

# Limitations on Human Mobility in Response to COVID-19

A preliminary mapping and assessment of national and EU policy measures, their sanctioning frameworks, implementation tools and enforcement practices

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## Abstract

This report provides a mapping of measures adopted by the European Union and 10 selected Member States to restrict human mobility in order to tackle the spread of COVID-19. It also investigates the impact of the enforcement of mobility restrictions and border controls introduced since the outbreak of the pandemic on the individual rights and freedoms of EU citizens and third-country nationals. It does so by looking at the ways and extents to which different types of restrictions have been implemented and enforced over the 11-month period from the beginning of March 2020 until the end of January 2021.

First, the report identifies and categorises the different typologies of border and mobility restrictions introduced at different levels of governance (EU, international, national and subnational) to contain the spread of COVID-19. Second, the report scrutinises the rationale used to justify the introduction of such measures, looks at the procedures followed for their adoption and implementation, and examines the compatibility of the different categories of intervention with the principles of legality, necessity and proportionality enshrined in EU law. Third, the report looks at the impact of the application of such restrictions on the coherent application of the system of norms and standards currently governing intra-EU mobility, and the management of migration and asylum at the EU's external borders.



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## List of abbreviations

CNIL	Commission Nationale de l'Informatique et des Libertés
ECDC	European Centre for Disease Prevention and Control
EDPB	European Data Protection Board
EU	European Union
FRA	European Union Agency for Fundamental Rights
GDPR	General Data Protection Regulation
IGPN	Inspection Générale de la Police Nationale
JHA	Justice and Home Affairs
NGO	Non-Governmental Organisation
PLF	Passenger Locator Form
SBC	Schengen Borders Code
SIS II	Schengen Information System
UK	United Kingdom
UNHCR	United Nations High Commissioner for Refugees
VIS	Visa Information System

## Executive Summary

This report provides a preliminary mapping of measures adopted by the European Union and 10 selected Member States (Belgium, Bulgaria, Finland, France, Germany, Hungary, Italy, Lithuania, the Netherlands and Spain) to restrict human mobility in order to tackle the spread of COVID-19. The choice of Member States is designed to reflect how mobility restrictions have been formulated in countries with different constitutional architectures, institutional systems and legal traditions. By looking at the 11-month period from March 2020 to the end of January 2021, the report describes the evolution of EU and Member State policies limiting freedom of movement in response to the COVID-19 crisis in the first year of the pandemic. Mobility restrictions have been adopted, implemented and enforced at all levels of governance (EU, international, national and subnational).

Domestic mobility restrictions have ranged from nationwide and localised lockdowns to measures restricting interregional travel, nationwide and regional curfews, quarantines and measures targeting the mobility of specific groups. Countrywide lockdowns imposed in the early phase of the pandemic disregarded the largely regional and local development dynamics of the COVID-19 crisis. Their indiscriminate approach to domestic mobility restrictions produced a disproportionate impact on certain territories within a state. The content and scope of application of mobility restrictions imposed under nationwide lockdowns were often not precisely set out. In some cases, these restrictions were introduced contextually with state of emergency declarations and accompanied by the adoption of ‘internal security’ laws and policies that granted exceptional powers to national or local security forces. The latter have been left with a large margin of discretion in the application of administrative and criminal sanctions (the extent of which varies greatly between Member States) in cases of non-compliance. The result has been a high degree of legal uncertainty for individuals. Subsequent ‘phases’ of domestic mobility restrictions in response to COVID-19 have predominantly consisted of less-intrusive alternatives to nationwide lockdowns, with many Member States opting for local lockdowns and (nationwide and/or regional) curfews.

Cross-border mobility restrictions within the EU and Schengen area (EU+) have been widely reactive and unilateral. Decisions by Member States to impose blanket entry bans within the EU+ area raise questions of legality in light of the Schengen Borders Code (SBC). These types of EU+ mobility restrictions have largely been based on the qualification of the COVID-19 pandemic as a threat to national ‘public policy or internal security’. There are, however, doubts as to whether national governments have met the increasing burden of proof required by the SBC to justify entry restrictions on such grounds. The imposition of national bans on entry from within the EU+ area is also at odds with the rights of EU citizens under the Free Movement Directive. EU recommendations aimed at increasing the coordination of intra-EU+ mobility restrictions during the COVID-19 pandemic have not been set out in a legally binding document, and Member States have continued to reintroduce intra-EU+ mobility restrictions unilaterally, disregarding EU calls for compliance with the principles of non-discrimination and proportionality. In addition, cross-border mobility during the COVID-19 pandemic in the border

regions has been subject to the general restrictions on cross-border mobility. Only a limited number of the countries examined have adopted specific measures to govern the restrictions applicable to cross-border mobility in their border regions.

International mobility restrictions have been predominantly framed by the EU's travel restrictions at its external borders (the so-called 'EU travel ban'). With limited exceptions, the EU travel ban has been implemented by the Member States. Notable deviations include the lack of express inclusion by some Member States of international protection seekers as persons travelling for essential reasons. This decision has generated clear tensions with the right to seek asylum in the EU and the obligations of Schengen countries vis-à-vis refugees and persons seeking international protection, including non-refoulement. The amendment of the EU travel ban to allow residents of certain third countries considered as 'safe' to enter the EU for non-essential reasons has ultimately left it to individual Member States to decide on whether or not to permit such non-essential travel.

There is a clear trend towards the criminalisation of non-compliance with COVID-19-related mobility restrictions. In terms of the sanctions associated to non-compliance, several Member States have introduced specific penal provisions in their criminal codes or health codes. In several cases, criminalisation concerned deviations from emergency measures contained or specified in documents (including non-legally binding ones) that have been repeatedly updated, and that often expressed general or vague rules of conduct. A similar approach to criminalisation undermines any real possibility of consistent compliance, but also exposes individuals to risks of arbitrariness, disproportionate sanctioning, and abusive enforcement practices.

Implementation of COVID-19 mobility restrictions has primarily been entrusted to interior ministries. There have been a large-scale deployment of police and security forces entrusted with patrolling, identification, and screening duties. In several Member States, the large amount of discretion given to police and public security actors has led to instances of abuse of power, arbitrary or discriminatory checks and excessive use of force. The implementation and enforcement of COVID-19-related mobility restrictions have also brought about a dramatic expansion in digital surveillance. Examples of such trend include the use of drones to patrol public spaces, an increase of law enforcement authorities' powers to obtain location and other telecommunication data, systematic collection of data on travellers through PLFs, and expansion of interoperability of various databases. Data-driven policing of COVID-19 mobility restrictions raises serious fundamental rights challenges, and rule of law concerns.

## Introduction

Measures limiting human mobility constitute one of the most emblematic policy and normative responses adopted by the European Union and its Member States to deal with the COVID-19 pandemic.

Previous CEPS research has shown that EU Member States have responded to the COVID-19 pandemic with far-reaching restrictions on the freedom of movement, at both intra- and extra-EU level<sup>1</sup>. Since March 2020, mobility limitations within the territories of individual EU countries have progressively been imposed in parallel with the (re)introduction of internal border controls at specific land, sea and air borders, and compounded by the adoption of intra-EU travel bans<sup>2</sup> and the so-called ‘EU travel ban’ at the EU’s external borders<sup>3</sup>. At EU level, a number of measures have also been introduced in an attempt to coordinate national policies and actions directed at restricting the movement of both EU citizens and third-country nationals<sup>4</sup>. Since 1 February 2021, the policy landscape has continued to evolve rapidly, with a wide array of measures being adopted, implemented and relaxed in different jurisdictions in response to the changing pandemic situation.

All of these measures have been adopted in an attempt to prevent the spread of the new coronavirus, well after the actual arrival of COVID-19 in the EU. Scholarly analysis indicates that measures limiting human mobility in ‘fear of COVID-19’ have largely been adopted pursuant to a ‘precautionary approach’ to norms and policymaking. In the case of human mobility, this precautionary approach entails the progressive introduction and modulation of various types of restrictions on the freedom of (domestic, intra-EU and international) movement, with the purported objective of preventing major risks to human health<sup>5</sup>. Such an approach characterised the early policy and normative responses to the COVID-19 crisis in certain EU countries, but also largely informed the mobility restrictions that, in the first months of 2021, both the EU and its Member States continued to introduce, reintroduce, modify or keep in place in order to prevent the virus and its new variants from spreading across different geographies.

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<sup>1</sup> See Carrera, S. and Luk, N.C. (2020a), ‘In the Name of COVID-19: Schengen Internal Border Controls and Travel Restrictions in the EU’, Study for the EP LIBE Committee PE 659.506, Brussels, September. See also Carrera, S. and Luk, N.C. (2020b), ‘Love thy Neighbour? Coronavirus politics and their impact on EU freedoms and rule of law in the Schengen Area’, CEPS Paper in Liberty and Security No 2020-04, CEPS, Brussels, April.

<sup>2</sup> Cf. Carrera and Luk (2020b), pp. 8-13.

<sup>3</sup> See Carrera and Luk (2020a), pp. 41-47.

<sup>4</sup> See European Commission (2020a), *COVID-19: Guidelines for border management measures to protect health and ensure the availability of goods and essential services*, C(2020) 1753 final, Brussels, 16 March; European Commission (2020b), *COVID-19: Guidance on the implementation of the temporary restriction on non-essential travel to the EU, on the facilitation of transit arrangements for the repatriation of EU citizens, and on the effects on visa policy*, Communication, C(2020) 2050 final, Brussels, 30 March; European Commission (2020c), *Guidelines concerning the exercise of the free movement of workers during COVID-19 outbreak*, Communication, C(2020) 2051 final, Brussels, 30 March.

<sup>5</sup> Goldner Lang, I. (2021), “‘Laws of Fear’ in the EU – The Impact of COVID-19 on the Precautionary Principle and the Principle of Proportionality in EU Free Movement Law”, *Verfassungsblog on Matters Constitutional*, 27 January.

Decisions regarding the introduction, reintroduction or lifting of domestic, intra-EU and international mobility restrictions have often been of a highly symbolic and/or political nature, since they have not (or not exclusively) been linked to specific epidemiological developments. National governments have not systematically disclosed the evidence based on which they have progressively adopted or modified their COVID-19 responses (including the introduction and/or lifting of internal, intra-EU and international mobility restrictions. These measures have been tightened and relaxed over time following an ‘accordion-motion’<sup>6</sup> approach, but have not been accompanied by rigorous or clear explanations justifying them in light of the factual circumstances. Several EU countries have introduced COVID-19 mobility restrictions through recourse to an expansionist use of the notions of public policy and internal security. In turn, recourse to public security as a key policy rationale to justify mobility restrictions has conditioned the strategies used for the implementation and enforcement of such measures.

The benefits and costs of restrictions imposed on both domestic and cross-border mobility, as well as their actual effectiveness in tackling the spread of the virus, continue to be a matter of scholarly debate and policy discussions at both national and supranational level<sup>7</sup>. On the one hand, these discussions have attempted to measure or quantify the impact of certain mobility-restricting measures in terms of containing the spread of the new coronavirus<sup>8</sup>. On the other hand, they have highlighted the importance of ensuring the legality, necessity and proportionality of measures restricting human mobility<sup>9</sup>. These are, in fact, essential conditions to be met by national and EU policy makers to justify the introduction of restrictions of the fundamental rights (including the right to free movement) that are protected at national, EU and international level.

Against this background, the need emerges for a comprehensive mapping and categorisation of the different normative responses and policy interventions and the related implementation and enforcement strategies that, in an attempt to fight the spread of COVID-19, have restricted and/or still limit human mobility within the EU and across its external borders. In order to assess the impact that the wide-ranging COVID-19-related mobility restrictions have had on individual rights and freedoms protected at national, EU and international level, it is necessary to review

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<sup>6</sup> M. De Ridder (2021) ‘Belgium’s Accordion Response to COVID-19’, *VerfBlog*, 2021/3/10.

<sup>7</sup> Errett, N.A., Sauer, M. and Rutkow, L. (2020), ‘An integrative review of the limited evidence on international travel bans as an emerging infectious disease disaster control measure’, *Journal of Emergency Management*, Vol. 18, No 1, January/February. A partly different understanding is provided by Mendolia, S., Stavrunova, O. and Yerokhin, O. (2020), ‘Determinants of the Community Mobility during the COVID-19 Epidemic: The Role of Government Regulations and Information’, IZA Institute of Labor Economics, Discussion Paper Series, IZA DP No 13778, October.

<sup>8</sup> For domestic mobility, see for instance, Oh, J. et al. (2021), ‘Mobility restrictions were associated with reductions in COVID-19 incidence early in the pandemic: evidence from a real-time evaluation in 34 countries’. *Scientific Reports*, Vol. 11, No 1, 13717. The article finds that reductions of up to 40% in commuting mobility (to workplaces, transit stations, retailers, and recreation) were associated with decreased cases, early in the pandemic. Once both mobility and incidence had been brought down, further restrictions provided little additional benefit.

<sup>9</sup> Dawson, M. and Thielbörger, P. (2020), ‘EU Law in the “First Wave”: The legality of national measures to tackle the COVID-19 crisis’, Study Commissioned by The Greens/EFA Group in the European Parliament, December.

of the different types of limitations introduced, the timing of their adoption, the length of time for which they were maintained, their territorial and personal scope of application, the methods followed for their approval, their implementation, and enforcement, and the way in which they fitted in with or were complemented by the wider set of policy responses adopted in the wake of the health crisis.<sup>10</sup>

This report identifies and categorises the main typologies of border and mobility restrictions adopted across different geographies and levels of governance (EU, international, national and subnational) with the objective of tackling the spread of COVID-19. By looking at the 11-month period from March 2020 until the end of January 2021, the report aims to provide both a preliminary overview of how EU and Member State policies limiting freedom of movement in response to the COVID-19 crisis have evolved over time, and an initial assessment of their implementation frameworks and enforcement practices.

This overview and assessment of mobility restrictions and their related implementation frameworks and enforcement practices covers 10 EU Member States (Belgium, Bulgaria, Finland, France, Germany, Hungary, Italy, Lithuania, the Netherlands and Spain). The geographical coverage of the report provides a meaningful and balanced representation of the different policy and normative approaches to human mobility governance in times of COVID-19. It also permits a reflection on how mobility restrictions have been introduced and enforced by countries with different constitutional architectures (e.g. a more unitary system in France v a more sub-nationally divided system in Germany), institutional systems (e.g. Belgium and Netherlands with a distinct lack of ‘state of emergency’ laws), and legal traditions (e.g. Hungary and Bulgaria as Eastern European Member States, or Lithuania as a Baltic country).

The Report focuses especially on the various ways and extents to which the different types of mobility limitations introduced and applied under the ‘state of emergency’ regimes declared by several Member States in the aftermath of the coronavirus outbreak have impacted on individual rights and freedoms. The Report also takes into account the ‘transformative effects’ that certain mobility restrictions have had on the application of EU law on free movement, its founding principles, and systems of governance<sup>11</sup>.

The relationship between COVID-19 mobility limitations and the rule of law, particularly in Member States witnessing ‘backsliding’ in this field, is also considered. The Report provides examples of cases where mobility restrictions have, in fact, disproportionately affected certain categories of people and/or furthered the discrimination of already marginalised societal

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<sup>10</sup> Council of Europe (2020), *Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis: A toolkit for member states*, CoE Information Documents SG/Inf(2020)11, Strasbourg, Council of Europe, 7 April.

<sup>11</sup> Robin-Olivier, S. (2020), ‘Free Movement of Workers in the Light of the COVID-19 Sanitary Crisis: From Restrictive Selection to Selective Mobility’, *European Papers*, Vol. 5, No 1, pp. 613-619.



groups, including both EU citizens (e.g. Roma communities)<sup>12</sup> and mobile individuals (e.g. migrants, refugees and asylum seekers)<sup>13</sup>.

Finally, when looking at the implementation policies and enforcement practices put in place to monitor compliance with mobility restrictions, the Report pays attention to the role played by different kinds of surveillance technologies. Also in this respect, special attention is paid to the tensions created by the deployment of digital surveillance tools to police mobility and related restrictions in times of COVID-19 from the perspective of individuals' right, as protected under EU and international law<sup>14</sup>.

### *Structure and methodology*

In Section I of the draft inception report, the main typologies of mobility restrictions are identified and grouped under three distinct policy streams. Policy Stream 1 relates to 'domestic mobility restrictions', which include normative and policy measures adopted by the 10 EU Member States above to limit the movement of people throughout their national territories, or within and across their regions, provinces or municipalities. Policy Stream 2 relates to 'intra-EU+ mobility restrictions' and encompasses measures introduced to restrict cross-border mobility within the EU and Schengen area. Policy Stream 3 deals with 'international mobility restrictions' and, as such, focuses on the limitations of human mobility across the EU's external borders. This categorisation allows us to highlight the main specificities and distinctive features of the policy interventions developed under the pre-identified policy streams. The mapping of typologies of measures falling under each of the three policy streams is then complemented by a preliminary assessment of their related implementation frameworks and enforcement practices.

Section II pays attention to the ways and extent to which cases of infringement of mobility restrictions are formally sanctioned in the 10 Member States considered. A synthetic account is given of the various types of (criminal and/or administrative) sanctions that, in each of the countries analysed, apply to individuals who are found not to comply with mobility restrictions adopted under each policy stream. This section not only identifies variations in nature and amount of the penalties associated with non-compliance across different national or subnational jurisdictions, but also highlights issues related to the legality, necessity and proportionality of the sanctions introduced.

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<sup>12</sup> European Commission (2020d), *Overview of the Impact of Coronavirus Measures on the Marginalised Roma Communities in the EU*, 23 April.

<sup>13</sup> Ramji-Nogales, J. and Goldner Lang, I. (2020), 'Freedom of movement, migration, and borders', *Journal of Human Rights*, Vol. 19, No 5, pp. 593-602. See also UNHCR (2020), *COVID-19 Emergency Response. Update #13 Regional Bureau of Europe, 1-20 July 2020*, Brussels, United Nations High Commissioner for Refugees (UNHCR) Regional Bureau for Europe.

<sup>14</sup> Digital Freedom Fund (2020), 'Why COVID-19 is a Crisis for Digital Rights', 29 April.

Section III is devoted to the analysis of the mechanisms in place to implement and monitor compliance with the mobility limitations falling under each policy stream. We not only look at the main institutional actors responsible for designing and introducing the restrictions, but also at the role played by the law enforcement agencies and border authorities entrusted with the duty to enforce them. Special attention is paid to the practical and operational tools used for such purposes, with particular focus on the increasing importance of new digital surveillance technologies in the implementation of measures falling under the three policy streams.

Section IV looks at enforcement practices. Available data and information on the enforcement of the main types of mobility restrictions falling under the considered policy streams are analysed to highlight how these measures are impacting specific categories of targeted individuals on a practical level, including, for instance, so-called ‘mobile citizens’ and their family members, as well as undocumented migrants, refugees, asylum seekers and ethnic minorities. The analysis will strive to understand whether certain societal groups targeted by the policy interventions are being disproportionately affected in the enforcement phase.

The report builds upon and expands further the data collection and research previously developed by CEPS’ Justice and Home Affairs Unit in this specific field. The report brings together findings from different (existing and developing) scientific undertakings, including prior reports by CEPS JHA Researchers<sup>15</sup> and research produced in the context of other relevant EU-funded projects (e.g. the EU-CITZEN)<sup>16</sup>. The dataset produced by the CoronaNet research project<sup>17</sup> has been used to map out the types of domestic mobility restrictions introduced by the Member States considered over the period under analysis. Evidence collected by EU agencies, in particular by the European Union Fundamental Rights Agency (FRA)<sup>18</sup>, and reports developed by national associations such as *Mission Opérationnelle Transfrontalière*<sup>19</sup> have also been taken into account to deliver a country-by-country analysis of the different measures introduced, including in border regions. Other important sources used for the development of the report include information collected by civil society organisations that, since the early phases of the pandemic outbreak, have monitored the implementation of COVID-19 related

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<sup>15</sup> Carrera, S. and Luk, N.C. (2020a) and (2020b).

<sup>16</sup> Schneider, H., Kortese, L., Mertens, P. and Sivonen, S. (2021), ‘Cross-Border Mobility in Times of COVID-19: Assessing COVID-19 Measures and their Effects on Cross-border Regions within the EU’, study by the EU-CITZEN Network for the European Commission, Maastricht, Maastricht University, July (full text available with authors).

