Post-Covid Europe

Lessons from the pandemic and ideas
for a more resilient and fair Europe

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Rethinking governance after the Covid19 crisis:

challenges and opportunities for power devolution and self-government

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1. The EU reaction to COVID-19

Epidemics reveal the Truth of the Societies They Hit (Appelbaum, 2020). Spring 2020 was a history accelerator for the European Union (EU).

The reaction was instinctively state-centric: border closures, even without notifying the European Commission as required in the Schengen Area, and an autarkic struggle among Member States for health resources. The preventive role of the European Center for Disease Control was as discreet as that of its Member State (MS) counterparts (Herszerhorn and Wheaton, 2020).

In early March, Commission President Von der Leyen was about to celebrate her 100 days in office (European Commission, 2020a) when she delivered an ambitious but rather incremental set of priorities to increase the degree of ambition of pre-existing targets, notably on the environmental front via the so called Green Deal, the Just Transition Mechanism and the so-called European Climate Law (Von der Leyen, 2019).

2. The immediate response

However, the increased disarray with borders being unilaterally closed and initial competition for health assets prompted a fairly speedy response from the European Commission. The existing legal framework (Decision No 1082/2013/EU on serious cross-border threats to health) which allows for cooperation for early response and joint public procurement of medical items, along with the rescUE programme to build strategic reserves of critical medical instruments, the Freedom of Movement Directive 2004/37/CE and the Schengen Border Code were activated to encourage a more coordinated approach from 13 March onwards and prevent the collapse of the EU internal market due to uncoordinated responses by the Member States (European Commission, 2020b).

This was complemented with a range of measures, in coordination with EU finance ministers, the European Central Bank (the PEPP scheme) and the European Investment Bank: speeding up EU-funded investments (Corona Response Investment Initiative), waiving state aid and fiscal controls. Also new lending instruments: the SURE loan programme for short term employment subsidies financed by EU borrowing prefigured a financially larger programme that would be known as Next Generation EU (NGEU). Taboos were broken, especially about EU borrowing (*vid. infra*).

It was a great challenge for a multilevel organisation with limited competencies in health matters (Bénassy-Quéré and Weder di Mauro, 2020).

In a classic display of Niskanen's utility maximisation by bureaucrats, President Von der Leyen was the most vocal of those arguing (e.g. Palermo, 2020) that COVID-19 showed the need for more EU powers in the field of health. No doubt a new issue that will feature prominently in the Conference on the Future of Europe (Von der Leyen, 2020).

[1] Writing in a personal capacity.

In reality, the evidence so far at state level does not support that a more centralised approach is more effective than a decentralised/federal one (OECD, 2020). It is not self-evident that this would be different if the EU were to receive more power on matters of public health.

However, the European Parliament study on how to increase the potential of the Lisbon Treaty post coronavirus highlights that there are many provisions that have not been fully utilised. Instead of more legislation, it is necessary to apply what already exists, increasing administrative capacity and resources both at the EU and domestic levels (Bassot, 2020a) and building multilevel consensus or 'active subsidiarity' (Bassot, 2020b).

3. The financial response

Decades-long fossilised debates on financing the EU picked up again in a few intense weeks, showing that once the EU grows with crises resulting in a 'spillover effect" (Haas 168, 187), EU power expansion still works.

Italy and Spain, supported by France, resumed their traditional demand for the joint issuance of public debt ('Eurobonds', rebaptised 'Coronabonds') and direct transfers of funds to prevent the high debt levels of the last crisis (Conte, 2020). It was also seen as a political opportunity to rebalance the eurozone, establishing a "transfer union" from North to South, so feared by the countries that benefited from exporting excess savings to peripheral countries (Government of Spain, 2020). The shift in Germany towards the French position (that inherited by Emmanuel Macron from François Hollande, which he then adopted) led to Von der Leyen proposing NGEU. This breaks the double taboo of the EU directly raising levies and taxes (own resources) and of a very significant amount of EU finances which would be financed by engaging in long-term borrowing from the financial markets.

During the European Council of July 2020 (European Council, 2020) a Rubicon was definitely crossed. Totaling 750 billion euros, NGEU is equivalent to about two thirds of the EU's multiannual budget (mainly financed by Member State contributions).

The main element of NGEU is the so-called Recovery and Resilience Facility. Its main purpose is to address longstanding "structural reforms". This particular focus deserves some consideration.

4. Intrusive structural reforms

The Eurozone crisis had sped up the creation of a comprehensive performance management system. An illustration of this is the European Semester process and in particular the Member States' Reform Programmes, through which MSs (pl) are expected to report back to the Commission's Country Reports annually on their progress towards achieving the economic, social and environmental goals that the EU must collectively reach under its Europe 2020 strategy (Vanherke, Zeitlin and Zwinkels, 2015).

However, what was originally a process of multilevel reporting and performance review acquired a more commanding bent as a result of the financial crisis due to the so called "Fiscal Treaties". These were agreed in 2012, outside the scope of the recent 2009 Lisbon Treaty (due to Czech and British vetoes) but overlaid with EU Law in what Everson and Joerges (2014, 200) call *Ersatzunionrecht*, or international law that is a substitute for EU Law. These binding treaties have much more bite and are more intrusive in domestic affairs: they require fiscal consolidation and therefore concern vast areas of traditionally domestic competences such as education or social services. This new and improvised wave of "executive federalism" and high degree of intrusiveness in the domestic area all but exacerbates the EU's democratic deficit (Mény, 2014, Everson and Goerges, 2014, 201-202; Kreuder-Sonnen, 2016) which, to be addressed, would require a more sophisticated degree of multilevel dialogue than that proposed via the Semester Process (Zeitlin and Vanhercke, 2014).

However, unless a MS is subject to fiscal intervention (Greece, Portugal, Spain, etc.) or is a significant recipient of EU funds (and complies with macroeconomic and ex ante conditionalities), the impact of the Semester process is bound to be limited (Pazos-Vidal, 2019). In fact, one of the first measures of the Juncker Commission was precisely to simplify Semester reporting, as it was perceived by both governments and the Commission as excessively onerous for a limited return in terms of policy change (Vanherke, Zeitlin and Zwinkels, 2015, 8-9).

Still, rather than withdrawing, the Commission changed its approach from monitoring progress and what has been called "Sanctioning Europe" (Bieber and Maiani, 2014) to addressing the administrative capacity at the root of the lack of reforms, including non-compliance with EU law and unspent EU funds (Huguenot-Noel *et al.*, 2018; Farole, Goga and Ionescu-Heroiu, 2018).

Defining what 'administrative capacity' is remains elusive (Addison, 2009, Surubaru, 2017). The OECD's definition is the "ability to perform functions, solve problems, set and achieve objectives" (Willems and Baumert, 2003). Administrative Capacity is broadly more about people and skills, while institutional capacity is about organisations. A broader concept is Good Governance, as it also encompasses the political dimension, such as that defined by the European Quality of Government Index: rule of law; corruption; quality of bureaucracy or bureaucratic effectiveness; and democracy and the strength of electoral institutions (European Commission, 2017).

However, the Juncker Commission's Vice-Presidential team aimed to go even further: in 2014 a Structural Reform Support Service was created to support MS reforms in purely domestic policy areas, from justice to healthcare, in line with the Semester recommendations. The Economic and Monetary Union Package of December 2017 expanded it to 300 million euros, but with the option of earmarking 6% of the EU's Structural Funds (about 20 *billion* euros). This improvised perversion of the nature of the Cohesion Policy (which is long-term and grounded in multilevel governance) in favour of this newly-formed structural reform fund was completed only five months later, when in May 2018 the Commission's 2021-2027 EU budget proposal included a new Reform Support Programme with no less than a 25 billion euro budget (with the option of an additional 5% from the reduced Structural Funds budget). At the same time the Commission proposes a much stronger link between the EU Structural Funds and the semester process (Huguenot-Noel *et al.*, 2018, 17-22).

From that standpoint the COVID-19 crisis was a blessing in disguise for the Commission's advocates for structural reform. The Next Generation EU programme, and specifically its largest component, the Recovery and Resilience Facility (RRF), is none other than the stillborn 2021-2027 Reform Support Programme… only 15 times larger.

While Cohesion Policy has not been diminished significantly in the final package agreed in the 5- day-long July 2020 special European Council, the fact that there is a new instrument that is as big and that lacks the distinctive features of Cohesion Policy (multilevel governance, partnership, each region defining their own priorities) is a very significant shift in priorities, one that in time might affect Cohesion Policy itself. To avoid this, Pucher and Martinos (2018, 62-67) had suggested a number of changes to avoid the centralising nature of these new EU structural reform instruments (of which the RRF is the latest and largest), particularly in terms of empowering substate authorities in terms of direct access to capacity-building and technical assistance.

The COVID-19 response has meant a revival of the European Semester as the key lever for the European Commission to try to influence domestic policy decisions well beyond the existing division of powers within the EU. However, with some notable exceptions – Belgium, Sweden, the Netherlands – substate authorities are virtually absent from the Semester process, even in matters concerning their own powers. Thanks to the enterprise of the EU Committee of the Regions, the substate dimension was featured in the 2019 semester cycle, but progress is still rather timid and protocolary (Valenza *et al.*, 2020).

More broadly, it is necessary to examine with due caution the consequences of the mutualisation of EU debt which is heralded in the spectacular creation of Next Generation EU (and the SURE programme) in the Spring of 2020. The creation of a 'European Treasury', a decade-long demand by France (Hollande then Macron) and the Southern countries, was timidly brought up in the so-called "Report of the five presidents" (Juncker, 2015), only five years ago. With greater federalisation, there will be a greater imperative role for European institutions over the domestic level. Without a broad EU institutional reform, this risks blowing up the already weak, tacit pact by which major *policies* are (consociatively) decided in Brussels while (adversarial) party politics remain at the state level, a permissive consensus that is the basis for European integration (Krastev, 2020). This can exacerbate divisions within the EU (Treib, 2020).

5. The quest for legal supremacy and the rule of law

The *Weiss et al.* ruling of the German Constitutional Court (BVerfG) at the height of the coronacrisis was a very significant blow for the stability of the EU's legal edifice. The immediate effect of the ruling was seen in public discourse, with the raising of concerns regarding its potential consequences for the EU response to the pandemic. It manifestly revealed the level of penetration of the EU's jurisdictional order in the domestic life of countries and how the primacy of EU law and the supreme authority of the European Court of Justice (ECJ) are increasingly being challenged. This is, not just in so-called "rule of law" countries but also, and increasingly so, in founding EU members.

While *Weiss* referred to the *de facto* expansion, since the previous crisis, of the role of the European Central Bank (ECB) as lender of last resort to MS, this ruling threatened to undermine the ECB's role in combatting the economic impact of coronavirus.

In short, the BVerfG ruled in *Weiss* that the ECJ exceeded its jurisdictional mandate provided in art. 19(1) of the Treaty on European Union (TEU), acting *ultra vires* to uphold the ECB lending policies. This would be contrary to article 23.1 and articles 20.1, 20.2, 79.3 of the German Basic Law (GG), it would violate the principle of attribution of powers (art. 5.1 and 5.2 TEU) and would pave the way for a continuous erosion of the powers of the MS. So, quite explosively, ignoring the ECJ's authority, the BVerfG enjoins the German authorities to stop cooperating with the ECB if the latter is not able to prove that its anti-crisis lending policies are proportionate.

This was the latest and most determined move against the ECJ's pretension to being the sole arbiter of the EU- and MS- legal systems by the BVerfG (among others), and was a direct challenge to the ECJ's authority. It was a blow to the incremental accommodation between ECJ and MS courts, which had long been advocated by the multilevel constitutionalism doctrine (Poiares Maduro, 2020, Pernice, 2020). It is seen as a pretext for to those MSs openly challenging the EU rule of law (Kelemen et al., 2020; Kelemen and Pech, 2019). Others such as Avbelj (2020) view the BVerfG ruling not as a sign that we have a problem with constitutional pluralism in Europe but rather as confirmation of the pluralistic nature of the EU long identified by McCormick (1995: 259).

This ruling goes beyond the legal domain as it questions whether there is legitimacy and democratic deficit in the EU, as in the classic debate between Moravscik (2002), Majone (2000) and Hix & Føllesdal (2006).

As stated by judge Allan Rosas (2019), the combination of the expansion of jurisdiction of the Lisbon treaty together with the growing inability to solve the successive crises of the European integration process prompts the ECJ, like the US Supreme Court, to adjudicate on matters that should have been politically resolved.

However, this is not just a matter of the ECJ being forced to dwell on a matter that politics could not resolve. The ECJ is increasingly a political actor, well beyond its necessary role as EU guardian and legal activist. A few recent examples: the joined cases of Sánchez Ruiz, which although it refers to the interpretation of an EU Directive (Directive 1999/70 / EC), has seen the ECJ intervene in what is a purely domestic labour dispute; the *Associação Sindical dos Juízes Portugueses*, or *Commission/Poland* (Independence of ordinary courts), or C-619/18 ruling on the retirement age of the judges of the Polish Supreme Court. Both are evidence of this growing interventionism in the MS constitutional sphere. In the Portuguese case,

the ECJ goes as far as stating that it sees itself as competent on a purely domestic matter, even if there is no specific application of Union law involved: it is sufficient that the court or courts in question generally deal with matters of community law.

In *Melloni*, the ECJ argued its right, over any constitutional court, of not just defining lower thresholds for the rights enshrined in the EU Charter of Fundamental Rights, but also the maximum threshold as well (Torres Pérez, 2014), thus voiding in practice the nature of each country's constitutional pact.

Given this ECJ legal activism, the longstanding position of the BVerfG is not surprising. EU integration was admissible as long as (Solange) 'constitutional identity' was maintained at the state level. In its 2019 *Lisbon Treaty* ruling, building upon its 1993 *Maastricht* ruling, the BVerfG unilaterally reconceptualises the EU as a *Staatenberbund*, a close association of MSs (Lehmann, 2010, 3). It also narrowed down what makes the "constitutional identity" in the German Constitution, something that could never be transferred to the EU level (Poptcheva, 2014, 8). Using the Lisbon-defined principle of subsidiarity (art 5 TEU), it states that any transfer of power to the EU must leave "sufficient space for the political formation of the economic, social and cultural circumstances of daily life: namely, state citizenship, state monopoly on violence, tax decisions, criminal law, culture and education, freedom of opinion, of the press, of assembly, religion and social welfare" (Lehmann, 2014,17).

This German activism and even legal hegemony (Von Bogdandy, 2020) has inspired a series of copycat rulings elsewhere, such as the Spanish refusal to acknowledge the primacy of EU law (*Melloni*), or rather that such primacy is subservient to the supremacy of MS constitutional law. Other countries such as Denmark, Latvia and Lithuania have had similar rulings (Kruma, 2009). Poland is an interesting case as in the space of a decade it moved from grudgingly accepting EU primacy (Poland's EU accession ruling) to one of defiance. The German *Weiss* ruling is the third after the Czech *Landtovà* (Zbiral, 2012) y and the Danish Ajos rulings, where a MS's supreme court does not feel obliged to respect an ECJ ruling, but it is the first concerning an exclusive EU competence such as monetary policy. In other words, the trend is worsening, and not just in random cases.

Authors such as von Bogdandy and Ioannidis (2014) affirm that we are witnessing a systemic deficiency of "Rule of Law" across the multi-level jurisdictions of the EU, partly due to a lack of material or cognitive resources or simply due to active or passive ignorance for each respective legal order, when not due to corruption. This

has consequences for the whole legal system and European legitimacy, a state of affairs worsened by the usual ECJ alignment with the Commission's technocratic positions (Ritleng, 2016). While other authors are more optimistic, highlighting the political calculation of the ECJ to avoid upfront conflict (Werner, 2016, 1460) the trend is of concern.

