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Article

Assessing the Use of the State Aid Covid Temporary Framework with Regard to the Healthcare and Media Sector

Penelope Giosa*

I. Introduction

The European Union has faced numerous challenges due to the sudden widespread Covid-19 health crisis, which has had a negative impact on the European economy. One of these challenges has been the disruption of the normal operations of many EU industries, which put small and medium-sized enterprises ('SMEs') as well as large undertakings under severe financial pressure. In order to ensure that sufficient liquidity remains available in the markets and that the continuity of economic activity can be preserved during and after the Covid-19 outbreak, without disturbing the level playing field in the Single Market, on March 2020 the European Commission adopted a soft law instrument, i.e. a State Aid Temporary Framework, to enable the full flexibility foreseen under EU state aid rules. The State Aid Covid Temporary Framework ('Temporary Framework') was last amended on 18 November 2021 and was phased out on 30 June 2022. However, the Member States have still the possibility to provide not only specific investment measures until 31 December 2022, but also solvency support measures until 31 December 2023, in order to facilitate 'the kick-start of the economy' and to 'crowd-in private investment for a faster, greener and more digital recovery'.¹

Among the policy objectives that the European Commission set when it adopted the Temporary Framework was to ensure that the health services would continue to function and meet new but also existing needs, despite the Covid-19 outbreak.² This article will review, discuss, and assess the state aid measures that have been adopted

Key Points

- Although Covid-19 was a sanitary crisis, the vast majority of aid schemes under the State Aid Temporary Framework were granted to restore the liquidity of companies affected by Covid-19.
- Only few state aid measures regarded public health issues and these dealt mainly with coronavirus-related research and development activities, as well as with the production of Covid-19-related products.
- Only six state aid schemes contributed to a real investment in quality public health services with the potential to boost the national health systems also after the pandemic.
- It appears that some governments which granted aid schemes to the media sector under the State Aid Temporary Framework used this soft law instrument as a 'smokescreen' to restore the public trust in them and serve particular political interests.

under the Temporary Framework since the outbreak of Covid-19 in order to support the healthcare sector. Specifically, the assessment will be focused on whether and to what extent the Temporary Framework has been used as a tool of investment for Member States to foster their national healthcare systems in order to make them fit for the future, or it has just served as a tool to tackle head-on the health crisis caused by the pandemic, without having any long-term plans for the national healthcare systems. It is significant to have a holistic picture of how and to what extent the Temporary Framework has helped the Member States to respond to this public health crisis, as there has been criticism that the relaxation of EU state aid control by the Temporary Framework has produced long-term distortions on the internal market, while classical

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1 Commission, 'State aid: Commission will phase out State aid Covid Temporary Framework', IP/22/2980 (Brussels, 12 May 2022).

2 Guidance on Temporary Framework for State aid measures to support the economy in the current Covid-19 outbreak [2020] OJ CI 91/1.

policy objectives of state aid measures, such as R&D and innovation, have been set aside.³ This is also a topical research question in light of the efforts to improve the national health systems in the EU and the decision of the European Commission not to extend the Temporary Framework beyond the current expiry date of 30 June 2022.⁴ By reviewing and assessing the relevant data, much can be learnt about the way that the pandemic aid should or should not have been implemented.

Hence, as it will be shown from the article's analysis, the vast majority of the Commission decisions approving the health-related aid measures regarded financial aid for the production of Covid-related products for testing and upscaling medical infrastructures, and for Covid-19 relevant research and development. Yet, there were also a few aid schemes under the Temporary Framework that aimed to develop the national health systems of some Member States in order to achieve future patient outcomes improvement, without strictly focusing on coronavirus-related research, products, and development activities. The paper is going to study these illustrative examples, based on the factsheet-list of Member State measures approved under the Temporary Framework from 2020 to 2022.⁵

The paper will also examine the aid schemes that some Member States, i.e. the Republic of Cyprus, Denmark, Greece, and Latvia, granted under the Temporary Framework in order to support newspapers, magazines, regional media service providers, and radio stations in the context of coronavirus outbreak. These national aid schemes are of particular interest because three out of these four Member States, i.e. the Republic of Cyprus, Greece, and Latvia, did not use to any extent the Temporary Framework in order to take health-related measures. Since Covid-19 was a sanitary crisis, it would be expected that Member States would use the full flexibility foreseen under state aid rules to support to some extent their health systems and/or coronavirus-related research and development activities, apart from their economy and notably the media sector, which is a considerably grey zone in some Member States with highly disrupted media landscapes with regard to transparency.

3 Irene Agnolucci 'Will COVID-19 Make or Break EU State Aid Control? An Analysis of Commission Decisions Authorising Pandemic State Aid Measures' (2021)13(1) *Journal of European Competition Law and Practice*, 3.

4 Council Regulation (EU) No 2021/522 of 24 March 2021 on establishing a Programme for the Union's action in the field of health for the period 2021–2027 [2021] OJ L 107.

5 Commission, 'Coronavirus Outbreak-List of Member State Measures approved under Articles 107(2)b, 107(3)b and 107(3)c TFEU and under the State Aid Temporary Framework' (Brussels, 17 February 2023), available at https://competition-policy.ec.europa.eu/state-aid/coronavirus/temporary-framework_en.

Also, when it comes to the media sector, there is a general perception in some Member States with low-trust media landscapes that the direct government financial support to media can be given to manipulate them and to advance the political agenda of the relevant governments. Specifically, according to a survey of the Open Society Foundations⁶ in 2014, in 31 out of 55 countries worldwide, the government used state funding to manipulate media, while in 22 of them there was hard evidence that this was happening.⁷ The same survey revealed that governments awarded subsidies to media in 35 countries, in 14 of which there was evidence that these subsidy schemes were used to manipulate funded media.⁸ Hence, it is worth examining if the Temporary Framework, which is a soft law instrument that does not require legislative procedures and is exempted from the scrutiny of the Court of Justice of the European Union, was justifiably used by national governments to support the media sector or it was just a 'smokescreen' to serve the political agenda of some national governments in the EU. The imperativeness of discussing this topic gets clear, if we also consider that in the era of Covid-19 the political and social polarisation increased due to the economic distress⁹ and as a result there was a decline in trust in national governments,¹⁰ while the traditional notions of journalistic impartiality and objectivity came under pressure.¹¹ Hence, it is worth examining to what extent the ultimate goal of the state aid schemes given to

6 Open Society Foundations is a non-profit organisation.

7 Fernando Bermejo et al, 'Mapping Digital Media—Global Findings—A Report by the Open Society Foundations' (New York, July 2014), available at www.opensocietyfoundations.org/uploads/02fc2de9-f4a5-4c07-8131-4fe03398336/mapping-digital-media-overviews-20140828.pdf; Marius Dragomir 'Control the money, control the media: How government uses funding to keep media in line' (2017)19(8) *Journalism*.

8 Ibid.

9 Sebastian Jungkunz 'Political Polarization During the Covid-19 Pandemic' (2021)3 *Frontiers in Political Science*; Alexandra Flores et al 'Politicians polarize and experts depolarize public support for Covid-19 management policies across countries' (2022)119(3) *The Proceedings of the National Academy of Sciences*.

10 OECD, 'First lessons from government evaluations of Covid-19 responses: A synthesis' (Paris, 21 January 2022) available at https://read.oecd-ilibrary.org/view/?ref=1125_1125436-7j5hea8nk4&title=First-lessons-from-government-evaluations-of-COVID-19-responses; Orkun Saka 'The political scar of epidemics: why Covid-19 is eroding young people's trust in their leaders' (London, 7 September 2021) available at www.lse.ac.uk/research/research-for-the-world/politics/the-political-scar-of-epidemics-why-covid-19-is-eroding-young-peoples-trust-in-their-leaders-and-political-institutions; Sam Parsons and Richard D. Wiggins 'Trust in government and others during the Covid-19 pandemic—Initial findings from the Covid-19 survey in five national longitudinal studies' (London, October 2020) available at <https://cls.ucl.ac.uk/wp-content/uploads/2020/10/Trust-in-government-and-others-during-the-COVID-19-pandemic-%E2%80%99initial-findings-from-COVID-19-survey.pdf>; Giray Gozgor 'Global Evidence on the Determinants of Public Trust in Governments during Covid-19' (2022) 17(2) *Applied Research in Quality of Life*, 559–578.

11 Nic Newman 'Journalism, Media, and Technology Trends and Predictions 2021' (Oxford, January 2021) available at <https://reutersinstitute.politics.ox.ac.uk/journalism-media-and-technology-trends-and-predictions-2021>.

the media sector in the Republic of Cyprus, Denmark, Greece, and Latvia was to restore the public trust in these national governments, missing at the same time a golden opportunity to financially support their national healthcare systems with the help of a soft law instrument, such as the Temporary Framework.

At this point, it should also be noted that apart from the Temporary Framework, which is a soft law instrument with reduced transparency and accountability of decision making,¹² there were plenty of other measures that the Commission put forward in order to support the media sector, like the Cultural and Creative Sectors Guarantee Facility (CCS GF), which was launched by the European Investment Fund (EIF) and the European Commission¹³ and the action plan to support the recovery and transformation of the media and audio-visual sector.¹⁴ Thus, for this additional reason the necessity and purpose of the state aid measures under the Temporary Framework that supported the media sector are under discussion and scrutiny in this article.