<sup>17</sup> Cheng, C., Barceló, J., Hartnett, A., Kubinec, R. and Messerschmidt, L. (2020), COVID-19 Government Response Event Dataset (CoronaNet v1.0).

<sup>18</sup> FRA (2020a), “Coronavirus Pandemic in the EU – Fundamental Rights Implications”, Periodic Updates/Series, Bulletins 1-6.

<sup>19</sup> Peyrony, J., Rubio, J. and Viaggi, R. (2021), ‘The effects of COVID-19 induced border closures on cross-border regions’, study for the European Commission, MOT, Paris, January.

policies at national and transnational level (e.g. Amnesty International's COVID-19 campaign<sup>20</sup>, and Fair Trials International's COVID-19 justice campaign<sup>21</sup>).

This desk research has been complemented by primary data collection (most notably in the form of updated information on government responses and EU policies and related measures adopted at national or supranational level to tackle the COVID-19 pandemic). Information on the implementation and enforcement of COVID-19 mobility restrictions, as well as on sanctions for non-compliance with such restrictions, has been collected from different sources. The sources available to collect information on the implementation and enforcement of mobility restrictions falling under the different policy streams considered vary significantly by Member State. While publicly available official data have been collected from national governments and/or public authorities' websites, official data on the implementation and enforcement of measures restricting human mobility (in country, intra-EU, and cross-border) have not been consistently collected or published by all the Member States under analysis. Therefore, information contained in reports published by the media and Non-Governmental Organisations (NGOs) has also been compiled to complement the data collection exercise.

Given the continuous and rapid changes in government responses to developments in the COVID-19 pandemic, a reasonable temporal scope has been set for this report. Thus, the report covers a representative analysis of the mobility-restricting measures under the policy streams for the 10 selected EU Member States for the period from 1 March 2020 until 31 January 2021. This temporal scope of the report also applies to policies and measures adopted at EU level. Subsequent developments, particularly at EU level, will therefore not be addressed systematically in the main part of the report. The concluding observations will highlight some of these developments as key issues for subsequent research within the PERISCOPE project.

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<sup>20</sup> Amnesty International (ongoing), <https://www.amnesty.org/en/get-involved/covid-19/>.

<sup>21</sup> The COVID-19 Justice Campaign is an initiative of Fair Trials International, it consists of 'a global coalition to resist and roll-back unaccountable criminal justice powers created during the pandemic'; see Fair Trials International (ongoing), <https://www.fairtrials.org/covid19justice>.

## Section I – Main typologies of mobility limitations

### Key findings

- In response to the COVID-19 pandemic, Member States have adopted a variety of measures resulting in the limitation of individuals' freedom of movement, both domestically and across borders.
- Domestic mobility restrictions have ranged from nationwide and localised lockdowns to measures restricting inter-regional travel, nationwide and regional curfews, quarantines and measures targeting the mobility of specific groups.
- To a large extent, domestic mobility restrictions adopted by Member States have not been determined exclusively by epidemiological conditions. Country-wide lockdowns have been imposed disregarding the largely regional and local impact and development dynamics of the COVID-19 crisis, which has been found to be highly asymmetric within single countries. This approach entailed a disproportionate impact of restrictive measures on certain territories within a country.
- Nationwide lockdowns in some countries, particularly where 'out-of-home' mobility is limited to 'urgent reasons', have been formulated in such a way that a large margin of discretion has been left in the hands of enforcement authorities.
- Domestic mobility restrictions in some Member States have coincided with the declaration of states of emergency. The invocation of a state of emergency has been accompanied by a far-reaching (temporary) transfer of competences to the executive branch. In some Member States, the state of emergency has also brought about the adoption of laws and policies granting exceptional powers to security forces.
- In two Member States (BE, NL), measures restricting individuals' rights and freedoms (including the freedom of movement) as a response to the COVID-19 pandemic have been adopted on questionable legal grounds and legal instruments. In both Member States, this has led to court judgments invalidating the legal basis of COVID-19 measures. Subsequent 'phases' of domestic mobility restrictions in response to COVID-19 have predominantly consisted of less intrusive alternatives to nationwide lockdowns, with many Member States opting for localised lockdowns and (nationwide and/or regional) curfews.
- In adopting measures in the fight against COVID-19, particularly in the initial stages of the pandemic, there has been a lack of consideration for the specificities of the border regions.
- Cross-border mobility restrictions within the EU and Schengen area (EU+) in response to the COVID-19 pandemic have generally been reactive and unilateral. Notwithstanding attempts by the EU to coordinate Member States' measures restricting intra-EU+ mobility, Member States have continued to adopt measures without sufficient coordination at European level.
- International mobility restrictions, on the other hand, have been predominantly framed by the EU's travel restrictions at its external borders (the so-called 'EU travel ban'). With limited exceptions, the EU travel ban has been followed by the Member States. Notable deviations include, for example, the lack of inclusion by some Member States of international protection seekers as persons travelling for essential reasons.

## I.I Measures directed at restricting domestic mobility (Policy Stream 1)

### *Definition and typologies*

Domestic mobility restrictions consist of measures adopted to limit individuals' freedom of movement within a given country. The right of individuals (including both citizens and third-country nationals) to move freely within a country's national territory is guaranteed under international human rights law<sup>22</sup>. This right can only be limited in exceptional circumstances, which include the necessity to protect national security, public order and public health. Even in such exceptional circumstances, restrictions to the freedom of movement must be lawful (provided by law), necessary in a democratic society, imposed for a legitimate purpose and proportionate, including in their impact<sup>23</sup>. Regional international human rights law also establishes that limitations on the right to liberty of movement within a state's territory (including those introduced in the interest of public safety) can only be introduced in accordance with the law and in ways that are 'necessary in a democratic society'<sup>24</sup>.

All 10 Member States considered in this report have introduced restrictions on the freedom of internal (including inter-regional, inter-city and inter-municipal) movement in their efforts to curb the spread of COVID-19. The common rationale underpinning the adoption of these non-pharmaceutical measures is to limit the spread of the virus by imposing different kinds of community lockdown, and limits to social ('out-of-home') interactions. At the same time, the nature, scope and severity of these domestic mobility restrictions, and the ways and means by which they have been introduced, regulated, implemented and enforced vary significantly from one Member State to another.

Restrictions identified across the 10 EU Member States considered in this report include general lockdowns (i.e. imposed nationwide) or localised lockdowns (i.e. for specific regions, cities or establishments), as well as measures restricting the possibility to enter or leave a specific region or part of the territory (and therefore limiting inter-regional, inter-city or inter-municipal travel). They also encompass countrywide curfews, and curfews for specific parts of the state's territory. Quarantines and curfews targeting only specific categories of individuals (such as those who tested positive for COVID-19 or had contact with someone who tested positive) and/or societal groups (such as the elderly, but also ethnic minorities) have also been introduced. Mobility restrictions also derive from the adoption of measures permitting movement only for specific purposes, and/or only in the possession of certain documents proving or certifying the 'reason of necessity' and/or essential nature of the movement.

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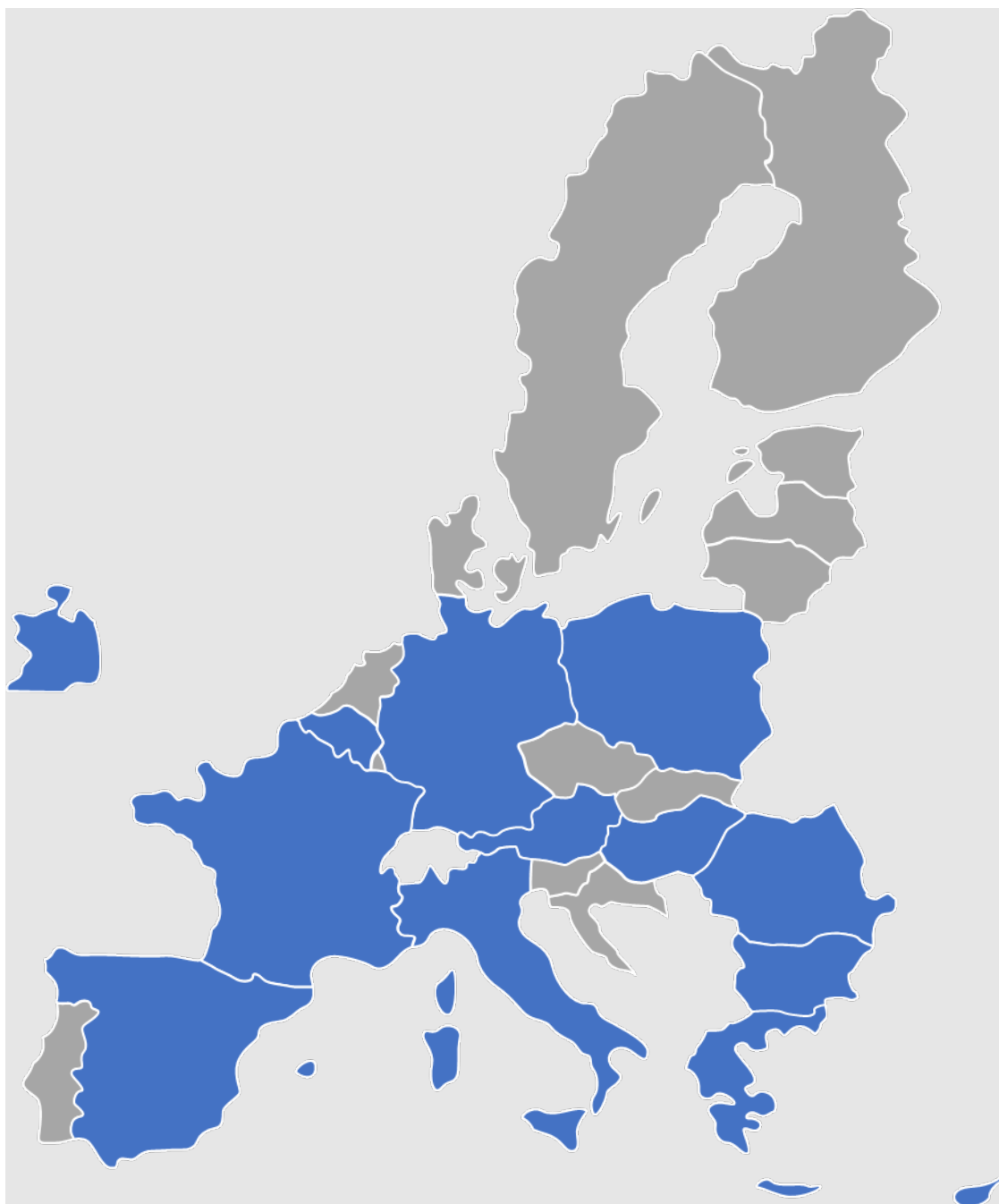
<sup>22</sup> Article 12 International Covenant on Civil and Political Rights.

<sup>23</sup> Human Rights Committee (1999), 'Addendum: General Comment No 27 (67). Freedom of movement (Article 12)', General Comments adopted by the Human Rights Committee under Article 40, Paragraph 4, of the International Covenant on Civil and Political Rights, CCPR/C/21/Rev.1/Add.9, 1 November, para 11.

<sup>24</sup> Article 2(3) Protocol No. 4 to the Convention for the Protection of human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and the first Protocol thereto, as amended by Protocol No. 11, Strasbourg, 16.IX.1963.

Figure 1 below sets out which EU Member States introduced, at any point between March and October 2020, nationwide lockdowns with restrictions on human mobility.

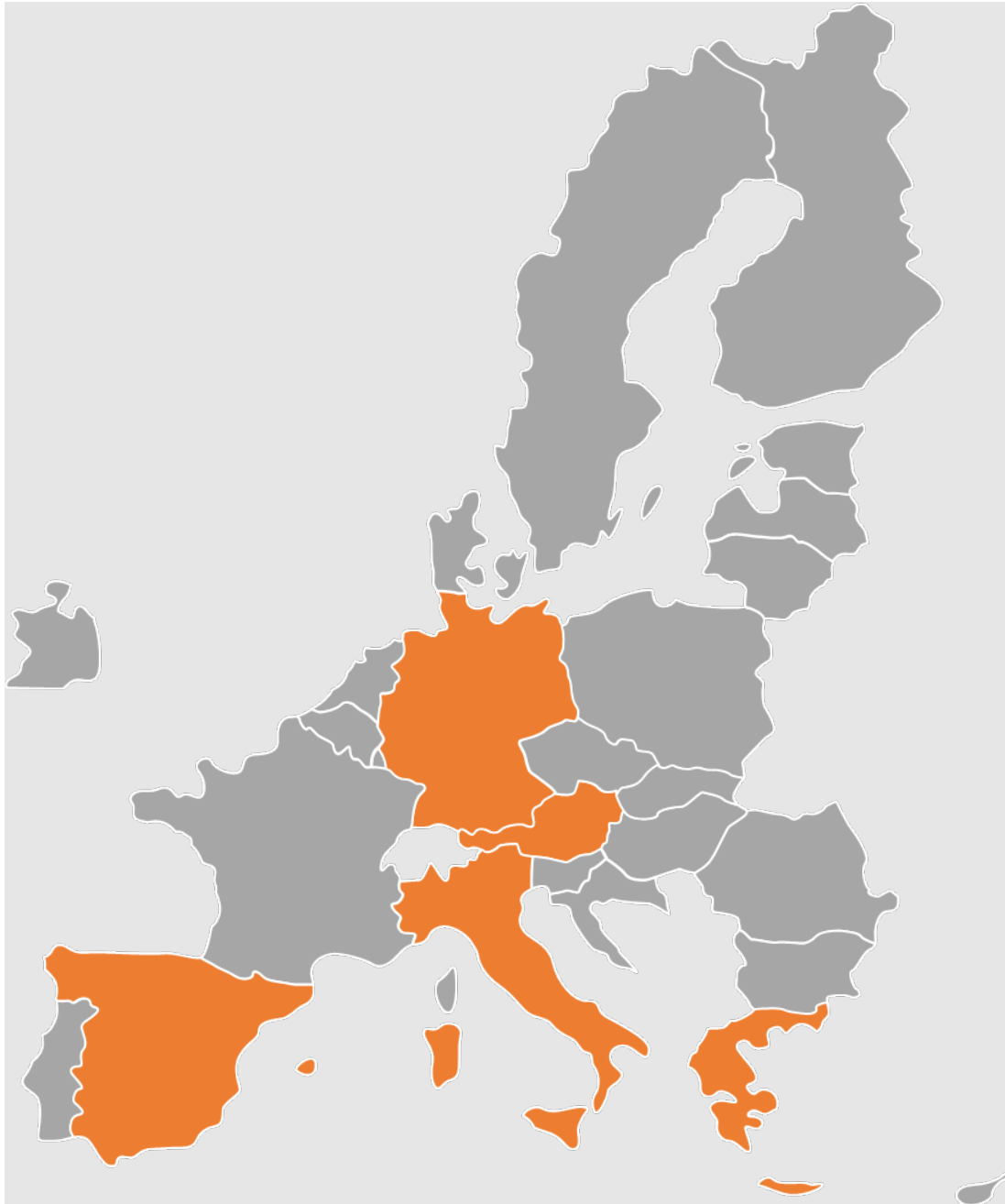
*Figure 1. EU Member States with instances of nationwide lockdowns between March and October 2020*



Source: authors' illustration based on data from Cheng et al. (2020), CoronaNet v1.0.

Figure 2 below sets out the EU Member States that introduced localised or regional lockdowns between March and October 2020.

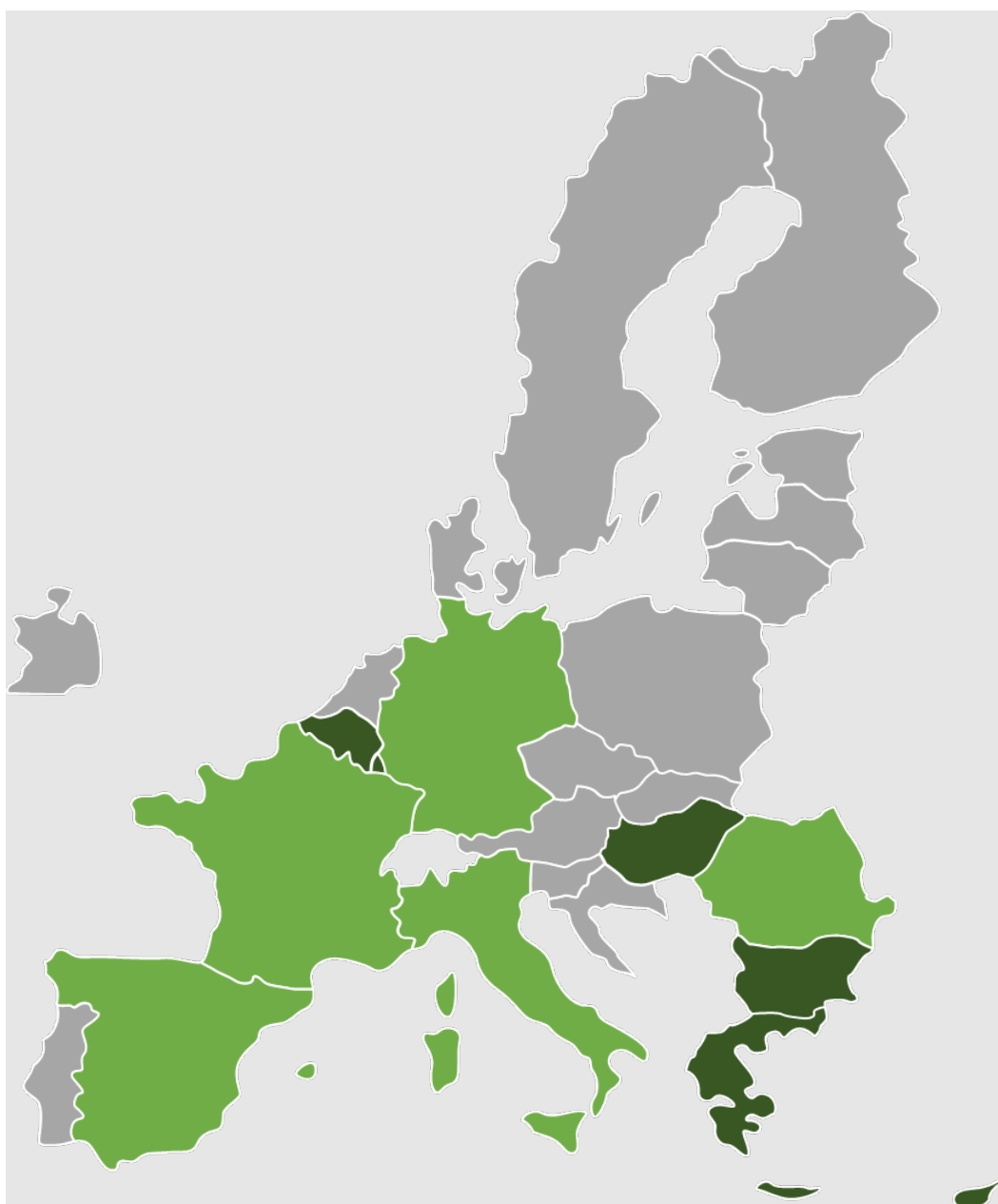
*Figure 2. EU Member States with instances of localised lockdowns between March and October 2020*



Source: authors' illustration based on data from Cheng et al. (2020), CoronaNet v1.0.

Figure 3 below provides an overview of the EU Member States that introduced countrywide (dark green) or localised/regional (light green) curfews at any point between March and October 2020.

*Figure 3. EU Member States with instances of countrywide curfews (dark green) or exclusively localised/regional curfews (light green) between March and October 2020*



Source: authors' illustration based on data from Cheng et al. (2020), CoronaNet v1.0.



Table 1 below provides an overview of the main types of mobility restrictions introduced between the beginning of February 2020 and the end of January 2021, by each of the Member States considered.

*Table 1. Domestic mobility restrictions: an overview*

MS	Nationwide lockdowns	Localised lockdowns	Countrywide curfews	Localised curfews	Restrictions for specific categories of individuals
BE	✓		✓		✓
BG	✓	✓	✓	✓	✓
DE		✓		✓	✓
ES	✓	✓	✓	✓	✓
FI				✓	✓
FR	✓		✓		✓
HU	✓		✓		✓
IT	✓	✓	✓	✓	✓
LT				✓	✓
NL			✓	✓	✓

Source: authors' compilation.

