

THE IMPACT OF COVID-19 ON THE FREE MOVEMENT OF PERSONS IN THE EU*

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ABSTRACT

The impact of the COVID-19 outbreak is being endured throughout the world, and the European Union (EU) is no exception. The rapid spreading of the virus effected, among other things, restriction on the freedom of movement. The EU member states introduced national response measures to contain the pandemic and protect public health. While broadly similar, the measures differ with regard to strictness and the manner of introduction, reflecting the political legitimacy of the respective country. With the ‘Guidelines concerning the exercise of the free movement of workers during COVID-19 outbreak’ – its first COVID-19-related Communication – the European Commission (EC) attempted to curb differing practices of the EU member states and ensure a coordinated approach. Ultimately, this action was aimed at upholding of fundamental rights as guaranteed to EU citizens, one such being the freedom of movement. Thus, from the very start of the pandemic, the coordinated actions of EU institutions sought to contain the spread of COVID-19 infections with the support and cooperation of EU member states. This is confirmed by the most recent Council of the EU (Council) recommendation on a coordinated approach to restrictions to freedom of movement within the EU of October 2020. While they did prevent the spread of infection and save countless lives, the movement restriction measures and the resulting uncertainty have greatly affected the people, the society, and the economy, thereby demonstrating that they cannot remain in force for an extended period. This paper examines the measures introduced by EU member states and analyses the legal basis for introducing therewith limitations on human rights and market freedoms. To what extent are

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the EU and member states authorized to introduce restrictions on the freedom of movement in the interest of public health? Have the EU and member states breached their obligations regarding market freedoms and fundamental rights under the Treaty? And most importantly: have they endangered the fundamental rights of the citizens of the EU?

Keywords: COVID-19, European Union, free movement of persons, human rights, travel ban

1. INTRODUCTION

Comprising one of the four fundamental freedoms upon which EU law rests – as laid down by the Treaty on the Functioning of the European Union (TFEU) – is the freedom of movement of persons. As the root of its protection and guarantee, the TFEU establishes the freedom of movement as a fundamental pillar of European Union (EU) law. Another aspect at the center of the EU's interest, in addition to freedom of movement, is EU citizenship. Being that the cornerstone of citizenship is precisely the right of citizens to move freely within the EU creates between the two an inextricable link. The years 2020 and nearly half of 2021, as marked by the COVID-19 pandemic, saw the EU posed with a new and difficult challenge, forced to balance between the protection of EU citizens' health and the foundations of its very existence – fundamental freedoms, especially freedom of movement. The results of actions taken to strike a balance between the two interests, are manifested in the employed soft law mechanisms. Despite the EU's guaranteed high level of security and multitude of social rights, the EU's response to the challenge suffered under its bureaucracy that continually hampers vital decisions, thereby creating distrust on the part of its citizens to whom it is to serve. The EU's actions in response to the pandemic have brought to light the need for flexibility in decision-making at EU level. But – given its member states' (MSs) mutual distinctiveness and differing interests and, by contrast, the EU's one-size-fits-all approach toward them – can the EU survive on exclusive unanimity and (requisite) solidarity? As focused on the freedom of movement of persons, the first part of the paper examines the regulations governing it, along with the relevant the case law of the Court of Justice of the EU (CJEU). The section also discusses the possibilities of restricting the freedom of movement of persons and presents the legal basis for such treatment. The central part of the paper analyzes the cardinal documents adopted and actions undertaken by the EU in response to the COVID-19 pandemic. The penultimate chapter reviews the Proposal for a Regulation of the European Parliament and of the Council on the digital green certificate with which the EU moved away from soft law mechanisms of action, which moving away is examined herein.

2. FREEDOM OF AND RESTRICTION ON MOVEMENT OF PERSONS

The freedom of movement of persons is both one of the four fundamental freedoms upon which EU law rests and the center of EU's *raison d'être*.¹ Initially defined by the 1992 Maastricht Treaty,² today freedom of movement is prescribed by Articles 45 to 49 to the TFEU.³ The Maastricht Treaty supplemented the originally purely economic motive for the integration with a politically oriented one, which integration is most prominent in the establishment of EU citizenship.⁴ The Treaty of Amsterdam, which amended Article 8 of the Maastricht Treaty, defined EU citizenship.⁵ The keystone of EU citizenship is the citizens' right to move and reside freely on any MSs' territory, irrespective of their economic activities.⁶ This right is also prescribed by Article 45 of the Charter of Fundamental Rights of the European Union.⁷ Under the TFEU, a citizen of the EU is any person holding the nationality of an MS, whereby the EU citizenship does not replace national citizenship, but rather supplements it.⁸ In confirming the effect of Article 21 of the TFEU in *Baumbast* (C-413/99), the CJEU noted that the right to EU citizenship is granted directly to every EU citizen.⁹ In *Lasal* (C-162/09), the CJEU

¹ Kahanec, M.; Pytliková, M.; Zimmermann F., *The Free Movement of Workers in an Enlarged European Union: Institutional Underpinnings of Economic Adjustment, EU Enlargement, and the Great Recession*, Springer, Berlin, Heidelberg, 2016; Woodruff J., B., *The Qualified Right to Free Movement of Workers: How the Big Bang Accession Has Forever Changed a Fundamental EU Freedom*, *Duquesne Business Law Journal* No.10, 2008, pp. 127-146; Mushak, N.; Voloshyn, Y., *Impact of COVID-19 on the Realization of Freedom of Movement in the European Union and Its Member States*, Atlantic Press, *Advances in Economics, Business and Management Research*, vol. 170, Proceedings of the International Conference on Economics, Law and Education Research (ELER 2021).

² Baldoni, E., *The Free Movement of Persons in the European Union: A Legal-historical Overview*, *Pioneer Working Paper* No. 2, 2003, pp. 10.; Hasanagić, E., *Utjecaj prakse Suda Evropske unije na ostvarivanje slobode kretanja radnika*, *Pravni vjesnik*, Vol. 30, No. 2, 2014, pp. 307-327.

³ Vukorepa, I., *Migracije i pravo na rad u Europskoj uniji*, *Zbornik Pravnog fakulteta u Zagrebu*, Vol. 68, No. 1, 2018, pp. 85-120.

⁴ Verschueren, H., *Free Movement of EU Citizens: Including for the Poor?*, 22, *Maastricht J. Eur. & Comp. L.* 10, 2015, pp. 12; Čapeta, T.; Rodin, S., *Osnove prava Europske unije*, *Narodne novine*, Zagreb, 2018., pp. 160.

⁵ Carrera, S., *What Does Free Movement Mean in Theory and Practice in an Enlarged EU?*, *European Law Journal*, Vol. 11, No. 6, 2005, pp. 699–721, pp. 700.

⁶ *Ibid.*; Kurbegovic-Huseinspahic, D., *Prohibition of Discrimination Based on Nationality in the European Union*, *Annals of the Faculty of Law of the University of Zenica* 14, 2014, pp. 513-550, pp. 519.; Vukorepa, *Migracije i pravo na rad [...] op.cit.*, note 2.

⁷ Glibo, M., *Državljanstvo Europske unije*, *Pravnik*, 46, 1 (93), 2013, pp. 86; Verschueren, *op.cit.*, note 4.

⁸ Craig, P.; De Burca, G., *EU Law - Text, Cases and Materials*, Sixth Edition, Oxford University Press, New York, 2015, pp. 854; Čapeta; Rodin, *Osnove prava... op.cit.*, note 4; Kurbegovic-Huseinspahic, *Prohibition of... op.cit.*, note 6.

⁹ Storey, T., *Freedom of Movement for Persons - Baumbast & R v. Secretary of State for the Home Department (Case C-413/99), Carpenter v. Secretary of the State for the Home Department (Case C-60/00) - Court of*

emphasized that EU citizenship grants every EU citizen the primary and personal right to free movement and residence in the state territory of an MS.¹⁰ In *Bosman* (C-415/93), the CJEU also confirmed that the right to free movement includes the right to leave the permanent or temporary residence.¹¹ Accordingly, as confirmed by the case law of the CJEU, the freedom of movement and residence in the territory of an MS, as well as leaving the place of permanent or temporary residence, and the right to equal treatment are guaranteed to EU citizens under the TFEU – all being the fundamental rights of EU citizens regardless of their economic activity.¹²

The step to have strengthened the freedom of movement was made on 14 June 1985, by the signing of the Schengen Agreement.¹³ Its principal achievement was the abolishing of control of persons at internal borders and transplanting thereof to external borders.¹⁴ Complementing it was the Convention implementing the Schengen Agreement, which laid down regulations and guarantees for the establishment of areas free of internal border controls. Since the entry into force of the Treaty of Amsterdam, the Convention, as effective since 1995, has been subsumed under primary EU law as a Protocol.¹⁵ The EU's internal borders are governed by the Schengen Borders Code.¹⁶ The Schengen acquis has been integrated into the legal framework of the Union by Protocol (No 19) to the TFEU.¹⁷ The right of

Justice of the European Communities- EU Citizenship; Rights of Residence under EU Law for Third Country Family Members; Right to Respect for Family Life as a Fundamental Right in EU Law, Journal of Civil Liberties 7, No. 3, 2002, pp 152-162; Kurbegovic-Huseinspahic, *Prohibition of...*, *op.cit.*, note 6, pp. 520.; Verschueren, *op.cit.*, note 4.

