement benefits are used not only to help people who have to bridge involuntary non-productive work time to support themselves, but also in order to preserve jobs. The situation is similar for companies that are to be kept running by way of liquidity assistance in the form of grants or subsidies. What is referred to here as economic policy, or more precisely structural policy, is possibly (at least in the current crisis) a social policy matter at its core. Benefits to companies and the self-employed can, above all, serve to compensate for losses: namely in cases where disease control has necessitated the closure of businesses and has thus led to a loss of income.

It is remarkable that, as far as the labour market and the unemployment rates are concerned, the outcome of the measures to combat the pandemic confirm, again, the differences in social models – which also holds true for the situation within the EU as a whole, even if unemployment rates have, over the last years, been higher on average than in Germany.<sup>8</sup> If, however, despite social policy interventions, companies have to close and jobs are lost, the question arises as to whether the existing social benefits to cover loss of earnings and livelihoods suffice or whether special arrangements should be introduced during the crisis. Such changes allow further conclu-

8 OECD Data. Data for 2021 are those of Quarter 4, which are below yearly average.

sions to be drawn about the distribution of individual, societal and state (or in general: political communities') responsibilities in times of crisis. They can also call into question the existing divisions of responsibility, or they can confirm them with the argument that states of emergency also require exceptions under social law – depending on the justification and systematic classification of these exceptions. In this sense, the crisis is like a magnifying glass making the strengths and weaknesses of social protection arrangements clearly visible.



## 2. Crisis Management and Social Protection Systems

It is important to note that the design and implementation of all crisis-related measures are subject to particular challenges. First, fast action is needed, not only to calm the financial markets, but above all to provide effective help to those affected. Second, thousands of cases need to be dealt with. In addition to the increased burden on the authorities, this means, above all, acting under uncertain conditions: typecasting replaces individualisation, as individual case assessments can rarely, or not at all, be conducted. Requirements and procedures must be kept as simple as possible. It is necessary to react to dynamic situations, the further development of which cannot be awaited, but also cannot be predicted in view of the lack of experience with comparable pandemics. Corrective measures must remain possible, even where hurried decisions taken previously will have

created new facts. After all, times of crisis are not only times that require an effectively functioning state; they also require strong governments. It is true that political decision-making remains essential: restrictions on freedom must be legitimised just as much as the expansion of redistribution processes. In how far threats of the pandemic may be left to be handled by people on their own or require governmental intervention is not a simple fact but open for valuation and requires decisions, for which political responsibility must be assumed. It is also true that governments have to react effectively, and, in this sense, times of crisis may also become times of strong administrations. Effectiveness is even a justification for policing measures and other restrictions of individual freedoms although the relation between those administrative actions and constitutional rights is not free from tensions. The same holds true for the relation between administrative and legislative powers. The urgency of security measures requires flexible and efficient action. As a consequence, statutory instruments and executive (delegated) legislation is gaining ground, sometimes to an extent which risks jeopardizing prior achievements in relation to the rule of law.

In most countries, crisis-driven legislation has to be implemented, at least as far as social policy is concerned, within pre-existing frameworks of complex institutional arrangements. These arrangements open up certain paths of welfare state intervention while blocking others. In most countries, existing social policy branches are not sufficiently coordinated with one another, because they each serve individual purposes and their emergence is often the result of historical contingencies and political calculations. The challenges for short-term interventions are clear: When simple and fast-acting measures are called for, their incorporation into a given social protection infrastructure is likely to encounter difficulties, and coordination problems may arise. This is not just a question of academic interest. Different types of social protection systems are not – and should not – be chosen arbitrarily. They pursue specific aims, and they are based on different modes of financing (contributions or taxes) and different conditions of eligibility (means-tested or not). Both aspects reflect different forms of responsibilities, put into legal forms, and even if welfare states have a broad margin of appreciation when it comes to circumscribing and defining these responsibilities in the context of benefits schemes, they should act consistently once the schemes have been set up. The legitimacy of their interventions depends essentially on compliance with this consistency, both from an economic and a constitutional point of view and in terms of perceived justice.