### *Key developments*

The types of domestic mobility restrictions adopted by several of the Member States analysed have evolved significantly over time. Changes in nature and scope of mobility restrictions have not always, or not exclusively, been linked to or made directly dependent upon epidemiological developments within the country. To a large extent, such changes were also determined by evolving political considerations and strategies that, in each of the countries analysed, progressively informed the policy and legal responses to the COVID-19 crisis.

In spring 2020, several Member States attempted to contain the spread of the new coronavirus by means of imposing nationwide lockdowns (BE, BG, ES, FR, IT)<sup>25</sup>. In most cases, decisions to impose nationwide lockdowns were taken shortly after the adoption of mobility limitations that initially applied only to the areas of the countries where the first cases of the new coronavirus were recorded<sup>26</sup>. The specific mobility limitations that were imposed under the different nationwide lockdown regimes varied from country to country. In particular, the exact definitions of 'urgent reasons' or 'reasons of necessity' for which out-of-home mobility was exceptionally justified were not identical. In all countries that introduced nationwide lockdowns, these reasons have included – at a minimum – access to medical care, grocery shopping and travel to essential services such as pharmacies. Some countries (BE, IT, FR) also

<sup>25</sup> Cf. 'Coronavirus: What are the lockdown measures across Europe?', *DW*, 14 April 2020.

<sup>26</sup> For example, towards the end of February and up to 8 March 2020, a number of Italian towns and regions were placed under lockdown (see 'Coronavirus: Italy towns in lockdown after COVID-19 deaths', *DW*, 23 February 2020), with a nationwide lockdown quickly following on 10 March 2020 (see Sciorilli Borrelli, S. (2020), 'Italy orders total lockdown over coronavirus', *Politico.eu*, 9 March).

allowed some form of physical activity, including for instance walking or cycling. However, a high degree of legal uncertainty ensued from the fact that both the content and the scope of application of the different types of mobility restrictions imposed under the lockdown regimes were not precisely set out. This resulted in a large margin of discretion (or high degree of arbitrariness) being left in the hands of the authorities responsible for their implementation and enforcement.

Full nationwide lockdowns introduced in the first phase of the pandemic have been found to be the measures with the strongest impact on reducing domestic mobility and limiting out-of-home social interactions<sup>27</sup>. However, these policy measures not only come at a high social and economic cost<sup>28</sup>, but their generalised scope of application (i.e. extended to the whole of a country's territory and population) does not take into account the largely regional and local impact and development dynamics of the COVID-19 crisis, which has in fact been found to be highly asymmetric within individual countries<sup>29</sup>. Also, a direct and unequivocal interrelation between the imposition of nationwide restrictions and the reduction of COVID-19 positivity rates within the countries imposing such measures has not been established.

The regionally differentiated impact of the virus means that nationwide lockdowns are likely to have a disproportionate impact on certain territories (i.e. the territories less affected by the pandemic at a given point in time), and consequently on the freedom of movement of the country's population residing there. This has led to calls for EU countries to adopt a 'place-based' or territorially sensitive approach to policy measures (including mobility restrictions) adopted in response to the health crisis. Within the EU, the objective of promoting a coordinated territorial regional-like approach to the restriction of free movement in response to the COVID-19 pandemic was incorporated into the Council Recommendations adopted on 13 October 2020<sup>30</sup>. Aside from recommending that Member States take specific epidemiological criteria into account when considering whether to restrict free movement in response to the coronavirus pandemic, the Council also introduced a 'colour coding' system intended to modulate mobility restrictions within and across different Member States' regions.

<sup>27</sup> Lapatinas, A. (2020), 'The effect of COVID-19 confinement policies on community mobility trends in the EU', JRC Technical Report, EUR 30258 EN, Publications Office of the European Union, Luxembourg. See also, Santamaria, C. et al. (2020), 'Measuring the impact of COVID-19 confinement measures on human mobility using mobile positioning data. A European regional analysis', *Safety Science*, Vol. 132, December, 104925.

<sup>28</sup> Allen, D.W. (2021), 'Covid-19 Lockdown Cost/Benefits: A Critical Assessment of the Literature', *International Journal of the Economics of Business*, September.

<sup>29</sup> See OECD (2020), 'The territorial impact of COVID-19: Managing the crisis across levels of government', OECD Policy Responses to Coronavirus (COVID-19), updated 10 November. In the report it is noted how it is clear that the impact of the COVID-19 crisis differs markedly not only across countries, but also across regions and municipalities within countries, both in terms of declared cases and related deaths.

<sup>30</sup> Council Recommendation (EU) 2020/1475 of 13 October 2020 on a coordinated approach to the restriction of free movement in response to the COVID-19 pandemic. On 1 February 2021, the Council adopted amendments to this coordinated approach to take into account developments in the COVID-19 pandemic; see Council Recommendation (EU) 2021/119 of 1 February 2021 amending Council Recommendation (EU) 2020/1475 of 13 October 2020 on a coordinated approach to the restriction of free movement in response to the COVID-19 pandemic.

According to such a system, mobility limitations should be adopted at regional level (rather than at national level) on the basis of regular risk assessments linked to updates in the so-called ‘notification rate’ (i.e. the total number of newly notified COVID-19 cases per 100 000 population in the last 14 days at regional level) and test positivity rate<sup>31</sup>.

In autumn 2020, new restrictions on the freedom of domestic movement gradually started to be reintroduced. This reintroduction of domestic mobility restrictions came about after the decision taken by several governments of the countries analysed to lift previously adopted domestic mobility limitations in summer 2020<sup>32</sup>. With the exception of France (October)<sup>33</sup>, none of the countries analysed that had introduced nationwide lockdowns in the first phase of the pandemic decided to reintroduce the same type of generalised mobility restriction in autumn 2020. However, several Member States, including Lithuania<sup>34</sup> and the Netherlands<sup>35</sup>, which had previously not introduced nationwide lockdowns including domestic mobility restrictions, did so towards the end of 2020.

Instead of nationwide lockdowns, some countries (ES, IT) opted for the introduction of local lockdowns and/or limitations to inter-regional or inter-municipal travels to and from specific parts of their national territories where more severe increases in contagion rates were being recorded<sup>36</sup>. In this ‘second phase’, different types of localised lockdowns were also introduced in countries (DE, LT) that had previously decided not to impose express and legally binding limitations on domestic mobility<sup>37</sup>. The introduction of localised lockdowns and/or limitations on inter-regional mobility have in some cases (ES, IT, DE) been coupled with the imposition of nationwide and/or localised curfews<sup>38</sup>. In other countries (BE, HU), nationwide or localised curfews have entirely replaced the lockdown strategy adopted in the early stages of the pandemic<sup>39</sup>.

<sup>31</sup> Cf. Council Recommendation (EU) 2020/1475, as amended by Council Recommendation (EU) 2021/119, paras 10-12.

<sup>32</sup> Decisions to lift domestic mobility restrictions largely corresponded to, or were taken almost simultaneously with, the decisions to also lift intra-Schengen mobility restrictions; see ‘Coronavirus: How lockdown is being lifted across Europe’, *BBC News*, 2 July 2020.

<sup>33</sup> Décret no. 2020-1310 du 29 octobre 2020 prescrivant les mesures générales nécessaires pour faire face à l'épidémie de covid-19 dans le cadre de l'état d'urgence sanitaire. See Nordstrom, L. (2020), ‘As French hunker down for second Covid-19 lockdown, the new rules explained’, *France24*, 30 October.

<sup>34</sup> See Vaitekėnas, P. (2020), ‘Paskelbta, kuriuose valstybinės reikšmės keliuose sugriežtinus karantiną ribojamas eismas’ (in Lithuanian), *LRT*, 17 December; Lithuanian Ministry of the Interior (2020), ‘Nuo gruodžio 16 d. įsigalioja sugriežtintos pandemijos valdymo priemonės’ (in Lithuanian), 13 December.

<sup>35</sup> Government of the Netherlands (2020), ‘Lockdown in order to minimise contact between people’, 14 December.

<sup>36</sup> Cf. ‘Coronavirus: Italy imposes regional lockdown as Europe battles surges’, *BBC News*, 6 November 2020; ‘Spain invokes state of emergency to re-impose partial Covid lockdown in Madrid’, *France24*, 10 October 2020.

<sup>37</sup> See, for a regional lockdown in Germany, for example, ‘Germany’s Bavaria region to tighten coronavirus lockdown’, *Reuters*, 6 December 2020.

<sup>38</sup> See, for Spain, Cué, C.E. (2020), ‘Spanish prime minister approves new state of alarm with plans to keep it in place until May’, *El País*, 26 October.

<sup>39</sup> See, for Belgium, Chini, M. (2020), ‘Belgium goes back into lockdown’, *The Brussels Times*, 30 October; for Hungary, ‘Hungary Becomes Latest European Country to Impose Lockdown’, *VOA News*, 9 November 2020.

Curfews have also been introduced in Member States (NL, LT, FI) that did not impose nationwide or localised lockdowns to limit domestic movement in the first half of 2020. Under such regimes, outdoor mobility is generally prohibited during curfew hours, and only allowed in exceptional circumstances (e.g. in the event of an emergency, reasons related to work, study or family needs). Such circumstances must be certified through a self-declaration or through an employer's declaration of curfew exemption. In some of these countries (NL), the generalised nature of the curfew has been officially justified because of the impossibility for enforcement officers to check whether individuals are 'going for a walk round the block' or are 'on their' <sup>40</sup>.

In other countries (FI, LT), curfews have not been introduced nationwide, nor imposed by legally binding means. Local authorities have only adopted 'unofficial' or 'informal' curfews (consisting of recommendations for certain categories of individuals, most notably young people, not to be outside after certain hours). The non-binding nature of these measures is due to the determination that a curfew enforced by law and police action would lack legal grounds, and possibly be in violation of human rights law. Some countries (DE, FI, LT, NL) have also opted for non-binding measures – in the form of government recommendations – to limit inter-city or inter-regional travel.

### *Domestic mobility limitations under a state of emergency*

In several of the EU Member States analysed (BG, FI, FR, HU, IT, ES), domestic mobility restrictions introduced with the objective of tackling the spread of COVID-19 were imposed in the context of a declaration of a 'state of emergency'. Research conducted on the different EU countries shows that, while such declarations were officially justified by the objective of speeding up decision-making processes and easing administrative and bureaucratic procedures, they often had significant implications for individual rights and freedoms – including, but not limited to, the right to free movement – which are constitutionally guaranteed at national level, but also protected under the EU legal system and international human rights law<sup>41</sup>

In most of the states that declared a state of emergency (BG, ES, FR, IT, HU), this allowed for a shift of power towards the executive branch and, for the government, special intervention in the area of fundamental rights, including freedom of movement, freedom of assembly and the inviolability of the home. In some countries (BG, HU), a declaration of a state of emergency was in fact immediately followed up by normative intervention authorising the government to restrict and suspend human mobility within the national territory or certain parts of it, to order mandatory isolation, including home isolation of individuals (anyone who was ill or infected,

<sup>40</sup> De Jong, R. (2021), 'Avondklok ingegaan, vanaf nu niet zomaar meer op pad', *HVZeeland.nl*, 23 January.

<sup>41</sup> See Binder, K. et al. (2020), 'States of emergency in response to the coronavirus crisis: Situation in certain Member States III, European Parliament Think Tank Briefing', EPRS Briefing PE 651.972, European Parliamentary Research Service, Brussels, June.

anyone who had been in contact with an infected person, and anyone arriving from another country), as well as to restrict the operation of certain places or services.

In some countries (BG, FR, HU), a state of emergency declaration has been accompanied – or followed – by the adoption of ‘internal security’ laws and policies granting exceptional powers to (national, local or private) security forces entrusted with enforcing COVID-19-related mobility restrictions and applying (administrative or criminal) sanctions in cases of non-compliance<sup>42</sup>. In some Member States (BG), the state of emergency has also been used to introduce far-reaching means of electronic surveillance, which have empowered the government to access different categories of data (include geolocation) with the alleged objective of monitoring compliance with COVID-19-related restrictions<sup>43</sup>. In other countries (ES)<sup>44</sup>, the declaration of state of emergency has ‘unlocked’ the law enforcement potential of internal security laws adopted prior to the outbreak of the pandemic<sup>45</sup>. In these cases, the introduction of restrictions on domestic mobility coincided with the adoption of measures inspired by internal security (rather than public health) logics.

In other countries (DE), where the possibility to declare the state of emergency is expressly envisaged in the national constitution, such a measure does not automatically grant the executive ‘special powers’ to restrict fundamental rights. Instead, the declaration of state of ‘internal emergency’ enables special mechanisms of enhanced ‘mutual administrative assistance’ between different levels of government (i.e. the Federal Government and the *Länder*). On the other hand, legislative intervention by the German Federal Parliament has introduced the possibility for local authorities to take ‘all necessary measures’ to fight infectious diseases. Based on the modification of the Federal Infection Protection Act, local authorities

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<sup>42</sup> In Bulgaria: Act on Measures and Actions During the State of Emergency, announced by a Decision of the National Assembly of 13 March 2020. In France: Law No 2020-290 of 23 March 2020 on emergency to deal with the COVID-19 epidemic. In Hungary: Act XII of 2020 on the containment of coronavirus (Coronavirus Containment Act).

<sup>43</sup> The Bulgarian Act on Measures and Actions During the State of Emergency amended the Electronic Communications Act. The result of the amendment is that telecom operators are obliged to store and (upon request, without prior court authorisation) provide the data required to locate a device to the competent authorities ‘for the purposes of enforcement of mandatory isolation and hospital treatment of persons under Article 61 of the Health Act, who refused or did not comply with mandatory isolation and treatment’. According to the ECA, only the following authorities can access the data: the General Directorate of the National Police, the Sofia City Department of the Interior, and the Ministry of Interior Regional Directorates, i.e. the bodies of the Ministry of Interior and the police.

<sup>44</sup> Royal Decree 463/2020 of 14 March 2020, through which the state of alarm is declared for the management of the health situation generated by COVID-19.

<sup>45</sup> See, Civic Space Watch (2020), ‘Defender a quien Defiende, SPAIN: Human rights and support networks in times of pandemic’, 9 July, p. 21, where it is noted that ‘[d]ifferently from other countries, Spain did not develop an ad hoc legislation to enforce the restrictive measures during this state of emergency: the legislative framework introduced in 2015, through the amendments to the Penal Code and the Citizen Security Law (known as “Ley Mordaza”, “Gag Law”) was already restrictive enough. For example, police agents used the article 36.6 of Ley Mordaza to sanction people who breached some kind of restriction under the state of emergency with fees ranging between 601 and 30,000 euro for “disobedience or resistance to the authority or its agents in the exercise of their functions”’.

have introduced and implemented various pandemic control measures, including curfews and limits to inter-state and inter-regional travel<sup>46</sup>.

Some of the Member States considered (BE, NL) lack explicit ‘emergency clauses’ in their national constitutions. However, this has not prevented far-reaching domestic mobility restrictions from being introduced, including a nationwide lockdown (BE) and curfews (BE, NL).

In at least one of the countries analysed (BE), such measures were introduced through a series of ministerial decrees adopted upon declaration of the ‘federal phase of national emergency’.<sup>47</sup> The choice to introduce domestic mobility restrictions (and related sanctions and enforcement measures) by ministerial decree (i.e. without the necessary legal scrutiny and democratic approval in parliament) has been largely criticised by legal experts<sup>48</sup> and civil society<sup>49</sup>. Concerns have been expressed with regard to the risk of ‘rule of law erosion’ deriving from the exclusion of parliamentary scrutiny and approval of emergency measures curtailing basic fundamental rights<sup>50</sup>. The introduction of emergency restrictions by means of governmental decree has also led to significant implementation and interpretation challenges, with national courts (and lawyers before them) repeatedly questioning the legality of measures such as curfews, as well as the possibility to impose sanctions based on executive measures lacking a precise legal basis<sup>51</sup>.

In one of the Member States analysed (NL), a curfew was introduced by the government, which was acting on the basis of a law enabling the executive power to impose such a measure in very urgent and exceptional circumstances. In this case as well, the decision to introduce similar restrictions bypassing the legislative process – involving the Senate and the House of Representatives in advance – was subject to legal challenges and led to a court ruling that

<sup>46</sup> See Jürgensen, S. and Orlowski, F. (2020), ‘Critique and Crisis: The German Struggle with Pandemic Control Measures and the State of Emergency’, *Verfassungsblog on Matters Constitutional*, 19 April.

<sup>47</sup> Starting from the first Ministerial Decree adopted in 2020 containing mobility restrictions (Arrêté ministériel du 23 mars 2020 portant des mesures d'urgence pour limiter la propagation du coronavirus COVID-19, <http://www.ejustice.just.fgov.be/eli/arrete/2020/03/23/2020030347/moniteur>) up to the Ministerial Decree, as applicable on 31 January 2021, containing mobility restrictions (Arrêté ministériel du 28 octobre 2020 portant des mesures d'urgence pour limiter la propagation du coronavirus COVID-19, <http://www.ejustice.just.fgov.be/eli/arrete/2020/10/28/2020010455/moniteur>, as most recently amended by Arrêté ministériel du 29 janvier 2021 modifiant l'arrêté ministériel du 28 octobre 2020 portant des mesures d'urgence pour limiter la propagation du coronavirus COVID-19, <http://www.ejustice.just.fgov.be/eli/arrete/2021/01/29/2021030264/moniteur>).

<sup>48</sup> Verdussen, M. (2020), ‘The impact on parliamentary assemblies: the crisis triggered by the Covid-19 pandemic in Belgium’; Popelier, P. (2020), ‘COVID-19 legislation in Belgium at the crossroads of a political and a health crisis’, *The Theory and Practice of Legislation*, Vol. 8, No 1-2, pp. 131-153; De Ridder, M. (2021), ‘Belgium’s Accordion Response to COVID-19’, *Verfassungsblog on Matters Constitutional*, 10 March. See also Hope, A. (2020), ‘Legal experts call for corona-law to back restrictions’, *The Brussels Times*, 2 November.

<sup>49</sup> See, Belgian League of Human Rights (2021), ‘Belgium: New “Pandemic Bill” Undermines Democracy and Rights’, *Liberties*, 18 February.

<sup>50</sup> Cf. De Ridder (2021), op. cit.

<sup>51</sup> Wauters, L. (2021), ‘L’Etat condamné par le tribunal de Bruxelles qui juge les mesures covid “illegales”’, *Le Soir*, 31 March; Chini, M. and Walker, L. (2021), ‘Belgium must lift “all Covid-19 measures” within 30 days, Brussels court rules’, *The Brussels Times*, 31 March.

declared the curfew to be unlawful and in ‘violation of the right to freedom of movement and privacy and (indirectly) limits, among other things, the right to freedom of assembly and demonstration’<sup>52</sup>.

In other countries (HU), the government decision to ‘officially end’ the state of emergency has not actually resulted in the withdrawal of exceptional executive powers to restrict the freedom of movement. In Hungary, on the same day that the national parliament approved a legislative proposal (the ‘Bill on Transitional Provisions related to the Termination of the State of Danger’), amendments to pre-existing rules on ‘state of medical emergency’ endowed the government with the authority to restrict by decree the exercise of essential fundamental rights, such as the freedom of movement or the freedom of assembly. According to this legislation, restrictions may initially last for a period of six months, but may then be extended – also indefinitely – without parliamentary approval<sup>53</sup>.

### *The subnational dimension of domestic mobility restrictions, and the issue of border regions*

In several of the Member States analysed (BE, BG, DE, ES, FI, FR, IT, NL), the competence and responsibility for the adoption, implementation and enforcement of domestic mobility restrictions is shared between national and subnational (federal, regional and municipal) government authorities. In at least two of the Member States examined (BE, DE), the sharing of competences to adopt mobility restrictions during the COVID-19 pandemic is the result of a more general constitutional/institutional division of competences between national and subnational levels<sup>54</sup>.

In some countries (BE, BG, DE, ES, FI), the state of emergency has allowed local authorities and subnational governments to introduce more stringent mobility restrictions (e.g. in terms of the timing of curfews) than those introduced at national level. In some of the countries analysed (BE, DE, ES, IT), the legitimacy, proportionality and legality of some of the mobility restrictions imposed by the central government have been contested or appealed against by governmental authorities at subnational level.