In view of the above, the article is structured as follows. Section II explains the interaction between the EU and Member State levels with regard to healthcare. Section III examines the legal basis of the Temporary Framework and its compatibility with the single market. Section IV critically analyses the state aid schemes that were granted under the Temporary Framework between March 2020 and August 2022. Section V provides an overview of the Member States' aid measures under the Temporary Framework with respect to the public health sector in order to assess their nature and see if they were effective enough to boost the national health systems during but also after the Covid-19 pandemic. Section VI discusses the state aid schemes that were given under the Temporary Framework in order to support the media industry of some Member States during the pandemic. In this section, it is also examined if and to what extent these state aid measures were justifiably granted under this soft law regime or the Temporary Framework was simply used

as a 'smokescreen' to restore the public trust in national governments and to serve their political agenda with the help of national media. In section VII, the article ends with a summarising conclusion and a recommendation that the European Commission should initiate proceedings against specific national aid schemes that seem to have departed from the TFEU provisions.

II. Interaction between the EU and member states with regard to healthcare

According to Article 168(7) of the Treaty on the Functioning of the European Union ('TFEU'):

'Union action shall respect the responsibilities of the Member States for the definition of their health policy and for the organisation and delivery of health services and medical care. The responsibilities of the Member States shall include the management of health services and medical care and the allocation of the resources assigned to them.'

Based on a black-letter approach to this treaty article, the EU has limited competence to regulate national health-care systems, as the Member States are responsible not only for allocating their resources but also for the management of health services and medical care within national healthcare systems. However, in the aftermath of the 2008 economic crisis, the fiscal oversight of a Member State is possible. Practically speaking, this means that the EU has a say on the allocation of Member States' financial resources to a great extent,¹⁵ confirming in this way the consideration that 'explicit stipulations ... and implicit understanding of the subsidiarity principle ... proved not to be the "guarantees" of no [Union] interference in national health care services that they were often held to be'.¹⁶

Moreover, by virtue of Articles 121 and 148 TFEU, when it comes to economic, fiscal, and social policies, the EU Member States shall regard their economic policies as a matter of common concern. Hence, each Spring the EU Commission presents country-specific recommendations as part of the European Semester¹⁷ cycle, which is part of the EU's economic governance framework and contributes not only to the prevention

x.ac.uk/sites/default/files/2021-01/Newman_Predictions_2021_FINAL.pdf.

12 Paula G Andrade 'EU External Competences in the Field of Migration: how to Act Externally When Thinking Internally' (2018)55(1) Common Market Law Review, 157–200; Deirdre Curtin 'Overseeing Secrets in the EU: A Democratic Perspective' (2014)52(3) Journal of Common Market Studies, 684–700.

13 Commission 'European Commission and European Investment Fund announce new coronavirus measures for businesses under the €251 million Cultural and Creative Sectors Guarantee Facility' (Brussels, 29 July 2020) available at <https://digital-strategy.ec.europa.eu/en/news/european-commission-and-european-investment-fund-announce-new-coronavirus-measures-businesses-under>.

14 'Commission on Europe's Media in the Digital Decade: An Action Plan to Support Recovery and Transformation' COM(2020) 784 final.

15 Mary Guy 'Towards a European Health Union: What Role for Member States?' European Journal of Risk Regulation (2020)11(4), 759.

16 Ibid.; E Mossialos, G Permanand, R Baeten and T Hervey 'Health systems governance in Europe: the role of European Union law and policy' in E Mossialos, G Permanand, R Baeten and TK Hervey (eds), *Health Systems Governance in Europe—The Role of European Union Law and Policy* (1st edn, Cambridge University Press 2010) chapter 1, 1.

17 In the framework of 'Europe 2020', EU Member States are subject to a new system of economic monitoring and governance known as the European Semester.

of excessive government debt and macroeconomic imbalances, but also to the support of structural reforms in sectors like health.¹⁸ The country-specific recommendations have been very influential in national health systems, as a content analysis of the country-specific recommendations for the years 2011, 2012, 2013, and 2014 confirms the increasing trend for health systems to feature in country-specific recommendations.¹⁹ In addition, the 2020 country-specific recommendations aimed to mitigate the consequences of Covid-19, *inter alia* by setting as economic priority the investment in access, effectiveness, and resilience of health care.²⁰

The influence that EU institutions have on national health systems through the European Semester makes it clear that the interaction between the EU and Member State levels with regard to healthcare is 'more interconnected'²¹ than initially expected.

III. The legal basis of the temporary framework and its compatibility with the single market

As all the soft law instruments, the Temporary Framework did not go through the institutional and democratic guarantees of a legislative process, leaving in this way its content and provisions exposed to criticism as far as their legitimacy and accountability are concerned.²² Yet, the TFEU provides for the differentiated application of State aid rules when dealing with emergencies. Though Article 107(1) TFEU contemplates a general prohibition imposed on Member States,²³ Article 107(2) TFEU provides for a series of grounds that *automatically* render the aid compatible with EU law and Article 107(3) TFEU contains a series of additional grounds in which aid *would* be compatible.

¹⁸ Commission 'European Semester: Health reforms need to continue' (Health EU—Newsletter 236, June 2019), available at https://ec.europa.eu/health/eunewsletter/236/newsletter_en.

¹⁹ Natasha Azzopardi-Muscat, Timo Clemens, Deborah Stoner and Helmut Brand, 'EU Country-Specific Recommendations for health systems in the European Semester process: Trends, discourse and predictors' (2015) 119 *Health Policy* 375.

²⁰ Council of the EU, 'European Semester 2020: Country-Specific Recommendations adopted' (Brussels, 20 July 2020); European Parliament 'Country-specific recommendations: An overview' PE 624.404 (Brussels, September 2020).

²¹ Guy (fn 15), 761.

²² Andrea Biondi 'Governing the Interregnum: State Aid Rules and the Covid-19 Crisis' 2020 (Volume IV) No.2 *Market and Competition Law Review*, 25.

²³ According to Article 107(1) TEFU, 'any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market'.

Specifically, Article 107 (2)(b) TFEU contemplates that aid granted to make good the damage caused by natural disasters or exceptional occurrences shall be compatible with the internal market. Pursuant to Article 107(3)(b) TFEU the Commission may also declare compatible with the internal market aid 'to remedy a serious disturbance in the economy of a Member State'. The courts of the EU Member States have consistently interpreted that the disturbance must affect the whole or an important part of the economy of the Member State concerned, and not merely that of one of its regions or parts of its territory.²⁴ It is admitted that Covid-19 pandemic has had an impact on all Member States, as well as on the European undertakings, which were badly affected by the containment measures taken by the Member States. As specifically provided for by the Temporary Framework, 'the outbreak posed the risk of a serious downturn affecting the whole economy of the EU, hitting businesses, jobs and households'.²⁵ Hence, State aid is justified and can be declared compatible with the internal market on the basis of Article 107(3)(b) TFEU, for a limited period and as long as some conditions are met.²⁶

In addition, in virtue of Article 107(3)(c) TFEU Member States can notify to the Commission aid schemes to meet acute liquidity needs and support undertakings facing financial difficulties, also due to or aggravated by the COVID-19 outbreak. Specifically, Article 107(3)(c) TFEU entitles the Commission to authorise 'aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest'.

²⁴ Communication from the Commission on Temporary Framework for State aid measures to support the economy in the current Covid-19 outbreak [2020] OJ C1 91/1.

²⁵ Ibid., paragraph 9.

²⁶ The Commission will consider such State aid compatible with the internal market on the basis of Article 107(3)(b) TFEU, provided that all the following conditions are met:

- (i) the aid does not exceed EUR 800,000 per undertaking in the form of direct grants, repayable advances, tax or payments advantages; all figures used must be gross, that is, before any deduction of tax or other charge;
- (ii) the aid is granted on the basis of a scheme with an estimated budget;
- (iii) the aid may be granted to undertakings that were not in difficulty (within the meaning of the General Block Exemption Regulation (15) on 31 December 2019); it may be granted to undertakings that are not in difficulty and/or to undertakings that were not in difficulty on 31 December 2019, but that faced difficulties or entered in difficulty thereafter as a result of the COVID-19 outbreak;
- (iv) the aid is granted no later than 31 December 2020. If the aid is granted in form of tax advantages, this deadline is not applicable and the aid is considered granted when the 2020 tax declaration is due;
- (v) the aid granted to undertakings active in the processing and marketing of agricultural products is conditional on not being partly or entirely passed on to primary producers and is not fixed on the basis of the price or quantity of products purchased from primary producers or put on the market by the undertakings concerned.

Finally, Article 108(2) TFEU provides that, on application by a Member State, the Council may, acting unanimously, decide that aid which that State is granting or intends to grant shall be considered to be compatible with the internal market, in derogation from the provisions of Article 107 or from the regulations provided for in Article 109, if such a decision is justified by exceptional circumstances.

In view of the aforementioned emergency-related provisions of the Treaty, the Temporary Framework is compatible with the Single Market.

IV. State aid measures adopted under the temporary framework—the case of economic activities that protect public health in the context of the Covid-19 outbreak

A. Critical analysis of state aid between March 2020 and August 2022

This section presents the results of a review conducted on the official list of state aid measures adopted under the Temporary Framework during the pandemic, between March 2020 and August 2022. The analysis reveals that in 2020, 342 state aid measures were totally adopted under the Temporary Framework, while 22 of them regarded the public health crisis. This means that only 6.4 per cent of the state aid measures under the Temporary Framework targeted at the support of public health in the context of the coronavirus outbreak.

The look at the data of next year, i.e. 2021, does not reveal a different picture. In 2021, while the total number of state aid measures adopted under the Temporary Framework was still high, i.e. 284 measures, only 10 of them were relevant to public health. Speaking in percentages, 3.5 per cent of state aid under the Temporary Framework was granted towards the protection and support of public health.