Of course, crisis-related measures may be constructed in a way which modifies some of the principles of previously existing benefits schemes,

and it is sometimes not clear whether such modifications occur intentionally or not. One may assume that they are a reaction to crisis-driven changes concerning the societal background of specific social protection systems. To give an example, it can make a difference for the design of a social assistance scheme whether it is meant to be applicable under extraordinary circumstances only, or whether it actually covers a majority, or at least a substantial part, of the population on a more long-term basis – which may well be the case once indigence, and not just the fear of economic decline, actually reaches the middle class. Such developments may help to overcome continued (now often semantic) distinctions between those in need who deserve more and those who deserve less<sup>9</sup>, as was done especially in England in the 19th century (“deserving and undeserving poor”),<sup>10</sup> and as has been widely discussed in US welfare policy.<sup>11</sup> Yet, if measures to improve access to social assistance are only implemented in order to overcome a crisis and not to modify the structure of a protection system as such, because a pre-existing stigma related to such schemes persists, this leads to the question of whether a distinction between different categories of “poor” still operates in the background of those systems – despite the fact that they should have opened up possibilities to all without

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9 The distinction is indeed made; cf. in connection with a normative justification of the minimum wage *Blumkin/Danziger*, Deserving Poor and the Desirability of a Minimum Wage, *IZA Journal of Labour Economics* (2018) 7:6.

10 The distinction gained significance due to the changes introduced to Elizabethan poor law in the course of the industrial revolution through the English *Poor Law Amendment Act of 1834*, to which the foundation had already been laid in the *old poor law*, cf. *1601 Poor Relief Act*, Introduction: “to set the Poor on Work: And also competent Sums of Money for and towards the necessary Relief of the Lame, Impotent, Old, Blind, and such other among them being Poor, and not able to work, and also for the putting out of such Children to be apprentices”. It is questionable, however, whether the workhouses did actually function to this extent; cf. *Smith*, A Letter to the People of England in Behalf of the Deserving Poor, 1838, p. 3 (LSE Selected Pamphlets): “The deficiency of our workhouse system is, that its classification has no reference to character, and the consequence is that there is little difference made between the good and the bad, the deserving and the undeserving ...”. Cf. also *Poor Law Commissioners’ Report of 1834*, II.1.5.: “But in no part of Europe except England has it been thought fit that the provision, whether compulsory or voluntary, should be applied to more than the relief of *indigence*, the state of a person unable to labour, or unable to obtain, in return for his labour, the means of subsistence. It has never been deemed expedient that the provision should extend to the relief of *poverty*; that is, the state of one, who, in order to obtain a mere subsistence, is forced to have recourse to labour.”

11 Cf. *Moffitt*, The Deserving Poor, the Family, and the U.S. Welfare System, *Demography* (2015) 52, pp. 729-749.

any moral underpinning, and although the egalitarian concept of human dignity obliges the state to secure the livelihood of all citizens in the same manner.

In any case, crisis-related social policy measures shed light on the background of social protection schemes and underlying ideas of how to delineate the spheres of responsibility between the individual, societal institutions and the political community. There is one type of social benefit which – in a certain way – is most directly based on the differentiation of those spheres of responsibility, which is public compensation. It is not always recognised as a specific category of social benefits,<sup>12</sup> although it should be as it is based on a specific reason for supporting people. It is true that the actual use of respective benefits schemes differs from one state to the other, and also the way in which they are typically organised at a national level does not follow one universal model.<sup>13</sup> Yet, at least two kinds of compensation benefits are well-established all over Europe: one being compensation for war victims, the other compensation for victims of crimes, and the latter also has a basis in European law<sup>14</sup>. The common background of such benefits is that a person suffers a damage and that the community (regularly the state) bears a responsibility for the situation that has caused this loss. In some cases, not least in the case of victims of crime, one may ask why a community should be held responsible at all. The reason is that such compensation serves to maintain a peaceful social order whenever the state claims a monopoly on the use of force.<sup>15</sup> Even though it is often disputed or questioned because the community's responsibility does not follow from state liability, it can be based on the general assumption that a welfare state has to maintain the legal and social order and to support individuals if they suffer from extraordinary losses. Such responsibility may follow from an obligation of the welfare state to take the appropriate measures although most governments would assume

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12 It is not by chance that the term “social compensation” has been put in brackets on the [internet site of the European Commission](#) providing general information on social protection in Germany.