Cross-border mobility during the COVID-19 pandemic in border regions has been subject to the general restrictions on cross-border mobility (as set out in the sections below). Some countries have, throughout the period examined, adopted mobility restrictions applicable to cross-border mobility with neighbouring countries (BE, HU, LT, ES). Only a limited number of countries (BE, HU) have adopted specific measures to govern the restrictions applicable to cross-border mobility in their border regions.

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<sup>52</sup> ‘Netherlands COVID-19 curfew to continue after court ruling’, *Euronews*, 16 February 2021.

<sup>53</sup> Hungarian Helsinki Committee (2020), ‘Rapid analysis of the Bill on Terminating the State of Danger (T/10747) & the Bill on Transitional Provisions related to the Termination of the State of Danger (T/10748)’, Budapest, Hungarian Helsinki Committee, 27 May.

<sup>54</sup> For Belgium, see De Ridder (2021), op. cit. For Germany, see Kaiser, A.-B. and Hensel, R. (2021), ‘Federal Republic of Germany: Legal Response to Covid-19’, in: King, J., Ferraz, O.L.M. et al (eds), *The Oxford Compendium of National Legal Responses to Covid-19*, Oxford: Oxford University Press.



The lack of coordination among border regions of measures restricting cross-border mobility has led to a multitude of adverse effects on cross-border workers, economic activities and family interactions<sup>55</sup>. The situation has been described as authorities having taken ‘the decisions very quickly, without assessing the future consequences for border areas’, with corrective measures taken only subsequently to remediate the adverse effects on cross-border mobility in the border regions<sup>56</sup>.

For example, towards the end of May 2020, the Belgian Government approved cross-border family visits with its neighbouring countries. The Belgian Minister of the Interior specified that such cross-border mobility in the border regions would be permitted with all of Belgium’s neighbouring countries, including France<sup>57</sup>. However, this was almost immediately contradicted by France, where a lockdown was still in place<sup>58</sup>. Further confusion in the border regions was caused by the announcement on the Belgian side that cross-border shopping would also be permitted<sup>59</sup>.

## I.II Measures directed at restricting intra-EU+ mobility (Policy Stream 2)

Together with measures aimed at restricting domestic mobility, the COVID-19 pandemic has seen countries introducing measures aimed at reducing mobility across borders. Countries have justified the introduction of restrictions on – and policies discouraging – cross-border mobility as a means of preventing or limiting the influx of COVID-19 into the country, particularly at times of increasing burden on national healthcare systems.

The following two sections will set out the key developments in the policies of the Member States examined aimed at restricting cross-border mobility. Owing to the specificity of EU law and the Schengen area, it is necessary to examine cross-border mobility restrictions within the EU+ area separately from ‘international’ mobility restrictions. The term ‘EU+’ refers, in the context of this paper, to the 27 EU Member States, the four associated Schengen countries, the four European Microstates and the United Kingdom (until 31 December 2020)<sup>60</sup>.

The cross-border mobility restrictions identified in this paper range from outright entry bans (more specifically, entry bans for people coming from certain countries, or for symptomatic travellers) and restrictive entry conditions (such as a pre-entry medical document certifying a negative (PCR) test result for COVID-19 and completion of a Passenger Locator Form (PLF)), to mandatory testing and/or quarantine after entry, as well as a combination of the above<sup>61</sup>. The

<sup>55</sup> See Peyrony, Rubio and Viaggi (2021), op. cit., pp. 59-107.

<sup>56</sup> Ibid., p. 59.

<sup>57</sup> See Hope, A. (2020), ‘Cross-border family visits allowed from today’, *The Brussels Times*, 30 May.

<sup>58</sup> See Chini, M. (2020), ‘Belgians cannot visit family or shop in France yet’, *The Brussels Times*, 30 May.

<sup>59</sup> See Hope, A. (2020), ‘Coronavirus lockdown: Confusion reigns in border areas’, *The Brussels Times*, 31 May; Cokelaere, H. (2020) ‘Belgium bursts the Benelux bubble’, *Politico.eu*, 28 May.

<sup>60</sup> See Carrera and Luk (2020a).

<sup>61</sup> Ibid.



scope, target and duration of these restrictions within the EU+ area vary greatly across the Member States examined.

### *Key developments in intra-EU+ mobility restrictions*

Intra-EU+ mobility restrictions during the COVID-19 pandemic have generally been characterised by a reactive and restrictive response by Member States. In mid-March 2020, in response to evidence regarding the rising circulation of COVID-19 in Europe, first in Italy and Spain, nearly all of the Member States analysed (BE, BG, FI, FR, DE, HU, IT, LT, ES) started introducing entry bans from Member States ‘affected’ by COVID-19<sup>62</sup>. Either at the outset (BE, FI, FR, IT, LT) or as subsequent restrictions (BG, HU), many Member States moved towards a blanket ban on most entry from abroad (including EU+ countries). All of the Member States examined exempted their own nationals and (legal) residents from said entry bans.

Most of the Member States analysed (BE, DE, FR, IT) have limited exceptions to their entry bans in relation to ‘essential’ travel. In most cases, this concept of ‘essential’ travel has been vague and open to interpretation by the implementing authorities. While some Member States have drawn parallels with ‘reasons for essential travel’ from outside the EU+ area (BE, HU), others have either left the assessment of whether specific intra-EU+ travel is ‘essential’ to discretion (DE) or adopted limited reasons considered as ‘essential’ (FR, IT).

While the EU has issued guidance on ‘essential travel’ in the context of intra-EU+ mobility, particularly in the later stages of the pandemic (with the categories of ‘essential travel’ corresponding broadly to the same categories of travelers from outside the EU+ area)<sup>63</sup>, not all Member States have fully aligned their national definition of ‘essential travel’ to the EU’s recommendations (FI, FR, IT). Following the unilateral action undertaken by several Member States in response to the COVID-19 pandemic, the European Commission issued guidance documents in respect of COVID-19 response measures and various areas of Union law. The Commission’s *Guidelines for border management measures to protect health and ensure the availability of goods and essential services*<sup>64</sup> underlined several guiding principles for the Member States to follow in adopting measures restricting intra-EU+ mobility as a response to the COVID-19 pandemic. These include ensuring the continuity of transport of goods and services, ensuring access to healthcare, and a preference for health-related measures over entry bans (such as quarantine and health screening).

Following the initial reactive period, the period from April 2020 until around summer 2020 saw Member States gradually relaxing entry bans, as more and more exceptions and exemptions were introduced, and more and more Member States introduced alternative cross-border mobility restrictions in lieu of outright entry bans<sup>65</sup>. April 2020 saw the gradual introduction of

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<sup>62</sup> Cf. Carrera and Luk (2020b).

<sup>63</sup> Cf. Council Recommendation (EU) 2020/1475 of 13 October 2020 on a coordinated approach to the restriction of free movement in response to the COVID-19 pandemic, para. 19.

<sup>64</sup> C(2020) 1753 final.

<sup>65</sup> Cf. Carrera and Luk (2020a).

other forms of restrictions to intra-EU+ mobility in lieu of entry bans, including pre-arrival entry conditions, quarantines and other post-entry mandatory conditions (such as post-arrival testing). In respect of quarantines, all Member States examined have introduced such quarantines; however, while most Member States have imposed a quarantine as a mandatory condition for entry (BE, BG, DE, HU, IT, LT, ES), a number of Member States (FI, NL) have opted for strongly recommending a quarantine (without imposing one as a legal obligation). Specifically for France (FR), mandatory quarantine had been announced (and imposed) as a ‘reciprocal’ response to quarantine obligations imposed for travellers from France<sup>66</sup>.

From May 2020, several Member States moved towards a ‘colour coded’ list of countries (including EU+ countries), with travellers departing from those countries being subject to mobility restrictions (or, in the case of ‘green’ countries, being exempt from such restrictions). In a few Member States (DE, FI), this categorisation is explicitly stated to be based on ‘objective’ criteria of infection rate and/or medical capacity of the country of departure. Other Member States (HU, IT) categorise EU+ countries as ‘low’ or ‘high risk’ for COVID-19 without specifically denoting the criteria for this determination. Belgium<sup>67</sup> and Lithuania<sup>68</sup> explicitly note that their categorisation is based on information provided by the European Centre for Disease Prevention and Control (ECDC).

Most Member States with intra-EU+ mobility entry restrictions gradually moved towards lifting these restrictions between May and July 2020<sup>69</sup>. In light of the second and third ‘waves’ of COVID-19 infections in the EU Member States, however, several Member States (BE, FI, HU, IT, LT, NL) once again responded in a reactive manner, opting for reintroduction of intra-EU+ mobility restrictions towards autumn 2020 and spring 2021<sup>70</sup>. Nearly all such re-restrictions on intra-EU+ mobility have been limited to pre-arrival COVID-19 testing requirements or mandatory quarantine upon entry, but at least three Member States (BE, FI, HU) have, as of 31 January 2021, explicitly opted for (temporary) reintroduction of entry *bans* for (non-essential travel of) non-nationals<sup>71</sup>.

The rise of COVID-19 variants in the UK and South Africa saw the EU+ countries move towards a reintroduction of entry restriction from the UK towards the last weeks of December 2020. Given that the UK has formally been treated as a third country since 1 January 2021, it has been subject to restrictions for international (extra-EU+) mobility. The UK’s change of status in

<sup>66</sup> See ‘Coronavirus: France reveals reciprocal quarantine plans for UK arrivals’, *BBC News*, 23 May 2020.

<sup>67</sup> See Belgian Federal Public Service for Health, Food Chain Safety and Environment, ‘Colour codes by country’, <https://www.info-coronavirus.be/en/colour-codes-by-country/>.

<sup>68</sup> ‘Important information regarding the Coronavirus (COVID-19)’, website of the Lithuanian Ministry of Foreign Affairs, <https://urm.lt/default/en/important-covid19>.

<sup>69</sup> ‘Coronavirus: How lockdown is being lifted across Europe’, *BBC News*, 2 July 2020.

<sup>70</sup> Lonsdorf, K. (2020), ‘Europe Imposes New Restrictions as COVID-19 Cases Soar’, *NPR*, 25 October; Jones, S. et al. (2021), ‘Curfews and quarantines: Europe faces another Easter of Covid restrictions’, *The Guardian*, 2 April.

<sup>71</sup> See ‘EU Commission Urges Six Member States to Remove Some of Their COVID-19 Border Restrictions’, *SchengenVisaInfo News*, 24 February 2021, which reports that the Commission explicitly urged Member States to lift their border restrictions and adopt alternative, more targeted measures.

January 2021, coupled with enhanced restrictions adopted by various Member States as a result of the coronavirus variant in the UK<sup>72</sup>, has led to instances where UK nationals residing in an EU+ country were refused entry<sup>73</sup>.

In an attempt to coordinate cross-border mobility in the EU during the COVID-19 pandemic, in September 2020 the European Commission submitted a proposal setting out a more coordinated approach for restricting intra-EU+ mobility during the pandemic<sup>74</sup>. The Council adopted the Commission's recommendations in October 2020<sup>75</sup>. This coordinated approach is based on a number of foundational principles, including non-discrimination and proportionality. Council Recommendation (EU) 2020/1475 calls for the use of a common set of objective criteria to determine whether intra-EU+ mobility restrictions should be imposed, namely the '14-day cumulative COVID-19 case notification rate', the 'test positivity rate' and the 'testing rate'<sup>76</sup>. Based on these objective criteria, to be assessed by the ECDC, regions of the EU Member States will be mapped (by colour-code) as either green, orange or red<sup>77</sup>, with travel between green regions to be free from COVID-19-related restrictions. Centrally, the Recommendation also strongly discourages the use of entry bans for orange and red regions (with preference being given to quarantining or testing upon arrival)<sup>78</sup> and stipulates that travellers with an 'essential function or need' should not be required to quarantine after entry<sup>79</sup>.

It should first be noted that this 'coordinated' or 'EU' approach to governing cross-border mobility in the context of the COVID-19 pandemic is a *recommendation* to Member States, enshrined in a non-legally binding document (a Council Recommendation). From an EU law point of view, cross-border mobility within the EU+ area is still governed primarily by EU (free movement) law and the Schengen *acquis*. The measures adopted by Member States restricting intra-EU+ mobility raise questions about legality (such as whether the Schengen Borders Code (SBC) permits blanket entry bans within the Schengen area), the need for individualised assessment, and questions regarding proportionality and non-discrimination on the basis of nationality<sup>80</sup>.

<sup>72</sup> Cf. Henley, J., Jones, S., Giuffrida, A. and Holmes, O. (2020), 'EU to hold crisis talks as countries block travel from UK over new Covid strain', *The Guardian*, 20 December 2020.

<sup>73</sup> Cf. 'Tien Britten toegang tot Nederland geweigerd: gewoon bezoekje mag niet', *NOS Nieuws*, 3 January 2021; Keeley, G. (2021), 'Britons blocked from entering Sweden over Brexit and Covid rules', *Independent*, 4 January; McPartland, B. (2021), "'We warned you': Call for urgent action after Britons living in EU denied entry', *The Local*, 4 January.

<sup>74</sup> European Commission (2020e), *Proposal for a Council Recommendation on a coordinated approach to the restriction of free movement in response to the COVID-19 pandemic*, COM(2020) 499 final, Brussels, 4 September.

<sup>75</sup> Council Recommendation (EU) 2020/1475 of 13 October 2020 on a coordinated approach to the restriction of free movement in response to the COVID-19 pandemic.

<sup>76</sup> *Ibid.*, para. 8.

<sup>77</sup> The text adopted by the Council allows Member States to take into account 'additional criteria and trends', see Council Recommendation (EU) 2020/1475, para. 13(b).

<sup>78</sup> *Ibid.*, para. 17.

<sup>79</sup> *Ibid.*, para. 19.

<sup>80</sup> Cf. Carrera and Luk (2020a), pp. 59-64; Thym, D. and Bornemann, J. (2020), 'Schengen and Free Movement Law During the First Phase of the Covid-19 Pandemic: Of Symbolism, Law and Politics', *European Papers*, Vol. 5, No 3, pp. 1162-1165.

Particularly in light of this, the fact that some Member States (BE, FI, HU) still retained outright entry *bans* (as set out above) as of 31 January 2021 is particularly concerning. First, the use of entry bans instead of alternative forms of entry restrictions (quarantines and testing) is explicitly and strongly discouraged by Council Recommendation (EU) 2020/1475<sup>81</sup>. Moreover, the maintenance of bans on entry from within the EU+ area (for non-essential travel in the case of BE and FI) is particularly at odds, in respect of the rights of EU citizens under the Free Movement Directive, with the principle of proportionality and the requirement of individual assessments<sup>82</sup>.

This is compounded by a final, related development in respect of intra-EU+ mobility restrictions. Since March 2020, a significant number of EU Member States have invoked the possibility provided by the SBC to temporarily reintroduce controls at their internal borders (with most Member States having lifted their internal border controls by around July 2020)<sup>83</sup>. As noted by Carrera and Luk, the COVID-19 pandemic has seen an increasing *instrumentalised* use of the SBC by Member States, such as the ‘opportunistic’ use of other legal bases in the SBC to maintain internal border controls, raising questions as to whether Member States have met their increasing burden of proof to justify the threat of COVID-19 to their ‘public policy or internal security’<sup>84</sup>. These questions on the *instrumental* use of the SBC, the expansionist notions of public policy, and the increasing burden of proof on Member States, apply *a fortiori* to those Member States that, as of 31 January 2021, still have (temporary) internal border controls in place (FI), or that have reintroduced internal border controls (including BE, HU, ES)<sup>85</sup>.

### I.III Measures directed at restricting international (extra-EU+) mobility (Policy Stream 3)

The types of cross-border mobility restrictions set out in Section I.II above apply equally to restrictions on international (extra-EU+) mobility. These include entry bans, additional pre-arrival entry conditions, quarantine after entry and post-arrival testing. The primary difference observed in international mobility restrictions (compared to intra-EU+ mobility restrictions) is, generally, the maintenance of an entry ban for extra-EU+ travellers for non-essential reasons. With limited exceptions of Member States having adopted mobility restrictions on international travel in early March 2020, the general line on international mobility restrictions has been framed by the EU travel ban<sup>86</sup>, the content of which is set out below.

For those travellers from a non-EU+ country for whom travel is permitted (either for ‘essential travel reasons’ or as an exemption from the EU travel ban), the restrictions set out above for

<sup>81</sup> Cf. ‘EU Commission Urges Six Member States to Remove Some of Their COVID-19 Border Restrictions’, *SchengenVisaInfo News*, 24 February 2021.

<sup>82</sup> See Articles 27-30 of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC.

<sup>83</sup> See Carrera and Luk (2020a), pp. 18-23.

<sup>84</sup> Cf. *Ibid*, pp. 48-59.

<sup>85</sup> See European Commission (2021), ‘Full list of Member States’ notifications of the temporary reintroduction of border control at internal borders’.

<sup>86</sup> See Carrera and Luk (2020b).

intra-EU+ mobility (more specifically, pre-arrival COVID testing, mandatory quarantine upon arrival, etc.) have been applied equally to extra-EU+ arrivals. This results in the concurrent application of entry bans and other entry restrictions for third-country nationals intending to enter the EU+ area from abroad.

### *Key developments*

As noted above, the policies and restrictions in respect of entry by third-country nationals from outside the EU+ area have been shaped by the framework set out in the EU travel ban<sup>87</sup>. The EU travel ban, as proposed by the European Commission and adopted by the Council in mid-March 2020, recommends that Member States restrict mobility across the (EU+) external borders for non-essential travel. The Commission's proposal calls specifically for the exemption of EU+ nationals and residents from the entry restrictions across the external borders. Moreover, the proposal sets out an exhaustive list of reasons that should be considered as travel for 'essential' purposes, including healthcare workers, frontier workers, goods transport, diplomatic staff, transit passengers, travel for imperative family reasons and persons in need of international protection<sup>88</sup>.

The Member States examined have generally followed the recommended restriction of mobility across the EU(+) external borders, but divergences have been observed in respect of the reasons considered as 'essential for travel'. Notably, several Member States (FR, HU, IT, LT) do not explicitly exempt third-country nationals travelling to seek international protection or for other humanitarian reasons from the imposed entry ban<sup>89</sup>. The lack of explicit exemption of asylum seekers and persons in need of international protection by some Member States (in their implementation of the EU travel ban within the context of the external Schengen borders) sits at odds with the right to seek asylum (Article 14 of the EU Charter of Fundamental Rights) and the obligations of the Schengen countries vis-à-vis refugees and persons seeking international protection, including non-refoulement (Article 3.b SBC)<sup>90</sup>. This is compounded by observations throughout the COVID-19 pandemic of Member States adopting COVID-19-related measures directly impacting and restricting the right to seek asylum<sup>91</sup>.

The second major development in respect of international (extra-EU+) mobility restrictions started in June 2020. Following Council Recommendation (EU) 2020/912<sup>92</sup>, the EU travel ban

<sup>87</sup> The EU travel ban refers to the adoption by the Council of the EU, on 17 March 2020 (<https://www.consilium.europa.eu/en/press/press-releases/2020/03/17/conclusions-by-the-president-of-the-european-council-following-the-video-conference-with-members-of-the-european-council-on-covid-19/>), of the proposal by the European Commission for the introduction of coordinated temporary restrictions on non-essential travel to the EU (COM(2020) 115 final).

<sup>88</sup> See COM(2020) 115 final.

<sup>89</sup> Cf. Carrera and Luk (2020a), pp. 168-175.

<sup>90</sup> Ibid., p. 76.

<sup>91</sup> Ibid.; Ghezlbash, D. and Tan, N.F. (2020), 'The End of the Right to Seek Asylum? COVID-19 and the Future of Refugee Protection', *EUI Working Papers* RSCAS 2020/55, Florence, EUI, pp. 7-8. Cf. Vosyliute, L. and Luk, N.C. (2020), 'Protecting civil society space: strengthening freedom of association, assembly and expression and the right to defend rights in the EU', Study for the EP LIBE Committee PE 659.660, Brussels, European Parliament, October, pp. 68-70.