This brings us to the ongoing rule of law controversy, code for increased authoritarianism in central and Eastern European MSs, namely Poland and Hungary.

Kelemen (2020) and Kelemen & Pech (2019) are among the most vocal on how these governments have used the arguments of constitutional pluralism and abused EU rules and funds to actively resist the EU legal order and undermine their own constitutional one (Pech and Kochekov, 2019).

With the *de facto* expansion by two thirds of the post 2020 EU budget through the so-called Recovery Plan (NGEU), the issue of the "rule of law" gains even further prevalence. Already in 2018, the Commission proposed a 'rule of law mechanism' that would tie more clearly than in the past respect for the rule of law, broadly defined, to the disbursement of EU funds. However, as with the general use of sanctions with a MS, this is very difficult to bring about. While the Commission has proposed using a "reverse qualified majority" (i.e. any decision on financial sanctions is accepted unless blocked by a qualified majority vote of a majority of MSs with at least 65% of EU population), the Council insists on the standard qualified majority. Furthermore, such suspension would be politically unacceptable to the European Parliament as their governments' ills would penalise the substate administrations and ultimately the citizens (Rubio, 2020).

This "joint decision trap" will only be resolved by using one of the following strategies, or a combination thereof: a) unreservedly accepting the primacy of EU law over MS law and constitutional courts; b) complementing the now "infamous" article 50 TEU to establish an automatic process of expulsion from the EU (i.e. reverting to a state of pre-accession) for MSs deemed in systemic failure of rule of law; c) expanding the investigative powers of the European Public Prosecutor and the resources of OLAF, including the ability to perform direct enforcement measures in the MS; d) establishing mechanisms of multilevel dialogue between MS courts and the ECJ similar to those of the Conference of Parliamentary Committees for Union Affairs (COSAC).[2]

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[2] An idea already advanced twenty years ago by Weiler (2000).

In any of these scenarios, ensuring the rule of law comes at a price: the expansion of EU powers as a spillover effect. The alternative is allowing a managed systemic rotting of the EU's legal and political system. Substate autonomy is a collateral damage in any of the scenarios, as we shall see next.

6. The EU post Corona and substate polities

This crisis showed the prevalence of the state as the essential building block of any response. MSs and the EU in practice tended to favour centralising approaches, often backed by public support (Amat, Arenas, Falcó-Gimeno, Muñoz, 2020). Nevertheless, evidence of centralised approaches performing better than federal or highly devolved ones is so far inconclusive (Bussjaeger *et al.*, 2018; Kölling, 2020).

Still, COVID-19 represents a very significant test of the paradigm of multilevel governance (Marks, 1993)[3] as a descriptive and normative approach to EU policy and decision-making.

However, it is not the first. Since the initial wave of academic interest and, in retrospect, exceedingly optimistic hopes for the so-called "Europe of the Regions" as a post-national paradigm of EU integration, the years after the 2001-2003 Convention on the Future of Europe saw institutional fatigue, and the recentralising and demobilising drive stemming from the 2008 economic crisis. This occurred alongside a post-Convention accommodation of substate EU aspirations within the MSs and with limited means of substate participation offered at the EU level (Jeffery, 2005).

As recalled by Jensen, Koop and Tatham (2014), the multilevel EU system of power dispersion can be observed in three dimensions: towards the EU, towards the substate level and horizontally (the latter by way of multiplication of actors and agencies) leaving the MS attempting to frame, shape and influence these developments. However, there are reasons to question this.

Firstly, there has been a longstanding confusion in the European discourse between

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[3] "a system of continuous negotiation amongst nested governments at several territorial tiers – suprastate, state, regional, and local – as the result of a broad process of institutional creation and decisional reallocation that has pulled some previously centralized functions of the state up to the supranational level and some down to the local/regional level". (Marks 1993, 401)

the region as a "subject" and the region as an "object" (Le Galès, 1988), and there has been a tendency, at EU and MS level to amalgamate the former with the latter. This shorthand generalisation has negatively affected their role in EU policymaking (Pazos-Vidal, 2019).

Secondly, the heyday of the "Europe of the Regions" as a post-national vision of the EU (Anwen, 2008) has now passed. According to Tatham (2014) the relevance of the "regional question" had its heyday even before it properly began to take form, as it "peaked between 1986 and 2003". The Convention on the future of Europe, which crafted what would eventually become the Lisbon Treaty regional acquis, was the epilogue of a two-decade period of increased regional engagement with the EU. The latter was stimulated by the EU Cohesion Policy's multilevel governance system and by EU competence slowly creeping into areas of traditional substate competence.

Thirdly, despite the successive expansion of the substate dimension in the EU Treaties, including article 5 TEU and article 4 TEU, and the Member States' Parliaments and Subsidiarity Protocol, the EU institutional framework makes a crucial distinction between privileged and non-privileged actors. In short, only the EU institutions themselves and the MSs have full access to the EU decision-making process and (together with those having "direct and individual concern", art 263 TFEU) to the ECJ (Pazos-Vidal, 2019).

Therefore, the EU institutional framework makes it all but inevitable that non-privileged actors form coalitions and networks in order to have sufficient critical mass to be able to influence the decisions of the EU institutions (Van Hecke, Bursens and Beyers, 2016; Tatham and Thau, 2014). Going solo if you are a non-privileged actor, even if you are a powerful Region with Legislative Powers (REGLEG), rarely pays off.

Fourth, while the impact of subnational authorities in the EU policy framework has been limited, this overlooks the power of agency. Some semi or non-privileged actors are able to effectively exploit EU windows of opportunity at the EU level. However, the CoR or European subnational networks' (Kern and Bulkeley, 2009) behaviour can result in principal agent problems (Scharpf, 1997; Loughlin and Peters, 2011) as they are geared towards increasing their legitimacy *vis-à-vis* the EU institutions rather than genuinely aggregating their members' interests (Pazos-Vidal, 2019).

Piattoni and Schönlau's (2015) conceive the CoR as transcending territorial cleavages to morph them into a collective ethos: the CoR's role would be to

articulate consensus. Thus, the CoR´s influence in the EU decision-making process is greater than its formal attributions suggest. The latter define it as "policy-shaping" within an EU framework that is discursive and that involves many actors in and around the institutions. They apply Urbinati's (2006) notion of democracy as a continuous discursive process to the CoR, where the possibility of influencing and scrutinising decisions can be as important as being formally part of the decision-making process (Piattoni and Schönlau, 2015, 20-26). For this reason, dismissing the CoR as Warleigh (1997), does by styling it as "a committee of no importance" is questionable.

The ongoing Conference on the Future of Europe is likely to see a replay of the substate discussions of the 2002-2003 Convention on the Future of Europe. At the time, the REGLEG (German and Austrian *Länder*, UK devolved polities, Italian and Belgian regions, Spanish Autonomous Communities, Finnish and Portuguese islands) competed with the CoR and the European territorial associations in shaping the substate dimension of what, six years later, would become the Lisbon Treaty: recognition of local and regional autonomy, a new EU objective of Territorial Cohesion and the above-mentioned prerogatives for the CoR, and an optional role for regional legislature in Subsidiarity scrutiny, where applicable. The CoR in particular was able to exploit its semi-privileged status. Its success (Ramón, 2004; Wassenberg, 2020) is a telling example of how interest aggregation can have markedly different degrees of success depending on its members' internal coherence, REGLEG being far more heterogenous in its demands (Bourne, 2006).

This second time, however, history is likely to be repeated at the Conference, but as a farce. REGLEG disappeared as a group by the end of the past decade and the network representing regional legislatures, CALRE, is an effective but politically less weighty actor (Pazos-Vidal, 2020).

In fact, most of the drama that may have been seen at the Conference, repeating the dynamics of the Convention of two decades ago, might well have been played out already, via the creation of the concept of 'active subsidiarity' in 2018.

The principle of subsidiarity, the traditional banner to call for more substate participation in EU decisions, is now as then a highly politically contested concept. What is a principle to orient the exercise of shared competence, is used *de facto* as a vehicle for competence apportionment (Delhomme, 2019; van Kersbergen *et al.*, 2020): the substate levels arguing that decisions should be taken "as closely as possible" to the citizens (Preamble TEU, Protocol No. 2), and the Commission

insisting that it should be taken where it is most efficient – see art. 5(3) TEU – in terms of "scale or effect" (Pazos-Vidal, 2019).

Over the last five years we have seen a merging of these two contrasting notions in the creation of the concept of "active subsidiarity", which in turn is made to be linked to the (non-Treaty) concept of Better Regulation.

This new approach was championed by the then Commission's First Vice-President Frans Timmermans, who during his time as the Dutch Foreign Minister led a review of EU regulation that linked subsidiarity with regulatory simplification.

The need for a more efficient EU, but also greater legitimacy and accountability, led the Juncker "Commission of the last chance" to give greater salience to EU regulatory simplification via the "Better Regulation" agenda, and in particular its 2015 package which included revised Stakeholder Consultation Guidelines, a new Regulatory Fitness (REFIT) Platform, and a new Interinstitutional Agreement on Better Law-Making (Dinan, 2016; Radaelli and Schrefler, 2015).

However, while this package expanded opportunities for substate pre-legislative input, their contribution both individually or through EU-wide aggregation has been limited, particularly if compared with European Social Partners (Sabato, Vanhercke and Spasova, 2017). Compared to those, the interest of substate authorities is much wider in scope and heterogenous, making it more difficult for them to engage, as the 2019 evaluation (European Commission, 2019) makes clear.

Thus, the Timmermans-led 2018 Subsidiarity Task Force (Commission, CoR and members of central parliaments) proposed to move from legal and binary confrontations about who is best placed to exercise a shared competence ("proximity" versus "scale or effect") towards what it termed "Active Subsidiarity": a process-driven policy formulation and delivery that bears strong resemblance with a *procedural due diligence* multilevel consensus-building that is geared towards optimising EU policies (better regulation) rather than adjudicating who should exercise a given shared competence (Pazos-Vidal, 2019; Lopatka, 2019).

This outcome is hardly surprising, for this reflects Dutch (and Austrian) multilevel working practices as well as the hyperconsociative nature of the CoR, which was the main beneficiary of the Task Force, providing the CoR with an expanded platform to enhance its position in the EU decision making process. Making use of its enterprise, it proposed a set of "Regional Hubs to Assess the Implementation of EU

legislation", which in turn are not too distant from the Dutch model of central-local EU partnerships to simplify or coordinate EU-derived policies. The CoR's activism was awarded – despite some resistance by the Croatian presidency (Council of the EU, 2020) – by expanding its position in the successor of the REFIT Platform, the *FitForFuture* Platform under the Von der Leyen Commission, with the RegHubs becoming a key consultative mechanism to allow participating regions to feed in views (European Commission, 2020).[4]

The success of these consociative procedures, which blend input legitimacy with elite capture approaches, is a far cry from the multilevel federalism still advocated by some (e.g. Keating, 2017).The limited institutional and political response to the Catalan independence crisis (Piris, 2016) is clear proof that the pretence of a "Europe of the regions" as an ontological post-State reality is in fact "a mirage". One can speak at most of a "Europe *with* the Regions" (Panara, 2016; Hepburn, 2008).

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[4] *Article 5(3) of the Commission Decision of 11 May 2020 establishing the Fit for Future Platform (2020/C 163/03) says that "Member States shall nominate one representative either from the national level or from the local and regional authorities (none did, though it is politically a notable breakthrough). The Committee of the Regions shall nominate three representatives. (nb: previously it was only one)*

7. Conclusion

Looking ahead, the response to the Covid crisis is likely to make the EU even more intrusive in state and substate polities under the guise of "structural reform", preferring centralised and technocratic responses.

The forthcoming (or ongoing) Conference on the Future of Europe (European Commission, 2020c; Council of the EU, 2020b) seeks to develop a vision of a post Brexit Europe. The White Paper on the Future of Europe (European Commission, 2020c) and the various MEP blueprints (Hübner Report, Corbett Report) barely mentioned the role of substate polities (Bassot and Hiller, 2019) so the Conference may not address the "regional question". However, the latter will certainly not go away (Schönlau, 2020; Shakel and Masseti, 2020; Shackel, 2020; Abels and Battke, 2019; Donat and Meyer, 2020).

COVID and the legal and political challenges to normative conceptions of EU integration will force the Conference to consider a number of long overdue issues such as the end of permissive consensus (Hooghe and Marks, 2009), the relevance of the EU institutional and policy instruments for its 2030-2050 policy goals (Glaub, 2019), and more fundamentally, the breakdown of the rule of law. None of them can be fully addressed while ignoring substate levels.

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'No person and no place left behind'?

Compatibilities and Inconsistencies of the EU Green Deal and the Next Generation EU in a post-COVID-19 scenario

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Introduction

The EU Green Deal and associated initiatives, namely the Circular Economy Action Plan and the new EU Biodiversity Strategy, form part of the core of the Multiannual Financial Framework 2021-2027 and Recovery Plan (i.e., Next Generation EU). These action plans are critical for the recovery of the European Union (EU), yet the future remains uncertain, as the two frameworks are difficult to reconcile. Whereas the Green Deal puts the EU on a path towards environmental sustainability, the Next Generation EU program remains a contentious proposition, as several inconsistencies have already been identified. In addition, in response to the COVID-19 outbreak,

regional and local authorities (RLAs) are being called upon to ensure that the Recovery Plan is realized with due haste, but the EU still lacks a coordination mechanism that can explicitly provide for their involvement in the preparation and implementation of National Recovery and Resilience Plans.

Will the EU be able to guarantee that "no person and no place is left behind" without taking a step backwards in terms of environmental protection? With this intricate challenge in mind, the purpose of this paper is twofold. First, it will provide an informed account of the many compatibilities and inconsistencies of the EU Green Deal and the Next Generation EU. Second, it will highlight the role of RLAs in a post-COVID-19 scenario.

The remainder of this paper will be divided into four sections. In the first part, we will place the EU Green Deal in context and present its main tenets. In the second part, we will outline the compatibilities and mismatches between the EU Green Deal and the Recovery Plan. In the third part, we will examine the role of regional and local authorities in decentralizing sustainability for the success of the recovery plan and reflect upon the opportunity to decentralize sustainability represented by the Conference on the Future of Europe. Finally, in the conclusion, we offer a general overview of our contribution.

1. The European Green Deal: on a path towards a sustainable future

1.1. The European Green Deal in brief

The European Green Deal, part of the EU's growth strategy, seeks to stimulate the economy and foster job creation while promoting the transition towards a European economy with zero impact on the environment. The Green Deal is intended to accelerate transformation in the ways that we move, produce and consume. Hand in hand with that transformation comes profound social change: public and private entities are encouraged to promote synergies and cooperate in order to guarantee that solidarity and fairness will be inherent in the process.

First proposed in December 2019, the European Green Deal has been upgraded from a climate and environmental policy package to a position at the very heart of the EU's economic recovery following the outbreak of the COVID-19 pandemic.

Upholding the principle of "do no harm" in its "green oath", the Green Deal represents a massive change in terms of adapting the EU's economy towards a sustainable future. It includes measures focused on mobilizing strategic industry for a clean and circular economy, building and renovating infrastructure in a resource-efficient manner, supplying clean, affordable and secure energy, protecting biodiversity, bolstering propitious food systems and promoting a shift towards smart mobility (The European Green Deal, 2019).

The EU's objectives of increasing climate and environmental resilience and becoming climate-neutral by 2050 (European Climate Law) imply changing lifestyles and patterns of production and consumption, as well as eliminating dependence on fossil fuels. In the light of the current pandemic crisis, the Green Deal's proposition is that climate transition may create new opportunities in the labor market that should inform and reform educational and training policies in the present, with particular attention to workers who may lose their jobs in the future.