In 2022, there was a fall in the total number of state aid measures under the Temporary Framework, as only 97 cases of state aid measures under the Temporary Framework were formally listed by the European Commission. This fall in the total number of measures approved under the Temporary Framework resulted in further and even more dramatic reduction of measures regarding the public health, as this year only one measure relevant to the healthcare sector was recorded. Speaking in percentages, in 2022 state aid within the category of public health represented only 1 per cent of total aid under the Temporary Framework.

Based on the official list of state aid measures adopted under the Temporary Framework during the pandemic, the largest proportion of aid was granted to support companies affected by the coronavirus outbreak, while most of the state aid measures that regarded public health issues dealt with coronavirus-related research and development activities, as well as with the production of Covid-19-related products. *Prima facie*, these findings demonstrate that when asking for state aid under the Temporary Framework, the EU Member States missed a golden opportunity to improve and guarantee the continuity of

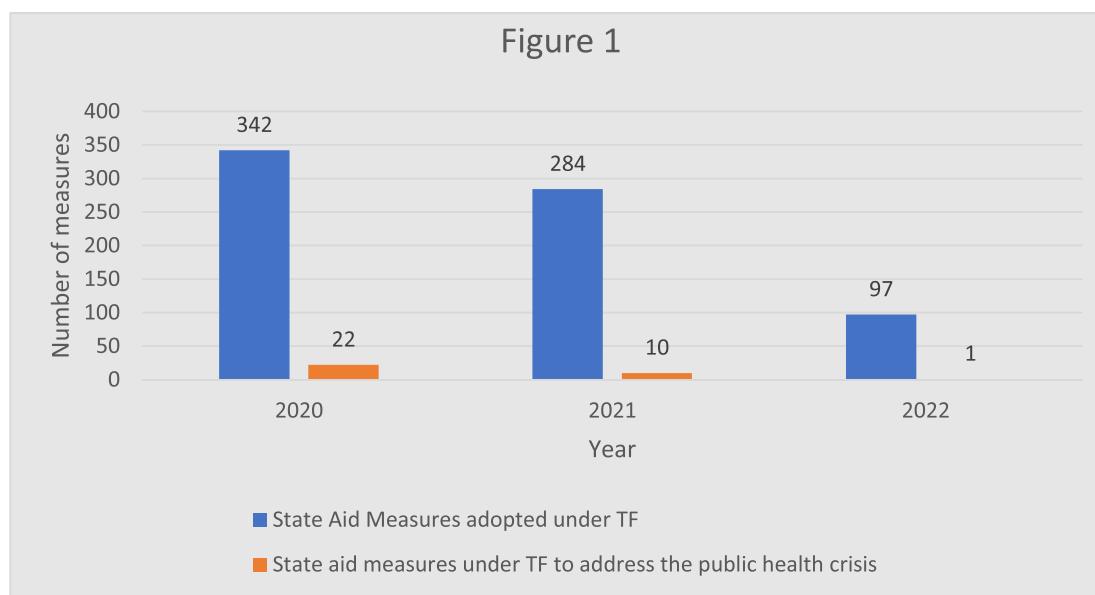


Figure 1.

vital health public services that were seriously harmed due to the increased number of struggling hospitals²⁷ dealing with urgent and overwhelming needs for goods and services during the Covid-19 crisis. As the small number of cases regarding public health measures demonstrates, the Temporary Framework did not manage to make the national healthcare systems of EU Member States fit for the future, nor did it adequately contribute to a real investment in quality public health services, which are vital to ensuring an inclusive and sustainable health system for all the European citizens post-Covid-19.

Yet, before drawing final conclusions, there is need to have a closer look at the few case studies that regard public health to see to what extent the state aid measures at issue contributed to a long-term investment in the relevant national public health systems. Therefore, the next section of this paper is discussing the state aid measures that Member States adopted under the Temporary Framework with respect to the public health sector.

V. State aid measures to support public health under the temporary framework: the national perspectives

This section provides an overview of the Member States' aid measures under the Temporary Framework with respect to the public health sector. Its purpose is to present the state aid measures taken at national level to address the public health challenges during the Covid-19 pandemic in order to assess their nature and see if they were effective enough to boost the national health systems during but also after the Covid-19 pandemic.

A. State aid schemes to support research, development, and production of coronavirus-relevant products

According to the official list of state aid measures adopted under the Temporary Framework during the pandemic, the vast majority of aid schemes aiming to cope with the public health challenges, i.e. 22 out of 33 measures between 2020 and 2022, regarded coronavirus-related research and development activities, as well as the

²⁷ Tamara Popic 'European health systems and Covid-19: Some early lessons' (*LSE blog*, 20 March 2020), available at <https://blogs.lse.ac.uk/europblogger/2020/03/20/european-health-systems-and-covid-19-some-early-lessons/>; Cameron Murray and Rachel Lewis 'Covid-19: Hospitals drop 2020 guidance as private pay-focused operators suffer' (*Healthcare Business International*, 26 March 2020), available at www.healthcarebusinessinternational.com/covid-19-hospitals-drop-2020-guidance-as-private-pay-focused-operators-suffer/; Daily Chart 'Tens of millions of surgeries are being postponed as a result of the pandemic' *The Economist* (London, 18 May 2020).

production of Covid-19-related products.²⁸ The main reasoning for the grant of these state aid measures was that given the public health crisis and the shortage of certain related products, it was crucial to provide incentives to companies to direct their activities to research on and

²⁸ State Aid SA. 59,524 (2020/N)-*Lithuania COVID-19: Prolongation of SA. 58,645 (2020/N)—Covid-19 related research, development and production support scheme* (Case COMP/C(2020) 9427 final) Commission Decision of 17 December 2020; State Aid SA.57829(2020/N)—*Slovakia COVID-19: State aid scheme for temporary aid to support COVID-19 research, development and testing* (Case COMP/C(2020) 4866 final) Commission Decision of 13 July 2020; State Aid SA.58471 (2020/N)—*Slovenia Amendment of the scheme SA.57782 (2020/N)—COVID-19—Support for SMEs and for COVID-19 related R&D and investment projects* (Case COMP/C(2020) 6142 final) Commission Decision of 2 September 2020; State aid SA.57035 (2020/N)—*Portugal—COVID-19—Support to R&D projects, testing infrastructures and production of COVID-19 related products* (Case COMP/C(2020) 7893 final) Commission Decision of 9 November 2020; State aid SA.57519 (2020/N)—*Poland COVID-19: R&D aid for Covid-19 relevant research and development, investment aid for the construction and upgrade of relevant testing and upscaling infrastructures, and investment aid for investments into production facilities for the production of Covid-19 relevant products* (Case COMP/C(2020) 4186 final) Commission Decision of 18 June 2020; State Aid SA.57204 (2020/N)—*Malta COVID-19: Investment Aid for the Production of COVID-19 Relevant Products* (Case COMP/C(2020) 3216 final) Commission Decision of 12 May 2020; State aid SA.56954 (2020/N)—*Luxembourg—Scheme for COVID-19 related R&D aid and investment aid for the production of COVID-19 relevant products* (Case COMP/C(2020) 2351 final) Commission Decision of 8 April 2020; State Aid SA.56786(2020/N)—*Italy—Production of medical equipment and masks* (Case COMP/C(2020) 1887 final) Commission Decision of 22 March 2020; State Aid SA.58202 (2020/N)—*Hungary—COVID 19: COVID 19 related research, development and production support scheme* (Case COMP/C (2020) 5592 final) Commission Decision of 10 August 2020; State Aid SA.57453 (2020/N)—*Ireland—COVID-19—Scheme to facilitate COVID-19 relevant research, to support construction and upgrade of testing and upscaling facilities for COVID-19 relevant products and to support investments into the production of COVID-19 relevant products* (Case COMP/C(2020) 3726 final) Commission Decision of 3 June 2020; State Aid SA.57367 (2020/N)—*France COVID-19: Aid for COVID-19 relevant R&D projects, investment into relevant testing and upscaling infrastructures, and investment into COVID-19 relevant production capacities* (Case COMP/C(2020) final) Commission Decision of 5 June 2020; State Aid SA.59278(2020/N)—*Estonia COVID-19: Support for (1) industrial research and experimental development by companies affected by the COVID-19 crisis, and (2) for COVID-19 related R&D* (Case COMP/C (2020) 8731 final) Commission Decision of 3 December 2020; State Aid SA.100743 (2021/N)—*Germany COVID-19: Modification to SA.56790, SA.59289, SA. 56,814, SA.58504, SA.56787, SA. 56,863, SA.57100, and SA.57447* (Case COMP/C(2020) 9879 final) Commission Decision of 21 December 2021; State Aid SA. 57071—*Czechia—COVID 19—Support to R&D projects* (Case COMP/C (2020) 3098 final) Commission Decision of 7 May 2020; State Aid SA.56961 (2020/N)—*Czech Republic—Investment aid scheme for COVID-19 relevant products* (Case COMP/C(2020) 2394 final) Commission Decision of 14 April 2020; State Aid SA.57605 (2020/N)—*Belgium COVID-19: Strategic transformation aid to undertakings in the Flemish region for investments in COVID-19 related products* (Case COMP/C(2020) 4238 final) Commission Decision of 19 June 2020; State aid SA.57173 (2020/N)—*Belgium COVID-19—Walloon scheme for Covid-19 relevant research and development* (Case COMP/C (2020) 3236 final) Commission Decision of 12 May 2020; State Aid SA.57057(2020/N)—*Belgium R&D scheme of Brussels Capital Region 'R&D Projects—Covid-19' under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak* (Case COMP/C (2020) 2804 final) Commission Decision of 27 April 2020; State Aid SA.57148 (2020/N)—*Austria COVID-19: Support Measures by the States (Länder) of Carinthia, Upper Austria, Styria, Tyrol and Vienna under the Temporary Framework for State aid measures to support the*

production of certain products. The beneficiaries of such measures were either small and medium enterprises ('SMEs') or large enterprises.