<sup>92</sup> Council Recommendation (EU) 2020/912 of 30 June 2020 on the temporary restriction on non-essential travel into the EU and the possible lifting of such restriction. Council Recommendation (EU) 2020/912 was most recently amended by Council Recommendation (EU) 2021/816 of 20 May 2021.

has been amended (to recommend Member States) to allow travel for non-essential reasons for residents of certain third countries considered as ‘safe’. The list of third countries exempted from the EU travel ban is subject to regular revision by the Council, based on certain epidemiological criteria set out in its Recommendation<sup>93</sup>. The Council Recommendation leaves it to the individual Member States to decide whether or not to permit such non-essential travel, but strongly urges the Member States not to exempt third countries not listed in the Recommendation.

Prior to September 2020, a number of Member States (BE, DE, HU) had opted not to exempt (all) third countries listed in the Council Recommendation from the EU travel ban<sup>94</sup>. As of 31 January 2021, however, only Hungary had an entry ban in place for (non-essential) travel from all third countries deemed ‘safe’ in Council Recommendation (EU) 2020/912 (as amended)<sup>95</sup>. While this deviation is, strictly speaking, permitted under the Council Recommendation (and without considering the non-binding nature of the Recommendation), an argument could be made that any (restrictive) deviation from the list of ‘safe’ countries set out by the Council does not satisfy the spirit of cooperation and coordination envisaged by the Recommendation.

On the other hand, Bulgaria markedly deviates from the Council Recommendation by opening its borders to non-essential travel from other (third) countries not listed in Annex 1 to the Recommendation<sup>96</sup>. This form of deviation to include additional countries not envisaged by the Council Recommendation may be more problematic. The argument has been raised that, notwithstanding the non-binding nature of the Council Recommendation, the language employed in said Recommendation (i.e. ‘should not decide’) could be interpreted as an agreement among the Member States, and is a crucial factor in ascertaining whether the EU Member States are complying with their ‘duty to cooperate’<sup>97</sup>. More liberal deviations from the list of ‘safe’ countries determined by the Council risks, particularly within the context of the Schengen area, creating situations where travellers from certain third countries are able to enter the Schengen area for non-essential travel<sup>98</sup>.

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<sup>93</sup> As of 31 January 2021, the criteria for determining whether a third country should be considered as ‘safe’ include whether the epidemiological situation in the third country is close to or below the EU average in terms of ‘infection rate’ (new COVID-19 cases over the past 14 days per 100 000 inhabitants) and whether the trend of new cases is stable or decreasing, as well as the overall ‘response’ of the third country in terms of e.g. testing, contact tracing, containment and treatment. It should be noted that non-epidemiological considerations have also played a crucial role in determining whether a third country should be considered as ‘safe’ for non-essential travel; see Carrera and Luk (2020a), p. 65.

<sup>94</sup> See Carrera and Luk (2020a).

<sup>95</sup> More specifically, Hungary has prohibited (with limited exceptions) the entry of all non-Hungarian nationals and residents.

<sup>96</sup> These (third) countries include Ukraine, North Macedonia, Albania, Kosovo, Bosnia and Herzegovina, Moldova, Israel, Kuwait, Belarus and Turkey. See Order No RD-01-50 of 26 January 2021 of the Minister of Health, item I.2.(a).

<sup>97</sup> See Carrera and Luk (2020a), p. 64.

<sup>98</sup> Cf. *ibid.*

## Section II – Sanctioning frameworks

### Key findings

- Member States have mechanisms in place to enforce and sanction non-compliance with mobility restrictions introduced in the context of the COVID-19 pandemic. Significant variance can be observed across the Member States in the type (criminal and/or administrative) of sanctions applied, the nature of the sanctions (fine or imprisonment) and their enforcement mechanisms.
- There is a clear trend towards the criminalisation of non-compliance with COVID-19-related restrictive measures, with Member States introducing specific penal provisions in their criminal codes or health codes.
- Criminalising deviations from emergency measures contained in constantly changing documents, and that are expressed in general or vague terms or include open clauses, stands in tension with key principles of criminal law, namely the principles of legality, proportionality and foreseeability. Moreover, such criminalisation exposes individuals to risk of arbitrariness, disproportionate sanctioning and abusive enforcement practices.
- Administrative sanctions have been employed by some Member States in lieu of criminal sanctions, except where violations of COVID-19-related restrictive measures amount to a more serious (criminal) offence. The decision to opt for administrative sanctioning of non-conformity with COVID-19-related measures has been based on the need to increase the fines applicable, or as a measure to reduce the workload of criminal courts.
- The extent of criminal or financial sanctions can also vary widely between Member States. Some Member States opt for setting a maximum amount of fines for violations, leaving the modalities for the application of the different (equal or lower) fines to local and regional governments. Other states opt for a fixed 'initial' fine for first-time offenders, leaving little to no room for the application of sanctions in proportion to the gravity of the offence committed.
- In respect of cross-border mobility, non-conformity with certain restrictions/measures (such as the obligation to quarantine or test for COVID-19 after entry) is subject to the same sanctioning framework set out with respect to domestic mobility restrictions. Specific to non-compliance with COVID-19-related measures in cross-border mobility, however, is where non-conformity with certain entry conditions introduced in light of the COVID-19 pandemic is 'penalised' by refusal to permit entry into the country.



## II.I Sanctions associated with domestic mobility restrictions

The vast majority of the Member States analysed have established mechanisms for the application of the domestic mobility restrictions introduced within their territories<sup>99</sup>. These mechanisms largely rely on a set of sanctions to be applied in different cases of non-compliance detected by the authorities responsible for monitoring implementation of the restrictions, and for securing their practical enforcement. The type (criminal and/or administrative) of sanctions applied and their nature (financial fine or imprisonment), as well as their severity, amount and enforcement mechanisms<sup>100</sup>.

Out of the ten countries analysed, seven (BE, BG, DE, HU, ES, FR, IT) directly associate criminal sanctions with non-compliance with COVID-19-related measures, including mobility restrictions such as curfews or lockdowns. This reflects a clear trend towards the criminalisation of non-compliance.

Different approaches have been adopted in terms of the ways in which cases of non-compliance with domestic mobility restrictions have been criminalised. Some countries (BG) have directly amended their criminal code to include new penalties for not observing quarantine or other COVID-19-related measures<sup>101</sup>. Other countries (BG, DE, FI) have introduced express penal provisions in public health legislation to sanction persons who, through wilful or negligent conduct, breach measures adopted to protect public health (including, in certain cases, mobility restrictions). In some Member States (BE, IT, HU, FR) the criminalisation of non-compliance with domestic mobility restrictions has occurred through the inclusion, in state of emergency measures, of references to incriminating norms already set out in national criminal codes, or in national laws dealing with internal security or public order. In other countries (ES), what is sanctioned is chiefly non-compliance with – or resistance to – orders of the authorities competent to enforce the restrictions imposed under the state of emergency.

As indicated above, since the start of the pandemic, the Member States analysed have introduced a wide range of emergency measures of different natures. These measures range from the express mandatory requirement to quarantine or self-isolate in certain situations (BE, BG, HU, ES, DE, FR, FI, IT, LT, NL) to general behavioural prescriptions and indications contained in public authority guidelines (BE, DE, FI, NL), which in some cases are communicated informally (e.g. through ‘Frequently Asked Questions’).

Criminalising deviations from emergency measures contained or specified in documents (including non-legally binding ones) that are constantly being updated, and that often express general or vague rules of conduct or include open clauses referring to ‘compliance with any other measures’ adopted by the authorities to limit the spread of the virus, generates tensions with the principles of legality, proportionality and foreseeability. And yet, the consistent

<sup>99</sup> A country-by-country overview of such sanctions is included in Annex to this Report.

<sup>100</sup> Cf. Carrera and Luk (2020a).

<sup>101</sup> See ‘Какво всъщност се промени в Наказателния кодекс заради извънредното положение’ [What actually changed in the Criminal Code as a result of the state of emergency], *Lex.bg News*, 27 March 2020.



application of such principles is of key relevance in the criminal law domain, which requires that all restrictions on rights be clearly and precisely set by law.

A similar approach to criminalisation not only undermines any real possibility of consistent compliance, but also exposes individuals to risks of arbitrariness, disproportionate sanctioning and abusive enforcement practices. Numerous reports indicate, for instance, how the ambiguous formulation of exceptions to general mobility restrictions, including the possibility to move only to buy ‘essential goods’ (ES, FR) or for ‘reasons of necessity’ (IT) have led to abuses in sanctions, discriminatory checks or excessive use of enforcement powers, including force, during identification and arrest procedures<sup>102</sup>.

Some of the Member States analysed do not (or do not only) sanction breaches of the mobility restrictions per se, but rather (or also) criminalise such conduct when/if they constitute another offence. For instance, spreading infectious diseases negligently or wilfully (including, for instance, through non-compliance with quarantine requirements) constitutes a standalone criminal offence in several of the countries analysed (BG, ES, DE, FI, IT, NL). However, it appears that in some Member States, sanctioning efforts have focused more on the enforcement of public order measures, rather than on preventing or punishing conduct directed at – or connected with – the spread of the virus. In Bulgaria, for instance, the sanction for someone suffering from an infectious disease who refuses to comply with mandatory isolation can attract a maximum financial fine (BGN 5 000, approximately EUR 2 500)<sup>103</sup>. Such penalty is ten times lower than the maximum amount (BGN 50 000, approximately EUR 25 000)<sup>104</sup> foreseen for violation of general ‘security measures’ adopted under the state of emergency.

In terms of administrative sanctions, the majority of the countries analysed (BE, BG, DE, ES, FR, HU, IT, LT, NL) apply them as an alternative to criminal sanctions, except in cases where breaching COVID-19-related measures (including, where applicable, domestic mobility restrictions) amounts to a more serious offence associated with a criminal penalty. Some countries, however, introduced administrative sanctions specifically to reduce the workload of criminal courts and speed up the enforcement procedure. In Belgium, for instance, the government authorised municipalities to resort to administrative sanctions of a minimum of EUR 250, with judicial proceedings being limited to cases dealing with minors or repeated or concurrent offences<sup>105</sup>. And yet, it has been reported that not all municipalities in the country

<sup>102</sup> For Spain, see Defender a quien Defiende (2020), ‘Human rights and support networks in times of pandemic’, Civic Space Watch, 9 July. For Italy, see ‘Avvocati di Strada, annullata la multa ai senzatetto inflitta durante il blocco per la pandemia: Illegittimo sanzionare chi era senza alloggio’, *La Repubblica*, 18 September 2020. For France, see Human Rights Watch (2020a), ‘France: End Discriminatory Police Checks and Fines’, 15 May.

<sup>103</sup> Amendment to the Health Act, 14 March 2020

<sup>104</sup> Criminal Code Amendment Act, 14 March 2020.

<sup>105</sup> Arrêté royal n° 1 portant sur la lutte contre le non-respect des mesures d'urgence pour limiter la propagation du coronavirus COVID-19 par la mise en place de sanctions administratives communales, 6 April 2020. <http://www.ejustice.just.fgov.be/eli/arrete/2020/04/06/2020020733/moniteur>.

currently have the legal framework in place for the application of such sanctions, and some have expressly refused to use it<sup>106</sup>.

In other countries, the introduction of new administrative sanctions associated with the violation of domestic mobility restrictions responded to the objective of increasing criminal fines otherwise applicable to cases of non-compliance with public official orders. In Italy, for instance, the state of emergency decree introduced administrative fines, the maximum of which (up to EUR 400) is higher than the maximum financial sanction (up to EUR 206) foreseen in the criminal code for non-observation of a public authority's order.

In terms of severity of amounts, the criminal or financial sanctions associated with cases of non-compliance with domestic mobility restrictions (including quarantine requirements) vary significantly from country to country. While some Member States foresee the application of high financial fines and even custodial sentences for cases of unauthorised domestic movement, countries that do not expressly prohibit or limit domestic movement (FI, LT, NL) do not associate any sanctions specifically with such behaviours. The nature and amount of the sanctions applied may also vary within individual countries. In Germany, in particular, the central government has established a maximum amount for violations of health regulations (EUR 25 000). It is, however, for federal government authorities to modulate the financial amount of fines, which in fact appear to vary significantly across the country.<sup>107</sup>

In other countries, a fixed fine has instead been set for any breach of the rules. Belgium, for instance, imposes a fixed fine of EUR 250 for 'first-time offenders' (this can rise to EUR 4 000 for serious or repeat offences). Such a fine can be settled amicably (through a so-called '*transaction pénale*') without recourse to criminal proceedings. It has been noted, however, that this approach does not allow for sentences to be proportionate to the gravity of the offence committed, which also is a key principle of criminal law.

In light of the varying approaches adopted by different countries to sanctioning non-compliance with COVID-19-related restrictions, and in consideration of the severe penalties introduced by some Member States to punish and criminalise breaches of emergency measures, leading European civil society organisations have called for EU countries to review all COVID-19-related charges and forms of prosecution<sup>108</sup>.

Member States have been advised to 'urgently review all charges, convictions and fines imposed for alleged COVID-19 offences' and, in particular, to lift any disproportionate, illegal or abusive charges, convictions and fines. It has also been recommended that Member States develop an easy procedure by which people can ask for a fine imposed during the emergency to be lifted, including on the basis of financial hardship. States have furthermore been urged to ensure that any records relating to violations of COVID-19 laws are expunged from criminal records and police databases.

<sup>106</sup> Fair Trials (2020), 'Commentary: 73 000 alleged COVID-19 breaches in Belgium – now is time to launch a review', 30 June.

<sup>107</sup> Kaiser and Hensel (2021), op. cit., section 2.

<sup>108</sup> JUSTICIA European Rights Network (2020), 'JUSTICIA calls for action against disproportionate COVID-19 criminalisation'.

## II.II Sanctions associated with cross-border mobility restrictions

Generally, the approach to sanctions associated with intra-EU+ and international mobility restrictions follows the sanctions set out above for domestic mobility restrictions<sup>109</sup>. The most common sanctions attached to non-conformity with cross-border mobility restrictions in the EU are criminal fines, prison sentences and/or administrative fines<sup>110</sup>. To the extent that it can be considered a sanction, certain EU Member States have also introduced mandatory post-arrival testing and quarantine upon arrival for certain categories of persons arriving from abroad (most notably its own nationals). The most severe sanction observed for non-conformity with health-related entry conditions is an entry ban<sup>111</sup>. In respect of sanctioning, it can be observed that Member States have not introduced any form of sanctions *specific* to either intra-EU+ mobility or international mobility. For the purpose of the analysis in this section, therefore, sanctions related to both Policy Stream 2 (intra-EU+ mobility restrictions) and Policy Stream 3 (international mobility restrictions) shall be examined together.

Sanctions related to cross-border mobility restrictions are applied in specifically defined cases, including the violation of quarantines after arrival and non-compliance with mandatory testing after arrival. For example, the sanction attached to non-compliance with the obligations to submit to COVID testing and to quarantine upon arrival to Belgium from a 'red' country is a fine of a minimum of EUR 250<sup>112</sup>. Similarly, non-adherence to quarantine obligations is subject to a fine of up to EUR 3 000 in Germany<sup>113</sup>, while non-conformity with entry requirements (such as a pre-arrival negative COVID test result) is linked to a fine of EUR 135 in France<sup>114</sup>, a fine of EUR 500 to EUR 1 500 in Lithuania<sup>115</sup> and up to EUR 6 000 in Spain<sup>116</sup>.

Sporadically publicised data demonstrates a lack of effective implementation and enforcement. For example, in Belgium, data based on submitted PLFs indicate that around 40% of people entering Belgium from a 'red zone' in January 2021 did not comply with the obligation to submit to domestic testing<sup>117</sup>. It has been observed that, while a fine of a minimum of EUR 250 may be issued for not complying with the obligation to be tested for COVID-19 after entry<sup>118</sup>, the

<sup>109</sup> Cf. Carrera and Luk (2020a).

<sup>110</sup> Ibid., pp. 37-39.

<sup>111</sup> Ibid., pp. 39-40.

<sup>112</sup> Cf. Paelinck, G. (2021), 'Vandenbroucke: "Wanneer reizigers zich niet laten testen, gaat informatie tegen 1 april rechtstreeks naar de politie"', *VRT NWS*, 5 February.

<sup>113</sup> 'Bußgeld: Das kosten Verstöße gegen Corona-Regeln', *NDR*, 28 August 2020.

<sup>114</sup> Dew, P. (2021), 'Contrôles aux frontières: ce que je risque si je n'ai pas de test PCR pour entrer en France', *LA VOIX DU NORD*, 5 February.

<sup>115</sup> Kalinsko, J. (2021), 'SAM primena: ko reikia atvykstant į Lietuvą, kokios baudos gresia ir kam galioja išimtys', *15min.lt*, 17 March.

<sup>116</sup> 'Las multas a los viajeros que lleguen a España sin PCR serán de hasta 6.000 euros, según Exteriores', *Público*, 13 November 2020.

<sup>117</sup> See 'Meer dan 40 procent laat zich niet testen bij terugkeer uit rode zone', *HLN.be*, 31 January 2021.

<sup>118</sup> See 'Wie terugkeert uit een rode zone en zich niet laat testen, krijgt 250 euro boete', *VRT NWS*, 19 January 2021; Walker, L. (2021), 'How travel will work after Belgium lifts its non-essential travel ban', *The Brussels Times*, 14 April.

actual enforcement of this obligation had been lacking<sup>119</sup>. More recently, a lack of effective information sharing has led to people being confronted by the police for not submitting to the mandatory post-arrival COVID testing, despite having had such a test at the airport upon arrival<sup>120</sup>.

An additional aspect to intra-EU+ and international mobility restrictions observed in some Member States is the entry ban for travellers who do not meet the conditions for entry, or who display symptoms of COVID-19. An explicit example of this is the regime that was applicable in Hungary prior to September 2020, whereby the entry of non-Hungarian nationals (and residents) from countries designated as ‘less severe’ was subject to testing for COVID-19 immediately upon arrival. A positive test result would result in the refusal of entry<sup>121</sup>. More implicit examples of denial of entry can be observed where the legislative or regulatory instruments attach additional conditions for entry (of non-nationals)<sup>122</sup>.

*Table 2. Sanctions for non-conformity with cross-border mobility restrictions*

Member State	Legal provision governing sanctions for non-conformity	Distinctions between intra-EU+ and extra-EU+ mobility restriction-related sanctions
<b>Belgium</b>	Ministerial Decree of 28 October 2020, as amended: <ul style="list-style-type: none"> <li>Art. 26 (jo. Art. 187 Civil Security Act): prison sentence and/or fine</li> <li>Implicit from Art. 21(1) and(2): entry ban for non-essential travel from countries other than EU+ and specific third countries</li> </ul>	<ul style="list-style-type: none"> <li>Art. 21(2) Ministerial Decree explicitly states that extra-EU+ travelers who cannot demonstrate an ‘essential reason’ for travel are to be denied boarding;</li> <li><b>Art. 21(3) Ministerial Decree explicitly states that extra-EU+ travelers who do not submit a PLF <i>may be denied entry</i>, whereas no similar sanction has been explicitly attached to non-compliance to entry from intra-EU+ countries.</b></li> </ul>
<b>Bulgaria</b>	No explicit provision referencing sanction in Order No. RD-01-50. As Order No. RD-01-50 was taken pursuant to Health Act, the following provisions in the Health Act may be relevant: <ul style="list-style-type: none"> <li>Art. 209a: fine for non-compliance with Orders adopted under Health Act</li> <li>Art. 215a: fine for non-compliance with mandatory quarantine</li> </ul>	No explicit distinctions in sanctions between intra-EU+ and extra-EU+ travels have been observed. However, Order No. RD-01-50 explicitly makes a distinction between Bulgarian nationals (their family members, and other Bulgarian residents) and foreign nationals, namely that the former can enter Bulgaria without a negative COVID test result (but then subject to mandatory quarantine of 10 days), see Art. I, under 8.
<b>Finland</b>	Government Decision SM/2021/5: explicitly states that persons not meeting entry conditions (including those listed in the Decision) may be refused entry based on the Border Guard Act (see also Government Decision SM/2021/6).	No explicit distinctions between sanctions in respect of intra-EU+ and extra-EU+ mobility restrictions have been found.

<sup>119</sup> ‘Nog geen enkele boete voor reizigers die zich niet lieten testen’, *HLN.be*, 2 February 2021.

<sup>120</sup> Hiroux, D. (2021), ‘Doorgeven gegevens testcentrum op de luchthaven stukt, lokale politie: “Bij helft van controles lijken mensen toch getest”’, *VRT NWS*, 12 May.