Climate mainstreaming is to be achieved primarily through the EU's new Industrial Strategy, the Sustainable Europe Investment Plan, InvestEU and the Modernization Fund – all policy instruments included in the Multiannual Financial Framework (MFF) and Next Generation EU (NGEU). With regard to social and cohesion policies, the relevance of the Just Transition Mechanism and REACT-EU should be emphasized. The Just Transition Fund (included within the Mechanism) will seek to support the Member-State sectors most drastically affected by the transition and those most exposed to international competition, in addition to fostering economic transition in regions where the economy is highly dependent on carbon. The rationale behind these policy instruments is that not all EU regions can transition at the same pace or are equally ready to implement measures aimed at climate neutrality and the elimination of a carbon-dependent economy. The Just Transition Fund is designed to address different rates of adjustment through compensation, thereby increasing homogeneity in Member States' roadmaps towards neutrality and opening a channel of solidarity and fairness between Member States that are already transitioning by investing in renewable energy sources and those that are not yet ready to do so. All in all, the EU's Green Deal is a growth strategy that seeks to rebuild Europe in a post-pandemic scenario through the values of environmental solidarity, inclusiveness and resilience.

1.2. Challenges and opportunities

Like any other EU initiative, the Green Deal poses numerous challenges and offers ample opportunities regarding its implementation and execution. Although it may be argued that the COVID-19 pandemic represents a unique opportunity to initiate a different approach to climate change and economic recovery, the Green Deal's influence in the long term on Member States' macroeconomic scenarios raises questions about its challenges in the short term.

The opportunities generated by the Green Deal can largely be described in two dimensions. In economic terms, new benefits will be created, industrial competitiveness in terms of innovation is already being enhanced (Horizon Europe), new jobs fit for a new type of economy will be developed ("job-creating engine") and the European Investment Bank will find new purpose as EU's climate bank through the financing of green projects. At the political level, by becoming the first continent with a carbon-neutral economy by 2050, the EU is presented with the possibility of consolidating its global climate leadership role. Moreover, climate transition will reduce dependence on fossil fuels, thus improving the EU's energy security.[1]

The current challenges concern the acceptance of the need of change by the actors involved, the social consequences of such policies and their timely implementation and execution – all interconnected issues. Potentially drastic social consequences can be expected if they are not properly addressed by the Just Transition Fund, particularly in the most carbon-dependent regions. Indeed, the possible increases in energy bills, especially for society's most underprivileged households, weigh heavily on the decision to change habits and the acceptance of climate transition as a necessity rather than an option.

Furthermore, there are sectors in the economy with protracted dynamics, and postponing the necessary changes may make the desired effects unattainable. We should not minimize the programming and capacity aspects at play here. Member States often have difficulties in programming, committing and applying EU funds. Given that the new EU budget is predicted to double in several headings from 2021 to 2024, full yearly commitments and payment completion by 2026-2027 under the existing EU budget rules seems unrealistic. Thus, the main challenges relate in

large part to the acceptance of the need for change and the efficient incorporation of the Green Deal's objectives into the MFF and NGEU – the framework for EU expenditure for the coming years.

The success of the Green Deal and the EU's economic recovery post-COVID-19 are dependent on determining a balance between the specific situations in which recovery measures should be applied, the speed with which recovery programs should be deployed, the scope of the measures and their eventual targeted nature. Here, regions and municipalities play a crucial role in implementing and executing change.

2. The Green Deal and the Recovery Plan: is this Europe's momentum?

2.1. Compatibilities between plans

In the wake of the sovereign debt crisis of 2008-2009, the European Commission published a European Economic Recovery Plan aimed at achieving a shift towards a low-carbon economy, with a focus on clean infrastructure, energy efficiency in buildings and green cars (European Commission, 2008). However, such initiatives have fallen short of their objectives, with limited progress to date in housing renovations and cleaner cars. Could it be different this time?

The new MFF and NGEU, combined with the Green Deal, can play a crucial role in setting ambitious goals for the EU. Although the idea that a carbon-based economy should be abandoned is not new, we must learn our lessons from the recent financial crisis if we are to successfully incorporate the Green Deal into the Recovery Plan and achieve a carbon-neutral and fair economy. A first step towards that goal was the consideration of various member state and regional realities – that is, the recognition that there are different starting points among the Member States and regions, and the subsequent provision of several effort-sharing measures.

It may be argued that the efforts thus far undertaken towards convergence and compatibility between instruments have been, in general terms, successful, especially with regard to the target of 30% climate mainstreaming in all EU expenditure for the next 8 years, as well as in the development of an effective methodology for monitoring and annual reporting on climate spending and its performance. Indeed, there are promising investment approaches and measures to

be funded. In particular, one should note the predicted improvements in energy-efficiency planning and investments that can unlock energy savings in the housing sector and in public infrastructure (the so-called Renovation Wave).

The MFF and NGEU should thus be perceived as measures that are capable of strengthening and prioritizing climate objectives while still aiming to relaunch the economy with a far-reaching perspective to help prepare for future crises. If properly embedded within the Green Deal, the instruments can have a positive impact on Member States' GDPs, given that the rate of investments (both public and private) required to implement the transition will generate economic growth. Acknowledging the likelihood of higher carbon prices in the future (predicted through revisions of the Emissions Trading Scheme (ETS) and the Energy Taxation Directive), will promote investment in, for example, smart electricity grids and charging infrastructure for electric cars, and will provide revenues to help fiscal consolidation.

Furthermore, the inclusion of the NGEU within the EU budget structure means that disbursement will require programming linked to the European Semester, thus ensuring macroeconomic conditionality; likewise, subject to the European Commission's budgetary management and control systems, while being under the budgetary control of the European Parliament, has benefits not only in terms of transparency and accountability, but also regarding the proper execution of the funds.

The pandemic crisis has paralyzed the EU's economy. Although the exceptional measures taken at both EU and member state levels have softened the impact of the economic recession, the shock wave will have prolonged effects whose full range of consequences remains unclear. The European Council of July 2020 has signaled the EU's intention to face the crisis in an unprecedented manner by issuing quasi-common EU debt and creating new Own Resources, but the manner through which funds are allocated among the programs aimed at stimulating businesses and investment will be critical in guaranteeing the development of green products and services.

Indeed, the new Own Resources available for the green transition such as a plastic levy (to be introduced in 2021), as well as a Carbon Border Adjustment Mechanism (to be proposed in the first half of 2021), indicate that the Green Deal served as the EU's compass when it was searching for new resources and new sources of revenue for novel and extraordinary outlays. Similarly, EU leaders have asked the European Commission to propose a revision of the ETS that will extend it to the aviation and maritime sectors.

Another aspect that should be mentioned is the Commission's proposal to update the current target for emissions reduction by 2030 to at least 55%. This sends a message to market players that the EU's decarbonization trajectory is headed towards carbon neutrality by 2050, enabling them to make informed green investment decisions. Furthermore, the provisions made in the Common Agriculture Policy regarding its modernization and an effective 40% climate spend demonstrate how efforts are being focused on strong policy actions over the next seven years.

Topics of compatibility between instruments have been mentioned, but the issue of greatest significance is the role of regional and local authorities in matching the Green Deal's objectives with the implementation of funds allocated by the MFF and NGEU, namely in the post-COVID-19 recovery context. Regions and municipalities are able to predict which new jobs will be in high demand and to foster growth accordingly. They play a key role in implementing the EU's cohesion policy and understanding their specific realities, which demonstrates the importance of the local and regional level for efficient European governance, in line with the subsidiarity principle.[2] By combining these tools and seeking to achieve convergence between them, the MFF and NGEU would seem to be the economic solution capable of realizing the EU's vision and ambition to become a carbon-neutral continent. What remains to be seen is the extent to which they will actually be compatible.

2.2. Inconsistencies

In order to realize the vision of a green recovery, it is important to reflect on the lessons of the recent financial crisis of 2008-2009 — that is, to develop a clear understanding of both the economic impacts and the economic policy responses of societies, and to properly integrate the green component into the recovery. Indeed, several Action Plans and Strategies will be required to correctly achieve a green recovery, not only to prevent increasing levels of regional asymmetries, but also to achieve its full potential.

[2] The subsidiarity principle aims to ensure that decisions are made as closely as possible to the citizen and that there are constant checks to verify that action at the EU level is justified in light of the options available at the state, regional or local levels. Specifically, it is the principle whereby the EU does not take action (except in the areas that fall within its exclusive competence) unless it would be more effective than action taken at the state, regional or local levels. It is closely linked to the principle of proportionality, which requires that any action by the EU should not go beyond what is necessary to achieve the objectives of the Treaties. The EU Treaties recognize the legal-political principle of subsidiarity and seek to organize the growing number of competences that are shared between the EU, the Member States and substate levels of government.

However, inconsistencies can already be identified ex-ante. First, it should be remembered that the 2030 climate target, a central element of the Green Deal, was initially outlined in 2014 by the European Council. Since then, specific climate and environmental legislation has been passed, largely since the end of 2017. Thus, the initial MFF proposal reflected the level of ambition of 2014, given that this was the known benchmark. With the MFF negotiations underway, the Just Transition Fund was designed without the revision of the 2030 climate target, and therefore with a clear mismatch between the level of EU ambition and how the designers proposed to achieve it. Nonetheless, we note that the NGEU foresees, among other aspects, the enhancement of the Just Transition Fund, in addition to an increase in the percentage of climate mainstreaming.

Additionally, carbon pricing has increased its value fivefold over the last years, increasing the endowment of instruments such as the Modernization Fund (designed to support 10 Member States in energy and social transitions). Overall, although the resources are comparatively greater than the 2014 benchmark, there is a gap between measures and goals. This underscores the importance of reviewing climate targets before the end of 2020 — not only to update the National Determined Contributions (NDCs) to the UNFCCC of the EU and the Member States, but also because a higher degree of convergence should be sought between the various policies and programs.

Moreover, there is a risk of anticipated contributions to climate-related spending being overestimated. Not all spending can be considered green investment and/or expenditures due to their diversification, ranging from agricultural subsidies to funding for research and innovation. It is therefore important for the European Commission to review the methodology of how expenditures are interpreted as contributing to climate objectives, given that the current methodology exhibits certain flaws, as recently highlighted by the European Court of Auditors (European Court of Auditors, 2020).

Furthermore, inconsistencies between instruments can be detected in some priorities set out in the MFF and NGEU, in the expected redistributive effects of the different programs and their social impact, and in deficiencies regarding the level of competence fit to decide on member states' energy mixes.

The Green Deal's long-term outlook notwithstanding, the big-budget programs laid out in the MFF and NGEU are typically temporary and only modestly redistributive (Bruegel, 2020). In fact, a range of priorities set out in the MFF and NGEU intended

to provide an immediate and sizeable boost to the economy will directly compete with the green objective. Much fiscal stimulus is likely to focus on boosting demand within existing economic structures rather than pursuing aggressive supply-side reform. To make matters worse, Member States have the choice but not the obligation to invest EU funds in the transition towards climate neutrality.

If we are to achieve climate neutrality with solidarity and fairness, the expected level of redistribution set out in the programs should be greater. It may be argued that several policies are already designed to resolve this issue and that there is limited power of redistribution at suprastate level, but if the EU is to strengthen its social pillar, its redistributive capacity must be reconsidered and reinforced with regard to the specific allocation of funds to various headings and programs and the resulting complementarity. Here, regional and local entities play a fundamental role in guaranteeing that no one and no place is left behind. Indeed, their role in such a complex scenario is recognized at all levels, but it is seldom reflected in practice in governance mechanisms and funding strategies.

In terms of social impact, although there are several mechanisms in place to address inequalities and regional disparities, the mix of the two instruments will most likely lead not only to an increase in unemployment levels and a shift in patterns of production, but also to social consequences that cannot be fully anticipated and may further exacerbate asymmetries within the EU.

One question that should be raised: will the MFF and NGEU exclude funding for fossil-fuel industries, nuclear energy, new airports and motorways, landfills and incineration and unsustainable overfishing in order to be compatible with the Green Deal? Such expenditures would not be in line with the Green Deal's goals, but cutting these sectors out of the MFF and NGEU would be unrealistic, given that most Member States' economies still rely on them to some degree to foster growth and to transition to eco-friendly solutions. One could argue that any frontloading of investments in the 2021-2027 budget framework, namely in terms of cohesion policy, should be compatible with the principle of "do no harm" and comply with at least 50% of the sustainability targets mentioned above. However, that would interfere in matters of member states' sovereignty regarding decisions on their energy mixes, which is a rather sensitive topic.

Staking on the "twin transition" (environmental and digital) is not an easy proposition. It represents a level of ambition that some might deem unattainable, but it is now left to the Member States to address the policies' inadequacies by properly implementing and executing it in an attempt to meet its objectives.

3. Substate authorities and the Recovery Plan: key players in decentralizing sustainability

One issue that has gained prominence with the outbreak of COVID-19 is the key role of regional and local authorities (RLAs) in the elaboration and implementation of the Green Deal and Recovery Plans. Although the EU paid due attention to RLAs in EU policy-making in the 1990s, namely with the institutionalization of the CoR and legal endorsement of the subsidiarity principle with the Treaty of Maastricht, the involvement of RLAs in the governance of the EU Recovery Plan – in particular its main component, the Recovery and Resilience Facility – is quite limited, implying that these instruments are "spatially blind". In this respect, the European Commission[3] has also acknowledged that the Recovery and Resilience Facility lacks both a territorial dimension and clear references to the involvement of regional and local authorities. Most notably, the Facility proposal does not explicitly provide for their involvement in the preparation and implementation of National Recovery and Resilience Plans.

Although Member States remain the primary decision-makers, the involvement of regional and local authorities would be useful in ensuring that funds are spent where and how they are most needed. Their added-value in identifying territories with strategic investment needs is undeniable in this regard. Moreover, such involvement of RLAs in the design of National Recovery and Resilience Plans (NRRPs) could mitigate the "lack of democratic elements in the proposed governance of NRRPs".[4] In a survey carried out by the CoR and the OECD in June and July 2020 on the impact of COVID-19 on regions and cities, more than 9 out of 10 (91%) of respondents representing RLAs indicated that it would be "helpful" or "very helpful" for Member State governments to engage in early and continuous consultation with substate entities in the design of recovery measures.

Bearing these precedents in mind, the CoR has suggested that the Recovery and Resilience Facility's governance mechanism should promote the involvement of RLAs, thus following the principle of active subsidiarity. In a similar vein, concrete measures could be adopted to prevent the fragmentation of recovery investment efforts by prioritizing innovation and transformation investment in Member States

[3] European Commission. Proposal for a Regulation establishing a Recovery and Resilience Facility. COM (2020) 408 final. 28/05/2020. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020PC0408R(02) (accessed on 24/10/2020)

[4] Jacques Delors Centre. How to spend it right: A more democratic governance for the EU Recovery and Resilience Facility. 11/06/2020. Available at: https://www.delorscentre.eu/en/publications/detail/publication/how-to-spend-it-right-a-more-democratic-governance-for-the-eu-recovery-and-resilience-facility (accessed on 24/10/2020)

and regions according to their competitive strengths. The smart specialization approach could also become an intrinsic part of the governance of the European investment strategy, providing a strong foundation on which to build a comprehensive European recovery plan involving regions and cities as key contributors.