In this context, the state aid measures were mainly granted to support research into vaccines, medicinal products and treatments, medical devices, hospital and medical equipment, disinfectants, protective clothing and equipment, as well as research into relevant process innovations for an efficient production of the required products. Apart from the aforementioned, the purpose of the relevant aid schemes was also to promote investments in the production of Covid-19 relevant products. The supported activities were the production of medicinal products (including vaccines) and treatments, their intermediates, active pharmaceutical ingredients, and raw materials; production of medical devices, hospital and medical equipment (including ventilators, protective clothing, and equipment as well as diagnostic tools), and necessary raw materials; and production of disinfectants and their intermediary products and raw chemical materials necessary for their production as well as data collection/processing tools. Some of these state aid measures involved as well investment aid for the construction or upgrade of testing and upscaling infrastructure necessary for the development, testing, and upscaling of the production of Covid-19 relevant products until they reached the first commercial stage, before mass production.²⁹

It is submitted that in cases where the aid measures involved investments into infrastructures contributing to develop Covid-19 relevant products and into production capacities for products needed to respond to the Covid-19 outbreak, an honest effort was made to invest public funds in public health promotion and prevention of future health crises. In these cases, the aid schemes could cover not only the costs of trial runs of the new production facilities, but also investment costs (land, buildings, and plant/equipment, immaterial assets, architect's fees, and necessary ancillary costs to investment) necessary to construct, or upgrade, the testing and upscaling

infrastructures, as well as to create or expand production capacities for the production of the Covid-19 relevant products and services. Therefore, it could be said that this kind of state aid measures not only accelerated progress on Covid-19 pandemic, but also prepared the ground for future vaccine technologies, research and development for vaccines as well as drugs that have the potential to avoid future health crises.

Apart from the above general aid schemes, there were also *ad hoc* measures that were adopted to support the Covid research. According to the list of state aid measures adopted under the Temporary Framework during the pandemic, Austria granted €840,000 to Apeptico and €1.2 million to Panoptes, which are both biotech companies engaging with COVID-related research.³⁰ Belgium granted up to €3,541,600 to the University of Liège for the production of Covid-19 relevant products, specifically diagnostic tools and necessary raw materials.³¹ Denmark also notified an *ad hoc* aid measure, i.e. a repayable advance of a total amount of approximately €108 million, in favour of Bavarian Nordic A/S to support Covid-19 relevant research and development.³²

B. State aid schemes that support national health systems beyond the short-term impact of Covid-19

As mentioned above, the vast majority of state aid measures adopted under the Temporary Framework between 2020 and 2022 regarded coronavirus-related research and development activities, as well as the production of Covid-19-related products. However, some Member States proceeded to further measures to support their national health systems in the context of the coronavirus outbreak. The study cases in the current section are different from the state aid schemes of the previous section, as not only do they ensure that the disruptions caused by the Covid-19 outbreak do not undermine the viability and survival of the healthcare sector, but also promote investments that relate to longer-term aspects of the healthcare delivery in the 'after Covid-19' era.

economy in the current COVID-19 outbreak (Case COMP/C(2020) 3411 final) Commission Decision of 19 May 2020; State Aid SA.62576 (2021/N)—*Italy COVID-19: Development Contracts under the COVID-19 Temporary Framework* (Case COMP/C (2020) 4246 final) Commission Decision of 8 June 2021; State Aid SA.62513 (2021/N)—*Estonia COVID-19: Support for COVID-19 related R&D* (Case COMP/C (2021) 2694 final) Commission Decision of 14 April 2021; State Aid SA.60414 (2020/N)—*Belgium COVID-19: Investment aid scheme for the production of COVID-19 relevant products (Walloon Region)* (Case COMP/C (2021) 246 final) Commission Decision of 12 January 2021.

29 See for example State Aid SA.57829(2020/N)—*Slovakia COVID-19: State aid scheme for temporary aid to support COVID-19 research, development and testing* (Case COMP/C(2020) 4866 final) Commission Decision of 13 July 2020.

30 State Aid SA.57340 (2020/N)—*Austria COVID-19—Individual aid to Apeptico* (Case COMP/C (2020) 9 final) 4652 final Commission Decision of 3 July 2020; State Aid SA. 57345 (2020/N)—*Austria in COVID-19: Individual aid to Panoptes* (Case COMP/C(2020) 4653 final) Commission Decision of 3 July 2020.

31 State Aid SA.60198 (2020/N)—*Belgium-Covid-19: Investment aid for the production of COVID-19 related products (Université de Liège)* (Case COMP/C(2021) 247 final) Commission Decision of 12 January 2021.

32 State Aid SA.63958 (2021/N)—*Denmark—State aid to Bavarian Nordic A/S* (Case COMP/C(2021) 6173 final) Commission Decision of 23 July 2021.

I. State aid scheme to support the development and implementation of e-health applications in the context of the coronavirus outbreak—the case of the Netherlands

The Netherlands was the first EU Member State that adopted drastic aid measures to support its national health system during the outbreak of Covid-19 pandemic. Apart from the usual aid schemes regarding coronavirus-related research, development activities, and production of Covid-related products, the Netherlands opted for grant schemes that invest in the development and implementation of e-health applications, acknowledging in this way the pivotal role of e-health in attaining overarching health priorities.³³ Specifically, approximately €77 million was granted to service providers that are focused on providing health care services to groups that are most affected by the social distancing rules imposed by the Dutch government to combat the pandemic (e.g. the elderly, risk groups and mentally ill patients).³⁴ The measure complemented and extended the measure approved by the Commission in case SA.56915 and it covered costs made for the purchase, leasing, licensing, and implementation of e-health applications.

This aid measure taken by the Netherlands under the Temporary Framework confirms that the Covid-19 pandemic could be a great opportunity for Member States to accelerate the growth of various health services, like digital health services, and invest in the development of a better and more resilient health system that would effectively respond to and recover from public health crises, like the one of Covid-19. It also meets the digital transition in accordance with the EU objectives, as ‘a Europe fit for the digital age’ is one of the six political priorities of the Commission 2019–2024.³⁵

2. State aid scheme to support air ambulance transport—the case of Sweden

In 2021, Sweden granted approximately €4.96 million aid in the form of direct grants to air ambulance companies

in order to support them in upholding their businesses.³⁶ The new requirements that Sweden set to adapt transports to Covid-19 patients, in combination with the decrease in demand for scheduled transports between hospitals, due to the postponement of regular health care, put the undertakings providing air ambulance services in Sweden in a difficult situation that worried a lot the Swedish authorities, as their services were still needed, especially during the second wave of the pandemic. For this reason, this state aid measure tried to restore the liquidity of these companies by partially covering their fixed costs.

The decision of Sweden to give public funds to air ambulance companies during outbreaks of Covid-19 is a good example of targeted financial help from which both hospitals and patients benefitted, ensuring in this way the continuous access to healthcare services for all citizens and the prevention of health disparities.

3. State aid scheme to support the health of teleworkers—the case of Belgium

Belgium took a very innovative aid measure during the Covid-19 outbreak in order to reduce work-related adverse health effects from the pandemic in the Flemish region. It decided to spend approximately €1.53 million to 10 to 20 projects that would deal with the health and wellbeing of teleworkers, as there has been a tremendous increase in teleworking in response to the Covid-19 pandemic.³⁷ Belgium called for projects that would assist the undertakings to provide additional or different services and policies for health promotion, encouraging in this way their employees to live healthier lives, both physically and mentally, in the context of working from home.

Considering that many teleworkers reported not only missing out on the informal and in-person interactions, but also feeling isolated and missing the emotional support of their co-workers, it was significant to secure for teleworkers a continuous socially supporting communication within the team and with their supervisor, as well as a health-promoting leadership.³⁸ The fact that there are

³³ Some of these priorities are the universal health coverage and the sustainable development goals. Please see World Health Organization (WHO) ‘Using e-health and information technology to improve health’ (*World Health Organization—Western Pacific*, 11 October 2022), available at www.who.int/westernpacific/activities/using-e-health-and-information-technology-to-improve-health.

³⁴ State Aid SA. 57897—*The Netherlands—COVID-19: Direct grant scheme for e-Health services at home under the Temporary Framework for State aid measures to support the economy in the current Covid-19 outbreak* (Case COMP/C(2020) 4982 final) Commission Decision of 16 July 2020.

³⁵ European Commission ‘Public Health-Overview’ (*European Commission, eHealth: Digital health and care*, 11 October 2022), available at https://ec.europa.eu/ehealth-digital-health-and-care/overview_en.

³⁶ State Aid SA.61904 (2021/N)—*Sweden COVID-19: Aid to ensure access to ambulance air transport* (Case COMP/C(2021) 1596 final) Commission Decision of 5 March 2021; State Aid SA. 63,130 (2021/N)—*Sweden—COVID-19: Aid to ensure access to ambulance air transport* (Case COMP/C(2021) 4541 final) Commission Decision of 17 June 2021.

³⁷ State Aid SA. 63,252 (2021/N) *Belgium—COVID 19: working from home in a healthy and vital way: call for projects* (Case COMP/C(2021) 4973 final) Commission Decision of 30 June 2021.