¹⁰ Verschueren, *op.cit.*, note 4.

¹¹ Case C-415/93 *Union royale belge des sociétés de football association ASBL v Jean-Marc Bosman, Royal club liégeois SA v Jean-Marc Bosman and others and Union des associations européennes de football (UEFA) v Jean-Marc Bosman*, ECLI:EU:C:1995:463, paras. 95-96.

¹² Verschueren, *op. cit.* note 4, pp. 13.

¹³ Full title: "Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders"

¹⁴ Atger, A. F., *The Abolition of Internal Border Checks in an Enlarged Schengen Area: Freedom of movement or a web of scattered security checks?*, Research paper No. 8, 2018.

¹⁵ Protocol (No 19) on the Schengen Acquis integrated into the Framework of the European Union, C 202/290.

¹⁶ Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code).

¹⁷ Protocol (No 19) on the Schengen Acquis integrated into the Framework of the European Union, C 202/290.; McCabe, K., *Schengen Acquis: The Development of the Right to Free Movement of Persons within the European Union Legal Framework and the Necessary Reforms to Adapt to Evolving Security Threats in the Region*, Creighton Int'l & Comp LJ 107., Vol. 7, Issue 1, 2016, pp. 109; Carrera, *op.cit.*, note 5, pp.701.

citizens and their families to free movement within the EU is guaranteed by the Citizens' Rights Directive.¹⁸

The above documents also provide for restrictions on the freedom of movement in certain circumstances. Such restrictions are regulated in more detail in the TFEU and may be justified by Article 21, which states that the right to free movement and residence within the MSs' territories is subject to the limitations and conditions set out in the Treaties, as well as the measures put in place to give them effect. Where the Treaties do not provide the necessary powers, the Council may, in accordance with the ordinary legislative procedure, adopt provisions that facilitate the exercise of the said rights. The Council may also adopt measures relating to social security or social protection.¹⁹ The protection and improvement of human health deriving from the TFEU fall under the supporting competences where the EU has no power to act, but rather only support the actions of MSs. Under Article 45 (3) to the TFEU, freedom of movement for workers may be restricted on grounds of protection of public policy, public security, or public health.²⁰ On the example of health matters, which are entirely within the competence of the MSs, even if the EU does not have authority to regulate issues relating to health protection, it has the authority to activate the restriction on the freedom of movement of workers under Article 45 (3) of the TFEU, invoking preservation of public health. Article 29 (1) to the Schengen Borders Code provides for the reintroduction of border control at internal borders – commensurate with the circumstances – where public policy or internal security so require.²¹

The MSs derive the greatest power for restriction on the right of entry and right of residence from the Citizens' Rights Directive. Under its Article 27, MSs may

¹⁸ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC; Marković, T., *Prava državljana članica EGO-a i članova njihovih obitelji u okviru slobode kretanja vs. mobilnost*, Pravni vjesnik, Vol. 30, No 2, 2014, pp. 285-305; Valcke, A., *EU Citizens' Rights in Practice: Exploring the Implementation Gap in Free Movement Law*, European Journal of Migration and Law, Vol. 21, No. 3, 2019, pp. 289–312, pp. 290.

¹⁹ Article 21 TEU (Lisbon).

²⁰ Article 45 (3) TEU (Lisbon); Paces, M. A.; Weimer, M., *From Diversity to Coordination: A European Approach to COVID-19*, European Journal of Risk Regulation, Vol.11, Issue 2, 2020, pp. 283-296, pp. 286.

²¹ Montaldo, S., *The COVID-19 Emergency and the Reintroduction of Internal Border Controls in the Schengen Area: Never Let a Serious Crisis Go to Waste*, European Papers, Vol. 5, No 1, 2020, pp. 523-531, pp. 525; Ramji-Nogales, J.; Goldner Lang, I., *Freedom of movement, migration, and borders*, Journal of Human Rights, Vol. 19, Issue 5, 2020, pp. 593-602, pp. 596; Regulation (EU) 2016/399, *op.cit.*, Article 29 (1).

restrict the freedom of movement and residence of EU citizens and their families on grounds of public policy, public security, or public health. The measures taken on grounds of public policy or public security must be in line with the principle of proportionality. Neither of the grounds may be invoked to serve economic ends. However, the Directive does condition that the measures taken on grounds of public policy or public security be based exclusively on the personal conduct of the individual concerned, and under no circumstance rely on general prevention or be automatic or systematic²² The CJEU has repeatedly emphasized that the condition for taking measures to preserve public policy and public security is a case-by-case assessment.²³ However, neither the Citizens' Rights Directive nor the CJEU have determined that such condition applies to measures taken to preserve public health.²⁴ Of even more weight is Article 29 to the Directive, prescribing that the only diseases justifying measures restricting freedom of movement are the diseases with epidemic potential as defined by the relevant instruments of the World Health Organization (WHO) and other infectious diseases or contagious parasitic diseases if they are the subject of protection provisions applying to nationals of the host MS. The disease caused by the COVID-19 virus undoubtedly fulfils said criteria.²⁵

3. ACTIONS UNDERTAKEN BY THE EU AMID THE COVID-19 PANDEMIC

Following the COVID-19 outbreak in Europe and the rapid increase in the number of infections, European countries closed their borders, i.e., introduced restrictions on all entries to their respective state territories. The measures were adopted at the national level, absent of coordination between MSs,²⁶ hindering, inter alia, free movement of workers employed in MSs different from their country of ori-

²² Directive 2004/38/EC, *op.cit.*, Article 27.

²³ Case 67/74 *Carmelo Angelo Bonsignore v Oberstadtdirektor der Stadt Köln*, ECLI:EU:C:1975:34, para. 7., Case C-348/96 *Criminal proceedings against Donatella Calfa*, ECLI:EU:C:1999:6, paras. 25-27; Case C-408/03 *Commission v Belgium*, ECLI:EU:C:2006:192, paras. 68-72., Case C-331/16 *K. v Staatssecretaris van Veiligheid en Justitie and H.F. v Belgische Staat*, ECLI:EU:C:2018:296, para. 52; Case C-371/08 *Nural Ziebell v Land Baden-Württemberg*, ECLI:EU:2011:809, para. 82.

²⁴ Goldner Lang, I., „Laws of Fear” in the EU: *The Precautionary Principle and Public Health Restrictions to Free Movement of Persons in the Time of COVID-19*, European Journal of Risk Regulation, Cambridge University Press, 2021, pp. 1-24, pp. 7.

²⁵ Goldner Lang, I., *Obveze Republike Hrvatske temeljem europskog prava pri donošenju zaštitnih mjera protiv bolesti COVID-19*, in: Barbić, J. (ed.), *Primjena prava za vrijeme pandemije COVID-19*, HAZU, 2021, pp. 4.

²⁶ *Ibid.*, pp. 2; Paces; Weimer, *op.cit.*, note 20; Bornemann, T.; Daniel J., *Schengen and Free Movement Law During the First Phase of the Covid-19 Pandemic: Of Symbolism, Law and Politics*, European Papers, Vol. 5, 2020, No 3, 2021, pp. 1143-1170, pp. 1146.

gin. To prevent the spread of the disease and in response to the requests from the Members of the European Council (EUCO) to facilitate the transit of citizens returning to their countries of origin, the European Commission (EC) presented practical instructions for introducing a temporary restriction on non-essential travel to the EU, along with guidelines for ensuring the free movement of key workers.²⁷ With the Communication to the European Parliament, the European Council and the Council of 16 March 2020, the EC called for a temporary restriction on non-essential travel to the EU on grounds of the COVID-19 pandemic. The EC's aim was to ensure that the measures taken at external borders of the EU be consistent and commensurate.²⁸ With the Communication, the EC recommended to the EUCO to act with a view to the rapid adoption, by the Heads of State or Government of the Schengen MSs together with their counterparts of the Schengen Associated States, of a coordinated decision to apply a temporary restriction of non-essential travel from third countries into the EU area. The temporary restriction excluded nationals of the aforementioned groups of MSs.²⁹

The primary task of the EU's policies was to maintain the functioning of the single market to prevent shortages and avoid exacerbating the social and economic difficulties faced by all European countries. The key principle therefor is solidarity. With a view to preventing the MSs from taking measures that would jeopardize the integrity of the single market for goods (in particular supply chains), the EU promptly adopted the Guidelines for border management measures to protect health and ensure the availability of goods and essential services.³⁰ The Guidelines formulate the principles underpinning an integrated approach to effective border management, as well as require that the MSs allow without exception entry to their own citizens and residents and facilitate the transit of other EU citizens and residents returning to their countries of origin or residence. At any rate, vital to any measure pertaining to EU border management is coordination at EU level.³¹ Section V of the Guidelines that concerns internal borders, provides for MSs to

²⁷ Communication from the Commission Guidelines concerning the exercise of the free movement of workers during COVID-19 outbreak (2020/C 102 I/03); Communication from the Commission COVID-19 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 (2020/C 102 I/02).

²⁸ Communication from the Commission COVID-19: Temporary Restriction on Non-Essential Travel to the EU, COM(2020) 115 final.

²⁹ *Ibid.*; Marcus Scott, J. *et al.*, *The impact of COVID-19 on the Internal Market*, Policy Department for Economic, Scientific and Quality of Life Policies Directorate-General for Internal Policies, PE 658.219, 2021.