Additionally, drawing on previous experiences, the CoR has suggested that the Recovery and Resilience Facility could include a "Code of Conduct on Partnership" – similar to that in force under cohesion policy[5] and European Structural and Investment Funds[6] – to set minimum standards for the involvement of RLAs and to ensure that RLAs are not only implementers but also co-designers of relevant reforms and investments. Moreover, in line with the dissemination of good practices already in use, the CoR has decided to organize together with the European Commission during the annual European Week of Regions and Cities in order to influence the management of the Facility and enhance the "place-based" approach that is currently lacking. Finally, in parallel with these suggestions, the CoR has established a "Green Deal Going Local" working group.

3.1. The Committee of the Regions: "Green Deal Going Local" working group

The "Green Deal Going Local" working group is a new initiative of the European Committee of the Regions that seeks to place cities and regions at the core of the European Green Deal and ensure that both the EU's sustainable growth strategy and the COVID-19 recovery plan translate into direct funding for cities and regions and tangible projects for every territory.

The "Green Deal Going Local" working group will guarantee that the complex mechanisms that the EU establishes (in agreement with the Member States) are tailored to EU regions and capable of responding to their needs while staying true to their ultimate objectives. In terms of governance, this Working Group will ensure that:

- Regional and Local Authorities are involved in the decision-making process whenever decisions about specific regions are being made;

- The European Committee of the Regions, as the voice of regional and local authorities at the EU level, are consulted when establishing the general rules for the EU recovery and resilience strategy;

- Funding schemes and strategies are put in place to grant cities and regions direct access to funds to implement their Green Deal projects.

In brief, the "Green Deal Going Local" working group has three specific objectives:

- To make the voices of cities and regions heard in deliberations on the numerous policy initiatives under the European Green Deal;

- To place cities and regions at the heart of EU institutions' policies promoting carbon neutrality;

- To highlight achievements and best practices of local and regional authorities in implementing local green transitions and to facilitate replication across the EU.

In sum, to ensure that the COVID-19 crisis can serve as an opportunity to realize and accelerate sustainable structural change, the unprecedented amount of money supplied by the NGEU must be spent in a coordinated and ambitious manner prioritizing shared and long-term benefits. To this end, the governance of the EU Recovery Plan – fully respecting the principles of partnership and multi-level governance[7] – will be a key element, deserving of continued and close monitoring.

Overall, the COVID-19 crisis has highlighted the importance of coordination and multi-level governance mechanisms. In situations involving shared responsibilities in critical policy areas and a territorially asymmetric impact, coordinated, flexible and territory-specific responses have been developed with success. According to an OECD report (2020), the current crisis could lead certain countries to reevaluate their multi-level governance systems to make them more "fit for purpose", more flexible and better balanced between centralized and decentralized management.

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[5] *The Code of Conduct Partnership under Cohesion Policy is available here: https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/code-conduct-partnership-ccp (accessed on 25/10/2020)*

[6] *The Code of Conduct on Partnership in the Framework of the European Structural and Investments Funds is available here: https://op.europa.eu/en/publication-detail/-/publication/93c4192d-aa07-43f6-b78e-f1d236b54cb8 (accessed on 25/10/2020)*

[7] *Multi-level governance has been defined by the Committee of the Regions as being based on coordinated action by the EU, the Member States and regional and local authorities according to the principles of subsidiarity and proportionality and in partnership, taking the form of operational and institutionalized cooperation in the drafting and implementation of the European Union's policies.*

Similar views were shared with the CoR by the Congress of Regional and Local Authorities at the Council of Europe[8] in a contribution to the OECD report. The contribution includes certain preliminary recommendations for the establishment of a coordinated framework to respond to future crisis situations. These are:
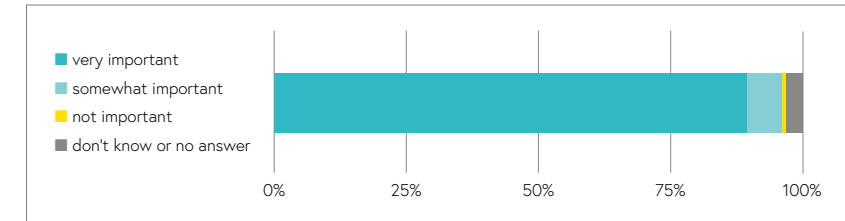
- Any emergency measures must be temporary in nature, proportional to the requirements of the situation and introduced under democratic control, and they must be lifted as soon as the situation allows;

- Better division of competences and means within the multi-level governance system must be ensured and maintained even in times of crisis;

- Instead of re-centralizing competences and funds, better coordination between different levels of governance and an improved system of regular consultations with local and regional authorities must be established within emergency mechanisms, making subnational authorities an integral part of national crisis management;

- Local and regional authorities must be closely involved in setting up mechanisms and procedures for future emergency situations in their role as actors in multi-level governance;

- Provision of direct funding to local and regional authorities and their access to direct funding must be ensured during both the crisis management and post-crisis recovery.

Unsurprisingly, these guidelines are supported by substate governments. In a survey commissioned by the CoR and OECD in June-July 2020,[9] substate governments were asked to rate the importance of various factors for a successful exit strategy from the crisis. The results for the factor "Coordination in the design and implementation of measures among all levels of government" are very telling: No fewer than 87% of respondents rated it as "very important", and a further 8% called it "somewhat important" (see Figure 1 next page).

8 For further details, see: Congress of Regional and Local Authorities at the Council of Europe. 'A threat to both public health and democratic institutions, COVID-19 must not lead to a "lockdown" of local democracy'. September 2020. Available at: https://rm.coe.int/congress-contribution-to-the-state-of-the-regions-sotreg-of-the-europe/16809fba64 (accessed on 25/10/2020)
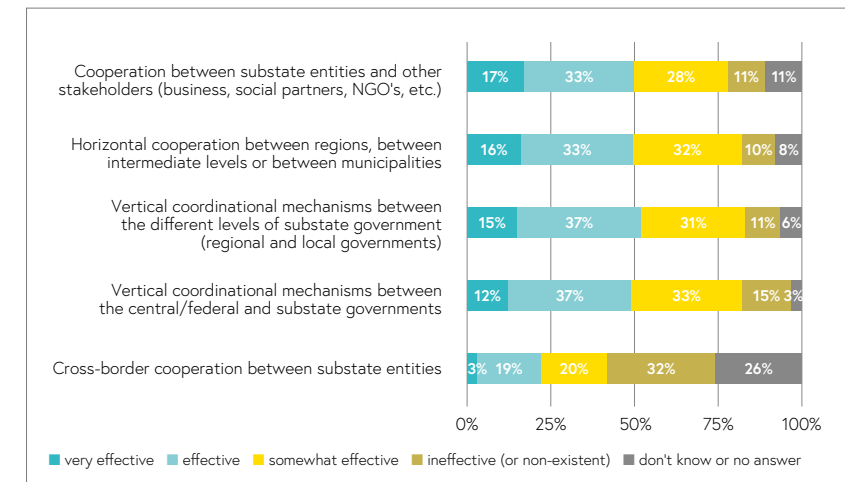
9 CoR-OECD survey (2020) "The impact of COVID-19 on regions and cities", June-July 2020. Available at: https://cor.europa.eu/en/our-work/EURegionalBarometerDocs/4370-Barometer%20optimized.pdf (accessed on 24/10/2020)

Figure 1: Importance of the factor "Coordination in the design and implementation of measures among all levels of government" for a successful exit strategy from the crisis

The responses from RLA representatives to the question "How effective have the following coordination mechanisms been in managing the COVID-19 crisis in your country?" are shown in Figure 2 below. As the figure shows, the vertical coordination mechanisms between the central and substate levels of governments are evaluated almost as equally "effective" (37%) and "somewhat effective" (33%), leaving room for improvement.

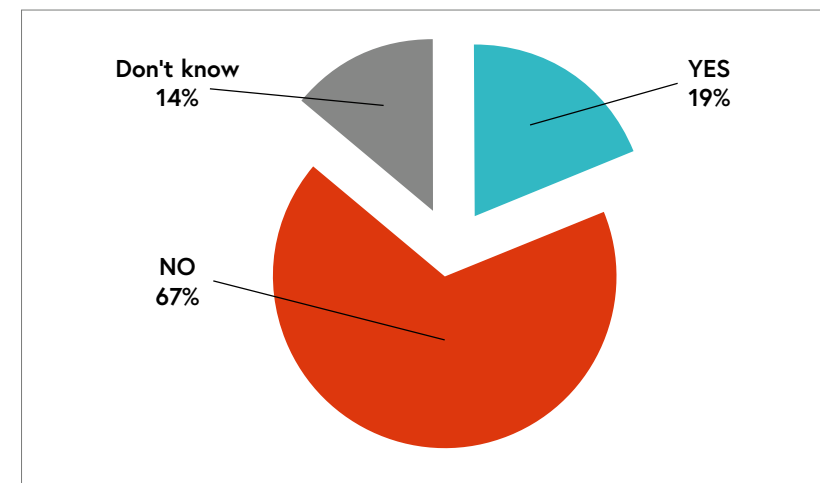**Figure 2: Effectiveness of coordination mechanisms in managing the COVID-19 crisis**

Source: CoR-OECD survey (2020)

3.2. The Conference on the Future of Europe and the EU Green Deal after COVID-19: a unique opportunity to decentralize sustainability

The COVID-19 pandemic has impacted the preparation of the Conference on the Future of Europe; however, it also provides certain opportunities. Aimed as it is at strengthening the participatory dimension in EU democracy beyond elections and ensuring that citizens can make their voices heard and heeded, the Conference seems likely to be more relevant than ever in the aftermath of the pandemic. The Conference process was intended to start in May 2020 and last two years, but its launch has been delayed to late autumn at the earliest due to the pandemic crisis. In light of the governance challenge posed by the COVID-19 outbreak, the Conference may well offer a unique opportunity to reinforce mechanisms of multi-level governance aimed at decentralizing sustainability.[10]

Once again, if we look at the opinion polls, around two-thirds[11] of Europeans think that regional and local authorities do not have enough influence on the decisions made at the European Union level (see Figure 3). Indeed, more than two-thirds of European citizens think that regional and local authorities do not have enough influence on the decisions taken at European Union level (67%), while less than a fifth of respondents consider that regional and local authorities do have enough influence (19%).

Figure 3: Do you think regional and local authorities have enough influence on the decisions made at the European Union level? (%)
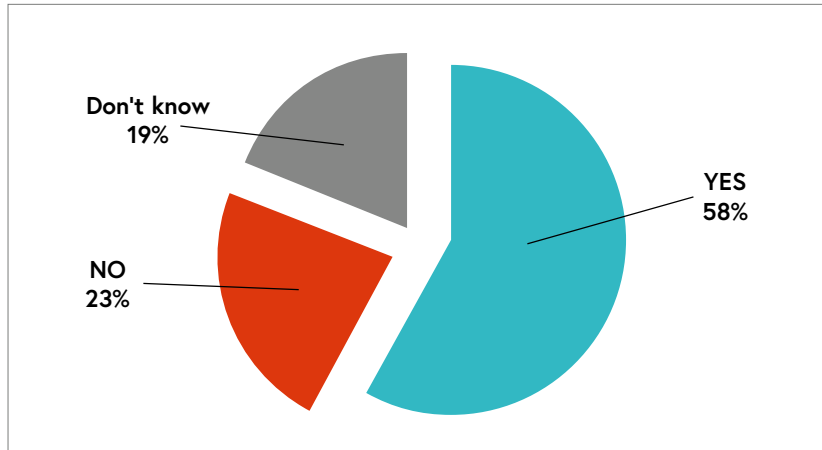

Source: CoR (2020)[12]

In short, Europeans would like their regional and local authorities to have more influence on the decisions made at the EU level; the most frequently mentioned policies for which more influence would be preferred are those related to health (45%), employment and social affairs (43%) and education, training and culture (40%). Finally, a clear majority of Europeans (58%) think that greater influence of regional and local authorities would have a positive impact on the EU's ability to solve problems (see Figure 4); notably, that is the majority view in all Member States.

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[10] This chapter was finalised in November 2020.

[11] For further details, see: https://cor.europa.eu/en/our-work/Pages/EURegionalBarometer-survey.aspx?utm_source=SharedLink&utm_medium=ShortURL&utm_campaign=EURegionalBarometer-Survey (accessed on 20/10/2020)

[12] European Committee of the Regions 'Public opinion survey: The coronavirus crisis and the role of regions and cities in the EU'. October 2020. Available at: https://cor.europa.eu/en/our-work/Pages/EURegionalBarometer-survey.aspx?utm_source=SharedLink&utm_medium=ShortURL&utm_campaign=EURegionalBarometer-Survey (accessed on 01/11/2020)

Figure 4: Overall, do you think more influence of regional and local authorities would have a positive impact on the European Union's ability to solve problems? (%)

Don't know
19%

YES
58%

NO
23%

The COVID-19 pandemic has already contributed to enhancing the profile of regions and local authorities in the fight against the crisis, with RLAs pressing for more coordination and collaboration between levels of governance, and thus urging a more effective multi-level system of governance.

4. Conclusion

Since the beginning of the crisis, the EU has supported Member States in the coordination of their responses as well as in their efforts to contain the multiple crises brought about by the pandemic. The EU response for a sustainable recovery is multifaceted: the European Recovery and Resilience Facility is admittedly a major instrument in this regard, but it does not stand alone – it is accompanied by several other instruments (e.g., European Structural and Investment Funds, InvestEU) and policies (such as the Green Deal).

In this paper, we have provided evidence of the compatibilities and inconsistencies of the EU Green Deal and the Next Generation EU. However, this mixed picture should not overshadow the measures adopted by the EU to mitigate the fallout of the economic crisis triggered by the pandemic. Furthermore, we have shown that the way the recovery strategy is designed is just as important as the sum of the financial effort. In this respect, we have highlighted the importance of the RLAs as key players in the definition and implementation of the two plans.

Indeed, the RLAs must be actively involved to guarantee that the sustainable recovery is tailor-made to territorial specificities. Similarly, greater coordination between all levels of governance is necessary to ensure that the COVID-19 crisis is turned into an opportunity to realize and accelerate sustainability. Finally, in view of the Conference on the Future of Europe, we have suggested that the EU should embrace this unique opportunity to reimagine itself to enhance vertical (and horizontal) coordination in a more effective multi-level system of governance.

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Solidarity in Border Regions as a Response to State Reflex

The pandemic has shown that border regions in the EU need better governance to ensure cross border solidarity not only in times of crisis

Martin Unfried

Introduction

According to the European Commission, the European Union (EU) has 40 internal land border regions, which represent 40% of the Union's territory and close to 30% of the EU population. The definition of "border region" in this context is of course geographically rather broad, but nevertheless many citizens or politicians living in capitals are certainly not aware of the fact that living close to a border is a rather normal circumstance in 27 Member States. However, again according to the European Commission, border regions generally perform less well economically than other regions within a Member State. Access to public services, hospitals and universities is generally poorer. And in addition, citizens, businesses and public

authorities are confronted with difficulties when navigating between different administrative and legal systems. That was the result of a broad evaluation process held in 2017 that led to several initiatives of the Commission to improve the situation. This also reflects the author's own research in the border region in the Dutch, German and Belgian triangle in Maastricht.[1] From a broader perspective, it is not only about money. Since 1990, a special fund (INTERREG) sponsors cooperation at borders throughout the EU. Nevertheless, one can describe an interesting paradox: more European integration does not necessarily lead to more integration in border regions, meaning that despite the many cross-border projects and the establishment of cross-border territorial organisations (called Euroregions or Euro-districts), the root causes of barriers have not disappeared and the making of more EU legislation and harmonisation has not necesarily led to more integrated cross-border territories. There are still many serious problems and barriers, especially in the fields of the labour market, mobility and education. The main reason is that other than in the field of the internal market or competition, the most fundamental legislations hindering the functioning of cross-border mobility in border regions are passed by Central (or Regional) governments and are very often uncoordinated. Even worse: due to even more sophisticated institutional architecture in the fields of taxes, social security, education or health insurance, the mismatch between different systems can today be even greater than decades ago. This could be described as the paradox of EU integration in border regions: in policy sectors where Member States have explicitly chosen non-harmonisation at the EU level, cross-border cooperation is not necessarily easier than in the past.