³⁸ Julia Christine Lengen et al ‘Social isolation among teleworkers in the context of the Covid-19 pandemic’ (*PubMed-National Center for Biotechnology Information-National Library of Medicine*, 23 October 2020) available at <https://pubmed.ncbi.nlm.nih.gov/33132537/>.

surveys showing that many employees want to telework more post-pandemic compared to before the pandemic reaffirms the necessity of long-term, mental and physical health-supporting measures that accommodate the shift towards different forms of remote work arrangements brought on by the Covid-19 pandemic.³⁹

4. State aid scheme to support helicopter emergency medical services—the case of Ireland

Ireland granted aid in the form of direct grants, i.e. €5 million to charities providing public services of dedicated Helicopter Emergency Medical Services (HEMS)-specific aviation services in Ireland.⁴⁰ These charities were particularly affected by the Covid-19 pandemic, seeing a reduction in income from fundraising while continuing to incur costs. The Irish authorities aimed to provide financial aid to the beneficiaries to support costs associated with the operational costs of aircraft leasing, jet fuel, technical maintenance, and aviation-related costs, amongst others, to ensure their continued operation of public services.

HEMS is indeed a vital public service, as they have played an outstanding role in this health crisis. They were not only important for the transfer of infectious and ventilated patients from hospital to hospital, but they also secured relevant infrastructure through monitoring flights. Indicatively, HEMS operators such as ADAC Luftrettung, DRF, Luxembourg Air Rescue, and Sécurité Civile, alongside other HEMS operators, have flown many patients suffering from Covid-19 from France to other hospitals in the country and abroad for intensive care treatment.⁴¹ Moreover, the Irish measure is of a scale which can be reasonably anticipated to produce positive effects for more healthcare services in Ireland than just emergency services. For example, medical treatments following transport with HEMS might be more successful as patients will be in the hospital quicker than otherwise would have been the case.⁴²

³⁹ According to data collected in April and May 2020, 61 per cent of teleworkers in Germany, Switzerland, the United Kingdom, and other countries want to telework more post-pandemic compared to before the pandemic. See Clara Weber et al 'Future Teleworking Inclinations Post-Covid-19: Examining the Role of Teleworking Conditions and Perceived Productivity' (2022)13 *Frontiers in Psychology*.

⁴⁰ State Aid SA. 102,557 (2022/N) Ireland-COVID-19: Support to Helicopter Emergency Medical Services (HEMS) (Case COMP/C(2022) 3172 final) Commission Decision of 30 June 2021.

⁴¹ European Rotors 'Covid-19—Helicopters across Europe help fight corona crisis' (*Helihub*, 16 April 2020) available at <https://helihub.com/2020/04/16/covid-19-helicopters-across-europe-help-fight-corona-crisis/>.

⁴² Ibid.

5. State aid scheme to support health spas—the case of Czech Republic

In an attempt to support the demand for the services provided by facilities with a special permission to provide spa medical procedures and curative rehabilitation treatments, the Czech Republic gave a discount of CZK 4000 (i.e. approximately EUR 149) to all consumers of at least 18 years old spending minimum six nights in these facilities and undergoing at least five spa medical rehabilitation treatments during their stay in the spa.⁴³ The compensating discounts were available to all EU/EEA consumers that would stay in such spas until 31 December 2020.

These state-sponsored vouchers were an injection of money into the health tourism of the country but most importantly, they managed to prevent the dismissals of highly specialised personnel.⁴⁴ Human resources are the most important of the health system inputs, as the knowledge, skills, and motivation of individuals who deliver health services determine the performance and the benefits of a national health system.⁴⁵

6. State aid scheme to support the economy in the current Covid-19 outbreak—the case of Malta

Malta was another EU Member State that supported public health during the Covid-19 outbreak not only by financing Covid-related research, products, and development activities, but also by granting aid to applications aimed at better dissemination of recommendations by national (Public Health) and/or international health authorities (World Health Organization).⁴⁶ It also wanted to extend its financial support to any other research related to infectious diseases that can lead to human epidemics.⁴⁷ In this way, Malta did not focus only on the challenges surrounding the Covid-19 outbreak, but wanted to incentivise undertakings carrying out other antiviral relevant research to propose solutions to overcome future challenges as well.

This was an ambitious measure adopted by Malta, which aligns short- and long-term health policies and sets

⁴³ State Aid SA. 58,018(2020/N)—Czechia—Covid-19: Support for Health Spas (Case COMP/C(2020) 5552 final) Commission Decision of 7 August 2020.

⁴⁴ Ibid.

⁴⁵ World Health Organization, 'World Health Report 2000: Health Systems: Improving Performance.' (WHO, June 2000) available at https://apps.who.int/iris/bitstream/handle/10665/42281/WHR_2000-eng.pdf?sequence=1&isAllowed=y.

⁴⁶ State Aid SA. 57075 (2020/N)—Malta—R&D Fund under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (Case COMP/C(2020) 2680 final) Commission Decision of 22 April 2020.

⁴⁷ Ibid.

the foundations for a robust health system that mitigates disease outbreaks and averts pandemics.

VI. State aid measures to support media under the temporary framework: the national perspectives

After discussing the state aid measures that Member States adopted under the Temporary Framework with respect to the public health sector, it is time to deal with the state aid schemes that were granted to support the media industry of some Member States during the Covid-19 pandemic. As underlined earlier, these state aid measures are of particular interest because there is a general perception that public money is used by the governments to capture media and suppress critical journalism.⁴⁸ Covid-19 raised further concerns regarding this issue, as the economic distress brought to light the erosion of public trust in government⁴⁹ and increased the political fanaticism and social fragmentation, putting in this way further pressure on journalists.⁵⁰ Hence, it is worth examining if and to what extent these state aid measures were justifiably granted under the Temporary Framework or they were used as a 'smokescreen' to restore the public trust in national governments and to serve their political agenda with the help of national media.

According to the official list of state aid measures adopted under the Temporary Framework during the pandemic, four EU Member States, i.e. the Republic of Cyprus, Denmark, Greece, and Latvia, granted financial aid to the media industry. The main reasoning for the grant of these state aid measures was the shrinking advertising revenues due to the Covid-19-related measures that made it impossible for businesses to carry out their activities during the pandemic, and consequently, they had to reduce or refrain from advertising.

⁴⁸ Fernando Bermejo et al 'Mapping Digital Media—Global Findings—A Report by the Open Society Foundations, July 2014' (*Open Society Foundations*, September 2014) available at www.opensocietyfoundations.org/uploads/02fc2de9-f4a5-4c07-8131-4fe033398336/mapping-digital-media-overviews-20140828.pdf; Marius Dragomir 'Control the money, control the media: How government uses funding to keep media in line' (2017)19(8) *Journalism*.

⁴⁹ OECD (fn 10); Saka (fn 10); Parsons and Wiggins (fn 10); Gozgor (fn 10).
⁵⁰ Sebastian Jungkunz 'Political Polarization During the Covid-19 Pandemic' *Frontiers in Political Science* 3(2021); Alexandra Flores et al 'Politicians polarize and experts depolarize public support for Covid-19 management policies across countries' 119(3) *The Proceedings of the National Academy of Sciences* (2022); Nic Newman 'Journalism, Media, and Technology Trends and Predictions 2021'. Digital News Project January 2021 (*Reuters Institute for the Study of Journalism*, 7 January 2021) available at https://reutersinstitute.politics.ox.ac.uk/sites/default/files/2021-01/Newman_Predictions_2021_FINAL.pdf.

A. Support scheme for newspapers—the case of the Republic of Cyprus

By electronic notification of 22 June 2020, the Republic of Cyprus notified €106,000 aid in the form of direct grants to ensure that 'sufficient liquidity remains available for newspapers, to counter the liquidity shortage faced by these undertakings because of the outbreak, to ensure that the disruptions caused by the outbreak do not undermine the viability of those undertakings and thereby to preserve the continuity of economic activity during and after the Covid-19 outbreak'.⁵¹ The source of this amount of money was the government budget and the final beneficiaries of the measure were press publishers, i.e. five daily and two weekly newspapers.⁵² The government subsidy that the written press in the Republic of Cyprus received seems to be an effective way to secure that the newspapers would not cut down their activities but they would continue to work at full speed, thus mitigating the effects of the Covid-19 crisis. Yet, at the same time concerns arise regarding the necessity and ultimate goals of this measure, as the Republic of Cyprus spends less on health than most EU countries,⁵³ so the flexible regime of the Temporary Framework was a golden opportunity for the government to invest money in the national healthcare sector, which was struggling to cope with the pandemic.⁵⁴ In order to see if these concerns are justifiable, the political and media landscape of the Republic of Cyprus should be examined, as well as the government's ability to handle the pandemic, in order to see if the Cypriot citizens were happy with the government's handling when the state aid scheme was given to the national newspapers. If they were satisfied with the government's handling, it is less likely that the subsidy was granted in order to gain favour with the media.

First, it should be noted that the subsidy was given based on unofficial data and not on independently audited data or figures about a drop in daily press circulations for the whole 2020, whilst state aid and advertising distribution to media are not governed by any

⁵¹ State Aid SA. 57762 (2020/N)—Cyprus—Covid-19: Support scheme for newspapers (Case COMP/C(2020) 4647 final) Commission Decision of 3 July 2020.

⁵² Ibid.

⁵³ OECD and European Observatory on Health Systems and Policies and European Commission 'State of Health in the EU—Cyprus Country Health Profile 2021' (*Directorate General for Health and Food Safety*, September 2021) available at https://health.ec.europa.eu/system/files/2021-12/2021_chp_cyprus_english.pdf.