³⁰ Guidelines for border management measures to protect health and ensure the availability of goods and essential services, (2020/C 86 I/01).

³¹ *Ibid.*

reintroduce temporary border controls at internal borders on grounds of public policy or internal security, of which reintroduction they must notify in accordance with the Schengen Borders Code. Such reintroduced controls should, of course, be applied in a proportionate manner, and EU citizens must be guaranteed the safeguards laid down in Directive 2004/32, i.e., MSs must not discriminate between their own nationals and resident EU citizens. However, MSs may take appropriate measures, such as impose self-isolation upon return from a COVID-19-affected area, insofar as they apply to their own nationals as well.³²

To safeguard free movement of workers, in March 2020 the EC issued the Communication concerning the exercise of the free movement of workers,³³ building on the preceding Guidelines for border management measures to protect health and ensure the availability of goods and essential services.³⁴ Under paragraph 23 of the Guidelines, MSs should ensure the continued professional activity of frontier workers, primarily those in the health care and food sector and similar essential services (e.g. child and elderly care, critical staff for utilities) by permitting and facilitating their border-crossing.³⁵ The Communication of the EC concerning the exercise of the free movement of worker invites MSs to take specific measures to achieve a coordinated approach at EU level, pertaining primarily to critical workers in essential services whose place of work requires border crossing. The EC lists 17 critical occupations, including health professionals, staff of public institutions, firefighters, police officers etc. The Communication also requires that health screening of workers be carried out in a non-discriminating manner, as well as limits border controls of such workers. A separate section is dedicated to seasonal workers.³⁶ With the above documents, the EC strived to establish a common approach to addressing the crisis.³⁷

The EC proceeded to adopt two further communications (on 8 April 2020 and 8 May 2020), recommending a one-month extension of the restrictions on optional travel, which extension all Schengen Area MSs and the four countries associated

³² *Ibid.*

³³ Communication from the Commission, Guidelines concerning the exercise of the free movement of workers during COVID-19 outbreak, (2020/C 102 I/03), *op.cit.*, note 27.

³⁴ Guidelines for border management measures to protect health and ensure the availability of goods and essential services, (2020/C 86 I/01).

³⁵ *Ibid.*

³⁶ Communication from the Commission, Guidelines concerning the exercise of the free movement of workers during COVID-19 outbreak, (2020/C 102 I/03), *op.cit.*, note 27; Guild, E., *Covid-19 Using Border Controls to Fight a Pandemic? Reflections From the European Union*, Original Research Article, *Front. Hum. Dyn.*, 2020.

³⁷ Robin-Olivier, S., *Free Movement of Workers in the Light of the COVID-19 Sanitary Crisis: From Restrictive Selection to Selective Mobility*, *Insight, European Papers*, Vol. 5, No 1, 2020, pp. 613-619, pp. 616.

to the Schengen Area implemented, as last amended by 15 June 2020.³⁸ As part of the guidelines and recommendations package aimed at assisting MSs in a gradual lifting of restrictions on free movement, on 13 May 2020 the EC adopted the Communication towards a phased and coordinated approach for restoring freedom of movement and lifting internal border controls, and on flexibility in the reintroduction of certain measures where the epidemiological situation were to worsen and so require.³⁹ Its aim is to gradually unwind contingency and emergency measures for combatting the pandemic and restore free movement in the EU. The EC listed three criteria thereof: (1) epidemiological criteria; (2) health system capacity and (3) appropriate monitoring capacity.⁴⁰

The EC's Communication of 11 June 2020 and the subsequent Recommendation of the Council of 30 June 2020 set out the lifting of the said restrictions on a country-to-country basis. Coordination of restrictions at external borders was a key factor in the lifting of restrictions at internal borders.⁴¹ The EC called for adherence to principles of non-discrimination, flexibility and, as mentioned previously, coordination.

Given that the number of COVID-19 cases in the EU decreased between June and July 2020, many MSs lifted the free movement restrictions introduced in the pandemic's first wave. As the number of COVID-19 cases began to increase across the EU in August 2020, some MSs reintroduced such restrictions. With a view to facilitating free movement despite reintroduced restrictions, the Council adopted in September 2020 the Proposal for a Recommendation on a coordinated approach to restrictions on free movement in response to the COVID-19 pandemic,⁴² once again putting the emphasis on adherence to principles of proportionality and non-

³⁸ Marcus Scott *et al.*, *op.cit.*, note 29; Communication from the Commission to the European Parliament, the European Council and the Council on the assessment of the application of the temporary restriction on non-essential travel to the EU COM(2020) 148 final; Communication from the Commission to the European Parliament, the European Council and the Council on the second assessment of the application of the temporary restriction on non-essential travel to the EU, COM(2020) 222 final.

³⁹ Communication from the Commission Towards a phased and coordinated approach for restoring freedom of movement and lifting internal border controls — COVID-19, (2020/C 169/03).

⁴⁰ Guild, *op.cit.*, note 36.

⁴¹ Council Recommendation (EU) 2020/912 of 30 June 2020 on the temporary restriction on non-essential travel into the EU and the possible lifting of such restriction, LI 208/1; Communication from the Commission 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, COM(2020) 399 final; De Bruycker, P., *The COVID Virus Crisis Resurrects the Public Health Exception in EU Migration Law*, *Frontiers in Political Science*.

⁴² Proposal for a Council Recommendation on a coordinated approach to the restriction of free movement in response to the COVID-19 pandemic, COM/2020/499 final.

discrimination in the introduction of restrictions. The EC then followed with the Communication on additional COVID-19 response measures, which set out next steps in key areas to reinforce the EU's response,⁴³ chiefly the effective and rapid testing, full use of contact tracing applications, facilitating of safe travel, securing of essential supplies, and effective vaccination. The development and procurement of an effective vaccine were determined as essential to bringing an end to the crisis. Acting toward this goal, the Commission is negotiating and concluding Advance Purchase Agreements (APAs) with vaccine producers to secure access to promising vaccine candidates.⁴⁴

Early in 2021, the Council adopted the Proposal for a Council Recommendation amending Council Recommendation of 13 October 2020 on a coordinated approach to the restriction of free movement in response to the COVID-19 pandemic.⁴⁵ With its Recommendation (EU) 2020/1475 on a coordinated approach to the restriction of free movement in response to the COVID-19 pandemic, the Council coordinated the approach to the following key aspects: employing common criteria and thresholds in decisions on the introduction of free movement restrictions; color-code mapping the COVID-19 transmission risk as prepared by the European Centre for Disease Prevention and Control (ECDC); harmonizing measures that may apply to persons moving between areas, depending on the transmission risk level prevalent in those areas.⁴⁶ The Proposal for a Council Recommendation amending Council Recommendation (EU) 2020/1475 tasked the Commission, supported by the ECDC, to continue to regularly evaluate the criteria, data needs and thresholds defined therein – inter alia, the need to consider other criteria or adjust thresholds. Under the Proposal, any restrictions on the free movement of persons should continue to be implemented in line with the general EU law principles, primarily proportionality and non-discrimination, including non-discrimination on the basis of nationality. Any measures taken should be limited to the extent strictly necessary to safeguard public health. Restrictions should be adequately enforced, and any sanctions effective and proportionate.⁴⁷

⁴³ Communication from the Commission on additional COVID-19 response measures COM(2020) 687 final.

⁴⁴ *Ibid.*, 2.4.

⁴⁵ Proposal for a Council Recommendation amending Council Recommendation (EU) 2020/1475 of 13 October 2020 on a coordinated approach to the restriction of free movement in response to the COVID-19 pandemic COM/2021/38 final.

⁴⁶ Council Recommendation (EU) 2020/1475 of 13 October 2020 on a coordinated approach to the restriction of free movement in response to the COVID-19 pandemic.

⁴⁷ *Ibid.*, 14-16.

It follows from the above that the EC's actions changed between March 2020 and March 2021. Depending on the number of COVID-19 cases, the EC issued more or less strict recommendations on actions to be taken by MSs. A comparison of the recommendations and guidelines adopted by the EC in March 2020 and the latest recommendations from 2021 reveals progress and improvement in certainty in action. At the outset, the EC took a reserved stance that soon faltered under the pressure and reality of EU-wide unilateral national restrictions introduced. To coordinate national measures and emphasize the importance of non-discrimination and proportionality, the EC adopted a string of soft law measures. The single exception thereto was the closing of external borders with third countries, which closing was first adopted by the EUCO, and then implemented individually by the MSs.⁴⁸ The Schengen Borders Code does not explicitly mention the threat to public health as valid grounds for reintroducing internal border controls. In this context, the EC's action is crucial seeing as how it demonstrates that, in crises, the risks of a contagious disease can be considered equivalent to a threat to public policy or internal security.⁴⁹ That public health is used as grounds for restricting free movement of EU citizens points to its double-edged role in this pandemic. Namely, that the precautionary principle is considered in regard to COVID-19 policies in certain EU documents translates to public health being both a national and an EU value which, according to the EC, has become a top EU priority. However, public health is concurrently employed as grounds for limiting on a national level of another cardinal EU value – the free movement of persons.⁵⁰ That public health is accepted as justification for national measures restricting freedom of movement confirms that it is recognized as an EU value. Protect both public health and free movement interests as the EU may, the two are, in fact, mutually exclusive: more public health protection by way of national restrictions and travel bans effects less free movement there. By analogy, opting for national precautionary measures that restrict free movement of persons indicates that, in the MSs' view, more lenience in free movement effects more endangering of public health. While the EU documents relating to COVID-19 mention precautionary principles only sporadically, EU institutions have undoubtedly supported the precautionary approach through

⁴⁸ Goldner Lang, "Laws of Fear [...]" *op. cit.*, note 24, pp 3; Paces, M. A.; Weimer, M., *op. cit.*, note 20, pp. 291-294; Renda, A.; Catro, R., *Towards Stronger EU Governance of Health Threats after the COVID-19 Pandemic*, European Journal of Risk Regulation, Vol. 11, No. 2, 2020, pp. 273-282; Alemanno, A., *The European Response to COVID-19: From Regulatory Emulation to Regulatory Coordination?* European Journal of Risk Regulation, Vol. 11, No. 2, 2020, pp. 307-316.