<sup>121</sup> Government Decree 341/2020 of 12 July 2020, §5.

<sup>122</sup> Cf. Dew, P. (2021), ‘Contrôles aux frontières: ce que je risque si je n’ai pas de test PCR pour entrer en France’, *LA VOIX DU NORD*, 5 February.

	Moreover, the Communicable Diseases Act (1227/2016), section 88, and the Criminal Code (39/1989), Chapter 44, section 2, set a prison sentence and/or fine for non-compliance with health measures.	
<b>France</b>	Decree No. 2020-1310, as amended: <ul style="list-style-type: none"> <li>Art. 56-5, under II: passenger entering from outside the EU+ who cannot demonstrate proof of 'essential travel' may be denied entry</li> </ul>	<b>As explicitly set out in Decree No. 2020-1310, persons entering France from outside the EU+ must be in the possession of a document justifying their 'essential travel', barring which their entry may be denied. No corresponding provision has been found for entry from EU+ countries.</b>
<b>Germany</b>	Coronavirus-Einreiseverordnung (§9) and Infektionsschutzgesetz (§73(1a), under 24, and §74(1): prison sentence and/or fine for non-compliance with COVID measures	No explicit distinctions between sanctions in respect of intra-EU+ and extra-EU+ mobility restrictions have been found.
<b>Hungary</b>	Government Decree 408/2020 (VIII.30), as amended (§18), in conjunction with the Act II of 2012 on Infringements, Infringement Procedure and Infringement Registration System identifies non-compliance with health/epidemic measures as an offence.	No explicit distinctions between sanctions in respect of intra-EU+ and extra-EU+ mobility restrictions have been found.  However, an explicit distinction was made in Government Decree 408/2020 between entry from Hungarian nationals (§2-§4, entry subject to COVID test and/or quarantine) and foreign nationals (§5-§7, entry generally prohibited)
<b>Italy</b>	No explicit sanctions in DPCM of 14 January 2021; however, Decree-Law No. 19 of 25 March 2020, as converted by Act No. 35 of 22 May 2020, as most recently amended, provides as sanctions for non-conformity an administrative fine (see Art. 4);	No explicit distinctions between sanctions in respect of intra-EU+ and extra-EU+ mobility restrictions have been found.
<b>Lithuania</b>	Neither Order V-1680 of 17 July 2020 (setting quarantine and testing conditions for entry from abroad), Order V-352 of 12 March 2020 (general quarantine obligations in light of COVID), nor Order V-1463 of 15 June 2020 (setting COVID-related entry conditions) explicitly detail sanctions for non-compliance. Moreover, The Civil Protection Act (see Art. 39) and Act on Prevention and Control of Communicable Diseases of Humans (see Art.40) sanction non-conformity in general terms ('liable in accordance with the laws of the Republic of Lithuania').	No explicit distinctions between sanctions in respect of intra-EU+ and extra-EU+ mobility restrictions have been found.
<b>Netherlands</b>	n/a (No formal legislation, applicable on 31 January 2021, setting additional COVID-related entry conditions and/or sanctions for non-compliance have been found)	n/a
<b>Spain</b>	Cf. Resolution of 11 November 2020 (BOE. No. 298 of 12 November 2020), ninth paragraph, in conjunction with Title VI of General Public Health Act (Act No. 33/2011): fines	No explicit distinctions between sanctions in respect of intra-EU+ and extra-EU+ mobility restrictions have been found.

It can be observed that the *types of sanctions* do not differ between intra-EU+ and extra-EU+ mobility restrictions. Rather, to the extent that there are differences, these result from the differences in *entry conditions* between intra-EU+ mobility and international mobility introduced as a response to COVID-19. Moreover, most regulatory instruments governing mobility restrictions during the pandemic generally defer the issue of sanctions to more general legislation, such as legislation on civil protection, health acts, communicable diseases acts or criminal codes.

## Section III – Implementation

### Key findings

- The implementation of measures limiting domestic movement has primarily been entrusted to interior ministries, the police and law enforcement authorities. In some Member States, the armed forces or security forces are further involved in the enforcement of domestic mobility restrictions introduced in light of COVID-19.
- The large-scale recourse to enforcement by police and security forces of COVID-19 mobility restrictions through patrolling, identification and screening procedures has led to a large amount of discretion being given to police and public security actors. In many Member States this has led to instances of abuse of power, arbitrary or discriminatory checks and excessive use of force.
- The implementation of cross-border mobility restrictions is, in respect of restrictions and conditions applied after entry (e.g. quarantine and post-arrival testing), in the hands of the same authorities as for domestic mobility restrictions. For restrictions on cross-border mobility introduced in light of the COVID-19 pandemic that impose additional conditions for entry, their implementation has primarily been entrusted to police authorities (in the case of land borders) and border management authorities. Issues identified in this respect include the appropriateness of entrusting border management authorities with the verification of (mostly) health-related conditions. Another identified trend is the involvement of non-governmental actors (such as flight carriers) in the enforcement of COVID-19-related entry conditions (e.g. a pre-arrival negative COVID-19 test result).
- The implementation and enforcement of COVID-19-related measures in the Member States have brought about a dramatic expansion in the use of digital surveillance and new technologies, including the use of drones to patrol public spaces, an increase in law enforcement authorities obtaining telecommunications data to monitor compliance with mobility restrictions, systematic collection of data on travellers through PLFs, and expansion of interoperability of various databases.
- The expanding use of data-driven technologies in the implementation and enforcement of COVID-19 mobility restrictions has raised serious fundamental rights and rule of law concerns. Questions arise concerning the necessity and proportionality of such measures, their compatibility with privacy rights and purpose limitation of data processing. Moreover, concerns may be raised about the use of these surveillance measures for other purposes, including restricting other individual freedoms unrelated to the fight against the COVID-19 pandemic.

### III.I Implementation of domestic mobility restrictions

The implementation of measures limiting domestic movement has largely been entrusted to police and law enforcement authorities.

In all of the countries examined that have introduced domestic mobility restrictions, the responsibility to secure the implementation of COVID-19 restrictions has been entrusted to interior ministries at national or subnational (federal or regional) level. In some states (BG, HU, ES) the declaration of the state of emergency has also prompted the deployment of the armed forces to enforce domestic mobility restrictions. In other countries (BE, FR, IT) deployment of the military for the purpose of patrolling public spaces was already allowed prior to the outbreak of the pandemic, and has only been reconfirmed or reactivated under the COVID-19 state of emergency.

Several Member States have resorted to extraordinary forms of territorial control and surveillance of their citizens. These include patrols by security forces to ensure compliance with curfews and lockdowns (BE, BG, DE, ES, FR, HU, IT, LT), ‘randomised’ identity checks to verify certifications or self-certification requirements (BE, BG, ES, FR, HU, IT), the creation of check points at the entry and exit points of certain municipalities, regions or federal states (BG, ES, FR, FI, IT) to limit inter-city or inter-regional travel to ‘essential reasons’ or other ‘legitimate purposes’, the dispersal of gatherings and unauthorised assemblies in public spaces (BE, BG, DE, ES, HU, FR, IT, NL), and widespread collection and processing of personal data for the ordering, implementation, monitoring and execution of applicable measures.

Not all of the countries covered by the analysis publish official data on the actual number of agents deployed to perform such tasks. In several of the Member States analysed (ES, DE, FR, IT), the ministries of interior have expressly announced their decision to increase the number of law enforcement agents and/or military forces especially tasked with policing compliance with COVID-19-related restrictions.

The French Interior Minister announced that, as of October 2020, a total of 12 000 law enforcement officers (*gendarmes*) would be tasked with ensuring the curfew<sup>123</sup>. In November 2020, the total number of law enforcement officials deployed across the country reportedly increased to 250 000 units to enforce the second lockdown’s rules<sup>124</sup>.

The Italian Ministry of Interior announced that during the 2020 winter holiday period a total of 70 000 police agents would be deployed to implement domestic mobility restrictions and apply sanctions for cases of non-compliance<sup>125</sup>. These agents would be supported by approximately

<sup>123</sup> Ministère De l’Intérieur, ‘COVID-19 : rétablissement de l’état d’urgence sanitaire et couvre-feu décrété en Île-de-France et dans huit grandes métropoles’, <https://www.gendarmerie.interieur.gouv.fr/zooms/covid-19-retablissement-de-l-etat-d-urgence-sanitaire-et-couvre-feu-decrete-en-ile-de-france-et-dans-huit-grandes-metropoles>.

<sup>124</sup> ‘EN DIRECT – Covid-19 : ce qu’il faut retenir de la journée du 15 décembre’, *Les Echos*, 15 December 2020.

<sup>125</sup> ‘Natale e spostamenti, 70.000 agenti in strada. Controlli anche alle frontiere, da domani torna lo shopping’, *Il Messaggero*, 5 December 2020.



7 500 armed forces units already specifically tasked with domestic patrolling duties under the so-called ‘secure streets’ operation (*‘Operazione strade sicure’*).

The Spanish Interior Ministry announced in October 2020 the deployment of 7 000 ‘police officers and security personnel’ to enforce mobility restriction measures imposed on the Madrid region ‘at various exit and access points of the region under state of emergency’.

In Germany, responsibility for the police lies mainly with the 16 federal states, all of which operate differently when it comes to enforcing the rules. However, the central government has repeatedly stated that the approximate 40 000 officers of the federal police (who oversee border security) can also support the state police if necessary. In December 2020, the Federal Government Ministry of Interior stressed that ‘in coordination with the states, federal police will deploy thousands of officers’<sup>126</sup>.

The large-scale recourse to patrolling operations, identification and screening procedures, and enforcement powers have given a large amount of discretion to national police and a wide range of other public security actors. The latter are ultimately responsible for applying and interpreting mobility restrictions on the ground, deciding on what qualifies as ‘legitimate’ or ‘essential’ movement and what does not, and determining which personal, work and family needs justify mobility, including by establishing the exact ways in which individuals can prove that they meet medical or professional requirements, or criteria such as residence.

In France, the vague formulation of some of the measures restricting the right to freedom of movement to tackle COVID-19, for instance those only allowing freedom of movement when purchasing ‘essential goods’, has reportedly resulted in police abuse of power, including arbitrary and discriminatory identity checks and unlawful use of force<sup>127</sup>. This has led to complaints being filed with the French Ombudsperson, the Inspection Générale de la Police Nationale (IGPN), the body tasked with investigating allegations of excessive use of force by police<sup>128</sup>.

In Spain, unclear instructions to the population and the lack of unequivocal protocols for the law enforcement authorities to implement restrictions has led to thousands of arrests, and evidence exists of different police interventions where sanctions were applied arbitrarily, or through excessive use of force during identification and arrest procedures. Such practices have prompted an investigation by the Spanish Ombudsman<sup>129</sup>. The Spanish Ombudsman also claims to have forwarded to the Ministry of the Interior complaints from citizens about the restrictions

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<sup>126</sup> Siebold, S. (2020), ‘Thousands of German police plan to hunt out lockdown breakers’, *Reuters*, 29 October.

<sup>127</sup> Amnesty verified 15 videos of instances of unlawful use of force and/or racist and homophobic insults by law enforcement officials from 18 March to 26 April 2020 in 15 different French cities. The majority of the videos (10) were filmed in the Paris region. Other cases occurred in Marseille, Toulouse, Lorient and Limoges. In six out of the 15 videos, law enforcement officials were enforcing lockdown measures.

<sup>128</sup> See, for instance, an open letter written by the Eritrean community, available at <http://www.psmigrants.org/site/13-04-2020-lettre-ouverte-violences-policieres-a-calais/>.

<sup>129</sup> Defensor del Pueblo (2020), ‘Más de un millar de quejas por el Covid-19’, 3 April.

on movement imposed after the state of alarm was declared, as well as letters from people reporting improper actions by the state security forces<sup>130</sup>.

In Italy, some cases of violent police intervention are reported to have occurred in the enforcement of lockdown measures, which included a prohibition on public gatherings<sup>131</sup>. While most of the violent episodes were linked to police interventions to disperse public gatherings (including in particular protests against the restrictive measures)<sup>132</sup>, it should be reminded how the objective of ensuring compliance with the lockdown measures to combat the COVID-19 pandemic does not automatically justify the use of force against individuals who do not pose any threat to law enforcement officials.

In Bulgaria, the use of force – including by the armed forces – has been expressly authorised when ‘absolutely necessary’ to enforce restrictions<sup>133</sup>. No clear definition is provided in the law, however, of what constitutes ‘absolute necessity’.

In some of countries analysed, government authorities have developed guidelines to help police agents in applying the restrictions, including those related to domestic mobility. In Belgium, for instance, the public prosecutor published guidelines to be followed in the enforcement of COVID-19-related measures<sup>134</sup>. These guidelines have, however, failed to prevent state of emergency restrictions being enforced in ways that have been found to be disproportionate (use of force), discriminatory (focusing on specific groups of the population and ethnic minorities) and sometimes even incoherent with the very objective of containing the spread of the virus<sup>135</sup>.

In other countries, guidelines produced by the government, local authorities or public prosecutor have even promoted a discriminatory approach to enforcing COVID-19 restrictions. This is the case for Bulgaria, where upon express indication by the Public Prosecutor’s Office in Sofia<sup>136</sup>, several municipalities decided to deploy law enforcement officials to patrol Roma neighbourhoods, and in particular to prevent people from leaving their settlements.

<sup>130</sup> See FRA (2020b), ‘Country research – Coronavirus pandemic in the EU – Fundamental Rights Implications – Spain’, May, p. 3.

<sup>131</sup> Amnesty International (2020a), ‘Policing the Pandemic: Human Rights Violations in the Enforcement of COVID-19 Measures in Europe’, June, p. 24.

<sup>132</sup> ‘Covid: Protests take place across Italy over anti-virus measures’, *BBC News*, 27 October 2020.

<sup>133</sup> Measures and Activities during the State of Emergency Declared by Decision of the National Assembly of 13 March 2020 Act, 24 March 2020, Articles 9 and 10.

<sup>134</sup> On 25 March 2020, the public prosecutor published its guidelines on the enforcement of COVID-19-related measures, see Collège des procureurs généraux (2020), ‘Directives du Collège des procureurs généraux relatives à la mise en œuvre judiciaire de l’arrêté ministériel du 24 mars 2020 modifiant l’arrêté ministériel du 23 mars 2020 portant des mesures d’urgence pour limiter la propagation du coronavirus COVID-19’, 25 March.

<sup>135</sup> Ligue des Droits Humains and Police Watch (2020), ‘Rapport Police Watch – Abus policiers et confinement’, July.

<sup>136</sup> Ваксберг, Т. (2020), “Съгласни сме с мерките, но да са еднакви за всички”. Какво прави полицията в ромските махали’, *Radio Free Europe*, 20 March; ‘Полиция влезе в кв. “Факултета” и “Христо Ботев”’, *Vesti.bg*, 19 March 2020.

In substance, it emerges how the wide discretionary powers given to the security authorities entrusted with enforcing health-related restrictions have increased legal uncertainty and divergences in the application of the envisaged policies on the ground.

### III.II Implementation of cross-border mobility restrictions

The implementation of COVID-19-related measures in the context of cross-border mobility can be grouped into two categories: entry restrictions applied after arrival from abroad (e.g. quarantine) and conditions stipulated for entry. In the case of the former (mobility restrictions related to the arrival of travellers that are applied after entry), the implementation of such measures generally follows the situation outlined above in respect of domestic mobility restrictions. The evaluation of whether a traveller is subject to and is complying with, for example, a mandatory quarantine is, in most Member States, conducted by public health authorities, often through phone calls or spot checks<sup>137</sup>.

Practical enforcement in cases of perceived non-compliance is in the hands of the police or law enforcement authorities. For example, the enforcement of the obligation to quarantine and be tested for COVID-19 upon arrival in Belgium from a country or region marked as a ‘red zone’ is entrusted to the police<sup>138</sup>. Similarly, the police are entrusted with the enforcement of mandatory quarantine for travellers arriving in France<sup>139</sup>.

As regards entry restrictions and conditions, implementation thereof has been attributed to Member States’ border management authorities (FI<sup>140</sup>, DE<sup>141</sup>, HU and police authorities (BE<sup>142</sup>, FR<sup>143</sup>, DE<sup>144</sup>). This raises several concerns. First, some countries use ‘vague’ entry criteria, subject to discretionary interpretation by the border management authorities. For example, Germany explicitly notes that the determination of whether people entering the country are travelling for ‘essential reasons’ is wholly within the discretion of the border control officers<sup>145</sup>.

<sup>137</sup> Patel, J., Fernandes, G. and Anchuri, K. (2021), ‘Self-Isolation: Support, Monitoring and Adherence. A scoping review of international approaches’, *Global Health Governance Programme COVID-19 Policy Series*, University of Edinburgh, 20 January.

<sup>138</sup> See Paelinck, G. (2021), ‘Vandenbroucke: “Wanneer reizigers zich niet laten testen, gaat informatie tegen 1 april rechtstreeks naar de politie”’, *VRT NWS*, 5 February.

<sup>139</sup> Cf. ‘Covid-19 : les voyageurs en quarantaine désormais contrôlés par la police française’, *Le Figaro*, 26 April 2021.

<sup>140</sup> See Finnish Border Guard, ‘Guidelines for border traffic during pandemic’, <https://raja.fi/en/guidelines-for-border-traffic-during-pandemic>.

<sup>141</sup> ‘Coronavirus: Fragen und Antworten’, website of the German Federal Ministry of the Interior, <https://www.bmi.bund.de/SharedDocs/faqs/DE/themen/bevoelkerungsschutz/coronavirus/coronavirus-faqs.html>.

<sup>142</sup> See Van Hoorn, M. (2021), ‘Belgische politie gaat systematisch grenscontroles uitvoeren op naleven coronaregels’, *Business Insider*, 1 January.

<sup>143</sup> Dew, P. (2021), ‘Contrôles aux frontières: ce que je risque si je n’ai pas de test PCR pour entrer en France’, *La Voix du Nord*, 5 February.

<sup>144</sup> Cf. Ziegele, M. (2020), ‘Corona-Regeln in Hessen – Strafen bis zu 5000 Euro möglich’, *Frankfurter Neue Presse*, 29 April.

<sup>145</sup> See ‘Coronavirus: Fragen und Antworten’, op. cit.

This raises concerns about the potential for arbitrary decision making in respect of cross-border mobility. Moreover, it is questionable whether the enforcement of health-related measures and criteria should be attributed to border management authorities at all<sup>146</sup>.

In the case of cross-border mobility by (international) passenger transportation (such as by air), several Member States (BE<sup>147</sup>, IT<sup>148</sup>, ES<sup>149</sup>) have explicitly placed a duty on the carrier to deny boarding if the passenger does not meet the (additional) conditions for entry. Similarly, indications of carriers' obligations to ensure compliance with (COVID-19-related) entry requirements can be observed in France<sup>150</sup>.

For example, as on 31 January 2021, passenger transport companies or carriers travelling to Belgium are obliged to confirm whether passengers are in the possession of a declaration of 'essential' travel and, if not, to deny boarding to these passengers<sup>151</sup>. Carriers transporting (international) passengers to Italy are not only required to confirm whether passengers are in the possession of a completed PLF, but are also obliged to carry out temperature screenings and to deny boarding to passengers displaying symptoms of a fever<sup>152</sup>. Similarly, international passenger carriers travelling to Spain have been designated as having a role in implementing and ensuring compliance with COVID-19-related entry requirements (such as the completion of a PLF and temperature screening)<sup>153</sup>.

The involvement of passenger carriers in enforcing mobility restrictions in light of COVID-19 raises significant concerns. First, even where the legislative instrument explicitly imposes a duty on carriers to verify passenger compliance with COVID-19-related entry restrictions, it is not explicitly made clear what the consequences are for carriers who do not meet their obligations. However, as cases in Italy<sup>154</sup> and France<sup>155</sup> demonstrate, these consequences can be as severe as the suspension of an airline's flights.

<sup>146</sup> Carrera and Luk (2020b).

<sup>147</sup> See Arrêté ministériel du 26 janvier 2021 modifiant l'arrêté ministériel du 28 octobre 2020 portant des mesures d'urgence pour limiter la propagation du coronavirus COVID-19, <http://www.ejustice.just.fgov.be/eli/arrete/2021/01/26/2021040221/moniteur>.