⁵⁴ A recent study revealed the moderate levels of hospitals preparedness in Greece and Cyprus to cope with the COVID-19 pandemic. Please see Aris Yfantis et al. 'An Assessment of the Hospitals' Preparedness to Encounter the Coronavirus Disease (COVID-19): The Cases of Greece and Cyprus' (2020)13(3) *International Journal of Caring*.

statutory framework.⁵⁵ According to the Media Pluralism Monitor 2022, which is a scientific and holistic effort to document the health of media ecosystems, detailing threats to media pluralism and freedom in European Union member states and some candidate countries,⁵⁶ there is lack of transparency as well as uncertainties surrounding the allocation of state resources to the media sector.⁵⁷ Based on the same Research Project Report, 'the sitting government in Cyprus tends to manipulate the media by developing a quid pro quo relationship with most media owners'.⁵⁸ Transparency concerns increase, if we also consider that the Cyprus News Agency, which is a public law entity and the sole provider of news and reports to all media in the Republic of Cyprus, is politically influenced, as its budget relies almost exclusively on state funding and the appointment of its governing body is made by the Council of Ministers.⁵⁹

Also, the financial aid to the press publishers was given in June 2020, when the first Covid-19 wave restrictions including travel bans began to be eased. Such actions were expected to invoke a high risk of viral resurgence,⁶⁰ which was confirmed by the high positivity rates (number of positive cases out of total swabs per day) by end of Summer 2020.⁶¹ This means that at that period of time the Cypriot government needed to adopt appropriate communicative and supportive approaches to minimise the negative effects of their decision to ease the first wave restrictions in order to stimulate the economy. According to surveys, public trust and national media can regulate the negative effect of the pandemic.⁶² Hence, it could be argued that the timing of this state aid scheme

granted to the national newspapers was not fortuitous, but this is only a speculation that cannot be easily verified. After all, we should not overlook the fact that thanks to the government's early implementation of interventions between March and May 2020, the community transmission was significantly decreased and the testing rate in the Republic of Cyprus was among the highest in the European region during that period.⁶³ This implies that the handling of the government was right and the public trust in the government was still high when the state aid scheme was granted to the national newspapers.

The controversial findings of the discussion above do not allow us to draw a conclusion about whether the Temporary Framework was instrumentalised by the government or not in order to restore the public trust in them and serve particular interests that fall outside the scope of this temporary state aid measure. However, the indications argue for the need of an EU-level oversight of the Temporary Framework, as some Member States may not have used the Temporary Framework in good faith, as expected.

B. Compensation scheme for the media sector and aid for local weekly newspapers—the case of Denmark

In April 2020, the Danish state decided that the media should be paid all the subsidies already foreseen for the fiscal year 2020 at once, giving them in this way some extra money and not just the usual monthly payment.⁶⁴ In the same vein, by electronic notification of 14 May 2020, Denmark notified approximately €32 million aid in the form of direct grant for partly compensating the damage caused by the loss of advertising revenue due to Covid-19 outbreak.⁶⁵ The aid was financed directly by the national budget in order to support all undertakings with entities within the media sector which produce editorial content and are covered by the jurisdiction of the Danish Press Council.⁶⁶ In addition to these measures, on 10 May 2021 Denmark notified another €5.22 million aid in the form of direct grants to cope with

55 Christophoros Christophorou and Nicholas Karides for the European University Institute 'Monitoring media pluralism in the digital era: application of the Media Pluralism Monitor in the European Union, Albania, Montenegro, the Republic of North Macedonia, Serbia and Turkey in the year 2021. Country report: Cyprus' (European University Institute, June 2022) available at <https://cadmus.eui.eu/handle/1814/74685>.

56 European University Institute, Centre for Media Pluralism and Media Freedom, Robert Schuman Centre 'MPM2022 Results-Overview' (Centre for Media Pluralism and Media Freedom—European University Institute, 2022) available at <https://cmpf.eui.eu/mpm2022-results/>.

57 Christophorou and Karides for the European University Institute (fn 55), p. 6.

58 Ibid., 15.

59 Ibid.

60 Sarah Cuschieri et al. 'A year of Covid-19: experiences and lessons learnt by small European island states—Cyprus, Iceland and Malta' (2022) 32(2) European Journal of Public Health.

61 Ibid.

62 Mohammad Reza Mohammadi et al. 'The Role of Public Trust and Media in the Psychological and Behavioral Responses to the COVID-19 Pandemic' (2020) 15(3) Iranian Journal of Psychiatry; OECD 'Transparency, communication and trust: The role of public communication in responding to the wave of disinformation about the new Coronavirus' (OECD, 3 July 2020) available at www.oecd.org/coronavirus/policy-responses/transparency-communication-and-trust-the-role-of-public-communication-in-responding-to-the-wave-of-disinformation-about-the-new-coronavirus-bef7ad6e/.

63 Annalisa Quattrocchi et al. 'Extensive Testing and Public Health Interventions for the Control of COVID-19 in the Republic of Cyprus between March and May 2020' (2020) Nov 8;9(11) Journal of Clinical Medicine.

64 European Centre for Press and Media Freedom (ECPMF), European Federation of Journalists (EFJ) and Osservatorio Balcani e Caucaso Transeuropa (OBCT) 'Media Freedom made in Scandinavia—Six examples of best practices' (ECPMF, December 2019) available at www.ecpmf.eu/wp-content/uploads/2020/05/ECPMF-FFM-Scandinavia_2020.pdf.

65 State Aid SA.57106(2020/N)—Denmark, Compensation scheme for the Danish media sector related to Covid-19 (Case COMP/C(2020) 3566 final) Commission Decision of 27 May 2020.

66 Ibid.

the decreased demand for advertising in local weekly newspapers.⁶⁷

The report of a fact-finding mission to Scandinavia hailed the 'survival kit' for media outlets that the Danish state provided, saying that Denmark '... is leading the way to a stable future for quality journalism and media plurality'.⁶⁸ It is unsurprising that the reporters acknowledged positively this state aid measure, considering that Denmark has a long history of political independence of the media, as well as a strong culture for freedom of the press and editorial independence.⁶⁹ Moreover, we should not forget that Scandinavia leads the 'press freedom index' 2022,⁷⁰ which is an annual ranking of countries compiled and published by 'Reporters without Borders' since 2002.

Yet, it should be noted that in Denmark there are no explicit laws ensuring political independence of media and there is no explicit legislation that prohibits politicians or parties from owning media companies.⁷¹ Also, there are no comprehensive studies on the political independence of media outlets.⁷² Only recently have some news sociological studies⁷³ begun to look into the complexities of a news media market that is heavily state funded, but these studies investigate very broadly the extent to which politics influence news media through their funding. This gap in the Danish academic literature in combination with the strong public criticism that the current Danish government has received regarding their

attitude towards the academics and journalists of Denmark, i.e. that they try to influence them,⁷⁴ raises questions about the reasons that the Temporary Framework was used to support national media during the Covid-19 pandemic.

In the same vein, we should not overlook the fact that when the state aid measures under the Temporary Framework were adopted, it was noted that 'national newspapers were getting new subscribers in the thousands for the web-editions and new readers in the hundreds for their print-editions'.⁷⁵ In addition to that, in April 2020 the Danish media were paid all the subsidies already foreseen for the fiscal year 2020 in advance. Having said that, someone might counterargue that the increase in subscriptions could not compensate in any possible way for the loss of advertisement revenue and that the payment of all the subsidies already foreseen for the fiscal year 2020 in advance improves the cashflow but does not solve the problem of decreased advertising revenues.

In view of the above, it is not quite clear and certain whether the state aid schemes under the Temporary Framework were used *inter alia* to exercise political influence over the Danish media sector or not. Hence, in order to shed more light on this issue, it is necessary to focus our attention on the particular period of Covid-19 pandemic and see how citizens in Denmark felt about their government in regard to their ability to guide the country safely through the pandemic. If the average level of trust in the Danish government was generally high, it is less likely that the aforementioned subsidies were granted in order to gain favour with the media.

According to a survey conducted among unemployed Danes before and after the announcement of the Danish lockdown on 11 March 2020, there was increased trust in the Danish Prime Minister's administration, especially after the lockdown announcement.⁷⁶ Unemployed people are an interesting case as they usually have a low trust in government and are also particularly vulnerable to the economic consequences of a lockdown, in view of their economic pessimism.⁷⁷ For this reason,

67 State Aid SA. 63029(2021/N)—Denmark, Covid-19: Aid for local weekly newspapers in Denmark (Case COMP/C(2021)3809 final) Commission Decision of 21 May 2021.

68 European Centre for Press and Media Freedom (ECPMF), European Federation of Journalists (EFJ) and Osservatorio Balcani e Caucaso Trans.europa (OBCT) fn (64).

69 Mark Blach-Ørsten, Rasmus Burkhal et al., 'Denmark: High media independence and informal democratic traditions in the newsroom' in J Trappel & T Tomaz (eds), *The Media for Democracy Monitor 2021: How Leading News Media Survive Digital Transformation*. vol. 2, (Nordicom, Gothenburg 2021), pp. 147–176.

70 In this index, which assesses the state of journalism in 180 countries and territories, Denmark has the second-best score, after Norway. See Reporters without Borders 'RSF's 2022 World Press Freedom Index: a new era of polarisation' (*RSF Reporters without Borders*, 2022) available at <https://rsf.org/en/rsf-s-2022-world-press-freedom-index-new-era-polarisation>.