⁴⁹ Goldner Lang, "Laws of Fear [...]", *Ibid.*, pp.5.; Korkea-aho, E.; Scheinin, M., „*Could You, Would You, Should You?*” *Regulating Cross-Border Travel Through COVID-19 Soft Law in Finland*, European Journal of Risk Regulation, 2021, pp. 1-18, pp. 15.

⁵⁰ Goldner Lang, "Laws of Fear [...]", *Ibid.*

allowing national restrictions on free movement of persons, including throughout Schengen, as well as through the implicit acknowledging thereof.⁵¹

However, in doing so, the EU institutions did not intend to question the introduction of national travel bans or the closing of internal borders. Instead, to protect the economy to then the extent possible, the EC endeavored to ensure the mobility of essential workers within the EU. However, the EU's firm stance on the importance of ensuring the mobility of EU workers in critical occupations in light of the implications of a total stalemate in the internal market did not correspond to the EU's persuasive attempts to ensure that these workers are not neglected, exploited, or discriminated against.⁵²

While restrictions on workers' freedom of movement may be justified on the basis of public policy, public protection, or public health, they first need to be necessary, proportionate, and based on objective and non-discriminatory criteria, i.e., are permissible only if the principles of proportionality and non-discrimination are followed. The principle of proportionality requires that the restrictive measure be appropriate to the achieving of the objective pursued, which – in the context of the pandemic – is the protection of public health (suitability test); that the set goal not be achievable as effectively with a less restrictive measure (necessity test); and that the measure be reasonable, taking into account other competing social interests and the degree of impediment to people's freedom of movement.⁵³ The principle of non-discrimination, on the other hand, requires that restrictions not be conditioned upon the nationality of a given EU citizen, and that nationals of other MSs not be placed at a disadvantage compared to nationals in identical or similar circumstances.⁵⁴

Particularly emphasized is the precautionary principle. Never before had EU policies aimed at curbing the spread of COVID-19 sought recourse in the application of the precautionary principle to such an extent and with such urgency. In brief, the precautionary principle allows decision-makers to adopt restrictive measures in the face of an occurrence, product or process identified as a threat to the environment, human, animal, or plant health, for the risk of which threat the scientific evidence is insufficient, unconscientious or uncertain. Factors such as scientific evaluation, scientific uncertainty and adverse effects on human health precondition the invok-

⁵¹ *Ibid.*; Renda; Catro, *op.cit.*, note 48, pp. 276.

⁵² Mantu, S., *EU Citizenship, Free Movement, and Covid-19 in Romania*, *Front. Hum. Dyn.* 2:594987, 2020 pp. 5.

⁵³ Goldner Lang, *Obveze Republike Hrvatske...op.cit.*, note 25, pp.4

⁵⁴ *Ibid.*; Alison L. Y.; De Búrca, G., *Proportionality*, in: *General Principles of Law: European and Comparative Perspectives*, Hart Publishing, 2017.

ing of the precautionary principle, all of which – in the case of the COVID-19 pandemic – have been met.⁵⁵ A number of EU documents concerning restrictions on movement, as referred to below, contain terminology associated with the proportionality test and the precautionary approach, including: *preventive measures*, *protection*, *risk assessment*, *risk management science*, and *WHO*. In addition, the documents emphasize the balance of different criteria, including the epidemiological situation, in decision-making concerning the COVID-19 policy.⁵⁶

The actions of the EC in the subsequent documents are directed at very specific conduct. Once the vaccine had been made available, the EC undertook to procure and finance it, instructing the MSs to take further action. Initially, the MSs introduced border closures and restrictions on entry to non-citizens, thereby violating the principles of proportionality and non-discrimination, which action the EC then sought to correct and prevent in its recommendations. The recommendations adopted between end of 2020 and in 2021 are aimed at inoculation in the MSs and facilitating movement within the EU. The EC's action is aimed at the future and the changes that are crucial to restoring a normal functioning and the freedoms that were restricted.⁵⁷ In particular terms, with the above actions, the EU in fact extended its powers, using the protection of public health as grounds for restrictions that is not envisaged as a basis for border closures under the Schengen Borders Code. Precisely such action is key to containing the pandemic as it allows for greater coordination of national responses that – through differing and often divergent – are necessary.⁵⁸

From the analysis of the Council's recommendations and the EC's guidelines it follows that the EU did not exceed its powers with its actions, but rather only employed soft law instruments in the pandemic's first year. Formally, the EU fo-

⁵⁵ Communication from the Commission on the precautionary principle (COM(2000) 1 final, para. 4; Goldner Lang, „Laws of Fear [...]”, *op.cit.*, note 24, p. 9.; Alemanno, A., *The Shaping of the Precautionary Principle by European Courts: From Scientific Uncertainty to Legal Certainty*, in: Cuocolo, L.; Luparia, L. (eds.), *Valori Costituzionali E Nuove Politiche Del Diritto*, Cahiers Européens, Halley, 2007; Bocconi Legal Studies Research Paper No. 1007404; Feintuck, M., *Precautionary Maybe, But What's the Principle? The Precautionary Principle, The Regulation of Risk, and The Public Domain*, 32 *Journal of Law and Society*, 2005, pp. 371-398; Majone, G., *The Precautionary Principle and its Policy Implications*, *JCMS: Journal of Common Market Studies*, Vol. 40, Issue 1, 2002, pp. 89–109.

⁵⁶ Goldner Lang, „Laws of Fear [...]”, *Ibid.*, pp. 11.

⁵⁷ Kostakopoulou, D., *The Configuration of Citizenship in (post-)Covid-19 EU: Thoughts on the EU Citizenship Report 2020*, *European Law Blog*, 2021, [<https://europeanlawblog.eu/2021/02/01/the-configuration-of-citizenship-in-post-covid-19-eu-thoughts-on-the-eu-citizenship-report-2020/>], Accessed 10 April 2021.

⁵⁸ Bouckaert, G., *et. al.*, *European Coronationalism? A Hot Spot Governing a Pandemic Crisis*, *Public Administration Review*, by The American Society for Public Administration, Vol. 80, Issue 5, 2020, pp. 765–773, pp. 772.

cused on the coordination of the restrictive measures already put in place by the MSs. More precisely, the single document with which the EU sought to prevent MSs' decision-making, i.e., to direct it to joint action, is the 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. The Guidance, as based on national measures, were put in place to ensure coordinated action at the EU's external borders, devised as assistance in actions at the EU's external borders.⁵⁹ Nonetheless, the power of EU soft law is not to be underestimated: while not law in itself, it creates rules, by which MSs abide.

4. DIGITAL GREEN CERTIFICATE

Finally, in March 2021, the EC proposed two regulations introducing the digital green certificate (DGC) – an interoperable certificate on vaccination, testing and recovery – aimed at facilitating free movement during the COVID-19 pandemic. Both DGC Regulation Proposals shape the framework for the DGC, with the first one applying to EU citizens,⁶⁰ and the second to third-country nationals residing in MSs during the COVID-19 pandemic.⁶¹ The legal basis for the first DGC Regulation Proposal is Article 21 (2) of the TFEU,⁶² and the legal basis for the second is Article 77 (2) (c) TFEU.⁶³ In fact, the second DGC Regulation Proposal follows the Council Recommendation of 30 October 2020, providing for MSs to apply the same rules to both EU and third-country nationals residing in EU territory

⁵⁹ Communication from the Commission COVID-19 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 (2020/C 102 I/02).

⁶⁰ Proposal for a Regulation of the European Parliament and of the Council on a framework for the issuance, verification and acceptance of interoperable certificates on vaccination, testing and recovery to facilitate free movement during the COVID-19 pandemic (Digital Green Certificate), COM(2021) 130 final 2021/0068(COD).

⁶¹ Proposal for a Regulation of the European Parliament and of the Council on a framework for the issuance, verification and acceptance of interoperable certificates on vaccination, testing and recovery to third-country nationals legally staying or legally residing in the territories of Member States during the COVID-19 pandemic (Digital Green Certificate) 2021/0071 (COD).

⁶² Article 21 (2) TFEU: "If action by the Union should prove necessary to attain this objective and the Treaties have not provided the necessary powers, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may adopt provisions with a view to facilitating the exercise of the rights referred to in paragraph 1."