<sup>148</sup> See Article 9.1 of the Decree of the President of the Council of Ministers, 14 January 2021, <https://www.gazzettaufficiale.it/eli/id/2021/01/15/21A00221/sg>.

<sup>149</sup> See Resolution of 11 November 2020 of the General Directorate of Public Health, regarding the health controls to be carried out at the points of entry in Spain, <https://www.boe.es/eli/es/res/2020/11/11/1/con>.

<sup>150</sup> Delmas, S. (2020), 'Des attestations sont requises pour prendre l'avion', *Le Particulier*, 22 September.

<sup>151</sup> Article 21 of Arrêté ministériel du 28 octobre 2020 portant des mesures d'urgence pour limiter la propagation du coronavirus COVID-19 (as amended); cf. Communication from the Belgian Civil Aviation Authority of 2 January 2021, [https://mobilit.belgium.be/sites/default/files/DGLV/communiqu%2021\\_01\\_02.pdf](https://mobilit.belgium.be/sites/default/files/DGLV/communiqu%2021_01_02.pdf).

<sup>152</sup> See Article 9.1 of the Decree of the President of the Council of Ministers, 14 January 2021.

<sup>153</sup> See Resolution of 11 November 2020 of the General Directorate of Public Health, regarding the health controls to be carried out at the points of entry in Spain, §2 and 5.

<sup>154</sup> See Berberi, L. (2020), 'Enac contro Ryanair: "Non rispetta norme anti-Covid, se non rimedia stop ai voli". La low cost: "È falso"', *Corriere della Sera*, 5 August.

<sup>155</sup> Sauvage, G. (2021), 'Covid-19 : ce qu'il faut savoir sur la fermeture des frontières françaises', *France24*, 1 February.

It is further questionable whether carriers are suitably equipped to enforce COVID-19-related cross-border mobility restrictions, for example if airlines were confronted with falsified or false COVID-19 test results<sup>156</sup>. Moreover, the involvement of carriers in the enforcement of COVID-19-related mobility restrictions may lead to situations where carriers impose additional travel restrictions on passengers, such as the mandatory requirement to have a negative COVID-19 test result for boarding with Finnair<sup>157</sup>, despite no such legal obligation existing for entry into Finland<sup>158</sup>.

### III.V The role of digital surveillance and new technologies

The deployment of surveillance technologies and tools for the collection and processing of data to screen individuals, and to monitor and enforce compliance with COVID-19-related mobility restrictions, constitutes a common feature in many of the EU Member States analysed. The technologies deployed to monitor compliance vary significantly in nature, as do their implications for fundamental rights and the rule of law.

As far as domestic mobility restrictions are concerned, several of the countries analysed (BE, BG, HU, FR, IT) have deployed drones to patrol public spaces. In Bulgaria, drones were put at use to check the temperature of people under surveillance<sup>159</sup>. The Bulgarian authorities also reportedly used planes to ‘disinfect’ the Roma neighbourhood<sup>160</sup>. Deploying drones to assist with the enforcement of COVID-19 lockdown measures raises several fundamental rights challenges and legal questions from the perspective of both EU privacy data protection laws<sup>161</sup> and national constitutions.

In France, the Council of State (*Conseil d’État*) banned the police from using surveillance drones to remotely patrol public spaces in Paris and monitor compliance with COVID-19 lockdown measures in order to deploy intervention resources to disperse gatherings or sanction unauthorised movement<sup>162</sup>. The Council of State found that the drones would be ‘likely to collect identifying [personal] data’, even though they were not equipped with zoom cameras.

<sup>156</sup> See Herrero, O. (2021), ‘Aéroports : les faux tests PCR, casse-tête pour les compagnies et la police aux frontières’, *Le Figaro*, 1 February; Sauvage, G. (2021), ‘Covid-19 : ce qu’il faut savoir sur la fermeture des frontières françaises’, *France24*, 1 February.

<sup>157</sup> Teivainen, A. (2021), ‘Finnair requires proof of negative coronavirus test from people flying to Finland’, *Helsinki Times*, 28 January.

<sup>158</sup> Cf. Finnish institute for health and welfare, *Travel and the coronavirus pandemic*, <https://thl.fi/en/web/infectious-diseases-and-vaccinations/what-s-new/coronavirus-covid-19-latest-updates/travel-and-the-coronavirus-pandemic>.

<sup>159</sup> FRA (2020a), ‘Coronavirus pandemic in the EU – Fundamental Rights Implications – Bulletin 2’, 28 May, p. 56.

<sup>160</sup> ‘Дезинфектираха ромската махала в Ямбол със самолет’, *bTV News*, 14 May 2020.

<sup>161</sup> European Data Protection Supervisor (2014), Opinion of the European Data Protection Supervisor on the Communication from the Commission to the European Parliament and the Council on ‘A new era for aviation - Opening the aviation market to the civil use of remotely piloted aircraft systems in a safe and sustainable manner’.

<sup>162</sup> Conseil d’État, Ordonnance du 18 mai 2020, Statuant au contentieux N. 440442, 440445, association ‘La Quadrature du Net’ et la Ligue des droits de l’homme, <https://www.laquadrature.net/wp-content/uploads/sites/8/2020/05/440442-440445-quadrature-du-net-et-ldh.pdf>.

According to the court, the drones would have no means of ‘avoiding’ collecting identifying data. Data collected by these means is ‘personal in nature’, and its collection constitutes a ‘serious and illegal infringement of the right to privacy’. The court therefore declared it illegal to use any drone equipped with a camera and flying low enough to allow the police to identify individuals by their clothing or a distinctive sign. According to the *Conseil d’État*, only a ministerial decree reviewed by the CNIL (National Commission on Informatics and Liberty) could allow the police to use such drones. As long as such a decree is not issued, the French police cannot use its drones<sup>163</sup>.

The outbreak of the pandemic also led to the adoption of new normative measures enabling digital surveillance directly by law enforcement authorities through the collection of different categories of data, most notably location and telecommunication data held by private companies, to monitor compliance with emergency rules and mobility restrictions.

In Bulgaria, an amendment to the law on the state of emergency currently allows the police to request ‘immediate access’ to the traffic data of users from telecommunication companies, without prior judicial authorisation or the need to prove that the targeted person is in quarantine. While these powers are officially to be used ‘only’ to monitor those in compulsory quarantine, the amendment to the emergency legislation de facto also allows police to generally track people’s movements, as well as to ‘monitor who they talked to and which sites they visited’<sup>164</sup>.

In Hungary, the Minister for Innovation and Technology, together with an operational body composed of Ministry of Interior’s representatives, the police and health authorities, are entitled by decree<sup>165</sup> to acquire and process any kind of personal data from private or public entities, including traffic and location data from telecommunication providers, with a very broad definition of the purpose for which the data can be used.

While some have countries introduced legislation that allows the government and law enforcement authorities to directly access personal data to monitor compliance with emergency measures, including mobility restrictions, other Member States (BE, ES, ES, NL) have adopted measures allowing telecommunication companies to collect, process and share customers’ geolocation data with public authorities as part of the pandemic response.

In Belgium, telecommunication companies are giving data to a third-party analytics company, which then processes this data to assess the spread of COVID-19 and locate hotspots<sup>166</sup>. In Italy,

<sup>163</sup> La Quadrature du Net (2020), ‘France: First victory against police drones’, EDRI website, 27 May.

<sup>164</sup> Martino, F. (2020), ‘Bulgaria, if coronavirus tests freedom of expression’, Osservatorio Balcani e Caucaso Transeuropa (OBCT) website, 25 March.

<sup>165</sup> Governmental Decree No 46/2020 on prevention, avoidance of the mass human disease threatening the safety of human health and property, and on the measures taken in the state of danger in order to protect the health of the Hungarian citizens (III.) (46/2020. (III. 16.), 16 March, Article 13, [http://njt.hu/cgi\\_bin/njt\\_doc.cgi?docid=218547.380736](http://njt.hu/cgi_bin/njt_doc.cgi?docid=218547.380736).

<sup>166</sup> Privacy International (2020), ‘Belgium: Telecoms location data to be provided to third-party analytics company’, 12 March.

the national government and Lombardy Region, in cooperation with universities and private firms, have put in place a number of initiatives that, through public-private partnerships, allow information on traffic and location data of telephone users to be traced, stored and shared, in order to monitor movement<sup>167</sup>. In Spain, the National Institute of Statistics has developed a mobile application called 'DataCovid', which is based on data provided by the main telecommunication operators<sup>168</sup>.

These systems do not track or monitor the movement of individual phones, but calculate overall movements using aggregated data collected from location-tracking software on mobile phones. While using positioning data from mobile devices, the data collected is anonymised and aggregated to guarantee compliance with data protection standards. And still, fundamental rights questions can arise from the deployment of these new data collection and processing technologies and public-private partnerships. For instance, the Dutch data protection authority (*Autoriteit Persoonsgegevens*) is recommending against a bill that would force telecoms operators to collect more data on their customers and share it with Statistics Netherlands as part of the country's pandemic response. The authority complains that the bill lacks privacy and security protections, fails to show that the data is necessary, and does not include guarantees that were promised<sup>169</sup>.

Across the EU, other forms of digital surveillance have been introduced to monitor compliance with domestic mobility restrictions. Among the countries analysed, Belgium, Bulgaria and France have put to test wristbands that can track people during the coronavirus<sup>170</sup>. In Poland, a phone application have been introduced that, once activated, sends unscheduled requests to users for a new photo to be sent within 20 minutes. The system checks both the person (using facial recognition) and the location, 'essentially replicating what would otherwise be a visit from a police'<sup>171</sup>.

When it comes to cross-border mobility, a significant number of EU Member States have introduced requirements for all travellers to submit additional data in the form of a PLF<sup>172</sup>. Travellers are thus required, as a condition for entry, to submit both personal information and information on their travel history. Importantly, the data submitted through PLFs is used, for example in Belgium, to determine whether travellers are subject to quarantine measures and domestic testing. This data is further used by enforcement authorities to determine whether sanctions (such as fines) are to be applied to non-compliance with such obligations<sup>173</sup>.

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<sup>167</sup> Library of Congress – Law (2020), 'Regulating Electronic Means to Fight the Spread of COVID-19: Italy', June.

<sup>168</sup> Library of Congress – Law (2020), 'Regulating Electronic Means to Fight the Spread of COVID-19: Spain', June.

<sup>169</sup> Davies, J. (2020), 'Dutch watchdog warns against data sharing to combat COVID-19', Telecoms.com, 3 July.

<sup>170</sup> Council of Europe (2020), *Digital Solutions to fight COVID-19: 2020 Data Protection Report*, October, p. 20.

<sup>171</sup> Privacy International (2020), 'Poland: App helps police monitor home quarantine', 19 March.

<sup>172</sup> Cf. Carrera and Luk (2020a), p. 32.

<sup>173</sup> See Paelinck, G. (2021), 'Vandenbroucke: "Wanneer reizigers zich niet laten testen, gaat informatie tegen 1 april rechtstreeks naar de politie"', VRT NWS, 5 February.



Further surveillance tools used by governments to track people's cross-border mobility under the COVID-19-related state of emergency include interoperable databases<sup>174</sup>. The outbreak of the pandemic has led to a further increase in data-driven movement surveillance, through the systematic collection of data for the purpose of controlling and policing cross-border mobility in Europe. In this regard, the European Commission has called for enhanced 'secondary security checks' by national authorities against the relevant databases, including the Schengen Information System (SIS II), the Visa Information System (VIS) and Eurodac, in addition to other non-EU systems established for internal security purposes, such as Interpol's Lost and Stolen Travel Documents database<sup>175</sup>.

### III.VI Fundamental rights and rule of law implications

The deployment of data-driven technologies for the enforcement of COVID-19 restrictions raises important challenges for EU citizens' and third-country nationals' fundamental rights, and might lead to further discrimination and growing inequalities<sup>176</sup>.

A key issue of concern derives from the lack of clear legal frameworks adequately demarcating the exact scope and limits of data processing, in line with EU legal standards of necessity, proportionality and purpose limitation. It has been noted that while some of these different data collection and processing technologies entail serious interferences with the private life of individuals and their highly sensitive health data, it is not always clear whether they are limited to what is strictly necessary<sup>177</sup>. This creates additional risks, for instance that health-related data is not only used by medical professionals or contact tracers but also, and perhaps more prominently and systematically, by authorities responsible for identity checks and verification of compliance with mobility restrictions. Previous research has noted that when access to that health-related data goes beyond health professionals and includes national police and military authorities, there is a clear risk of undermining the EU data protection principle of purpose limitation<sup>178</sup>.

In fact, surveillance measures introduced or enhanced by national governments during the state of emergency might also be used by governments (including liberal ones) to restrict individual freedoms in ways that are not directly related or relevant to the pandemic, or that are disproportionate in view of the goal of limiting the spread of the virus. Normative intervention (at both EU and national level) directed at enabling access to – or the collection of – information held by private companies, such as providers of internet or telecommunication services, should be read in conjunction with other policy developments triggered by the COVID-

<sup>174</sup> Mitsilegas, V. (2020), 'Responding to Covid-19: Surveillance, Trust and the Rule of Law', QMUL blog post, 26 May.

<sup>175</sup> European Commission (2020), *COVID-19: Guidance on the implementation of the temporary restriction on non-essential travel to the EU, on the facilitation of transit arrangements for the repatriation of EU citizens, and on the effects on visa policy*, C(2020) 2050 final, Brussels, 30 March.

<sup>176</sup> European Data Protection Supervisor (2020), 'EDPS Response to the COVID-19 outbreak', [https://edps.europa.eu/data-protection/our-work/subjects/covid-19\\_en](https://edps.europa.eu/data-protection/our-work/subjects/covid-19_en).

<sup>177</sup> See Carrera and Luk (2020a), op. cit., pp. 74-75.

<sup>178</sup> Ibid, pp. 75-76



19 crisis, such as the introduction of new criminal offences. Bulgaria, for example, sanctions the publication of ‘false news’ that might cause panic<sup>179</sup>. In Hungary, a law criminalising the spread of ‘disinformation’ under the state of emergency includes the possibility for social media surveillance<sup>180</sup>.

These examples show that the increase in digital surveillance powers with the (official) objective of containing the spread of the new coronavirus might also be used to restrict fundamental freedoms such as the freedom of expression, and unduly reduce freedom of assembly and civil society’s space in democratic societies. At the same time, there is a risk that such measures might affect society’s trust in public authorities, reducing the effectiveness of any public health response and undermining the principle of mutual trust upholding EU cooperation in the area of freedom, security and justice.

To be legal, data collection and processing for the purpose of monitoring a life-threatening epidemic should not only be authorised by law, but should also be to specific regulation that ensures compliance with the principle of legal certainty. Furthermore, personal data should be collected for explicit, specified and legitimate purposes, and should not be processed in a way that is incompatible with those purposes. As the analysis and data collection in this report show, compliance with this principle appears to be one of the major challenges in the context of the current COVID-19 pandemic, because some governments have often adopted broad regulations giving a wide range of law enforcement authorities an extensive margin of manoeuvre.

In a context where many intrusive measures are constantly being considered or adopted, fully ensuring the rights of data subjects remains crucial. In practice, however, the exercise of rights such as the right of access, opposition and erasure as foreseen by the General Data Protection Regulation (GDPR)<sup>181</sup>, as well as under Article 9 of Convention 108+<sup>182</sup>, can be difficult for the data subjects. In some instances, these rights have even been formally subject to important derogations.

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<sup>179</sup> See Carrera, S., Stefan, M. and Mitsilegas, V. (2020), ‘Cross-border data access in criminal proceedings and the future of digital justice: navigating the current legal framework and exploring the way forward within the EU and across the Atlantic’, Report of a CEPS/QMUL-GPI Task Force, CEPS Paperback, October.

<sup>180</sup> Criminal Code (Hungary), Sec. 337(2). Similar provisions have been introduced also by other Member States. See Ó Fathaigh, R., Helberger, N. and Appelman, N. (2021), ‘The perils of legally defining disinformation’, *Internet Policy Review*, Vol. 10, No 4.

<sup>181</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), Articles 15-22.

<sup>182</sup> Protocol amending Convention 108, opened for signature on 10 October 2018 in Strasbourg (CETS No 223).

## Section IV – Enforcement practices

### Key findings

- Official data on the enforcement of measures to combat the COVID-19 pandemic is not systematically collected by all Member States, nor is data on police checks consistently collected or reported.
- The lack of clear rules and the large margin of discretion left to the authorities responsible for enforcement undermine legal certainty and the possibility for individuals to comply with restrictions. These factors have also led to arbitrariness in enforcement practices, resulting in abuses.
- In several of the Member States analysed, enforcement practices have disproportionately affected specific and already marginalised groups or communities. Several examples of worrying enforcement practices by Member States' authorities include the over policing and disproportionate targeting of minorities, cases of discrimination and racial profiling, and specific enforcement practices targeting Roma communities.
- The monitoring of and reporting on Member States' enforcement practices have depended to a large extent on civil society organisations.
- International human rights bodies have stressed that neither the COVID-19 pandemic, nor a state of emergency or alarm declared pursuant thereto, justify the violation of the principles of non-discrimination and proportionality.

Official data on enforcement of the measures adopted to combat the COVID-19 pandemic is not systematically collected by all Member States, nor is data on police checks consistently reported. Even when it exists, such data is not disaggregated by ethnicity, religion or legal status<sup>183</sup>.

Against this backdrop, civil society organisations have played an important role in reporting how, in several of the countries analysed, the enforcement of mobility restrictions has disproportionately affected specific societal groups, including most notably lower income communities, ethnic minorities and homeless people<sup>184</sup>.

<sup>183</sup> In a recently published Communication, the European Commission stressed that '[a]ccurate and comparable data is essential in enabling policy-makers and the public to assess the scale and nature of discrimination suffered and for designing, adapting, monitoring and evaluating policies'. See, European Commission (2020), *A Union of Equality: EU anti-racism action plan 2020-2025*, COM(2020) 565 final, 18 September.

<sup>184</sup> See, for instance, ENAR (2020), 'COVID-19 impact on racialised communities: interactive EU-wide map', European Network Against Racism, 12 May. See also PICUM (2020), 'What's happening to undocumented people during the COVID-19 pandemic?', 24 July.

As far as domestic mobility restrictions are concerned, reports issued by non-governmental organisations (NGOs) across the EU indicate that the COVID-19 pandemic has further revealed how heavy policing and unlawful use of force are especially concentrated in urban areas with high rates of poverty, and where a large proportion of the population are of ethnic minority origin.

In France, testimonies on police checks, videos and official data suggest that police checks linked to the application of the containment measures put in place in response to the COVID-19 pandemic have tended to disproportionately target particular minorities in disadvantaged neighbourhoods<sup>185</sup>. At the end of April 2020, government statistics showed that in Seine-Saint-Denis – the poorest department in mainland France with a high percentage of black residents and residents of North African descent – the police performed a number of checks amounting to more than double the national average. In this department, 17% of people checked were fined, nearly triple the national average<sup>186</sup>. And yet, according to local authorities, respect for lockdown measures in Seine-Saint-Denis was comparable to that in other departments in France<sup>187</sup>. The high number of fines and identity checks indicate, therefore, that the department was disproportionately policed and sanctioned compared to others in the country. Discriminatory and unlawful policing trends also emerged in other parts of the country. In Nice, for instance, predominantly working class and minority ethnic neighbourhoods were subject to a longer night-time curfew than the rest of the city<sup>188</sup>.

Over policing of certain neighbourhoods or societal groups has also been reported in other countries<sup>189</sup>. In Belgium, a correlation has been noticed between the number of abuses committed by police authorities in the enforcement of COVID-19 restrictions, and the poorest regions and neighbourhoods in the country. Analysis conducted by civil society actors revealed that as at July 2020, more than 70% of recorded abuses had taken place in the poorest districts of Brussels<sup>190</sup>.

Several cases of discrimination and police abuse have also been reported in Spain, including cases of racial profiling and unlawful use of force<sup>191</sup>. In Italy, the enforcement of some lockdown measures, in particular those restricting the right to freedom of movement, has especially discriminated people who are homeless or destitute. Several cases have in fact been reported

<sup>185</sup> Amnesty International (2020b), 'Europe: COVID-19 lockdowns expose racial bias and discrimination within police', 24 June.