71 Christiern Santos Rasmussen, Kristian Redhead Ahm and Anders Theis Bollmann for the European University Institute 'Monitoring media pluralism in the digital era: application of the Media Pluralism Monitor in the European Union, Albania, Montenegro, the Republic of North Macedonia, Serbia and Turkey in the year 2021. Country report: Denmark' (*Publications Office of the European Union*, June 2022) available at <https://op.europa.eu/en/publication-detail/-/publication/0cd11275-3a26-11ed-9c68-01aa75ed71a1/language-en>

72 Ibid.; p.24.

73 Paul Clemens Murschetz (2020): 'State Aid for Independent News Journalism in the Public Interest? A Critical Debate of Government Funding Models and Principles, the Market Failure Paradigm, and Policy Efficacy' (2020)8(6) Digital Journalism; Helle Sjøvaag, *Journalism between the State and the Market* (New York: Routledge, 2019).

74 Rasmussen, Redhead Ahm and Bollmann for the European University Institute fn (71), p. 17.

75 European Centre for Press and Media Freedom (ECPMF), European Federation of Journalists (EFJ) and Osservatorio Balcani e Caucaso Trans.europa (OBCT) Fn (64), p. 37.

76 Martin Baekgaard, Julian Christensen, Jonas Krogh Madsen and Kim Sass Mikkelsen 'Rallying around the flag in times of Covid-19: Societal lockdown and trust in democratic institutions' (2020)3(2) *Journal of Behavioural Public Administration*, 1–12.

77 Virginia A. Chanley 'Trust in Government in the Aftermath of 9/11: Determinants and Consequences' (2022)23(3) *Political Psychology*, 469–483; Virginia A. Chanley, Thomas J. Rudolph and Wendy M. Rahn 'The Origins and Consequences of Public Trust in Government: A Time Series Analysis' (2000)64(3) *Public Opinion Quarterly*, 239–256.

they may be considered a less-likely case for rallying around the flag.⁷⁸ Another survey conducted in Denmark between late March and late June 2020 showed that the general level of trust in government's ability to respond to the Coronavirus was significantly high.⁷⁹ In that survey, respondents were asked to provide answers on a scale from 0 to 10, where 0 indicated 'no trust at all' and 10 indicated 'complete trust' in the current government. The mean score was 7.4, confirming Danish citizens' trust in the government's ability to handle the pandemic.

The findings of these recent surveys attest that it is unlikely that the Danish government granted the aforementioned state aid schemes to media in order to gain favour with them, as Danes consistently trusted their government in that particular period of time. Consequently, it seems that the Temporary Framework was not used by the Danish government as a 'smokescreen' to achieve goals other than tackling the Covid-19 pandemic.

C. Aid to newspapers, magazines, media service providers, and radio stations—the case of Greece

After discussing the state aid measure that the Republic of Cyprus and Denmark adopted under the Temporary Framework with respect to the media sector, it is time to deal with the Greek aid scheme that was used to support media.

By electronic notification of 1 July 2021, Greece notified the European Commission regarding €20 million aid in the form of limited amounts of aid for radio stations, private publishers of national, local, and regional newspapers and magazines, as well as to private companies that are regional content providers of digital terrestrial television.⁸⁰ Specifically, the Greek State assumed the beneficiaries' payment obligation towards a social security fund, either by paying their contribution to the fund or by reimbursing them in case the beneficiaries already paid for their contribution.⁸¹ The source of this huge amount of money was the Greek State's national budget, and it was given because there was a downward trend in the aforementioned beneficiaries' turnover during the year 2020 in comparison to the previous year

due to the significant reduction in media organisations' advertisement revenues and income from circulation.⁸² Moreover, the measure was designed to meet the requirements of a specific category of aid ('limited amounts of aid'), as mentioned above, which is described in section 3.1 of the Temporary Framework, according to which

'Beyond the existing possibilities based on Article 107(3)(c) TFEU, temporary limited amounts of aid to undertakings that find themselves facing a sudden shortage or even unavailability of liquidity can be an appropriate, necessary and targeted solution during the current circumstances' (emphasis added).

However, it turns out that the media sector in Greece was not facing a sudden shortage or even unavailability of liquidity, as required in section 3.1 of the Temporary Framework, because at the beginning of the pandemic, the Greek government had allocated another €20 million to distribute among media outlets in order for them to publish public health messages.⁸³ It is also worth noting that the grant of this money, i.e. €20 million to support public health messaging by media outlets, caused a big scandal⁸⁴ in Greece during the COVID-19 pandemic, as the distribution of these funds was outsourced to a private media buying company, bypassing in this way not only the obligation to make public all transactions conducted by the state, but also the Online Media Registry. In addition to this, it turned out that certain media outlets were deliberately eliminated from the state funding, since the list with the names of the supported media outlets included only the names of some media outlets, many of which were non-existent websites, personal blogs, and a religious outlet, according to which the holy communion, which presupposes sharing eating utensils, is harmless during the pandemic.⁸⁵ In July 2020, the eventual disclosure of the sums allocated to each media outlet confirmed that the funds had been distributed unequally and disproportionately, without taking into account their circulation and readership.⁸⁶

The influence of political power over the functioning of the media market in Greece has also been underlined

⁷⁸ The theory of rallying around the flag suggests that in times of international crisis, citizens will often react by increasing support for their political leaders.

⁷⁹ Julie Hassing Nielsen 'Trust in government in Sweden and Denmark during the Covid-19 epidemic' (2021) 44(5-6) *West European Politics*, 1180–1204.

⁸⁰ State Aid SA.63896(2021/N)—Greece, COVID-19: Aid to newspapers, magazines, media service providers and radio stations (Case COMP/C(2021) 5749 final) Commission Decision of 27 July 2021.

⁸¹ *Ibid.*, p. 3

⁸² *Ibid.*, p. 2.

⁸³ Ministerial Decisions 227/21.03.2020 and 337/25.04.2020 on the unpaid transmission of public health awareness messages by state-owned and private TV channels and radio stations.

⁸⁴ This is the Petsas list scandal, which was named after the former Deputy to the Greek Prime Minister and government spokesperson, Mr. Stelios Petsas.

⁸⁵ European Centre for Press and Media Freedom and Media Freedom Rapid Response 'Controlling the Message: Challenges for Independent Reporting in Greece, Report of the 1–15 December 2021 joint fact-finding mission' (ECPMF, 2022) available at www.ecpmf.eu/wp-content/uploads/2022/03/Greece-mission-report-MFRR-1.pdf.

⁸⁶ *Ibid.*

in several research reports. According to the latest report of the European Centre for Press and Media Freedom and the Media Freedom Rapid Response ('MFRR'), which is a Europe-wide mechanism that tracks, monitors, and responds to violations of press and media freedom in EU Member States and Candidate Countries, 'the allocation of state advertising to media in Greece suffers from a problematic lack of transparency',⁸⁷ which is not a new phenomenon. According to the latest Reuters Institute for the Study of Journalism report, the media market in Greece is characterised by lack of trust in news and a politically polarised press.⁸⁸ According to the Media Pluralism Monitor 2022, Greek media have had traditionally a symbiotic relationship with political power and the area of political independence is on the edge of a high-risk score, i.e. 66 per cent, which is the borderline of medium risk scores (medium 34–66 per cent and high 67–100 per cent).⁸⁹ The same report found out that 'the indicator state regulation of resources and support to the media sector receives a high-risk score of 67%, much higher compared to 2020 (33%), mainly due to the lack of transparency concerning the distribution of state subsidies to media outlets during the pandemic'.⁹⁰

In view of the above, there are concerns about whether it was appropriate for the European Commission to approve the grant of this extra €20 million under the Temporary Framework to the media market in Greece. The fact that Greece's media industry is polarised, highly fragmented, and captured by business and political interests⁹¹ increases the concerns. It also points out the strange paradox of granting state aid to the Greek media market under the Temporary Framework, whilst the public health sector in Greece has been struggling and it was a golden opportunity to use this soft law instrument to support the national healthcare system. The great pressure on packed state intensive care wards,⁹² which until recently have been running out of beds, as well as the

fact that health spending in Greece accounts for 7.8 per cent of GDP as compared to an OECD average of 8.8 per cent,⁹³ confirm that strange paradox and raise questions about the necessity and ultimate goals of the Greek state aid measures under the Temporary Framework that supported the media sector.

D. Aid to media—the case of Latvia

Latvia is the fourth country that granted state aid schemes to support the media industry during the Covid-19 pandemic. By electronic notification of 10 May 2021, Latvia notified temporary limited amounts of aid in the form of direct grants to support undertakings owning television, radio, and printed and digital media, which were facing liquidity challenges due to the Covid-19 outbreak.⁹⁴ The estimated budget of the measure was EUR 3,250,210, and it was considered to be essential for helping the advertising financed media to keep their content production and secure in this way the access of the public to diverse and comprehensive information.⁹⁵ The political decision of Latvia's government to give public money to the media sector in order to compensate them for the falling advertising revenues during the pandemic is in line with the conditions set out in the Temporary Framework. However, it also raises questions about why the media industry was considered to be a higher-priority sector compared to the national healthcare sector, which did not receive any state support through the Temporary Framework, though the crisis exerted enormous pressure on Latvia's health system.⁹⁶ In order to shed light on this issue, it is necessary to focus our attention on the particular period of Covid-19 pandemic and investigate the political landscape of Latvia as well as how the public evaluated the Latvian government's response to Covid-19 crisis.