13 *Becker, Soziales Entschädigungsrecht*, 2018, p. 63 et seq.

14 See European Convention on the Compensation of Victims of Violent Crimes, [ETS No. 116](#); [Directive 2004/80/EC](#) relating to compensation to crime victims of 29 April 2004 (OJ L 261/15); also [Directive 2012/29 EU](#) establishing minimum standards on the rights, support and protection of victims of crime of 25 October 2012 (OJ L 315/57). See also the European Commission's [EU Strategy on victims' rights](#).

15 Whereas it is not the obligation to protect people's lives cf. *Becker, Soziales Entschädigungsrecht*, 2018, p. 107 et seq.

that they are rather free to act; in any case, there is no individual right to a compensation benefit without a political decision that has been put into a respective act. Things are different if the state is liable for a damage. Liability requires first that damages have been caused by governmental actions, and second that the state either did wrong, has to guarantee for a specific result (in the sense of strict liability) or had caused individual damages that go beyond the general risks of the vicissitudes of life. The first requirement is often not easily established, as demonstrated in particular by cases in which vaccination is recommended by administrative authorities.<sup>16</sup> In cases of a pandemic crisis, states cannot, at least in most cases, be held responsible for the outbreak of a virus; but a causal link can be established between damages and governmental actions if states impose a lockdown. What will be missing though, is the second condition, at least if lockdown measures are lawful and address major parts of the population. It follows therefore that if a state assumes a legal responsibility for the effects of a pandemic crisis by granting compensation for crisis-related damages and losses, it does so as an expression of its obligations arising from the social state principle.

Various types of compensation benefits tend to follow from major crises.<sup>17</sup> Their actual legal construction may differ according to national traditions of social policy interventions. They may be accompanied by additional types of social benefits and measures, in particular making social security and social assistance benefits available under easier conditions, and they may thus go beyond compensation in the proper sense. In any case, different state interventions made in the present crisis suggest – to varying degrees – that individuals were not held responsible for economic difficulties and that the mechanisms of the market economy were temporarily suspended. Whether they will lead to permanent changes, despite their temporary nature, and whether the crisis leads, in turn, to societal changes to which welfare states have to react by adopting their social benefits systems remains to be seen. This brings us back to the initial question, namely what can be learned from the crisis with regard to the basic structure of the welfare state.

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16 See decision of the Spanish *Tribunal Supremo*, Sala de lo Contencioso, Sección 4, Rec 6878/2010 of 9 October 2012; decision of the Italian *Corte Costituzionale* No. 107/2012 of 16 April 2012.

17 Cf. Becker, *Soziales Entschädigungsrecht*, 2018, preface (p. 5).



### 3. *Questions and Foci*

To provide answers, the following chapters illustrate which measures and strategies selected countries have chosen to react to the coronavirus crisis in order to secure economically endangered livelihoods through state intervention. Stocktaking and analysis face a double difficulty: on the one hand, the range of measures is very wide; on the other hand, these measures tended to change within a very short period of time because the lack of suitable blueprints and of experience required constant adjustments.

As to the first point, the study focuses on state support in the form of payments. It is based on three layers of measures.

- The first is labour market policy, where job security and the securing of wages interact. Such measures include internalising and externalising approaches (see I.1.), regulations of employment relations through labour law and the provision of social benefits through social (protection) law. We do not cover questions of general contractual and insolvency law. There are a wide range of crisis-driven changes in these areas, and they also concern the distribution of legal responsibilities in that they concern the existence and suspension of contractual obligations in times of crisis. From a social security perspective, however, these legal responses to crisis-related changes in certain circumstances are a separate matter, as their outcome decides on whether social needs evolve or not. We make only passing reference to functionally equivalent tax law provisions and to regulations for groups of people who are subject to specific social law provisions in all countries, namely students, artists and persons with disabilities.
- A second layer deals with the maintenance of economic activity in general through the granting of subsidies and aids. At first glance, they may form part of economic policy. But they have also to be characterised as social policy measures as the question arises to what extent they are (also) motivated by the assumption of a community responsibility to compensate for damages.
- The third form of intervention concerns measures to facilitate, and to open up, access to social protection.