In this article, results of a research project in the Meuse-Rhine Euroregion will be used in order to discuss the general issue of solidarity during the crisis. The author will demonstrate why border regions were not prepared to tackle a pandemic situation with solidarity and well-coordinated action across the borders.[2] He will also discuss why crisis management did not enable cross-border solutions but rather led to more complexity for cross-border coordination due to central government steering. This is firstly explained by the particular nature of the health sector where a defined solidarity mechanism was missing. In fact, the states' self interest at the beginning of the crisis focussed on the maintenance of capacities in the health sector meaning mainly intensive care capacities for Covid patients and

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[1] *The author is a senior researcher at the Institute of Transnational and Euregional Cooperation and Mobility (ITEM) at the Faculty of Law at Maastricht University (NL). The institute was established in 2016 and is specialised on research in the field of different cross border cooperation issues.*

[2] *The ITEM institute coordinated an impact assessment research project that focussed on the situation at the Dutch-German-Belgian, French-German and Polish-German borders, and the border on the Island of Ireland. See: https://www.maastrichtuniversity.nl/research/item/research/item-cross-border-impact-assessment.*

the avoidance of a collapse of their own hospital services in general. There was little room for cross-border solidarity in the first place, since there was no structural element of reciprocity.

The article will then show that the protection of these capacities became the main political objective of central governments. In this context, closing borders was seen as a political instrument to reduce health risks. The author will discuss in a broader sense how this had particularly negative repercussions on the fundamental freedoms of citizens and companies in border regions and led to the revival of old-fashioned ideas about closing borders as a political instrument to safeguard national interest. State reflex has clashed with previous attempts to make the idea of cross-border cohesion and solidarity emerge and will perhaps be a big obstacle to boosting cross-border territories again in the near future.

Hence, the author will argue that there is a need to rethink the nature of cross-border territories and how cross-border governance could be strengthened in order to avoid the revival of central government's top-down steering. The basic assumption of this article is the following: border regions are the litmus test of European integration, where citizens should benefit from cross-border infrastructures, labour markets, economic activity, universities and schools, a rich and diverse cross-border cultural and linguistic exchange and a friendly cooperation between civil society and the public sector.

1. Cross-border governance was not ready for a cross-border health crisis

As already mentioned, Maastricht-based institute ITEM (Maastricht University), together with three other border institutes, assessed the impacts of the first wave of Covid during the spring and summer of 2020. The author was responsible for the Meuse-Rhine Euroregion, located at the Dutch-Belgian-German border with cities such as Maastricht, Aachen and Liège. The following observations and conclusions are based on recent results.[3]

Of course, during the Covid pandemic measures had to be taken within

days or even hours. Of course, there was often a lack of time to take all the effects into account. And of course, governments had to act according to a precautionary principle to prevent citizens from possible worst-case scenarios during a pandemic crisis. Nevertheless, there are indications today that the closure of state borders was not always motivated by exceptional infection rates on the other side of the border but as a policy reflex out of helplessness (Unfried, 2020).

What happened at the Dutch-Belgian border in Spring 2020? Why did Belgium react with very strict border restrictions to the Covid crisis and partly closed the border? First, in March 2020, Belgium feared that the Dutch government would be more inclined to follow the idea of herd immunity. Even if this was only discussed at government level for a very short time, it apparently led to general irritation in Belgium.[4] Against this background, waiting for the Dutch or coordinating measures with the Dutch government was not an option. Hence, because of uncoordinated measures (closure of shops or other premises), Belgian mayors had difficulties coping with Dutch visitors in their cities. The latter were not aware of the stricter Belgian rules or did not respect them at that moment in time. This issue was reported by mayors of Belgian border towns such as Lanaken, close to Dutch Maastricht (Selis, 2020). On the other hand, when shops were already closed in Belgium, citizens in the border regions still could visit their favourite Dutch shops and markets. What has been a normal practice in a cross-border region suddenly led to friction. Belgian authorities tried to restrict travel and activities and saw that the open border did not help. In this respect, the closure of the border from the Belgian side (for non-essential travel) was a sort of "b-solution", since other coordinated measures with the neighbours were apparently not available.

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[3] The reports can be found on https://www.maastrichtuniversity.nl/research/item/research/item-cross-border-impact-assessment.

[4] See for instance a report from Flemish Public Channel VRT (Vlaamse Radio- en Televisieomroeporganisatie) from 17 March 2020, https://www.vrt.be/vrtnws/nl/2020/03/17/groepsimmuniteit-coronavirus/.

Table 1: Restrictions and closure of the border during the first wave in spring 2020 – Meuse-Rhine Euroregion

Indicator	NL	DE/NRW	BE
Number of days with border controls	0	0	87
Border closed for travel without a valid reason (in days)	0	66[5]	87
Closed borders: long traffic jams/ waiting times due to border controls	To NL: no official border controls	To NRW: no official border controls	To Belgium: small local traffic jams when the controls started
Need for a commuter's licence	Entry NL: no	Entry DE: Not legally regulated, but a form was issued by the *Bundespolizei* (Federal Police)[6]	From 22 March: entry and exit vignettes for cross-border commuters in "vital occupations". Others: employer certificates (forms were issued)
Number of commuters with a licence	-	Impossible to establish	Impossible to establish
Number of cross-border businesses in the EMR forced to cease their activities due to the introduction of border controls or measures	No data but in general business and the transport of goods was not hindered	No data but in general business and the transport of goods was not hindered	No data but in general business and the transport of goods was not hindered, longer waiting times at the border as usual due to controls
Number of cross-border workers potentially affected by Coronavirus measures	The Meuse-Rhine Euregion is one of the most integrated border regions in Europe. It numbers approximately 36,000 cross-border workers, including around 5,000 in the healthcare sector.		

[5] *To guarantee German residents adequate protection against infection (by (re-)entering travelers), the German Federal Cabinet had already decided that non-essential travel was to be avoided, i.e., that non-residents could only enter Germany for valid reasons. Against this backdrop, all federal states - including North Rhine-Westphalia - issued state regulations on entry and return travels. The NRW entry regulation came into force on 10 April.*

[6] *The Federal Police issued a license certificate on their website for employers to fill out on behalf of commuting employees. See: https://www.bundespolizei.de/Web/DE/04Aktuelles/01Meldungen/2020/03/pendlerbescheinigung_beruf_down.html, last accessed on 22 July 2020.*

In retrospect, cooperation across the border was very difficult, even in a cross-border territory that is, in comparison to other EU border regions, relatively well integrated. The Netherlands and Belgium are both members of the Benelux Union, meaning that next to the broader governance elements of cross-border networks and Euroregions, they could have joined forces at the ministerial level under the umbrella of the Benelux. However, the health sector has not been a major cross-border cooperation issue at the EU level, nor at the level of the Benelux Union or bilaterally between Belgium and the Netherlands. Also, with the German neighbours, in this case the German Länder of North-Rhine Westphalia, Lower Saxony and Rhineland-Palatinate, there were no broader agreements with respect to the health emergency situation and cross-border solidarity. For instance, according to practitioners, during the first wave it was only possible to coordinate cross-border procurement of protective equipment for health workers in exceptional cases. Neither was there wider cooperation with respect to testing materials, where for instance on the Dutch side shortages were registered in hospitals and old people's homes.

It was also hardly possible to publish infection data on cross-border territories in order to assess the necessity of the closure of state borders from a cross-border pandemic point of view. One of the reasons was certainly that there was a big difference with respect to the record of infections and death rates. This led to a situation where Belgian numbers could not be properly compared with the Dutch or German data, without knowing that they also counted assumed Covid-related cases in old people's homes, which was not the case in the Netherlands. That meant that proper monitoring of a cross-border situation was already hindered by non-harmonisation of statistics (Tans, 2020). That certainly changed during the second wave in the autumn and winter of 2020, but it is too early to make an assessment of whether monitoring and data exchange also collected by the European Centre for Disease Prevention and Control (ECDC) has led to real progress.

The observation for the first wave was that health systems operating with state monitoring systems could not meet the challenge of a cross-border crisis, let alone the question of a structured and defined possibility of sharing capacities of hospitals in a pandemic crisis. It was reported during the first wave that Dutch patients were incidentally treated in German intensive care units, however this was rather the result of *ad hoc* decisions rather than well-prepared exchange structures and cross-border protocols. During the second wave so far (December 2020), a small number of Dutch and Belgian patients are being treated in intensive care units in Germany. This has been both the result of, again, *ad hoc* agreements (between the Netherlands and North-Rhine Westphalia) and emergency *ad hoc* decisions in

border regions (patients from Wallonia to North-Rhine Westphalia). This still reflects a lack of structured cooperation and exchange of capacities in a statewide oriented health sector and of a well-defined system of mutual assistance and solidarity in crisis situations. The deficiencies were not a result of unwillingness of the partners (hospitals, emergency services) and their cross-border networks, but of an actual lack of "solidarity mechanisms" in place when it comes to hospital cooperation. Again, things are progressing and there has been a decision on a joint vaccine strategy, which constitutes a mechanism for solidarity. The European Commission entered into Advanced Purchase Agreements with individual vaccine producers on behalf of Member States. In return for the right to buy a specified number of vaccine doses in a given timeframe and at a given price, the Commission will finance a part of the upfront costs faced by vaccine producers from the Emergency Support Instrument.[7] This funding will be considered as a down-payment on the vaccines that will actually be purchased by Member States. It is obvious that this fits into the system of State health systems. Vaccines are allocated by Member States and will be distributed according to each of their vaccination strategies. That means that cross-border exchange does not initially form part of the system. It remains to be seen how cross-border networks in the health sector will deal with possible shortages on one side of the border and better capacities on the other. This also indicates that solidarity in border regions is different from general solidarity mechanisms between EU Member States.

2. Restrictions on freedom of movement and the closure of borders

Because of the above-mentioned lack of coordination of national measures, very strict rules applied to the crossing of the Belgian border. Given the open nature of the cross-border territories in the Dutch-German-Belgian triangle for so many decades, the partial "closure" of the Belgian border was suddenly an "unthinkable" reality. For the author, who lives 500 meters away from the Belgian border, it was a shocking experience.

First, citizens were confronted with a lack of clarity and confusion about the nature of state-wide measures. The Belgian government closed the border for non-

essential travel from the neighbouring countries and implemented strict border controls. However, the nature of exemptions and appropriate rules was very difficult to communicate. The most striking example were Belgian cross-border workers who were allowed to go to work in the Netherlands but received fines from the Belgian authorities when doing their shopping on their way home, on Dutch territory. Very often, it was also up to the interpretation of the local police to define whether a certain reason was in line with the regulation in place on a given day. Many examples at the Belgian border showed that strict controls and sanctions did not help in a situation where citizens were confronted with measures that are complex and implemented *ad hoc*.

In contrast, the situation between the Netherlands and Germany has been in general less restrictive and has been one of the most "open" borders within the EU during the first wave. There were fewer controls, no legal entry ban on the Dutch side, whereas the German side also applied a ban on non-essential travel as. However, there was also an extensive list of exemptions for cross-border workers and others. A positive aspect for the situation in the Meuse-Rhine Euroregion was that neither the Dutch government nor the government of North-Rhine Westphalia emphasised that the closure of the border would be an essential contribution to the fight against the pandemic. Prime Minister Armin Laschet of North Rhine-Westphalia even claimed that he successfully fought against the idea of the Federal Minister of the Interior to establish controls at the Dutch–German border (Bubrowski/Burger/Steppat, 2020). However, not only was there a lack of clarity about what the rules were during the Easter weekend, but both the governments of North Rhine-Westphalia and the Netherlands had communicated recommendations not to enter the country at that time. This led to confusing situations at the border. Newspapers reported that the Dutch Marechaussee (Netherlands gendarmerie) at the border had sent German drivers back because they wanted to go shopping. That was not in accordance with the rules, because the Netherlands had not issued an entry ban. There were prohibitions for certain geographical areas, for example for the "Heuvelland region" between Aachen and Maastricht. But these restrictions also applied to Dutch citizens from other regions. Such a ban on certain regions within a country (like in the Netherlands) was of course different from general restrictions on entering a country (such as in Germany) but very difficult to communicate. Also, official communication did not always help, meaning that citizens living close to the border were confronted with a complex set of rules, not knowing what the precise recommendations and rules were.

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[7] See the description of the joint EU vaccine strategy: https://ec.europa.eu/info/live-work-travel-eu/coronavirus-response/public-health/coronavirus-vaccines-strategy_en

In April and May, the subject of quarantine rules also raised many questions. The regulation in North Rhine-Westphalia (dated 9 April 2020) stipulated that people who had been abroad for more than 72 hours and then entered Germany had to go directly to their own homes or other accommodation and stay there for 14 days. They had to report to the health office of their neighbourhood or town. Also, in this case, the rules of the neighbouring countries were not the same and led to a complex picture with respect to exceptions for border commuters, business travellers, service technicians and even people picking up family members at an airport. In Belgium, the latter were for example at a certain moment also obliged to stay in quarantine.

During the second wave, it is still obvious that national quarantine rules lack consistency when applied to border regions. According to the current Dutch rules (set at the beginning of December 2020), a self-employed plumber who has done a job for a couple of hours and is returning from Aachen (Germany) to his place of residence in Maastricht (Netherlands), has to stay at home for the following 10 days since Germany is, from the Dutch perspective, defined as a risk area. The same self-employed person can stay for a couple of weeks in the Dutch city of Rotterdam where the infection numbers have been for many weeks much higher than in Aachen. When returning from the real high-risk area of Rotterdam, no quarantine is required in Maastricht since national quarantine rules only apply for territories abroad. This illustrates that in this case, the national rules do not reflect regional or Euroregional health risks and discriminate citizens and, for instance, self-employed individuals, in border regions. For people living in Dutch border cities like Kerkrade, where in some places the German territory is just on the other side of the street, a trip to the supermarket across the border is not a travel to a foreign country, but a normal daily routine. Quarantine examples show that even during the second wave, it was difficult for central governments to understand the reality in border regions. This can be tackled in the shorter run by pragmatic solutions. For instance, the German Land North-Rhine Westphalia has formulated a 24-hour rule for the so-called "small border traffic": meaning that if German citizens in border regions cross the border to Belgian or Dutch territory but return on the same day, the quarantine and other rules (registration at certain health institutions) do not apply. However, this is of course a second-best solution. Border regions would benefit especially from a regional view on health risks and respective measures, meaning travel restrictions or quarantine rules would be up to a regional risk assessment and applied irrespectively of statewide background. In this case, travelling across the border in a Euroregion could still be possible (if the health risk in the neighbouring region is comparatively low), whereas travel from and to high-risk regions in the same country would be restricted. This type of regional and state risk approach would be in accordance with the very nature of the freedom of cross-border mobility throughout the EU. It would do away with discrimination against citizens living in border regions and represent a more distinguished and consistent approach towards risks.

3. The impact on 'Euregional cohesion', a cross-border common space and solidarity

As mentioned in the introduction, for many years the European Commission, together with many stakeholders of border regions (for instance AEBR, the Association of European Border Regions), promoted the idea of integrated cross-border labour markets, cross-border infrastructure projects, cross-border education spaces, and a lively linguistic and cultural exchange. Beyond pure economic advantages, there is also and especially the notion of cross-border cohesion and identity. As in the case for the Meuse-Rhine Euroregion, open borders were such a matter of course, that border restrictions in the spring of 2020 came as a shock to many citizens. One should not underestimate the emotional and psychological consequences of this situation. Remember that at a certain moment in time in the spring, citizens were not allowed to visit their families across the border between Belgium and the Netherlands. This gave a strong signal that state borders are back, and open borders could again be at risk at any time of crisis.