⁶³ Article 77 (2) (c) TFEU: "For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures concerning: [...] (c) the conditions under which nationals of third countries shall have the freedom to travel within the Union for a short period [...]."

and/or having the right to travel to other MSs.⁶⁴ While the first DGC Regulation Proposal concerns EU citizenship issues, the second builds on EU policies relating to border control, asylum and immigration.⁶⁵ At the time of this writing, the two DGC Regulation Proposals are undergoing the first reading at the European Parliament (EP), more precisely, the first hearing at the EP's Subcommittee on Human Rights. Further two hearings were held before the Council, however, the Council's findings have not been made publicly available.⁶⁶ While announced by Commissioner Didier Reynders to likely be adopted in June 2021, a respective decision of the EP is still pending.⁶⁷

The model of treatment provided for in the two Regulation Proposals should facilitate the movement of individuals and allow for a return to regular functioning and reinstatement of freedoms suspended by restrictions,⁶⁸ serving as a sort of *soft* reversal of the above-mentioned many measures involving different, lengthy checks on persons arriving from risk areas in another MS. To exemplify, under point 17 of the Council Recommendation (EU) 2020/1475, MSs could condition quarantine/self-isolation and/or test for SARS-CoV-2 infection prior to and/or after arrival to persons travelling from higher-risk areas in another MS. Further, persons travelling from “dark red” areas could have been subject to more rigid public health measures, and required to provide various proof, such as medical certificates, test results, or statements, which – due to a lack of standardized and safe formats – were often unaccepted. The EC therefore proposed the introduction of a framework established at EU level that would allow the issuing, verifying and accepting of vaccination certificates across the EU as part of the digital green certificate. The framework would also include other COVID-19-related certificates

⁶⁴ Gkotsopoulou, O.; Galatova, D., *Op-Ed: “The EU Digital Green Certificate proposed framework: how does it interact with data protection law?”*, EU Law Live, 2021., [<https://eulawlive.com/op-ed-the-eu-digital-green-certificate-proposed-framework-how-does-it-interact-with-data-protection-law-by-olga-gkotsopoulou-and-daniela-galatova/>], Accessed 07 April 2021.

⁶⁵ Procedure 2021/0068/COD COM (2021) 130: Proposal for a Regulation of the European Parliament and of the Council on a framework for the issuance, verification and acceptance of interoperable certificates on vaccination, testing and recovery to facilitate free movement during the COVID-19 pandemic (Digital Green Certificate),

⁶⁶ General Secretariat of the Council, [https://www.consilium.europa.eu/en/documents-publications/public-register/public-register-search/results/?WordsInSubject=covid-19+vaccination&WordsInText=&DocumentNumber=&InterinstitutionalFiles=&DocumentDateFrom=&DocumentDateTo=&MeetingDateFrom=&MeetingDateTo=&DocumentLanguage=EN&OrderBy=DOCUMENT_DATE+DESC&ctl00%24ctl00%24cpMain%24cpMain%24btnSubmit=], Accessed 15 April 2021.

⁶⁷ Sánchez Nicolás, E., *MEPs raise concerns on vaccine ‘travel certificates’*, Euobserver, 2021, [<https://euobserver.com/coronavirus/151529>], Accessed 03 April 2021.

⁶⁸ Brown, C. H., R.; Savulescu, J.; Williams, B.; Wilkinson, D., *Passport to freedom? Immunity passports for COVID-19*, J Med Ethics, 46, 2020, pp. 652–659.

issued during the pandemic (specifically, documents confirming a negative SARS-CoV-2 test result and documents confirming a past SARS-CoV-2 infection). Such interoperable framework would allow facilitating of free movement of persons who have not been vaccinated (either by choice or by circumstance).⁶⁹ With two adopted regulations establishing a framework for interoperability between EU information systems in the field of justice and interior, interoperability is hardly a novelty in EU legislation. The two regulations are aimed at improving security in the EU, allowing for more efficient checks at external borders, improving detection of multiple identities and helping prevent and combat illegal migration, all while safeguarding fundamental rights.⁷⁰ The interoperability of information systems allows their mutual complementing, facilitates the correct identification of persons, and contributes to the combatting of identity fraud. The certificates included in the DGC are to facilitate the exercise of the right to free movement. As stated by the EC in the DGC Regulation Proposals, the possession of a digital green certificate, especially a vaccination certificate, should not be a criterion for exercising one's right to free movement. Unvaccinated persons (not having been vaccinated for medical reasons, or due to not belonging to a vaccine target group, such as children, or by choice or circumstance) must be allowed to exercise their fundamental right to free movement, subject to restrictions such as obligatory testing and quarantine/self-isolation when required. As it is, the DGC Regulation Proposals cannot be construed as establishing a vaccination obligation or right.⁷¹

⁶⁹ COM(2021) 130 final 2021/0068(COD); "Interoperability may be defined as a characteristic of a product or system, whose interfaces are completely understood, to work with other products or systems, at present or in the future, in either implementation or access, without any restrictions. While the term was initially defined for information technology or systems engineering services to allow for information exchange, a broader definition takes into account social, political, and organizational factors that impact system to system performance. The concept of interoperability differs from neighboring concepts like integration, compatibilization or portability. Integration happens when two or more functions or components of the same system interact. Compatibility when two or more applications work in the same environment. Portability happens when an application can be transported from one environment to a different one without losing capabilities.", Oliveira, A. A.-Y., Recent developments of interoperability in the EU Area of Freedom, Security and Justice: Regulations (EU) 2019/817 and 2019/818. UNIO – EU Law Journal, 5(2), 2019, p. 128-135., p. 129.

⁷⁰ Council of the EU, *Interoperability between EU information systems: Council adopts regulations* [<https://www.consilium.europa.eu/hr/press/press-releases/2019/05/14/interoperability-between-eu-information-systems-council-adopts-regulations/>] Accessed 03 April 2021; Regulation (EU) 2019/817 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of borders and visa and amending Regulations (EC) No 767/2008, (EU) 2016/399, (EU) 2017/2226, (EU) 2018/1240, (EU) 2018/1726 and (EU) 2018/1861 of the European Parliament and of the Council and Council Decisions 2004/512/EC and 2008/633/JHA.

⁷¹ COM(2021) 130 final 2021/0068(COD).

In theory, compared to vaccination certificates that would only allow inter-EU travel, digital green certificates would have a broader reach and could address the shortcomings of vaccination certificates. Vaccination certificates would allow unrestricted cross-border travel for vaccinated persons only, enabling each MS to set its own conditions for the entry of unvaccinated people to its territory. In effect, a host MS could impose for the unvaccinated even more stringent entry criteria, such as quarantine or even a total entry ban. The digital green certificate would curtail such an approach, instead – as stated in the Regulation Proposals – regulating and enabling free cross-border movement not only to vaccinated persons, but also to those holding a negative PCR test and those with antibodies developed post-COVID-19 recovery.⁷²

From the comment of Manfred Weber, the German Member of the European Parliament – “Now that vaccination in Europe is increasing, we must have a perspective to returning to the fundamental right of free movement and travel in Europe.” – it follows that the EU’s larger aim may be the rollback to previous conditions and the recovery of the right to free movement.⁷³ Digital green certificates would ensure to southern states, such as Spain, Greece and Portugal, as well as Croatia, whose economies are most reliant on tourism, more or less favorable conditions, and facilitate the upcoming season.⁷⁴ The WHO’s International Certificate of Vaccination or Prophylaxis (Yellow Card) – a well-known medical passport, certifying inoculation against cholera, plague, and typhus fever – shows that the digital green certificate would hardly be a novelty.⁷⁵

The efficacy of the vaccine remains an open point. Currently, no scientific data confirm that vaccination prevents or minimizes chances of coronavirus transmission from vaccinated to non-vaccinated persons. In its interim position paper, the WHO was against requiring proof of COVID-19 vaccination as a condition of leaving or entering a country, “given that there are still unknowns regarding the efficacy of vaccination in reducing transmission”, recommending that “people who are vaccinated not be exempt from complying with other travel risk-reduction

⁷² Goldner Lang, I., *Vaccination for Vacation: Should the EU Have a “Digital Green Pass”, “Vaccination Certificate” or Better Nothing?*, VerfBlog, 2021/3/16, [<https://verfassungsblog.de/vaccination-for-vacation/>], Accessed 05 April 2021.

⁷³ Banks, Martin, *Commission’s ‘Digital Green Certificate’ to help boost travel during the ongoing crisis*, The Parliament Magazine, 2021/3/15, [<https://www.theparliamentmagazine.eu/news/article/commissions-digital-green-certificate-to-help-boost-travel-during-the-ongoing-crisis>], Accessed 05 April 2021.

⁷⁴ Henley, J., *Covid: EU unveils ‘digital green certificate’ to allow citizens to travel*, *The Guardian*, 2021/3/17, [<https://www.theguardian.com/world/2021/mar/17/covid-eu-unveils-digital-green-certificate-to-allow-citizens-to-travel>] Accessed 03 April 2021; Goldner Lang, *Vaccination for Vacation...*, *op.cit.*, note 72.