All those measures will be analysed in light of two questions: (1) how they relate to existing social protection regimes, and (2) to what changes they lead in existing social protection, not only through financial transfers per se, but also through their design in the context of the systematisation, functionality and evaluation of welfare state interventions.

Second, and with regard to the dynamics of the measures, stocktaking remains a challenging task. Most countries experienced three or more waves of the coronavirus. That often called for a prolongation of measures that had initially been planned for only a short period of time; sometimes it also called for more far-reaching measures or new approaches. The following reports therefore provide information about a process, namely how welfare state measures were implemented and have been changed to cope with the crisis. They reflect the situation as of autumn 2021, and partly even beyond.

Even at the end of the winter of 2021/2022, it is unclear whether the pandemic is truly over, and at least some measures dealing with its consequences are still in force. At the same time, a new crisis has broken out with the war in Ukraine. As a consequence, it is hard to predict when the period of crisis-driven measures will be over, and when the world will be back to normal or even a 'new normal'. Nevertheless, every country has had to deal with the pandemic over a period of approximately two years now, and it is safe to say that, within this time span, certain patterns of social policy measures can be identified as reactions to the crisis.

#### 4. Phases and Countries

##### a) First Phase

Our project started with a first phase that concentrated on five European countries. It included *Germany*, *France* and the *United Kingdom* – three states which not only pursue different social, employment and industrial policy approaches, but which have also reacted to the corona crisis with different speed and intensity. Concerning the United Kingdom, however, the study concentrates on *England* only, as after the *devolution* special regulations have come to exist in the various regions of the kingdom, the mention of which would either go beyond the scope of this publication or require separate reports. *Denmark* has been included as this allowed to bring in aspects of the Scandinavian welfare state model in general, and to answer the question of how the pandemic is being responded to in the country that has long been a pioneer of “flexicurity” (see I.1.) in particular.<sup>18</sup> Finally, *Italy* was the first European hotspot of the spreading

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18 It is not about a potential model role of Danish policy, however; the fact that it cannot simply be transferred to Germany, and the question as to what can

coronavirus; drastic disease control measures were taken early on, and there the need for action in terms not only of health policy but also of social and economic policy became apparent very quickly. A first comparative analysis was published early, in May 2020 in German, and it gave a first systematic overview on the social policy reactions to the pandemic.<sup>19</sup> An updated version followed in November 2020 at the end of the first, and the beginning of the second, wave of COVID-19, allowing us to take in the first steps of a process of crisis reaction measures.<sup>20</sup> We also took stock of the first phase inquiry with a view to the situation of vulnerable groups of persons, focusing in particular on the differences regarding the crisis measures taken to support individuals in ‘standard employment’ and ‘non-standard workers’ in each country.<sup>21</sup>

What we did not include in our study was the reaction at regional level – in the sense of regional integration communities here in the European Union. The pandemic has also triggered a discussion about European solidarity and about crisis management at the European level. It raised questions such as: How should, can or must the Union react, and what do EU Member States owe to each other in terms of mutual assistance? Such discussions were familiar from earlier crises. They revolved, especially in connection with the 2008 financial crisis, around financial transfers and the introduction of a European unemployment insurance<sup>22</sup> but did not lead to a solution that would have got to the root of the problem. Then the pandemic hit economies that in some countries still had not recovered from this financial crisis, and although no one in the affected countries could be blamed for its outbreak, the question of national responsibility for combating it remained relevant. Different to the financial crises and despite all the controversy over the form and extent of the measures,

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particularly be learnt from it, has been the subject of numerous socio-political studies (particularly in the first decade of this millennium).