Hence, promoting cross-border activities will be more difficult in the future. It will be more difficult to promote the idea of a cross-border territory with its own cultural and linguistic identity, going beyond the nation-state. Due to the above-mentioned complexity of the crisis, many citizens in border regions were confronted with disadvantages. Those who are self-employed had to struggle with inconsistent quarantine rules. But not only that. In some cases, Dutch financial assistance schemes did not apply to self-employed individuals having their businesses in the Netherlands but their places of residence in a German or Belgian village, a widespread reality in border regions. Also, Dutch or Belgian companies had disadvantages if they had employees based in Germany but no official headquarters there. This meant that they were not eligible to a certain form of financial aid related to the reduction of working hours *(Kurzarbeitergeld)*. During the crisis, cross-border information points in the Meuse-Rhine Euroregion were approached by frustrated citizens who needed financial assistance but were not eligible due to their cross-border situations. Even

if the overall number of these cases are not that high, they were very often a major item in local newspapers and certainly a prominent item in cross-border business communities.

The long-term psychological effects for border regions will probably be worse than the short-term economic effects. Those pioneers who took on an already-higher administrative burden to start their businesses across the border or who got jobs as cross-border workers have been hit by the restrictions and inconsistencies of their institutional systems, which is a rather negative signal for the entire development of cross-border cohesion. Who will believe in future political statements praising cross-border cooperation and asking citizens and companies to work and live across the border? How realistic is it to invest in cross-border capacities and skills if the open border may be at stake due to another crisis? And moreover: how can citizens believe in cross-border solidarity when cross-border cooperation and assistance was hardly possible in the context of a major health crisis?

Of course, border regions and the stability of cross-border cooperation and governance are rather diverse. And the crisis led to very different challenges depending on regional circumstances. However, we detected major disruptions of cross-border cooperation even in a relatively well-established border region such as the Meuse-Rhine Euroregion. Without strong networks, institutions and governance, these disruptions would have been worse, especially for cross-border workers. The secretariat of the Euroregion, together with the recently established cross-border information points (helpdesks for citizens and companies) were able to influence central governments' policy makers by signalling the most urgent problems at the border. In this respect, the crisis even helped to bring official stakeholders (not the citizens) of the border regions closer together and could be used to trigger a general debate on appropriate cross-border governance mechanisms. Of course, this has to be related in the short term with the quality of cross-border crisis management. But in addition, it could also trigger a fundamental debate about the future functioning of cross-border territories.

4. Conclusions: enhancing solidarity in times of crises and beyond

The Covid crisis could be an opportunity for border regions. First, it is evident that new agreements, protocols and instruments are necessary to tackle cross-border threats related to pandemic outbreaks with a cross-border approach. Because of central-government structures and steering, possible cooperation capacities of hospitals and other important stakeholders in the health sector could not be fully exploited. Not even in the second wave can structural exchange of patients, staff, material etc. be fully implemented. At the beginning of the crisis, the states' reflex to use the closure of borders as a means of health protection created severe distortion in border regions, even at the Dutch-Belgian border, where political relations between governments used to be much more positive than in other border situations. Especially during the first wave, central governments were desperately trying to protect their own health systems and did that partly by giving up the idea of integrated cross-border territories. Even worse, instead of supporting solidarity between citizens across borders through the sharing of capacities in the health sector and coordinating outbreak management, the crisis approach was a barrier to cross-border solidarity. Especially at the beginning of the crisis in the spring of 2020, measures were taken unilaterally and without consulting neighbours.

A bitter conclusion is that the existing cross-border governance system is not robust enough for times of crises. This means that open borders in the EU should in the future not only be a vague promise but a decisive element of policies. Agreements and protocols have to be developed between Member States on how to create solidarity mechanisms that are robust enough to survive the next pandemic. This could of course also mean that some elements that are today pushed by the European Commission, such as the joint procurement of test and protection materials and vaccines, are strengthened at the EU level. The case of the Dutch-German-Belgian border shows that Member States do not have to wait for the EU, but can go much further in their agreements on certain mechanisms with respect to pandemic outbreaks. Especially, a joint approach to the mutual use of hospital capacities and the exchange of patients is a case in point: no other measure would better underpin the notion of solidarity and cohesion in a cross-border territory.

The crisis has also brought to light a number of persistent deficiencies: the inconsistencies of travel advice and quarantine rules proved that they remained related to rather old-school, centralised thinking. Assessing the health risk in accordance with regional indicators rather than statewide ones would mean

assessing risk beyond the borders of Member States. In this respect, stakeholders in border regions can contribute to the debate with innovative ideas about future crisis management systems that take into account the integrity of cross-border territories.

And finally: the health sector is only one symptom. There are still tremendous obstacles to the creation of integrated cross-border labour markets, a cross-border sphere of education, or linguistic and cultural cohesion. It is up to citizens and their politicians in border regions to use this window of opportunity and start a broader debate, increasing political pressure. It is clear that with the present cross-border governance elements – for instance rather modestly equipped cross-border organisations and the dependency on EU funds for joint projects - there will be no breakthrough. As shown, the confidence of citizens in open borders and cross-border cooperation is no longer a matter of course. It is not likely that just keeping the pre-pandemic *status quo* will convince citizens and restore a cross-border mindset.

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Pandemic Citizenship Amidst Stateless Algorithmic Nations:

Digital Rights and Technological Sovereignty at Stake

Igor Calzada

Abstract

COVID-19 has hit citizens dramatically during 2020, not only creating a general risk-driven environment encompassing a wide array of economic vulnerabilities but also exposing them to pervasive digital risks, such as biosurveillance, misinformation, and e-democracy algorithmic threats. Over the course of the pandemic, a debate has emerged about the appropriate techno-political response when governments use disease surveillance technologies to tackle the spread of COVID-19, pointing out the dichotomy between state-Leviathan cybercontrol and civil liberties. In order to shed light on this debate, this article introduces the term 'pandemic citizenship' to better understand the extreme circumstances in which citizens have been surviving. Particularly, this article attempts to provide an overview by focussing on stateless nations and the need to conduct further research and gather policy evidence to articulate counter political strategies as 'algorithmic nations'. The COVID-19 pandemic has inevitably raised the need to resiliently and techno-politically respond to threats that hyper-connected and highly virialised societies produce. Amidst the increasingly artificial intelligence (AI)-driven governance systems in several nation-states in Europe, this article identifies the need to devolve data power to citizens through data ecosystems in European stateless algorithmic nations. This article argues that in the absence of a coordinated and inter-dependent strategy to claim digital rights and technological sovereignty by a set of stateless algorithmic nations in Europe, on the one hand, Big Tech *data-opolies*, and on the other hand, the General Data Protection Regulation (GDPR) led by the European Commission, might bound and expand, respectively, stateless nations' capacity to mitigate the negative side effects of algorithmic disruption. Individually, we have already observed subtle reactions in several nations, including Catalonia and Scotland, that are unlikely to be consistent unless a joint strategy takes place at the European level by stakeholders operating in these nations' techno-political spheres.

1. Introduction: Pandemic Citizenship

Citizens in Europe have likely been pervasively surveilled during and probably as a result of the COVID-19 crisis (Aho & Duffield, 2020; Csernatoni, 2020; Hintz, Dencik, & Wahl-Jorgensen, 2017; Kitchin, 2020; Zuboff, 2019). Despite the fact that the homologation of the vaccine has sped up, its equitable distribution globally cannot be ensured yet (Burki, 2021). Although the coronavirus does not discriminate and affects citizens translocally, it has unevenly distributed economic and social impacts across and within state borders, producing a new pandemic citizenship regime that exposes health, socio-economic, cognitive and even digital vulnerabilities (Calzada, 2020c). By contrast, the COVID-19 pandemic has also shown that digital platforms and transformations can offer opportunities to connect with local communities even during times of crisis for substate and city-regional entities that attempt to ensure data commons (Tommaso, 2020) and sovereignty (Calzada, 2020b). But how can e-democracy be ensured for all citizens while also creating further democratic citizenship (Bridle, 2016; Lucas, 2020) to avert the algorithmic and *data-opolitic* (data oligopolies; Hand, 2020; Rikap, 2020; Stucke & Grunes, 2017) extractivist hegemonic paradigm, as well as Orwellian cybercontrol through massive contact-tracing apps that serve as a digital panopticon of the Leviathan (Datta, Aditi, Ghoshal, Thomas, & Mishra, 2020; Gekker & Hind, 2019; Kostka, 2019; Nichols & LeBlanc, 2020; Taylor, 2020)? How can citizens from stateless city-regional nations react to these unprecedented challenges and equip themselves with the best tools

(Delacroix & Lawrence, 2019) to claim digital rights and technological/digital/data sovereignty (Calzada, 2019a)? What does sovereignty mean for stateless citizens (Calzada, 2019b) amidst the pandemic crisis wrapped in an algorithmic global disruption (Dixson-Declève, 2020)?

The COVID-19 pandemic has stressed the growing impact of digital technologies in political and social life (Cheney-Lippold, 2011; Datta, 2020). Contact-tracing applications on mobile phones have raised vibrant debate and epitomised the magnitude of contemporary trends to incorporate algorithmic computation into the government of citizenry. Thus, this crisis has accelerated the need to increase human and social understanding of potential and risk of *techno-politics*—the entrenchment of digital technologies in political and governmental practices (Calzada, 2020e; 2021)—for 'pandemic citizens' in the stateless algorithmic nations of Europe.

Over the last two decades, the euphoria of the 'digital renaissance' and the advent of the Internet as a free network of networks have characterised the dawn of the new millennium. Recent years have witnessed widening concerns about the 'surveillance' effects of the digital revolution (Allam, 2020; Andersen, 2020; Christensen, 2019; Christl, 2017; Christl & Spiekermann, 2016; Levy & Barocas, 2018; Lightfoot & Wisniewski, 2014; Lupton & Michael, 2017; Maxmen, 2019; Morozov, 2020; van Dijck, 2014). Expressions like 'algocracy', 'digital panopticon', and 'algorithmic surveillance' have revealed a spreading scepticism about the rise of new governance models based on Big Data analysis and AI (AI; Berditchevskaia & Baeck, 2020; Delipetrev, Tsinaraki, & Kostic, 2020; Dyer-Witheford, Kjosen, & Steinhoff, 2019; Lutz, 2019; Misuraca, 2020). The Cambridge Analytica scandal in the United Kingdom (UK), on the one hand, and the Chinese Social Credit System (SCS) tracking, controlling, and scoring citizens, on the other, have offered dystopian representations of our digital present (Pilkington, 2019). They have exposed the urge to systematically address the question of whether, and to what extent, ubiquitous *'dataveillance'* is compatible with citizens' digital rights (Lupton & Michael, 2017; Smuha, 2020; van Dijck, 2014; Wong, 2020).

Against this backdrop, the European Union (EU)'s GDPR can be understood as a first attempt to pave the way for a specific European model of ruling on these matters and to take the lead globally in favour of an explicit strategy towards digital rights (Calzada & Almirall, 2020; Cities Coalition for Digital Rights, 2019). A rights-based approach to techno-politics may be articulated by connecting the digital transformation that is reshaping our urban spaces to the notion and institution of

citizenship, which has been the main carrier of rights in European societies over the last two centuries (Arendt, 1949). This raises the question of how algorithmic disruption can redefine citizenship through the incorporation of new digital rights related to the status of a citizen in cyberspace—access, openness, net-neutrality, digital privacy, data encryption, protection and control, digital/data/technological sovereignty, and so on (Calzada & Almirall, 2020). This article aims to provide a substantial and original contribution in this direction by articulating an in-depth investigation into how algorithmic disruption can bring about a new generation of human rights belonging to the digital sphere and how they can be unfolded to address the challenges raised by the spread of calls for technological sovereignty in stateless 'algorithmic nations' (Calzada, 2018a).

Nominally, over the last few decades, globalisation has led to a new class of global citizenship (Calzada, 2020f; Nguyen, 2017). While access to this global citizenship remains uneven, many have enjoyed unlimited freedom to move, work and travel. However, COVID-19 has drastically slowed down this global citizenship regime and introduced a new level of ubiquitous vulnerability in global affairs by inciting a new 'pandemic citizenship' regime in which citizens—regardless of their locations—share fear, uncertainty and risks (Taylor, 2020). Furthermore, COVID-19 is deeply and pervasively related to data and AI governance issues, which expose citizens' vulnerabilities in a potential surveillance state and market (Hintz et al., 2017; Morozov, 2020). Under these extreme circumstances, *pandemic citizenship* might thus be described as follows: the post-COVID-19 era has both dramatically slowed down several mundane routines for citizens, such as mobility patterns, and exponentially increased professional pressures, emotional fears, life uncertainties, algorithmic exposure, data-privacy concerns, direct health-related risks and socio-economic vulnerabilities. These factors depend eminently on the material and living conditions shared by a wide range of citizens regardless of their specific geolocation.

Actually, the responses to this pandemic emergency have varied extremely from location to location, even within the same nation-state in Europe. It is true that the pandemic has caused many nation-states to lock down, which then boosted online work and the delivery of goods via online platforms, putting further pressure on citizens. But it also allowed many communities and particularly civic groups and activists in stateless city-regional nations in Europe to respond resiliently, pushing forward co-operatives and reinforcing social capital. Among the resilient strategies adopted by governments in Europe, collective intelligence stemming from a proactive citizen-level response has been highly considered to greatly avoid further

dystopian measures that could exacerbate existing social inequalities and techno-political vulnerabilities among pandemic citizens (Bigo, Isin, & Ruppert, 2019). A particular collective intelligence response emerging in Europe has been the creation of digital co-operatives (Borkin, 2019; Cherry, 2016; McCann & Yazici, 2018), also known as *platform co-operatives* (Scholz, 2016) and *data co-operatives* (Pentland et al., 2019). However, this is not the only resilient strategy adopted within data-governance models by substate entities or particularly by stateless nations to devolve data powers for technological sovereignty.

There is a growing consensus in Europe that it is urgent for governments to start filling the same role in the information society that they have traditionally taken in the post-industrial society (Chiusi, Fischer, Kayser-Bril, & Spielkamp, 2020): not only fixing market failure but also regulating digital power relations and supervising actual economic interplay among stakeholders (Calzada, 2020a). This does not just mean demanding fair tax payments by big tech companies and imposing fines when they violate the GDPR or when they abuse their market power (European Commission, 2020). More fundamental issues are at stake that call for government attention beyond public intervention; this article refers to it as fostering social innovation among stakeholders in civil societies (Moulaert & MacCallum, 2019) in stateless nations (Calzada, 2018b). The COVID-19 crisis has clearly shown that citizens in stateless nations are not only highly dependent on data and the economic value it creates but also directly influenced by the techno-political biosurveillance it generates. The COVID-19 crisis has thus led to an explicit, necessary revaluation in society of the roles of both state governments and their citizens in extending economic and socially innovative alternatives to digitisation and datafication by devolving data powers to subnational and city-regional levels to ensure civil digital rights and overcome state-centric cybercontrol (Calzada, 2017a, 2017b; Loukissas, 2019). In doing so, this article introduces and contextualises the term 'stateless algorithmic nations' (Calzada, 2018a)

2. Debate on cybercontrol vs. civil liberties: evidence on digital rights post-COVID-19

A traditional public health approach has been pursued to combat COVID-19, involving phases of containment (taking steps to prevent the virus from spreading), delay (implementing measures to reduce the peak of impact), mitigation (providing the health system with necessary support) and research (seeking additional

effective measures and care). According to Kitchin (2020), in the early response to COVID-19, there was no sufficient consideration of the consequences on civil liberties, biopolitics or surveillance capitalism, whether the supposed benefits outweighed any commensurate negative side effects or whether public health ambitions could be realised while protecting civil liberties. Contact-tracing apps have shown profound implications for privacy, governmentality, control creep and citizenship, and they reinforce the logic of surveillance capitalism.