The government of Latvia in 2021 was formed from five parties, which became the longest running government in the history of democratic Latvia.⁹⁷ According to the general literature on corruption, corruption is a 'major issue in countries ruled by coalition governments'.⁹⁸ When it

⁸⁷ Ibid.

⁸⁸ Nic Newman et al. 'Digital News Report 2021—10th edition' (Reuters Institute for the Study of Journalism, 2021) available at https://reutersinstitute.politics.ox.ac.uk/sites/default/files/2021-06/Digital_News_Report_2021_FINAL.pdf.

⁸⁹ Lambriini Papadopoulou for the European University Institute 'Monitoring media pluralism in the digital era: application of the Media Pluralism Monitor in the European Union, Albania, Montenegro, the Republic of North Macedonia, Serbia and Turkey in the year 2021. Country report: Greece' (European University Institute, July 2022) available at <https://cdmus.eui.eu/handle/1814/74691>.

⁹⁰ Ibid., pp. 14–15.

⁹¹ See also European Centre for Press and Media Freedom and Media Freedom Rapid Response (fn 85), p. 10.

⁹² George Georgopoulos and Andrew Heavens 'Athens enlists private hospitals to ease pandemic pressure on health system' (Reuters, 9 March 2021) available at www.reuters.com/article/us-health-coronavirus-greece-hospitals-idUSKBN2B10Q5.

⁹³ Aris Angelis et al 'Greece's response to the coronavirus pandemic' (Cambridge Core Blog, 10 April 2020) available at www.cambridge.org/core/blog/2020/04/10/greeces-response-to-the-coronavirus-pandemic.

⁹⁴ State Aid SA.63031(2021/N)—Latvia, Covid-19: Aid to media (Case COMP/C(2021) 4616 final), Commission Decision 18 June 2021.

⁹⁵ Ibid.

⁹⁶ Inna Šteinbuka, Aldis Austers, Olegs Barānovs and Normunds Malnačs 'Covid-19 Lessons and Post-pandemic Recovery: A Case of Latvia' (2022) 10 Front Public Health.

⁹⁷ Freedom House 'Latvia' (Freedom House, 2022) available at <https://freedomhouse.org/country/latvia/freedom-world/2022>.

⁹⁸ Siva Prasad Ravi 'Innovation with information technology: coalition governments and emerging economies—fighting corruption with electronic governance' (2013) 5(1) International Journal of Business and

comes to Latvia, the analysis of the 2021 Corruption Perceptions Index shows that some of Latvia's weaknesses lie in preventing waste of public funds and in distrust regarding the fair use of public funds, including EU funding.⁹⁹ Yet, as far as the media sector is concerned, the Media Pluralism Monitor 2022 shows that the State regulation of resources and support to media sector indicator scores low risk (29 per cent), as there are clear and transparent rules on the distribution of direct and indirect subsidies to the media.¹⁰⁰

Regarding the public trust in the national government during the pandemic, it should be noted that in the first wave of the pandemic, the public trust in the national government increased, as the infection rates were relatively low and the lockdown measures were not very stringent.¹⁰¹ Yet, during the second wave of the pandemic, the Latvian government turned out to be unprepared. This resulted in lack of public trust in the government, which began to recover in mid-2021,¹⁰² when the Latvian government notified the European Commission about the state aid scheme in favour of the media sector.¹⁰³ Also, several public scandals in 2021 rocked the vaccination process in Latvia, like the failure of authorities to procure enough vaccine doses after the failure of AstraZeneca to obtain an early authorization from the European Medicines Agency in order to be used in the public.¹⁰⁴

Against this background, it is debatable to what extent the media sector was favoured over the healthcare sector in order to serve *inter alia* the political agenda of the Latvian government and restore the citizens' trust in them regarding their ability to guide the country safely through the pandemic. The indications, however, argue for the need of an EU-level oversight of the Temporary Framework, as it seems that some Member States may have used the Temporary Framework to achieve different goals from the ones set by the European Commission when adapting this soft-law regime.

Emerging Markets; Jennifer Bussell 'E-Governance and Corruption in the States' (2012) 47(25) Economic and Political Weekly.

99 Transparency International Latvia 'Corruption Perceptions Index 2021: Latvia's score improves, albeit too slowly' (Delna, 26 January 2022) available at <https://delna.lv/en/2022/01/26/corruption-perceptions-index-2021-latvias-score-improves-albeit-too-slowly/>.

100 Anda Rozukalne for the European University Institute 'Monitoring media pluralism in the digital era: application of the Media Pluralism Monitor in the European Union, Albania, Montenegro, the Republic of North Macedonia, Serbia and Turkey in the year 2021. Country report: Latvia' (European University Institute, June 2022) available at <https://cdmus.eui.eu/handle/1814/74695>.

101 Šteinbuka, Austers, Barānovs and Malnač (fn 96).

102 Ibid.

103 The electronic notification was made on 10 May 2021.

104 Šteinbuka, Austers, Barānovs and Malnač (fn 96).

VII. Conclusions

This article reviewed and assessed the state aid measures that have been adopted under the Temporary Framework since the outbreak of Covid-19 with the aim to see how many of them supported the healthcare sector. Based on the official data of the European Commission, the vast majority of aid schemes under the Temporary Framework regarded the support of companies affected by the coronavirus outbreak. The few state aid measures that regarded public health issues dealt mainly with coronavirus-related research and development activities, as well as with the production of Covid-19-related products. Only six state aid schemes under the Temporary Framework contributed to a real investment in quality public health services with the potential to boost the national health systems also after the Covid-19 pandemic. Hence, it is submitted that many EU Member States missed a golden opportunity to promote investments that relate to longer-term aspects of the healthcare delivery in the 'after Covid-19' era.

The article also examined the aid schemes that some Member States, i.e. the Republic of Cyprus, Denmark, Greece, and Latvia, granted under the Temporary Framework in order to support their media sector. These national aid schemes are of particular interest because the media sector is a highly controversial sector and a considerably grey zone in some Member States with highly disrupted media landscapes with regard to transparency, such as the Republic of Cyprus and Greece. The discussion revealed that in Greece there was lack of transparency concerning the distribution of state subsidies to media outlets during the pandemic, which has called into question the government's decision to adopt the soft-law regime of the Temporary Framework for financially supporting the national media, whilst the Greek hospitals were struggling to deal with urgent and overwhelming needs for goods and services during the Covid-19 crisis.

In the Republic of Cyprus and Latvia, the findings were rather controversial. In the Republic of Cyprus, the subsidy was given based on unofficial data and not on independently audited data or figures about a drop in daily press circulations for the whole 2020, whilst international reports underline the tendency of the government to manipulate the media by developing a quid pro quo relationship with most media owners. Also, the aid scheme was given when the first Covid-19 wave restrictions including travel bans began to be eased, which implies that at that period of time the Cypriot government needed to adopt appropriate communicative approaches to minimise the negative effects of this decision. Yet,

this is only a speculation that cannot be easily verified, especially if we consider the successful handling of the pandemic by the government during the first Covid-19 wave, which advocates for high public trust in the government when the state aid scheme was granted to the media. Hence, it is debatable whether the grant of this aid scheme under the Temporary Framework flags the use of Covid-19 as a 'smokescreen' to serve the political agenda of the Cypriot government or not. Likewise, in Latvia, though the 2021 Corruption Perceptions Index showed that some of Latvia's weaknesses lie in preventing waste of public funds and in distrust regarding the fair use of public funds, the Media Pluralism Monitor 2022 showed that the State regulation of resources and support to media sector indicator scores low risk. Due to these ambiguous findings, it would be a rather facile conclusion to say that the Latvian government instrumentalised the Temporary Framework to gain favour with the media during the second wave of the pandemic, though they would definitely need the media's support to overcome several public scandals that interrupted the vaccination process.

As far as Denmark is concerned, the discussion has shown that the aid scheme given to the media sector does not raise concerns regarding the compatibility of its aim with the ones set by the European Commission when adapting the Temporary Framework. Denmark has a long history of political independence of the media, as well as a strong culture for freedom of the press and editorial independence. Moreover, studies showed that the average level of trust in the Danish government was generally high, in regard to their ability to guide the country safely through the pandemic. Hence, it seems that when the state aid was given to the media sector, the Danish government was not trying to use the Temporary Framework as a 'smokescreen' to serve its political agenda.

In view of the aforementioned cases, it appears that sometimes the Temporary Framework has offered a 'smokescreen' for aid which purported to relate to tackling the COVID-19 pandemic, but which actually did not. When it comes to state aid schemes, the responsibility lies primarily with Member States, which are the ones setting the policy objectives by deciding how much aid to apply and what sectors to support. Yet, there is also a crucial role for the EU to play in implementing these measures, as the European Commission had to consider each time if the relevant aid measures under the Temporary Framework were necessary, appropriate, and proportionate to remedy a serious disturbance in the economy of a Member State and if they met all the conditions of the Temporary Framework. As the discussion above has shown, in some cases the European Commission could have raised objections to state aid measures suggested by Member States to be adopted under the Temporary Framework, as it seems that instead of trying to remedy a serious disturbance in the economy of the relevant Member States during the Covid-19 pandemic and support the struggling national healthcare systems, some of those measures were taken with the aim of restoring the public trust in the national government, which was lost or shaken during the pandemic, and serving *inter alia* its political agenda. Such phenomena flag up concerns about the opportunistic way that the Temporary Framework may have been used by some EU Member States during the Covid-19 pandemic and make indispensable the initiation of proceedings by the European Commission against national aid schemes that may have departed from the TFEU provisions, with a view to establishing consistent, efficient, and effective supervisory practices, and to ensuring the common, uniform, and consistent application of EU law.

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