- 19 *Becker/He/Hohnerlein/Seemann/Wilman*, Existenzsicherung in der Coronakrise: Sozialpolitische Maßnahmen zum Erhalt von Arbeit, Wirtschaft und sozialem Schutz im Rechtsvergleich, *MPI Soc Working Papers Law Vol. 6/2020*.
- 20 *Becker/He/Hohnerlein/Seemann/Wilman*, Protecting Livelihoods in the COVID-19 Crisis: Legal Comparison of Measures to Maintain Employment, the Economy and Social Protection, *MPI Soc Working Papers Law Vol. 7/2020*.
- 21 *Seemann, Anika; Becker, Ulrich; He, Linxin; Hohnerlein, Eva Maria; Wilman, Nikola*: *Protecting Livelihoods in the COVID-19 Crisis: A Comparative Analysis of European Labour Market and Social Policies*, in: *Global Social Policy (2021) 2*.
- 22 Cf. only the chapters by *Becker* and *Potacs*, in: Hatje (ed.), *Verfassungszustand und Verfassungsentwicklung der Europäischen Union*, *EuR supplement 2/2015*, pp. 19, 31 et seq. and pp. 135, 143 et seq.

there was consensus among the Member States on one point: namely, that the EU could not refuse mutual assistance.<sup>23</sup> The common ground of all reactions both within states and within the EU<sup>24</sup> is the question how to share responsibilities between political communities and their members. Of course, the situation concerning the EU requires separate consideration, in particular with a view to the legal framework provided by primary EU law. It should be noted though, that this law also concerns the actions of the EU Member States that, in their individual crisis management, remain integrated into this legal framework. In practice, this was and is important in two areas, namely regarding the law on state aid and the free movement of persons. While the European Commission has taken swift and effective action to ensure that internal market rules do not stand in the way of the support for the economy necessitated by the crisis<sup>25</sup>, the Union had, at the beginning of the crisis, largely been left out of the picture when internal borders were closed. Things have improved over time, and an overall assessment would come to the result that the EU has taken the opportunity to strengthen its profile, to provide European answers to the pandemic with its ‘recovery plan’<sup>26</sup> and ‘NextGenerationEU’<sup>27</sup> to lay some

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- 23 [Regulation \(EU\) 2020/672](#) on the establishment of a European instrument for temporary support to mitigate unemployment risks in an emergency (SURE) following the COVID-19 outbreak of 19 May 2020 (JO L 159/1) did not establish an EU unemployment insurance scheme but a new form of financial assistance. On 25 September 2020, the [Council approved](#) EUR 87.4 billion in financial support for Member States; overall, 19 EU Member States are due to receive a total of EUR 94.4 billion in financial support under SURE. See for the overview of the amounts disbursed so far [information of the European Commission](#).
- 24 Cf. [Regulation \(EU\) 2020/461](#) of 30 March 2020 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 (OJ L 99/9); [Council Regulation \(EU\) 2020/2094](#) of 14 December 2020 establishing a European Union Recovery Instrument to support the recovery in the aftermath of the COVID-19 crisis (OJ LI 433/23); [Regulation \(EU\) 2021/241](#) of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility (OJ L 57/17) as a centrepeice of ‘NextGenerationEU’ (fn. 27).
- 25 Cf. on the aids declared compatible with the internal market by the Commission on the basis of Art. 107 Para. 3 lett. b TFEU; Communication on the Temporary Framework for State Aid Measures to Support the Economy in the Current COVID-19 Outbreak of 19 March 2020, C(2020) 1863 ([OJ C 911/1](#)). Since its adoption, the Temporary Framework has been [amended six times](#).
- 26 See information of the [Council of the EU](#).
- 27 See the [EU’s 2021-2027 long-term budget](#).

foundations for future supranational actions, both in the area of health policy and of financial support of Member States.

### b) *Second Phase*

With this publication, we present the results of a second phase of our project. This phase is about broadening the investigation, first with a view to the time frame (see I.3.), second by adding experiences and analyses taken from 16 more countries.