⁷⁵ *Ibid.*

measures”.⁷⁶ Precisely this raises the question of whether relying on proof of vaccination to permit secure cross-border travel without any additional precautions is sufficient. Vaccination can therefore be considered a reliable and appropriate proof of prevention or reduction of transmission only after reliable scientific data have emerged. Until then, the suitability test – the Achilles’ heel of digital green certificates – will have to suffice.⁷⁷ Furthermore, vaccines have yet to be confirmed to be meeting the minimum requirements for the prevention of infection and disease; the specific difference in their effectiveness, too, has yet to be determined. This could prove especially difficult in regard to the vaccines not approved by the European Medicines Agency (EMA), such as in the case of the Russian and Chinese vaccines. Ultimately, the duration of immunity and protection of a vaccinated person against transmission will have to be determined.⁷⁸

Once vaccines become widely available, digital green certificates will only be accepted if they are proportionate. The suitability test, as applied to determine proportionality, which would ensure that vaccination protects public health not only by providing protection only to those who have been vaccinated, but also by eliminating or substantially decreasing virus transmission to those who have not been vaccinated. This is in line with public health’s main mission of protecting and improving the health of the whole population (rather than focusing on individuals only, which is the role of medicine).⁷⁹

Despite all of the above, there is growing concern about potential discrimination. Although both DGC Regulation Proposals emphasize that vaccine cannot be the sole basis for freedom of movement, even such action could lead to discrimination. Persons who still cannot be vaccinated (whether by choice or by circumstance) must hold a negative PCR test if they have not recovered from COVID-19. In practice, such persons must be tested when entering or returning to another MS. By and large, such testing is still not free but rather expensive and out of reach to a large number of people. Such circumstances amount to inequality between those vaccinated free of charge and those unvaccinated (whether by choice or by circumstance) who cannot afford to get tested. A solution might be the offering of free tests to the unvaccinated.

Another issue relates to the digital form of digital green certificate. In the wrong hands, such a document could fall prey to hacker attacks and reveal more per-

⁷⁶ Goldner Lang, *Vaccination for Vacation [...]*, *op.cit.*, note 72

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*; Dye, C.; Mills C. M., *COVID-19 vaccination passports*, *Science*, Vol 371, Issue 6535, 19 March 2021, [<https://science.sciencemag.org/content/371/6535/1184.full>], Accessed 05 April 2021.

⁷⁹ Goldner Lang, *Vaccination for Vacation [...]*, *op.cit.*, note 72.

sonal information than designed. This was also pointed out by the Members of the Committee on Civil Liberties, Justice and Home Affairs (LIBE), who called for a better technical and organizational framework of the certificates themselves, which would prevent potential abuse. Members of the LIBE also pointed out the issue of data management and data availability, referring to the General Data Protection Regulation (GDPR),⁸⁰ and offering as solution the application of the principle of minimization of personal data and time-limiting the use of such collected data to the end of pandemic to be declared by the WHO. In this regard, the European Data Protection Supervisor (EDPS) Wojciech Wiewiórowski presented to the LIBE the joint opinion of the EDPS and the European Data Protection Board (EDPB) on the EC's DGC Regulation Proposals. In the opinion, the EDPB and the EDPS highlighted that it is essential that the Proposal be coherent and not interfere with the GDPR's application in any way. Such opinion is not aimed only at legal certainty, but also at avoiding that the Proposals jeopardize, either directly or indirectly, the fundamental right to the protection of personal data, as established under Article 16 of the TEFU and Article 8 of the Charter of Fundamental Rights of the European Union.⁸¹

In turn, in his answers to MEP's requests for clarifications, European Commissioner for Justice Didier Reynders emphasized the EC's readiness to complete the required technical infrastructure work by the end of June, and that the certificate would not result in the creation of a central database at the EU level.⁸² A further issue of such a document is that it would marginalize undocumented migrants, asylum seekers and refugees. Moreover, many asylum seekers simply do not possess the technology that could cater to the demands of such digitalization.⁸³

In parallel with the EU action, in April 2021, the Council of Europe (CoE) issued to its member states guidance to safeguarding human rights. The document outlines the applicable human rights requirements for addressing the issuing of

⁸⁰ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 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 (General Data Protection Regulation).

⁸¹ EDPB-EDPS Joint Opinion 04/2021 on the Proposal for a Regulation of the European Parliament and of the Council on a framework for the issuance, verification and acceptance of interoperable certificates on vaccination, testing and recovery to facilitate free movement during the COVID-19 pandemic (Digital Green Certificate) 31 March 2021.

⁸² Digital Green Certificate: MEPs seek clarifications regarding the travel facilitation tool [<https://www.europarl.europa.eu/news/hr/press-room/20210407IPR01517/digital-green-certificate-clarifications-needed-on-travel-facilitation-tool>], Accessed 15 April 2021.

⁸³ Williams, O., *Vaccine passports and the threat to undocumented migrants*, *Left Foot Forward*, [<https://leftfootforward.org/2021/04/vaccine-passports-and-the-threat-to-undocumented-migrants/>], Accessed 13 April 2021.

digital green certificates. In addition, it underlines the importance of intensifying efforts in producing and administering vaccines in an equitable manner, in accordance with the Convention on Human Rights and Biomedicine (Oviedo Convention), so that restrictions on individual freedoms can be progressively removed as broader immunity is achieved. Additionally, in the context of traveling, the CoE underscored the importance of taking any steps to facilitate the certifying of individuals' health status relating to COVID-19 (vaccinated, immune or infection-free) – provided that personal data are secured and anti-counterfeiting steps taken. The document invites MSs to act in line with the Convention for the protection of individuals with regard to automatic processing of personal data, the Convention on cybercrime (Budapest Convention), and the Convention on the counterfeiting of medical products and similar crimes involving threats to public health (MEDICRIME Convention).⁸⁴

Between March 2020 and March 2021, or – more precisely – up to the adoption of the DGC Regulation Proposals, the EU had taken action by way of soft law instruments.⁸⁵ Such modus allowed MSs a wider array of actions and adoption of national decisions, independent from the EU. It could be argued that the simplicity of the soft law adaptation procedure is the primary advantage of soft law in times of crisis, where its flexibility in addressing situations where quick action is of great importance.⁸⁶ Nevertheless, soft law mechanisms and their impact on MSs' actions should not be underestimated. The DGC Regulation Proposals were a step further, and such treatment good from standpoint of urgency and the need for a harmonized approach to the overall situation with the aim of restoring freedom of movement. However, from the standpoint of the MSs, it might not be the optimum solution. While the DGC Regulation Proposals are focused on the matter of facilitating freedom of movement – one of the fundamental rights of the EU, the mechanisms for exercising that very right may prove to be a bone of contention in regard to the protection of personal data and the protection of fundamental rights.

⁸⁴ Vaccine passports: Council of Europe issues guidance to governments to safeguard human rights, [<https://www.coe.int/en/web/human-rights-rule-of-law/-/vaccine-passports-council-of-europe-issues-guidance-to-governments-to-safeguard-human-rights?fbclid=IwAR1Bb4dSI10EO1aJ-9mg-SM7ARg7q9VbNxfvcguHDcAwTP4GhLOtO3pUail>], Accessed 15 April 2021.

⁸⁵ Eliantonio, M.; Korkea-Aho, E.; Vaughan, S., *EJRR Special Issue Editorial: COVID-19 and Soft Law: Is Soft Law Pandemic-Proof?*, European Journal of Risk Regulation, Cambridge University Press, Vol. 12, Issue 1, 2021, pp.1-6; Eliantonio, M.; Ștefan, O.; *The Elusive Legitimacy of EU Soft Law: An Analysis of Consultation and Participation in the Process of Adopting COVID-19 Soft Law in the EU*, European Journal of Risk Regulation, Cambridge University Press, Vol. 12, Issue 1, 2021, pp. 159-175.

⁸⁶ Tsourdi, E.; Vavoula, N., *Killing me Softly? Scrutinising the Role of Soft Law in Greece's Response to COVID-19*, European Journal of Risk Regulation, Vol. 12, Issue 1, 2021, pp. 59-76.

5. CONCLUSION

The paper analyzed the two stages in the EU's and the MSs' fight against the COVID-19 pandemic. In the first stage, the MSs, acting independently, restricted the freedom of movement of persons, and the EU acted with soft law instruments. While the Council recommendations and EC guidelines, as analyzed herein, demonstrate that the EU had not exceeded its powers by acting through soft law instruments, their importance for the actions of the MSs should not be underestimated.

Under primary and secondary EU law, MSs may restrict the free movement of persons on three basic grounds: public safety, public order, and public health. However, the Schengen Borders Code – the legal basis for the closure of internal borders – provides only for public order and public safety as grounds for closing borders, and not public health. Directive 2004/38/EC, on the other hand, provides for restrictions on the free movement of persons (and residence of EU citizens and members of their families) on all three grounds, but its primary goal is not the mass restriction of freedom of movement, as caused by the COVID-19 pandemic, but an individual restriction of freedom, as has been confirmed by the CJEU. The COVID-19 pandemic found the EU unprepared, i.e., lacking legal regulation of restrictions on the free movement of people on grounds of protection of public health. Border closures and restrictions on the freedom of movement of workers can – unless interpreting it as the EU and the MSs having exceeded their powers – be justified solely by the precautionary principle, i.e., by the preservation of public safety in order to save human lives. In any event, the present situation has certainly revealed the need for amending secondary EU legislation, primarily the Schengen Borders Code.