The COVID-19 pandemic caused something akin to a real social experiment (Prainsack, 2020). It has exposed citizens to unforeseen and unprecedented conditions, forcing them to react in ways unimaginable a few months ago. In relation to AI, data and the digital infrastructure, which have to be considered together as a socio-technical package, the pandemic is acting as a boost to AI adoption and digital transition, creating new questions and amplifying doubts over data governance, security, rights, cybercontrol, liberties and increasing social inequalities. These concerns have produced a debate not just about the bounce-back to pre-COVID-19 normality but the bounce-forward to a more resilient and fair citizenship through foundational economic principles (Foundational Economy Collective, 2020).

Historians contend that the tension between civil liberty and collective health has existed since the early days of disease surveillance, while the manner in which such a controversy comes to an end has been historically contingent. As new technologies that collect and archive personal data from citizens have become available in modern societies, the deployment of information and communication technologies (ICT) in public health has reshaped not only the techniques but also the rationalities upon which disease surveillance is built. Such a shift coincides with the convergence of the fields of public health and security in the post-9/11 era, in which health risks such as infectious pathogens are considered security threats. Consistent with the security trend, disease surveillance efforts have concentrated on border vigilance to identify and prevent risky incomers that are suspected of carrying deadly viruses.

According to a review of literature in surveillance studies and the sociology of public health, contemporary surveillance technologies used for biosecurity purposes largely share three characteristics. First is the logic of preemption: while traditional methods of infectious disease management have mainly rested on the reactive logic of identification and response, health surveillance today operates predictively by modeling possible futures with past and real-time data taken directly from citizens' devices. Second, contemporary public health surveillance technologies invite

diverse actors and partnerships in the act of surveilling, along with the widespread institutionalisation of 'dataveillance', which operates via decentralised and ubiquitous tracking of digitised information and algorithmic analysis. Third, related to this point, disease surveillance today heavily involves self-tracking practices. The plethora of wearable devices, self-tracking mobile applications, and digital tools have shifted the relationship between self and body and between those who surveil and those being surveilled. Critical works on self-tracking often pay attention to both its biopolitical and self-care capabilities, which render citizens into pixelated, abstract bodies that can be disciplined as neoliberal subjects, but at the same time provide users with a sense of control over their bodies via a playful mode of self-surveillance. Such a perspective relates to this article's interest in pandemic citizens' digital rights concerning technological sovereignty (Hobbs, 2020). Data sovereignty through well-informed, transparent public action and active social engagement therefore emerges as a crucial issue related to the digital rights of citizens.

As an amplifier of pre-existing concerns about digital rights, the COVID-19 crisis has underlined the absolute critical role of digital data governance in modern societies. Without well-structured and semantically rich data, it is not possible to harness the opportunities afforded by AI, digital transformations and frontier technologies as such. How data is collected, by whom, for what purpose and how it is accessed, shared and re-used have become central questions during the COVID-19 crisis in relation to citizens' digital rights.

Another critical aspect of technological sovereignty relates to cybersecurity. The crisis has shown how the situation is being taken advantage of, with threats to stakeholders in an initially significant increase in observed cyberattacks on both crisis-relevant infrastructure and citizens, clearly affecting the European cybersecurity landscape.

A further element of sovereignty exposed by the lockdown is the dependency on non-European collaborative platforms (Muldoon & Stronge, 2020). These platforms have become a critical layer of the digital infrastructure connecting users, processes, applications and content. Through their use, citizens provide valuable intelligence to the platform operators for profiling, targeting and potential manipulation (Mazzucato, Entsminger, & Kattel, 2020). Digital and data sovereignty need to include this technological layer as well (Floridi, 2020). A dimension amplified by COVID-19 is the extent to which AI and digital transformation exacerbate existing social, economic, political and geographical inequalities, even within the same nation-state, affecting in particular the most vulnerable segments of society but

without providing the appropriate digital tools to empower the elderly, youth and people from socially or economically disadvantaged groups in stateless city-regional nations such as Catalonia or Scotland.

In the backdrop of these subtle reactions of stateless nations, a wide range of stakeholders in cities and regions are debating citizens' digital rights through accountable data ethics. This article distinguishes 15 digital rights as follows: (i) the right to be forgotten on the Internet; (ii) the right to be unplugged; (iii) the right to one's own digital legacy; (iv) the right to protect one's personal integrity from technology; (v) the right to freedom of speech on the Internet; (vi) the right to one's own digital identity; (vii) the right to the transparent and responsible usage of algorithms (Janssen, Hartog, Matheus, Yi Ding, & Kuk, 2020); (viii) the right to have ultimate human oversight in expert-based decision-making processes; (ix) the right to have equal opportunity in the digital economy; (x) consumer rights in e-commerce; (xi) the right to hold intellectual property on the Internet; (xii) the right to universal access to the Internet; (xiii) the right to digital literacy; (xiv) the right to impartiality on the Internet; and (xv) the right to a secure Internet.

In order to provide evidence of such examples of digital rights in cities and regions in times of COVID-19, the Coalition of Cities for Digital Rights (CCDR), encompassing more than 50 global cities (www.citiesfordigitalrights.org), is worth mentioning. It is the key advocacy group at the global level pushing an ambitious and highly relevant policy agenda on digital rights (Calzada & Almirall, 2020; Cities Coalition for Digital Rights, 2019). Barcelona and Glasgow are part of this Coalition.

As these cities and regions around the world try to cope effectively with the COVID-19 crisis, we are witnessing a wide variety of digital technology responses. Mobile phones, social media and AI can play a substantial role in dealing with the spread of COVID-19. This includes the development of contact-tracing apps and the use of Big Data to analyse people's movements. For example, mobility data from *Deutsche Telecom* is being used to estimate the degree to which the German population is complying with requests to stay at home. In Singapore, the TraceTogether app uses bluetooth to enable the health ministry to identify people who have been in close contact with infected individuals. Many of these kinds of solutions can be positive and help policymakers respond quickly and appropriately. They make it possible to monitor, anticipate the spread of the disease and support mitigation. But while the use of these applications may be effective in the short term, there may be a fine line between hurried implementation of new technologies in times of crisis and negative long-term impacts on digital rights (Goggin, Wromen,

Weatherall, Martin, & Sunman, 2019). How do we adequately balance the values of privacy and autonomy with those of safety and security for citizens? A special focus on pragmatic examples with a privacy-first and inclusive tech approach could be utilised as follows, considering social innovation over technological innovation (Calzada, 2020a).

Privacy is one inalienable and non-negotiable human right in a democracy and any decisions citizens make now will resonate for far longer than the COVID-19 virus will (Wong, 2020). Though the situation citizens are in provides a unique context, laws are not as context specific as we would like in this situation. This presents us with the risk that regulations we pass now may later on be used for purposes more nefarious than battling a global pandemic. It is therefore especially prudent to create an open space where the debate about how to combine personal privacy and public health can exist. The right to a private life must be upheld. This means that any use of personal health data, geo-location data, or other personal forms of data must be limited, supervised and temporary. Under these conditions, emergency measures may be created. How do cities and regions ensure a social and humane use of technology in their communities? And more specifically, how can cities and regions use technology as an enabler to face the current COVID-19 pandemic with citizens' digital rights at the centre of their design and application? In order to shed some light on this issue, this article has collected the following evidence produced during the outbreak of COVID-19 in 2020:

(i)   Action Plan for Digital Rights for COVID-19 by the City of Amsterdam, Netherlands. Some of the measures by the city aimed to explore how to support the move of the arts and creative industry online, to monitor the impact of cyber activity on our digital safety and to monitor the stability and resilience of the Internet in Amsterdam. Risks in supply chains for public safety were mapped. The COVID-19 data exchange was started to support the crisis team with data-gathering and analysis to measure the impact of measures, for example on mobility. Research and development on which tech could be used to ease the lockdown process has started to (www.amsterdam.nl/digitalesta and https://www.amsterdam.nl/en/coronavirus/overview/).

(ii) COVID-19 Extension of Telecare Service and VinclesBCN App - City of Barcelona, Catalonia. The City Council of Barcelona opted for the extension of Telecare, which had almost 90,000 users and the Radars programme (1,600 users) that monitors people living alone with the collaboration of the neighbourhood network, as well as an extension of the VinclesBCN App service

(2,400 users) that monitors elderly people. They also created a health channel to address the doubts that these people have (https://ajuntament.barcelona. cat/personesgrans/es/canal/teleassistencia   https://ajuntament.barcelona. cat/vinclesbcn/en/getting-know-apps).

(iii) Human Communication and Transparency vs. COVID-19 - City of Bratislava, Slovakia. The City of Bratislava identified transparency and human communication as success factors to navigate these challenging times. Consequently, the Mayor of Bratislava commissioned a famous local cartoonist to draw posters to inform citizens about the necessary measures to fight the coronavirus outbreak in a clear and simple fashion. These posters, made available both online and throughout the city, have been translated to English and the City Council is enthusiastic about sharing an adaptable version with interested municipalities. Moreover, Slovakian IT communities collaborated with information dissemination and emotion curbing, with initiatives like 'covid. chat', a free chatbot (https://www.ktopomozeslovensku.sk/).

(iv) Data-Driven Prediction and Citizen Engagement Techniques – City of Helsinki, Finland. Mikko Russama, Chief Digital Officer (CDO) at the City of Helsinki, provided a video intervention focussing on the three dimensions of the crisis: health, social life and the economy. He stressed the value of effective preparation, data-driven tracking and citizen engagement techniques. Helsinki's crisis management model included a taskforce divided into different areas and making predictive analysis. The need to have the right data was emphasised (https://www.intelligentcitieschallenge.eu/sites/default/files/2020-04/ICC_ COVID-19_Webinar_3_April_2020.pdf).

(v)   Connecting the Elderly: Digital Helpline and Prepopulated Tablets – City of New York, United States (US). The Mayor of NYC announced a new programme that entails the distribution of tablets to vulnerable and disconnected communities, such as seniors, in specific underserved areas of the city. The city partnered with T-Mobile to provide pre-populated tablets with apps that might be useful for them and a service telephone line for assistance and usage guidance. Seniors get to keep the tablet afterwards (http://bronx.news12.com/story/42035900/watch-live-mayor-gives-update-on-covid19-in-nyc).

(vi) PEPP-PT & DP-3T: COVID-19-Related Technologies – Pan-European Initiatives. Europe developed its own technology, such as Pan-European Privacy

Preserving Proximity Tracing (PEPP-PT) and the DP-3T, which in the event of infection allowed citizens to keep track of the contacts they had had in recent days, while respecting the privacy of both those who tested positive and their contacts. The European Commission launched a set of guidelines and recommendations about the use of these contact-tracing apps (https://ec.europa.eu/health/sites/health/files/ehealth/docs/covid-19_apps_en.pdf).

(vii) COVID-19 Open Data Hub & Digital Inclusion Partnerships – City of San Antonio, US. The City of San Antonio (Texas) developed an open data hub for citizens and interested stakeholders to access updated statistical information on COVID-19 on a daily basis. The hub site enabled citizens to download these data sets and application programming interfaces (APIs) while exploring useful links and maps for COVID-19 application. These applications and dashboards provided Health Insurance Portability and Accountability Act (HIPAA)-compliant, county-wide information about testing, hospital capacity and case data, in addition to key health and capacity metrics the city and local health authority were tracking as Texas began to reopen. In one week, over three million hits were recorded on the public COVID-19 dashboards, with an average number of 450,920.86 visits per day. The Open Data Hub Site received nearly 20,000 visits two weeks after deployment, averaging over 1.5 thousand visits daily. A digital inclusion taskforce with over 100 members, including 50 agencies and organisations as well as local school districts, was formed to coordinate digital inclusion efforts during the pandemic. The taskforce created a digital inclusion resources and needs tool and a list of service providers for connectivity and literacy. San Antonio's geographic digital divide was made particularly evident when the city mapped participation rates of an online self-screening COVID-19 tool. The tool made recommendations to residents for testing based on a series of questions regarding their symptoms. To address participation rates that were lower in areas that lacked Internet connectivity, the city responded with a taskforce that provided critical health information to disconnected residents on a door-to-door basis. To further address the digital divide, San Antonio also partnered with local transportation authority VIA on the program VIACares, which provides free Wi-Fi to underserved areas with otherwise underutilised vans during the pandemic (https://cosacovid-cosagis.hub.arcgis.com/ ; https://www.viainfo.net/cares/ ; https://cosagis.maps.arcgis.com/apps/MapSeries/index.html?appid=9cdb2a0222ff4b4fb81b1452fd9d15fa).

(viii) 'Solidarity City Action' & CIL's COVID-19 App Extension: A Network of Public and Civil Solidarity – City of São Paulo, Brazil. The City Council of São Paulo collaborated with several civil organisations to create the 'Solidarity City Action', a platform for donations to help the city's most vulnerable populations. The website provided citizens with information on where the eight drive-through points were located and the type of donations expected (from staple food to hygiene products). The page also included an interactive map next to ongoing actions and figures. Additionally, the Sign Language Intermediation Center (CIL) launched a new service offering guidance on COVID-19. São Paulo City Council's mobile app brought information about the coronavirus to people with hearing impairment. By accessing a specific icon and making a call, the interpreter would know that it was a request about COVID-19. In addition to the COVID-19 guidance option, the app offered other emergency, security and utility services. Besides meeting the demand from the deaf community, it also focussed on municipal public servants, who were able to download the app on their smartphones and use it when they had to assist a citizen who only communicated in sign language (https://www.spcidadesolidaria.org/; https://www.prefeitura.sp.gov.br/cidade/secretarias/pessoa_com_deficiencia/central_de_libras/index.php?p=203752).

(ix) Open & free courses on e-commerce for SMEs – City of Zaragoza, Spain. Zaragoza's City Council and Chamber of Commerce made free online courses available for small and medium-sized entreprises (SMEs) to be able to offer their services and products digitally to citizens. These included digital marketing, advertising on the Internet, web analytics, and social networks in retail. All were aimed at empowering local commerce with the skills necessary for their digital transformation so that no SMEs were left behind (https://www.camarazaragoza.com/empresa-en-marcha/; https://www.camarazaragoza.com/productos/curso-de-comercio-electronico-nuevas-oportunidades-para-el-comercio/).

3. Stateless algorithmic nations: digital rights and technological sovereignty at stake

The evidence presented in the previous section regarding the CCDR shows the importance of digital rights in several global cities worldwide, which locates the need for a debate on technological sovereignty in full consideration at the substate level—namely, stateless nations. How are these digital rights related to claims for

further data devolution of stateless nations? This article suggests a new term to refer to the way stateless nations need to approach the post-COVID-19 digital revolution: *algorithmic nations*. Algorithmic nations (Calzada, 2018a, p. 268) refers to 'a novel notion, which goes beyond internal discord around plurinationality and quasi-federalism' defined as: '(i) a non-deterministic city-regional and techno-political conceptual assemblage (ii) for a transitional strategic pathway (iii) towards the nation-state rescaling (iv) through three drivers—metropolitanisation, devolution and the right to decide' (p. 270).