As far as Europe is concerned, the country report on *Sweden* does not only provide more insight into reactions in Scandinavia but also into those of a country that had chosen to follow its own path of reactions to the pandemic. Observations on *Greece*, *Ireland* and the *Netherlands* help to differentiate the picture by shedding light on the reactions in three smaller European countries with somewhat mixed welfare state systems. Closing a considerable gap in our first project phase, we included four countries from Central and Eastern Europe. Three of them, the *Czech Republic*, *Poland* and *Slovenia* are Member States of the European Union. The fourth is a different and special case, as *Russia* not only belongs to both Europe and Asia but also does not share the legal framework common to the other European states involved in this project. And it has to be added that it has decided to leave any common ground with the global community by starting its war of aggression against Ukraine, a fact that could not have been imagined to become reality at the beginning of the second project phase. In this light, it might be one of the last Russian reports for the foreseeable future that accounts for political and economic peculiarities.

We also decided to widen the perspective beyond European borders – although a truly global approach would have had to be based on a greater number of countries. Instead, the selection presented here reflects, again, situations of specific interest. To start with the three countries from the Far East: *China* is the one where the pandemic began and the virus broke out, and where particularly drastic pandemic control measures are still being taken today in line with the country's zero-COVID strategy. Both *Japan* and *Taiwan* have taken early action against COVID-19, and both countries can rely on elaborate and well-developed social protection systems in the background. They also profited from their geographical location. Quite the same holds true for *Australia* and *New Zealand*. These two countries, too, followed a zero-COVID strategy with quite some impressive success during the first phases of the pandemic, even if Omicron has meanwhile put this strategy into question. The African continent is represented by

*South Africa*, where the virus hit a country in economic difficulties, but where the authorities were also rather experienced in dealing with epidemic situations. The two countries chosen from Latin America formed, in a certain way, a counterpart to the countries from the Far East and Oceania. Governments both in *Brazil* and in *Mexico* acted reluctantly to the pandemic, and the number of people who died from COVID-19 was comparatively high. This attitude also seems to be reflected in the social policy measures taken by these countries during the COVID-19 crisis.

### 5. *Comparative Insights from the First Phase*

A couple of results could be drawn from the first phase of the project. They concern the overall set-up of crisis-related measures (a)), the mix of social policy instruments used as a reaction to the pandemic (b)), and preliminary observations on the outcome of the welfare state architecture in general (c)). To what extent they have to be corrected or supplemented from the analyses presented in the following chapters can be learned from the general conclusions to this volume (see XIII).

#### a) *Crisis Mode*

All countries have been in crisis mode for the past two years. Some have been quicker, others more hesitant, in acknowledging the fact that the pandemic would be leading to challenges of an unprecedented scale – a fact that has become undeniable, at least when the second and third waves of coronavirus hit the countries. All countries have been trying to meet these challenges and set up social policy programmes, most of them shortly after the first curfews and contact restrictions had been imposed. Market mechanisms are being corrected through state measures, and social protection is increasing against negative economic consequences that are obviously considered unaccountable or undeserved. At the same time, awareness has quickly grown that despite all the measures taken, this crisis will lead to insolvencies and unemployment and will be harder to control than the last, financial, crisis. Three aspects deserve to be highlighted.

First, the procedures and forms of state intervention correspond to the exceptional situation: legislative procedures have indeed been accelerated in many countries, in some cases considerably, and the possibilities of executive legislation have been expanded, albeit always along the national

path of the respective constitutionally framed legislative culture. In addition, there is the sheer volume of regulations that have now been passed to combat the crisis.

Second, the particular pressure to act is reflected in the composition of instruments used. Each country is trying out combinations with different approaches: no country can do without new cash benefits, none without subsidies in the form of tax breaks and by granting special credit conditions; a deferral of social security contribution payments has also become widespread. Specific social policy measures are concentrating on employees, solo self-employed persons and smaller companies as well as those seeking employment.

Third, these instruments are not only introduced as quickly as possible, but also on a temporary basis – although in most countries the periods initially provided for this have already been extended at least once. The recent increase in infection rates has led to either the extension of specific social protection programmes, the introduction of new ones, or, where these programmes had already been cut back over the previous few weeks, to policy U-turns and to a re-booting of such programmes.