The second phase in the fight against the COVID-19 pandemic started with the DGC Regulation Proposals. With the Proposals, the EU moved away from soft law instruments of action, instead proposing unified action regulated by regulations. Although the EC has repeatedly stated that neither vaccination nor testing can be a precondition for free movement, formalizing its position with a regulation is still pending. The period following a greater anti-COVID-19 vaccination coverage rate carries with it many a challenge. Would the limiting of free movement to digital green certificate holders only be legally justifiable? To what extent would such limiting violate fundamental human rights? Would the introduction of a digital green certificate be discriminatory if free testing were not provided to people who are unable or unwilling to receive the vaccine? Further challenges include the protection of personal data (currently being discussed in the EP's Subcommittee on Human Rights), as well as concerns related to the recognition of vaccines. Or, to illustrate in practical terms: should the digital green certificate

recognize only EMA-approved vaccines, what would it mean for the freedom of movement of, e.g., Hungarian citizens who have been vaccinated with, e.g., the non-EMA-approved Russian Sputnik vaccine?

REFERENCES

BOOKS AND ARTICLES

1. Alison L. Y.; De Búrca, G., *Proportionality*, in: General Principles of Law: European and Comparative Perspectives, Hart Publishing, 2017
2. Craig, P.; De Burca, G., *EU Law - Text, Cases and Materials*, Sixth Edition, Oxford University Press, New York, 2015
3. Čapeta, T.; Rodin, S., *Osnove prava Europske unije*, Narodne novine, Zagreb, 2018
4. Kahanec, M.; Pytlíková, M.; Zimmermann F., *The Free Movement of Workers in an Enlarged European Union: Institutional Underpinnings of Economic Adjustment, EU Enlargement, and the Great Recession*, Springer, Berlin, Heidelberg, 2016
5. Alemanno, A., *The European Response to COVID-19: From Regulatory Emulation to Regulatory Coordination?* European Journal of Risk Regulation, Vol. 11, Issue 2, 2020, pp. 307-316
6. Alemanno, A., *The Shaping of the Precautionary Principle by European Courts: From Scientific Uncertainty to Legal Certainty*, in: Cuocolo, L.; Luparia, L. (eds.), *Valori Costituzionali E Nuove Politiche Del Diritto*, Cahiers Européens, Halley, 2007, Bocconi Legal Studies Research Paper No. 1007404
7. Atger, A. F., *The Abolition of Internal Border Checks in an Enlarged Schengen Area: Freedom of movement or a web of scattered security checks?*, Research paper, No. 8 , 2018
8. Baldoni, E., *The Free Movement of Persons in the European Union: A Legal-historical Overview*, Pioneer Working Paper No. 2, 2003
9. Bornemann, T.; Daniel J., *Schengen and Free Movement Law During the First Phase of the Covid-19 Pandemic: Of Symbolism, Law and Politics*, European Papers, Vol. 5, 2020, No 3, 2021, pp. 1143-1170
10. Bouckaert, G., et. al., *European Coronationalism? A Hot Spot Governing a Pandemic Crisis*, Public Administration Review, by The American Society for Public Administration, Vol. 80, Issue 5, 2020, pp. 765–773
11. Brown, C. H., R.; Savulescu, J.; Williams, B.; Wilkinson, D., *Passport to freedom? Immunity passports for COVID-19*, J Med Ethics, 46, 2020, pp. 652–659
12. Carrera, S., *What Does Free Movement Mean in Theory and Practice in an Enlarged EU?*, European Law Journal, Vol. 11, No. 6, 2005, pp. 699–721
13. De Bruycker, Philippe, *The COVID Virus Crisis Resurrects the Public Health Exception in EU Migration Law*, Frontiers in Political Science, 2021
14. Eliantonio, M.; Korkea-Aho, E.; Vaughan, S., *EJRR Special Issue Editorial: COVID-19 and Soft Law: Is Soft Law Pandemic-Proof?*, European Journal of Risk Regulation, Cambridge University Press, Vol. 12, Issue 1, 2021, pp.1-6

15. Eliantonio, M.; Ştefan, O.; *The Elusive Legitimacy of EU Soft Law: An Analysis of Consultation and Participation in the Process of Adopting COVID-19 Soft Law in the EU*, European Journal of Risk Regulation, Cambridge University Press, Vol. 12, Issue 1, 2021, pp. 159-175
16. Feintuck, M., *Precautionary Maybe, But What's the Principle? The Precautionary Principle, The Regulation of Risk, and The Public Domain*, 32 Journal of Law and Society, 2005, pp. 371-398
17. Glibo, M., *Državljanstvo Europske unije*, Pravnik, 46, 1 (93), 2013
18. Goldner Lang, I., „Laws of Fear” in the EU: *The Precautionary Principle and Public Health Restrictions to Free Movement of Persons in the Time of COVID-19*, European Journal of Risk Regulation, Cambridge University Press, 2021, pp.1-24
19. Goldner Lang, I., *Obveze Republike Hrvatske temeljem europskog prava pri donošenju zaštitnih mjera protiv bolesti COVID-19*, in: Barbić, J. (ed.), *Primjena prava za vrijeme pandemije COVID-19*, HAZU, 2021
20. Guild, E., *Covid-19 Using Border Controls to Fight a Pandemic? Reflections From the European Union*, Front. Hum. Dyn., 2020
21. Hasanagić, E., *Utjecaj prakse Suda Evropske unije na ostvarivanje slobode kretanja radnika*, Pravni vjesnik, vol. 30, No. 2, 2014, pp. 307-327
22. Korkea-aho, E.; Scheinin, M., „Could You, Would You, Should You?” *Regulating Cross-Border Travel Through COVID-19 Soft Law in Finland*, European Journal of Risk Regulation, 2021, pp. 1-18
23. Kurbegovic-Huseinspahic, D., *Prohibition of Discrimination Based on Nationality in the European Union*, Annals of the Faculty of Law of the University of Zenica 14, 2014, pp. 513-550
24. Majone, G., *The Precautionary Principle and its Policy Implications*, JCMS: Journal of Common Market Studies, Vol. 40, Issue 1, 2002, pp. 89-109
25. Mantu, S., *EU Citizenship, Free Movement, and Covid-19 in Romania*, Front. Hum. Dyn. 2:594987, 2020
26. Marcus Scott, J. et al., *The impact of COVID-19 on the Internal Market*, Policy Department for Economic, Scientific and Quality of Life Policies Directorate-General for Internal Policies, PE 658.219, 2021
27. Marković, T., *Prava državljana članica EGO-a i članova njihovih obitelji u okviru slobode kretanja vs. mobilnost*, Pravni vjesnik, Vol. 30, No. 2, 2014, pp. 285-305
28. McCabe, K., *Schengen Acquis: The Development of the Right to Free Movement of Persons within the European Union Legal Framework and the Necessary Reforms to Adapt to Evolving Security Threats in the Region*, Creighton International and Comparative Law Journal, Vol. 7, No. 1, 2016, pp. 107.-138
29. Montaldo, S., *The COVID-19 Emergency and the Reintroduction of Internal Border Controls in the Schengen Area: Never Let a Serious Crisis Go to Waste*, European Papers, Vol. 5, No 1, 2020, pp. 523-531
30. Mushak, N.; Voloshyn, Y., *Impact of COVID-19 on the Realization of Freedom of Movement in the European Union and Its Member States*, Atlantic Press, Advances in Economics, Business and Management Research, volume 170, Proceedings of the International Conference on Economics, Law and Education Research (ELER 2021)

31. Oliveira, A. A.-Y., *Recent developments of interoperability in the EU Area of Freedom, Security and Justice: Regulations (EU) 2019/817 and 2019/818*, UNIO – EU Law Journal, Vol. 5, Issue 2, 2019, pp. 128-135
32. Paccès, M. A.; Weimer, M., *From Diversity to Coordination: A European Approach to COVID-19*, European Journal of Risk Regulation, Vol. 11, No. 2, 2020, pp. 283-296
33. Ramji-Nogales, J.; Goldner Lang, I., *Freedom of movement, migration, and borders*, Journal of Human Rights, Vol. 19, No. 5, 2020, pp. 593-602
34. Renda, A.; Catro, R., *Towards Stronger EU Governance of Health Threats after the COVID-19 Pandemic*, European Journal of Risk Regulation, Vol.11, Issue 2, 2020, pp. 273-282
35. Robin-Olivier, S., *Free Movement of Workers in the Light of the COVID-19 Sanitary Crisis: From Restrictive Selection to Selective Mobility*, Insight, European Papers, Vol. 5, No 1, 2020, pp. 613-619
36. Storey, T., *'Freedom of Movement for Persons - Baumbast & (and) R v. Secretary of State for the Home Department (Case C-413/99), Carpenter v. Secretary of the State for the Home Department (Case C-60/00) - Court of Justice of the European Communities - EU Citizenship; Rights of Residence under EU Law for Third Country Family Members; Right to Respect for Family Life as a Fundamental Right in EU Law Case Analysis'*, Journal of Civil Liberties, vol. 7, no. 3, 2002, pp. 152-162
37. Tsourdi, E.; Vavoula, N., *Killing me Softly? Scrutinising the Role of Soft Law in Greece's Response to COVID-19*, European Journal of Risk Regulation, Vol. 12, Issue 1, 2021, pp. 59-76
38. Valcke, A., *EU Citizens' Rights in Practice: Exploring the Implementation Gap in Free Movement Law*, European Journal of Migration and Law, Vol. 21, No. 3, 2019, pp. 289-312
39. Verschueren, H., *Free Movement of EU Citizens: Including for the Poor?*, 22, Maastricht J. Eur. & Comp. L. 10, 2015
40. Vukorepa, I., *Migracije i pravo na rad u Europskoj uniji*, Zbornik Pravnog fakulteta u Zagrebu, Vol. 68, No. 1, 2018, pp. 85-120
41. Woodruff J., B., *The Qualified Right to Free Movement of Workers: How the Big Bang Accession Has Forever Changed a Fundamental EU Freedom*, Duquesne Business Law Journal No. 10, 2008, pp. 127-146