COVID-19 responses have shown the importance of the motto *small is beautiful* (Calzada, 2020d; Thorhallsson, 2006, 2016). Highly decentralised city-regions have demonstrated their ability to better cope with resilient pandemic responses in established small-state cases, such as New Zealand, Iceland, Ireland, Denmark, The Netherlands, Singapore, South Korea and Slovenia. However, there is an open question regarding how these small entities integrate claims in favour of their citizens' digital rights. More urgently, non-established stateless algorithmic nations may have already started from their main urban drivers to claim these digital rights in order to establish a strategy for their technological sovereignty. This is the case in Glasgow and Barcelona, respectively in Scotland and Catalonia. Having said that, intermediary cities or city-regions lack full sovereignty regarding digital readiness, infrastructure and services (cellular and broadband connectivity), which significantly limits their access to financial and non-financial services and more broadly to legislate on matters that directly affect their fellow citizens. The lack of digital sovereignty may impact young people in intermediary cities, denying them financial, employment, entrepreneurial, educational and training opportunities offered on digital platforms and locking many young people and key stakeholders out from participating directly in the digital economy and governance.

Against this backdrop, in a data-driven European economy, AI, Big Data, machine learning and blockchain technologies are reshaping the notion of citizenship by, on the one hand, pervasively challenging the rescaling of nation-states' fixed dynamics and, on the other hand, demanding a counter-reaction from stateless algorithmic nations to bring data control to citizens. Claims to technological sovereignty through data commons policy programmes are increasingly emerging in several locations. In a post-GDPR scenario, citizens' data privacy, security and ownership ultimately need to be protected by localising personal data via grassroots innovation and co-operative platforms as has been the case in Barcelona and Catalonia overall (Calzada, 2018c). How citizenship in small algorithmic stateless nations will be influenced and shaped by geopolital dynamics between established

big nation-states and big firms is still unfolding. Consequently, how could citizens' liquid data and digital rights be protected through further empowerment to avoid digital dissent and dystopia? How will stateless nations face the uneven interaction between AI devices and citizens without having the appropriate sovereign digital tools to protect their fellow citizens? Full democracy can only survive in stateless nations if citizens are able to make better choices than machines owned by big tech companies that are becoming more powerful than established nation-states. Newly emerging global geopolitics, known as AI nationalism, should inevitably have full consideration in this debate as a way to shape the lives of citizens in stateless algorithmic nations. In this direction, new versions of the e-state in Estonia may already offer interesting ways to deal with these uncertainties, taking the lead from the public sector. However, the civilian push is a component that should not be neglected, as the grassroots innovation element actually legitimates techno-political claims around digital rights. Another aspect is the impact of the disruptive algorithmic technology called *blockchain* on state-governance schemes. Is it possible to foresee stateless algorithmic nations claiming their technological sovereignty through decentralised governance schemes such as *blockchain?* Amidst the deep influence of *dataism*, stateless algorithmic nations should establish an alternative techno-political discourse on citizens' digital and data rights.

In the following summary, this article has gathered ongoing policy actions regarding digital rights and technological sovereignty taking place in two stateless algorithmic nations by analysing their core cities. This analysis has been conducted through a direct survey of city representatives carried out in November 2020 among different CCDR global cities, such as Barcelona and Glasgow[1]:

(i) Barcelona in Catalonia: Barcelona has been focussing on digital inclusion as the main priority to implement digital rights. In addition to this, open technologies and accountable decision-making in AI are presented as second and third priorities. The city of Barcelona is placing value on projects that are already occurring in civil society and universities. A specific contextual aspect that has leveraged the relevance of digital rights in Barcelona has been a strong civil society, alongside the fact that the Mobile World Congress has allowed Barcelona to lead the paradigm of 'technological humanism'. In this direction, universal and equal access to the Internet and digital literacy are seen as the main priorities alongside transparency, accountability and non-discrimination in data, content, and algorithms; and participatory democracy, diversity

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and inclusion. In Barcelona, the most critical stakeholder group to achieve greater protection for digital rights is private companies, especially those providing public services. However, according to city representatives, without the engagement of civil society, it is rather difficult to achieve an inclusive data-governance model. Moreover, according to them, certain entrepreneurs, activists, and innovators are pushing ahead with Barcelona's ecosystem of data. In addition, they acknowledge that COVID-19 and its effects have already modified their initial priorities on digital rights by altering their strategic plan towards digital inclusion. For Barcelona, a good data commons strategy could be defined as one based on transparency, accountability, pedagogy, and the data sovereignty of citizens. In Barcelona, there are initiatives related to platform and data co-operatives sharing health data to tackle COVID-19. Finally, citizens have so far reacted posivitively to the City Council's adoption of AI that focusses particularly on social services, transport and mobility. The way in which the claim for digital rights could be scaled up towards further technological sovereignty at the regional level remains to be seen.

(ii) Glasgow in Scotland: Glasgow has been focussing on digital inclusion and essential digital skills. However, Glasgow is not actively working on raising citizens' awareness of the need to protect their digital rights yet. Thus, Glasgow has been focussing on establishing its own actions for digital rights and engaging with elected officials to raise their awareness. Having said that, Glasgow is keen to learn from the CCDR to raise awareness within its citizens. Given that tackling social inequalities is the most pressing need for the city of Glasgow, local authorities have actively been implementing measures to achieve universal and equal access to the Internet and digital literacy. According to a city representative, the most critical stakeholder in the city to achieve greater protection for digital rights is the Lord Provost (equivalent of mayor), who positioned digital rights as a human right. Consequently, the public sector leads the data-governance model of the city. Regarding COVID-19 and its effects on the priority of digital rights, city representatives acknowledge that they have witnessed much greater data sharing within the city and with national public bodies, which in itself may reinforce the idea that sooner rather than later technological sovereignty will be claimed at the national level in Scotland. For the city of Glasgow, a good data commons strategy could be defined as one that provides value to all stakeholders in the city. Yet, citizen-driven data initiatives and projects lack consistency and leadership. In Glasgow, platform and data co-operatives could assist the city in tackling COVID-19-driven economic and social vulnerabilities among pandemic citizens. Regarding

existing data co-operative initiatives in the city, interestingly there are more general data-sharing agreements being established between public bodies that could provide the basis for data co-operatives. In response to the main challenges and obstacles for the public sector to implement AI, the Glasgow city representative considers public trust as the main hindrance. However, positively, AI adoption is consequently being coordinated by the Scottish Government through their AI strategy, in which Glasgow has an active role and a say in the technological sovereignty-driven strategy on AI, which essentially shows what this article is attempting to depict: an inter-dependent joint effort between Glasgow's claim on digital rights and a strategy of technological sovereignty by the stateless algorithmic nation of Scotland. Regarding how citizens would react to the adoption of AI for implementation in the public sector, the Glasgow city representative acknowledged that we do not know yet how citizens do or will respond to this adoption. In response to areas in which AI could contribute to delivering efficient and inclusive public services, Glasgow seems to focus on supporting their sustainability agenda.

4. Final Remarks

COVID-19 has been a trigger for increasing the impact of digital transformations on the daily lives of citizens. However, little is known or has been explored in relation to the direct effects of *Big Tech* surveillance capitalism and the cybercontrol push by nation-state governments during this crisis on citizens from stateless algorithmic nations. Paralleling this context, since the implementation of GDPR in May 2018, the European Commission has been intensively promoting the idea of technological sovereignty without further specifics, but the emerging project in this field is Gaia-X (GaiaX, 2020), which in itself has been promoted by France and Germany, revealing new concerns about the role of citizens in this timely debate. The aim of Gaia-X is apparently to direct European companies toward domestic cloud providers. Paradoxically, China's Cybersecurity Law mandates that certain data be stored on local servers or undergo a security assessment before exportation. China's data rules can be enforced anywhere in the world if the data at issue describes and affects Chinese citizens. This law will also create a blacklist prohibiting foreign entities from receiving personal data from China. It goes without saying that in this geopolitical competition, the USA is beginning to advance its own version of technological sovereignty by prohibiting Chinese cloud companies from storing and processing data on US citizens and businesses. Advocates of this approach

argue that some degree of data sovereignty is inevitable. The global Internet still functions in the face of these rules and companies continue to profit and innovate. Others argue that what is needed is for different nation-states to collaborate on common standards, agreeing to a set of core principles for the cloud and norms for government access to data stored there. Nonetheless, this article questions the remaining scope for subnational entities, and among them, for stateless algorithmic nations that present a strong will to bring their control of their citizens back through data devolution. This article claims that this debate has been absent so far and requires further active positions to be taken by stakeholders in these territorial contexts, as has been shown in two cases in the previous section.

Alongside the debate on technological sovereignty, millions of companies now use cloud computing to store data and run applications and services remotely. Furthermore, the pandemic has exacerbated the way citizens telework by introducing a 24/7 remote pattern. The term "technological sovereignty" emerged to describe the many ways governments try to assert more control over the computing environments on which their nation-states rely. Thus, governments around the world are passing measures that require companies to host data infrastructure and store certain kinds of data from citizens in local jurisdictions. Some also require companies that operate within their borders to provide the government with access to data and code stored in the cloud. This trend, especially when applied unilaterally, might erode the fundamental model of cloud computing that feeds, most importantly, non-European *Big Tech* firms—often without the public scrutiny of nation-states' governments—which relies on the free movement of data across borders. A cloud user or provider should be able to deploy any application or data set to the cloud at any time or place. Thus, citizens should be able to select the data provider that can best meet their needs. To that end, the European Commission has established what are called 'data ecosystems' without giving any clue about how local and regional authorities can self-govern and control their data power by relocating and devolving data ownership to their fellow citizens. Thus, in summary, this article suggests that stateless algorithmic nations need to start strategising in several policy areas without further delay: (i) to set up data strategies to have a say among pan-European agencies; (ii) to take the lead from the public sector on AI-intensive governance schemes; (iii) to explore the added value and the opportunity that blockchain may offer to better connect local administrations; (iv) to engage in collective actions through networks of cities, e.g., CCDR; (v) to implement data and platform co-operatives in stateless algorithmic nations as a way to reactivate socio-economic activity post-pandemic; (vi) to further identify vulnerable groups in hyper-

connected societies to avoid leaving them behind; and (vii) to put the digital rights of citizens at the forefront by prioritising actions in favour of protecting privacy and ensuring ownership.

Above all, how do we foresee stateless algorithmic nations operating through technological sovereignty in the post-COVID-19 and post-Brexit scenario? Technological sovereignty is a political outlook in which information and communications infrastructure and technology are aligned with the laws, needs and interests of the city, region or country in which users are located. Thus, data location and devolution unequivocally matter as we have witnessed during the COVID-19 crisis. In post-COVID-19 societies, the major challenge for the EU and the UK is to establish their cyber-sovereignty policies to be aligned with data ecosystems on the city-regional scale. In this endeavour, the emerging generation of digital co-operatives—so-called data and platform co-operatives—can clearly contribute (Calzada, 2020c). The EU and the UK are at the moment living labs for creating data and platform co-operatives stemming from data altruism and donation. How can citizens be governed and organise themselves in stateless algorithmic nations to establish new social capital that can overcome post-COVID-19 social distancing measures and consequently a loss of social capital? These challenges ultimately boil down to protecting citizens' digital rights while relying on the capacity of cities and regions to deal with self-governing and inter-dependent data policies as the only possible way to ensure fairer European and British democracies.

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A message from Coppieters Foundation

Since its creation in 2007, the Coppieters Foundation has been developing new ideas and producing knowledge on recurring subjects in the European public debate. Those include self-determination, multilevel governance, geography, diversity, gender equality, migrations, economic development, peacebuilding and the protection of human and minority rights.

As a research centre, we have always strived for high quality books and policy papers which contribute new reflections and visions for an inclusive and sustainable Europe. Our publications benefit from the knowledge and experience of a wide range of contributors with diverse backgrounds and fields of expertise.

With this in mind, we released this publication, of which I am particularly proud because it represents a new and important contribution to European public policy debates. I am certain that it will have a significant impact on European policymakers, academics, activists and citizens.

I would like to thank and acknowledge the authors, editors and coordinators of this study for their excellent contribution to the Foundation's work. And I also thank you, the reader, for your interest in our projects.

Antonia Luciani
Secretary-General of the Coppieters Foundation
www.ideasforeurope.eu

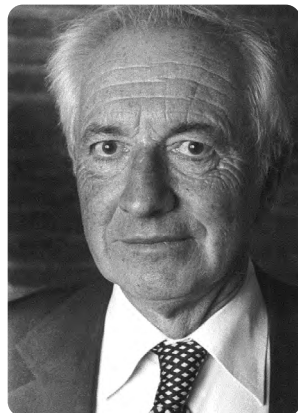## The aims of the Coppieters Foundation

- To develop new ideas and produce knowledge on the management of cultural and linguistic diversity, collective rights, multilevel governance, decentralization, state and constitutional reform, statehood processes, self-determination, migration, conflict resolution, peace studies, and the protection of human rights in Europe;

- To raise awareness on issues of special interest for the foundation and its members;

- To influence decision-making process at the European level and create a legal framework that allows for an enhanced implementation of the principle of subsidiarity, the right to self-determination, better protection of diversity and minority rights, and a stronger respect for human rights in Europe;

- To drive the EU towards an alternative institutional structure that is more democratic, more respectful of collective rights and more aware of complex (multi-national and multi-cultural) realities of EU Member States;

- To play a role as a platform for dialogue between academia, European institutions (the European Parliament, the European Commission and the Committee of the Regions) and other political actors;

- To transform scientific knowledge in the fields of political science, economy, sociology, philosophy and history into usable concepts for political action;

- To feed the European Free Alliance with politically relevant concepts, ideas, data, and knowledge, both in the institutional sphere and in EFA's action sphere outside European institutions.

Coppieters Foundation takes all necessary actions to promote and achieve the above stated goals by observing the principles on which the European Union is founded, namely the principles of democracy, respect for human rights, fundamental freedoms and the rule of law.

The geographical scope of the Coppieters Foundation is the European Union together with EU candidate and potential candidate countries. The partners of the organisation are based in 8 member states of the EU and active in 14 regions or stateless nations.

Maurits Coppieters
(Sint-Niklaas, 1920 – Deinze, 2005)

The Fleming Maurits Coppieters studied history and later became a Doctor of Laws and obtained a Master's degree in East European studies. During the Second World War, he refused to work for the German occupier. After many years as a teacher, he worked as a lawyer for a while. He was one of the people who re-established the Vlaamse Volksbeweging (Flemish People's Movement), of which he was the President from 1957-1963.

Coppieters' political career began when he became a member of the Flemish nationalist party Volksunie (VU), which was formed in 1954. With the exception of two years, Coppieters was a town councillor between 1964 and 1983. He was also elected as a member of the Belgian Chamber (1965-1971) and Senate (1971-1979). At the same time, Coppieters became President of the newly formed '*Cultuurraad voor de Nederlandstalige Cultuurgemeenschap*' (Cultural Council for the Dutch-speaking Community), from which the Flemish Parliament emerged, when the VU formed part of the government. In 1979, Coppieters was elected during the first direct elections for the European Parliament.

As a regionalist, he became a member of the Group for Technical Coordination and Defence of Independent Groupings and Members in the European Parliament (TCDI). Among other things, he made a name for himself when he championed the cause of the Corsicans. In the meantime, Coppieters also played a pioneering role in the formation of the European Free Alliance, of which he became the Honorary President and continued to play a role in its expansion, even after he said farewell to active politics in 1981. In 1996, Coppieters joined forces with the President of the Flemish Parliament, Norbert De Batselier, to promote 'Het Sienjaal', a project with a view to achieve political revival beyond the party boundaries. Coppieters died on November 11, 2005.

Among other things, Coppieters was the author of: '*Het jaar van de Klaproos*'; '*Ik was een Europees Parlementslid*'; '*De Schone en het Beest*'. He was an honorary member of the EFA.

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