#### b) *Social Policy Instruments*

The social policy toolkit contains various pandemic-specific measures, which can be found in a slightly modified form in all countries. Their configuration responds, above all, to three major consequences of the corona crisis: Entire sectors have come to a complete standstill, many self-employed persons have lost all employment opportunities due to curfews, and families have to look after themselves again. This results in new, or at least changed, needs to which social law must respond.

- One of the most important instruments with the aim of *job retention* are benefit schemes in the event of short-time work or partial unemployment.
- There is little common ground with regard to *labour law* in its role of supporting job retention. While some countries have refrained from doing so, others have introduced special holiday regulations or special protection against dismissal. Everywhere, however, there has been a reaction to the fact that apart from the many jobs at risk, there are others that are in particular demand in times of crisis. Thus, special grants, tax subsidies and vouchers have been issued to support certain

- groups of employees that have to shoulder the burden of the pandemic in some form.
- The self-employed and smaller companies receive *cash benefits* to compensate for loss of earnings, albeit at very different levels and with different starting points: whereas some payments are granted as earnings replacements, others aim at covering business costs and thus supporting livelihoods more indirectly. Some groups of self-employed are covered by existing social protection systems, although it must be borne in mind that the level of protection for self-employed workers varies considerably from one country to another.<sup>28</sup>
  - *Sickness benefit* is being used universally – not because there is greater demand for it due to an increase in the number of cases of illness, but because it is used everywhere to compensate for loss of earnings caused by forced quarantine or, in some cases, to assume childcare responsibilities where necessary. At the same time, benefit conditions have been changed in favour of the beneficiaries: where previously waiting periods had to be adhered to, these have been eliminated; payment periods have been extended in some countries, and benefit levels raised.
  - Access to *unemployment benefits* is being simplified. This applies in particular to the obligation to make oneself available to the employment service or to provide evidence for a job search or certain work services. As the labour market has collapsed and contact with case managers is limited, activation measures have temporarily become ineffective. In addition, the period for which unemployment benefit is paid has been extended in some countries.
  - Finally, there are various measures relating to *social assistance*. They range from the suspension of special conditionalities to special benefits for those most in need, to a partial or flat-rate waiver of a means test.

### c) Crisis Reactions and Welfare State Architectures

The pandemic has put emphasis on the strengths, but also on the weaknesses of welfare states. Generally speaking, political communities have taken over more or new responsibilities as the mechanisms of social mar-

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28 Cf. for the situation in Europe Becker, Die soziale Sicherung Selbständiger in Europa, *Zeitschrift für europäisches Sozial- und Arbeitsrecht* (ZESAR) 2018, p. 307 et seq.



ket economies have been suspended by the coronavirus. The pathways taken in the different countries very much depend on the given architecture of the existing social protection schemes. The general tendency, however, is universal.

Many states are struggling to find the right balance between flexibility and the protection of employment relationships and to improve and universalise their social protection systems. This is not surprising in times of major societal changes, including demographic processes and labour markets impacted by digitalisation.<sup>29</sup> The transformation of economies, triggered by the unavoidable fight against a climate catastrophe, leads to further need for social protection reforms. And this is where the pandemic can be expected to be of a certain help, namely because it increases the pressure to reform.

Yet, this is only true if there is already agreement on the necessity and content of reforms. This, however, is unlikely to be the case anywhere. Thus, we are once again taught the same lesson that we have been taught through the last financial crisis:<sup>30</sup> Times of crisis, with their tendency to offer simple and quick solutions, are not very suitable for finding viable and lasting compromises – yet these are essential for welfare states to function. However, each crisis reveals deficits in the design and the coordination of many social protection benefits. This is an opportunity to draw socio-political conclusions and thus provide a variety of impulses for a new discussion of fundamental questions regarding the welfare state once the crisis has been overcome.

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29 Cf. *Becker*, *New Forms of Social Security? A Comment on Needs and Options for Reform in a National and Supranational Perspective*, in: Pichrt/Koldinská (eds.), *Labour Law and Social Protection in a Globalized World*, 2018, p. 205 et seq.

30 See *Becker/Poulou* (eds.), *European Welfare State Constitutions after the Financial Crisis*, 2020.