EU LAW

1. Communication from the Commission COVID-19 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 [2020] C102 I/02
2. Communication from the Commission COVID-19: Temporary Restriction on Non-Essential Travel to the EU, COM(2020) 115 final
3. Communication from the Commission Guidelines concerning the exercise of the free movement of workers during COVID-19 outbreak [2020] C 102 I/03
4. Communication from the Commission on additional COVID-19 response measures COM(2020) 687 final
5. Communication from the Commission on the precautionary principle, COM(2000) 1 final

6. Communication from the Commission to the European Parliament, the European Council and the Council on the assessment of the application of the temporary restriction on non-essential travel to the EU, COM(2020) 148 final
7. Communication from the Commission to the European Parliament, the European Council and the Council on the second assessment of the application of the temporary restriction on non-essential travel to the EU, COM(2020) 222 final
8. Communication from the Commission 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, COM(2020) 399 final
9. Communication from the Commission Towards a phased and coordinated approach for restoring freedom of movement and lifting internal border controls — COVID-19, [2020] C 169/03
10. Communication from the Commission, Guidelines concerning the exercise of the free movement of workers during COVID-19 outbreak, [2020] C 102 I/03
11. Council Recommendation (EU) 2020/1475 of 13 October 2020 on a coordinated approach to the restriction of free movement in response to the COVID-19 pandemic COM(2021) 38
12. Council Recommendation (EU) 2020/912 of 30 June 2020 on the temporary restriction on non-essential travel into the EU and the possible lifting of such restrictio, LI 208/1
13. Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC
14. EDPB-EDPS Joint Opinion 04/2021 on the Proposal for a Regulation of the European Parliament and of the Council on a framework for the issuance, verification and acceptance of interoperable certificates on vaccination, testing and recovery to facilitate free movement during the COVID-19 pandemic (Digital Green Certificate) 31 March 2021
15. Guidelines for border management measures to protect health and ensure the availability of goods and essential services, [2020] C 86 I/01
16. Procedure 2021/0068/COD COM (2021) 130: Proposal for a Regulation of the European Parliament and of the Council on a framework for the issuance, verification and acceptance of interoperable certificates on vaccination, testing and recovery to facilitate free movement during the COVID-19 pandemic (Digital Green Certificate)
17. Proposal for a Council Recommendation on a coordinated approach to the restriction of free movement in response to the COVID-19 pandemic, COM/2020/499 final
18. Proposal for a Regulation of the European Parliament and of the Council on a framework for the issuance, verification and acceptance of interoperable certificates on vaccination, testing and recovery to facilitate free movement during the COVID-19 pandemic (Digital Green Certificate), COM(2021) 130 final 2021/0068(COD)
19. Proposal for a Regulation of the European Parliament and of the Council on a framework for the issuance, verification and acceptance of interoperable certificates on vaccination, testing and recovery to third-country nationals legally staying or legally residing in the ter-

- ritories of Member States during the COVID-19 pandemic (Digital Green Certificate) 2021/0071 (COD)
20. Protocol (No 19) on the Schengen Acquis integrated into the Framework of the European Union, C 202/290
 21. Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code)
 22. Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 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 (General Data Protection Regulation)
 23. Regulation (EU) 2019/817 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of borders and visa and amending Regulations (EC) No 767/2008, (EU) 2016/399, (EU) 2017/2226, (EU) 2018/1240, (EU) 2018/1726 and (EU) 2018/1861 of the European Parliament and of the Council and Council Decisions 2004/512/EC and 2008/633/JHA
 24. The Treaty on European Union
 25. The Treaty on the Functioning of the European Union

COURT OF JUSTICE OF THE EUROPEAN UNION

1. Case C-67/74 Carmelo Angelo Bonsignore v Oberstadtdirektor der Stadt Köln, ECLI:EU:C:1975:34
2. Case C-331/16 K. v Staatssecretaris van Veiligheid en Justitie and H.F. v Belgische Staat, ECLI:EU:C:2018:296
3. Case C-348/96 Criminal proceedings against Donatella Calfa, ECLI:EU:C:1999:6
4. Case C-371/08 Nural Ziebell v Land Baden-Württemberg, ECLI:EU:2011:809
5. Case C-408/03 Commission v Belgium, ECLI:EU:C:2006:192
6. Case C-415/93 Union royale belge des sociétés de football association ASBL v Jean-Marc Bosman, Royal club liégeois SA v Jean-Marc Bosman and others and Union des associations européennes de football (UEFA) v Jean-Marc Bosman, ECLI:EU:C:1995:463

WEBSITE REFERENCES

1. Banks, Martin, *Commission's 'Digital Green Certificate' to help boost travel during the ongoing crisis*, The Parliament Magazine, 2021/3/15, [<https://www.theparliamentmagazine.eu/news/article/commissions-digital-green-certificate-to-help-boost-travel-during-the-ongoing-crisis>], Accessed 05 April 2021
2. Digital Green Certificate: MEPs seek clarifications regarding the travel facilitation tool [<https://www.europarl.europa.eu/news/hr/press-room/20210407IPR01517/digital-green-certificate-clarifications-needed-on-travel-facilitation-tool>], Accessed 15 April 2021

3. Dye, C., Mills C. M., *COVID-19 vaccination passports*, *Science*, Vol 371, Issue 6535, 19 March 2021, [<https://science.sciencemag.org/content/371/6535/1184.full>], Accessed 05 April 2021
4. General Secretariat of the Council, [https://www.consilium.europa.eu/en/documents-publications/public-register/public-register-search/results/?WordsInSubject=covid-19+vaccination&WordsInText=&DocumentNumber=&InterinstitutionalFiles=&DocumentDateFrom=&DocumentDateTo=&MeetingDateFrom=&MeetingDateTo=&DocumentLanguage=EN&OrderBy=DOCUMENT_DATE+DESC&ctl00%24ctl00%24cpMain%24cpMain%24btnSubmit=], Accessed 15 April 2021
5. Gkotsopoulou, O.; Galatova, D., *Op-Ed: “The EU Digital Green Certificate proposed framework: how does it interact with data protection law?”*, *EU Law Live*, 2021., [<https://eulawlive.com/op-ed-the-eu-digital-green-certificate-proposed-framework-how-does-it-interact-with-data-protection-law-by-olga-gkotsopoulou-and-daniela-galatova/>], Accessed 07 April 2021
6. Goldner Lang, I., *Vaccination for Vacation: Should the EU Have a “Digital Green Pass”, “Vaccination Certificate” or Better Nothing?*, *VerfBlog*, 2021/3/16, [<https://verfassungsblog.de/vaccination-for-vacation/>], Accessed 05 April 2021
7. Henley, J., *Covid: EU unveils ‘digital green certificate’ to allow citizens to travel*, *The Guardian*, 2021/3/17, [<https://www.theguardian.com/world/2021/mar/17/covid-eu-unveils-digital-green-certificate-to-allow-citizens-to-travel>], Accessed 03 April 2021
8. Council of the EU, *Interoperability between EU information systems: Council adopts regulations* [<https://www.consilium.europa.eu/hr/press/press-releases/2019/05/14/interoperability-between-eu-information-systems-council-adopts-regulations/>], Accessed 03 April 2021
9. Kostakopoulou, D., *The Configuration of Citizenship in (post-)Covid-19 EU: Thoughts on the EU Citizenship Report 2020*, *European Law Blog*, 2021, [<https://europeanlawblog.eu/2021/02/01/the-configuration-of-citizenship-in-post-covid-19-eu-thoughts-on-the-eu-citizenship-report-2020/>], Accessed 10 April 2021
10. Sánchez Nicolás, E., *MEPs raise concerns on vaccine ‘travel certificates’*, *Euobserver*, 2021, [<https://euobserver.com/coronavirus/151529>], Accessed 03 April 2021
11. Vaccine passports: Council of Europe issues guidance to governments to safeguard human rights, [<https://www.coe.int/en/web/human-rights-rule-of-law/-/vaccine-passports-council-of-europe-issues-guidance-to-governments-to-safeguard-human-rights?fbclid=IwAR1Bb4dSII0EO1aJ-9mgSM7ARg7q9VbNxfvcguHDcAwTP4GhLOtO3pUaiI>], Accessed 15 April 2021
12. Williams, O., *Vaccine passports and the threat to undocumented migrants*, *Left Foot Forward*, [<https://leftfootforward.org/2021/04/vaccine-passports-and-the-threat-to-undocumented-migrants/>], Accessed 13 April 2021