<sup>186</sup> Human Rights Watch (2020b), "'They Talk to Us Like We're Dogs': Abusive Police Stops in France', June.

<sup>187</sup> 'Selon le préfet de Seine-Saint-Denis, le confinement est "globalement bien respecté"', *L'Express.fr*, 1 April 2020.

<sup>188</sup> Ligue des Droits Humains and Police Watch (2020), op. cit., pp. 8-10.

<sup>189</sup> Ibid.

<sup>190</sup> De Coninck, D. (2020), "'We hebben hem! We hebben hem geschept!': reconstructie van de dood van Adil in Anderlecht', *De Morgen*, 18 April.

<sup>191</sup> Amnesty International Spain (2020), 'España: Amnistía Internacional denuncia casos de arbitrariedad policial en la imposición de multas durante el estado de alarma', 8 May.

of fines imposed by law enforcement officials on homeless or destitute persons (including migrants) for failing to comply with measures around self-isolation and restrictions on the right to freedom of movement<sup>192</sup>.

A particularly concerning picture emerges from Bulgaria's policing practices toward the Roma communities. The Bulgarian Ministry of the Interior expressly authorised a special operation targeting Roma neighbourhoods, which involved a greater police presence and patrols in these settlements to ensure compliance with containment measures.

These measures were initially applied to areas in the towns of Nova Zagora, Kazanlak and Sliven with a high percentage of Roma residents, but soon expanded to large and predominantly Roma neighbourhoods in the Fakulteta and Filipovci suburbs of Sofia. Residents were prevented from leaving their settlements. In the city of Kazanlak, some of the access points to the Roma neighbourhood were literally sealed (with concrete) to make the neighbourhood accessible only through checkpoints<sup>193</sup>. And yet, at the same time that authorities resorted to mandatory lockdown and over policing of Roma neighbourhoods, they failed to ensure that the affected settlements had sufficient and safe access to basic goods and services (i.e. water, food, and sanitation or medical supplies) during the quarantine. The UN Special Rapporteurs on contemporary forms of racism and minority issues stated that 'oversecuritisation' and police operations in Roma neighbourhoods violated the principles of non-discrimination and equality and should be stopped<sup>194</sup>. Neither the Bulgarian Ombudsman nor the equality body investigated or commented publicly on these enforcement practices.

Roma living in informal settlements, and refugees, asylum seekers and migrants living in camps, have also experienced disproportionate and discriminatory implementation of measures to counter the COVID-19 pandemic. Instead of ensuring adequate access to water and sanitation and the alternative accommodation necessary to enable people to comply with recommended individual quarantine measures, authorities in some countries have imposed mandatory quarantines on entire settlements. Informal settlements and migrant camps in countries such as Bulgaria have been heavily policed, including through the deployment of the army, and subject to mandatory testing<sup>195</sup>.

<sup>192</sup> The association 'Avvocato di Strada' documented at least 17 cases in which homeless people received fines for breaching lockdown measures and restrictions on freedom of movement. See, Avvocato di Strada (2020), 'Emergenza e persone senza dimora, la battaglia continua', 9 April, <http://www.darvoce.org/blog/news/avvocato-di-strada-emergenza-e-persone-senza-dimora-la-battaglia-continua/COVID-19>. See also, Amnesty International (2020c), 'COVID-19 and the Right to Housing: Submission to the UN Special Rapporteur on Adequate Housing', June.

<sup>193</sup> FRA (2020c), 'Country research – Roma and Travellers Survey 2019 – Implications of COVID-19 pandemic on Roma and Travellers communities – Bulgaria', 15 June.

<sup>194</sup> United Nations Special Rapporteur on Contemporary Forms of Racism and United Nations Special Rapporteur on Minorities, *Stop hate speech and racial discrimination against the Roma minority*, 13 May 2020, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25881&LangID=E>.

<sup>195</sup> Amnesty International (2020a), op. cit., p. 5.

International human rights bodies have been vocal in stressing that the declaration of a state of emergency or alarm does not justify countries violating the basic principles of non-discrimination and proportionality<sup>196</sup>. All Member States are under the obligation to prevent disproportionate restrictions on freedom of movement that selectively target ethnic minority groups, especially when there is no evidence that they objectively represent a particular threat to public health or security. Imposing an unnecessary and disproportionate burden on these groups amounts to a direct violation of the principle of non-discrimination<sup>197</sup>.

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<sup>196</sup> Venice Commission (2020), *Report on Respect for democracy, human rights and the rule of law during states of emergency: Reflections*, CDL-AD(2020)014, Council of Europe, Strasbourg, 19 June. See also, Venice Commission (2020), *Interim Report on the measures taken in the EU member states as a result of the Covid-19 crisis and their impact on democracy, the Rule of Law and Fundamental Rights*, CDL-AD(2020)01, Council of Europe, Strasbourg, 8 October.

<sup>197</sup> See also, European Court of Human Rights, *A and others v UK*, Paras 186-190.

## Concluding observations

This inception report has aimed to map the typologies and modalities of mobility restrictions introduced by EU Member States in response to the COVID-19 pandemic.

Section I.I of this report identified the types of domestic mobility restrictions observed in 10 EU Member States (nationwide and localised lockdowns, countrywide and regional curfews, and quarantine requirement). The analysis shows that, in at least some of the Member States considered, measures restricting (in-country) mobility in the context of the COVID-19 pandemic have been adopted as part of wider policy, normative and operational responses to the sanitary crisis, which in terms of rationale and practical implications go well beyond the objective of tackling the spread of the new coronavirus.

In some Member States, the introduction of in-country mobility restrictions such as lockdowns or curfews has followed state of emergency declarations, and has been accompanied by the adoption of ‘internal security’ laws and policies. These have granted exceptional powers to (national, local or private) security forces entrusted with enforcing COVID-19-related mobility restrictions and with applying (administrative or criminal) sanctions in cases of non-compliance. In such cases, the introduction of restrictions on in-country mobility has coincided with the adoption of measures inspired by internal security (rather than public health) logics. In some cases, in-country mobility limitations have resulted in disproportionate, discriminatory and in some cases unnecessary – and therefore unlawful – restrictions of individual rights and freedom of movement.

The report has identified the use by some Member States of the state of emergency, resulting in the (temporary) expansion of executive powers, to adopt COVID-19 measures restricting (inter alia) freedom of movement. In some cases, Member States have introduced curfews and lockdowns outside the constitutional decision-making process that must be followed for the adoption of emergency measures curtailing fundamental rights. This has led to legality challenges before national courts. Two specific concerns regarding the use of ‘emergency’ as justification for measures introduced in response to the pandemic have been highlighted: the use by some Member States of ‘inappropriate’ legal bases and instruments – leading to concerns of exclusion of democratic control and accountability – and the ‘abuse’ in some Member States of the state of emergency for placing non-COVID-related restrictions on individuals’ rights and freedoms.

Key developments and representative instances of in-country mobility restrictions have been set out. Member States have generally been seen to move gradually away from nationwide lockdowns, opting instead for alternative measures such as curfews and local lockdowns. The move towards more targeted in-country restrictions followed EU calls for Member States to adopt a more ‘place-based’ or territorially sensitive approach to policy measures (including mobility restrictions) adopted in response to the health crisis.

In terms of restrictions on intra-EU mobility, Section I also set out how cross-border mobility restrictions within the EU+ area have been characterised by reactive and unilateral measures.

After an initial reactive period that saw EU countries imposing entry bans on travellers coming from other EU+ areas, Member States started to introduce exceptions, exemptions and alternative cross-border mobility restrictions in lieu of outright entry bans. However, the second and third ‘waves’ of COVID-19 infections led several Member States to once again respond in a reactive manner, opting for the unilateral reintroduction of intra-EU+ mobility restrictions in autumn 2020 and the early months of 2021. The measures adopted by Member States restricting intra-EU+ mobility raise questions about legality (such as whether the SBC permits blanket entry bans within the Schengen area), the need for individualised assessments, and proportionality and non-discrimination on the basis of nationality.

Attempts have been made at EU level to increase coordination in the restriction of intra-EU+ mobility in response to COVID-19. The European Commission and the Council have developed a coordinated approach towards mobility within the EU during the pandemic, according to which restrictions should comply with a set of foundational principles, including non-discrimination and proportionality. The use of entry bans has been strongly discouraged, with preference given to quarantine (except for travel motivated by ‘essential reasons’) or testing upon arrival.

At the same time, this ‘coordinated’ or EU approach to governing cross-border mobility in the context of the COVID-19 pandemic has not been set out in a legally binding document, but rather constitutes a recommendation. This is concerning from an EU law point of view because cross-border mobility within the EU+ area is currently primarily governed by EU (free movement) law and the Schengen *acquis*. This concern is further compounded by an increasing *instrumentalised* use by Member States of the SBC, which in particular entails ‘opportunistic’ use of other legal bases in the SBC to maintain internal border controls in the name of COVID-19. In particular, there are serious doubts as to whether national government decisions have actually met the burden of proof required to justify the qualification of the COVID-19 pandemic as a threat to national ‘public policy or internal security’.

On the other hand, extra-EU mobility restrictions have primarily been framed by the EU travel ban, which has been implemented (concurrently with the application of national entry bans and other entry restrictions) for third-country nationals intending to enter the EU+ area from abroad. While the Member States examined have generally followed the recommended restrictions on mobility across the EU(+) external borders, divergences and inconsistencies have been observed in respect of the reasons considered as ‘essential for travel’.

In particular, several Member States (FR, HU, IT, LT) have chosen not to explicitly exempt from their entry bans third-country nationals seeking international protection or travelling for other humanitarian reasons. This has generated clear tensions with the right to seek asylum in the EU, and the obligations held by Schengen countries vis-à-vis refugees and persons seeking international protection, including non-refoulement. The lack of explicit exemption of asylum seekers and persons in need of international protection by some Member States (in their implementation of the EU entry ban in the context of the Schengen area’s external borders)

has been compounded by Member States' decisions to adopt other COVID-19-related measures that directly and negatively impact and restrict the right to seek asylum.

Amendments to the EU travel ban to allow travel for non-essential reasons for residents of certain third countries considered as 'safe' have ultimately left it to individual Member States to decide on whether or not to permit such non-essential travel.

Section II set out the general framework for the sanctioning of non-compliance with COVID-19 restrictive measures. It highlighted an increasing trend towards criminalisation of non-compliance, as well as the implications of this criminalisation in cases of 'vague' or unclear norms resulting in the risk of arbitrariness, disproportionate sanctioning and abusive enforcement practices. The use in certain Member States of administrative sanctions in lieu of criminal sanctions was also set out. Specifically for cross-border mobility, the report demonstrated how non-compliance with certain entry conditions introduced in light of the COVID-19 pandemic could lead to denial of entry.

Section III highlighted the implementation dynamics and actors in the context of COVID-19-related mobility restrictions. More specifically, the involvement of (police authorities and) public security forces in the implementation of mobility restrictions, as well as the degree of discretion granted to them, raised concerns of abuse of power, arbitrariness in enforcement and excessive use of force. In respect of cross-border mobility, questions were raised about the appropriateness of involving border management authorities in the enforcement of health-related measures, as well as the enforcement role imposed on (private) passenger carriers. The increasing and expansionist use of digital surveillance and technologies in the enforcement of COVID-19 mobility restrictions was also questioned in light of the principles of necessity and proportionality, compatibility with data privacy and purpose limitations.

Section IV explored enforcement practices and the availability of data of said enforcement practices in the context of mobility restrictions in the fight against COVID-19. The report noted in particular the lack of official data on enforcement practices that is systematically collected by Member States. In this context, enforcement practices – particularly problematic examples thereof – have primarily been brought to the fore by civil society organisations. Section IV of this report focused specifically on the disproportionate impact that minorities and other disadvantaged groups have faced as a result of over policing, discriminatory targeting and racial profiling.

The findings set out in this report were restricted in temporal and geographical scope. Notwithstanding this, the main observation that can be made is the lack of rigorous, systematic and comparative evidence on the legal justifications underlying the measures adopted by Member States in light of the COVID-19 pandemic to restrict domestic and cross-border mobility, as well as their compatibility with national, EU and international law. This demonstrates the potential for the PERISCOPE project, more specifically subsequent research, to contribute to the evidence gap.



Throughout this report, and as a concluding observation, mobility restrictions adopted to combat the COVID-19 pandemic have been seen to be affected by a multitude of other factors and considerations, including those not related to mobility. Currently, there is no evidence regarding the actual effect that mobility restrictions, taken alone, have had on containing the spread of the virus. In order to examine the impact of mobility restrictions on containing the spread of COVID-19, it is crucial to also take these other factors into account. The effectiveness of Member States' approaches towards COVID-19 must therefore be examined in a holistic manner, incorporating a multitude of interconnected measures and policies.

The impact of measures and policies at national and EU level after 1 January 2021 should also be considered in subsequent research. Specific attention could be paid to the proposal to introduce an 'EU Digital COVID Certificate' as a measure to permit safe (intra-EU) cross-border mobility for the duration of the COVID-19 pandemic<sup>198</sup>.

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<sup>198</sup> See [https://ec.europa.eu/info/live-work-travel-eu/coronavirus-response/safe-covid-19-vaccines-europeans/eu-digital-covid-certificate\\_en](https://ec.europa.eu/info/live-work-travel-eu/coronavirus-response/safe-covid-19-vaccines-europeans/eu-digital-covid-certificate_en).

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## Annex – Overview of sanctions for non-compliance and authorities responsible for enforcement

Country	Sanctions associated with non-compliance	Authorities responsible for ensuring compliance and enforcement
BE	<p>Non-compliance with restrictions is associated with a criminal sanction that can lead to a prison term (<b>eight days' to three months' detention</b>), a criminal record and <b>fines</b> of up to EUR 4 000<sup>199</sup>.</p> <p>Non-compliance by 'first-time offenders' can be settled amicably (<i>'transaction pénale'</i>) by paying a fine of EUR 250.</p> <p>To reduce the workload of the courts, the government has authorised municipalities to resort to administrative sanctions of EUR 250, with judicial proceedings being limited to minors or repeat or concurrent offences<sup>200</sup>. Not all municipalities have the legislative framework in place for such sanctions, and some have expressly refused to use it<sup>201</sup>.</p>	<p><b>Police</b> – based on guidelines published by the public prosecutor<sup>202</sup> and the list of 'Frequently Asked Questions' produced by the government.</p> <p>Since October 2020, the police have been able to use the mobile application 'cross-covid' to check whether an immediate sanction (<i>'proposition de transaction immédiate'</i>) can be proposed to first-time offenders.</p>
BU	<p>The Criminal Code was amended to increase the penalties for not observing quarantine measures or other COVID-19-related measures. Violations committed during an epidemic, pandemic or state of emergency shall be punished by <b>up to five years of imprisonment</b> and a <b>fine</b> starting from BGN 10 000 (approximately EUR 5 000) up to BGN 50 000 (approximately EUR 25 000)<sup>203</sup>.</p>	<p><b>Police</b> – enforcing mobility restrictions, including at entry points of main city of each administrative district. Also deployed to patrol Roma neighbourhoods, to prevent people from leaving settlements<sup>205</sup>.</p> <p><b>Army</b> – participating in the implementation of anti-epidemic measures, including through identity checks, apprehension of individuals refusing or failing to comply with anti-epidemic measures until the arrival of the police, stopping</p>

<sup>199</sup> The Ministerial Decree of 23 March 2020 provides that infringements can lead to the sanctions as set out in Article 187 of the Act of 15 May 2007 on Civil Security.

<sup>200</sup> Service Public Federal Interieur, Arrêté royal n° 1 portant sur la lutte contre le non-respect des mesures d'urgence pour limiter la propagation du coronavirus COVID-19 par la mise en place de sanctions administratives communales, 6 April 2020, <http://www.ejustice.just.fgov.be/eli/arrete/2020/04/06/2020020733/moniteur>.

<sup>201</sup> Fair Trials (2020), 'Commentary: 73 000 alleged COVID-19 breaches in Belgium – now is time to launch a review', 30 June.

<sup>202</sup> On 25 March 2020, the public prosecutor published its guidelines on the enforcement of these COVID-19-related measures, [https://www.om-mp.be/sites/default/files/u147/col\\_06\\_2020\\_coronavirus.zip](https://www.om-mp.be/sites/default/files/u147/col_06_2020_coronavirus.zip).

<sup>203</sup> Criminal Code Amendment Act, 14 March 2020.

<sup>205</sup> After two months of lockdown, the new measures provoked protests by people who feared that they and their families could face a humanitarian crisis if not allowed to go to work; see 'Пълна блокада: 10 хил. души от ямболската ромска махала останаха откъснати от света', *bTV News*, 11 May 2020 and 'Напрежение в ромската махала в Ямбол, която е под карантина (ВИДЕО)', *bTV News*, 18 May 2020.

Country	Sanctions associated with non-compliance	Authorities responsible for ensuring compliance and enforcement
	The Health Act was amended to increase the sanctions for persons suffering from an infectious disease who refuse to comply with mandatory isolation. The sanction for non-compliance has been increased to a maximum of BGN 5 000 (approximately EUR 2 500) <sup>204</sup> .	vehicles until the arrival of the police, restricting the movement of persons and vehicles at checkpoints, and using physical force (when 'absolutely necessary') <sup>206</sup> .
DE	<p>At central government level, the Protection Against Infection Act<sup>207</sup>, which applies across the entire country, stipulates fines of up to <b>EUR 25 000</b> and <b>prison sentences of up to five years</b><sup>208</sup>.</p> <p>The state-level public order authorities are responsible for determining how violations will be punished. Federal states have in fact introduced their own sanctions for non-compliance of COVID-19-related restrictions. With specific regard to non-compliance with domestic mobility restrictions (including curfews, quarantines and inter-state travel) without a valid justification, the following states have introduced sanctions:</p> <ul style="list-style-type: none"> <li>• <b>Baden-Württemberg</b> – fines of between EUR 100 and EUR 1 000 – fines of up to EUR 25 000 for repeated violations<sup>209</sup></li> <li>• <b>Bavaria</b> – fines of EUR 150. Group violations of curfew are considered a <b>criminal offence</b> and might be punished with a fine of up to EUR 25 000</li> <li>• <b>Berlin</b> – fines of EUR 10 to EUR 100 for leaving place of residence or accommodation</li> </ul>	<p><b>Police</b> – federal states have adopted ordinances empowering the police to enforce adherence to mobility restriction rules. The powers granted to the police appear to vary from one federal state to another. Powers granted to police authorities include:</p> <ul style="list-style-type: none"> <li>• Checks on individuals during curfew hours<sup>211</sup></li> <li>• Processing of data for 'the ordering, implementation, monitoring and execution of measures in accordance with the Infection Protection Act'<sup>212</sup></li> <li>• Dispersing gathering on the grounds that organisers and participants would not follow physical distancing rules or wear face masks<sup>213</sup></li> </ul>

<sup>204</sup> Amendment to the Health Act, 14 March 2020.

<sup>206</sup> Measures and Activities during the State of Emergency Declared by Decision of the National Assembly of 13 March 2020 Act, 24 March 2020, Articles 9 and 10.

<sup>207</sup> Act on the Reform of the Communicable Diseases Law (Communicable Diseases Law Reform Act) *Gesetz zur Neuordnung seuchenrechtlicher Vorschriften* – (*Seuchenrechtsneuordnungsgesetz - SeuchRNeuG*) of 20 July 2000.

<sup>208</sup> Section 74 of the Act on the Reform of the Communicable Diseases Law.

<sup>209</sup> Ordinance of the State Government on Infection Protection Measures against the Spread of the SARS-CoV-2 Virus (Corona Ordinance – 'CoronaVO') of 23 June 2020.

<sup>211</sup> See, for example, Section 1, paras 5 and 6 of the *Bayerische Infektionsschutzmaßnahmenverordnung – BayIfSMV*.

<sup>212</sup> See, for example, Section 18 Processing of Personal Data, Ordinance of the State Government on Infection Protection Measures against the Spread of the SARS-CoV-2 Virus (Corona Ordinance – 'CoronaVO').

<sup>213</sup> See, for example, Section 10, para. 1 of the Ordinance to contain the spread of the SARS-CoV-2 coronavirus in the Free and Hanseatic City of Hamburg (Hamburg SARS-CoV-2 Contamination Ordinance - HmbSARS-CoV-2 Contamination Ordinance) – valid from 1 to 20 December 2020.

Country	Sanctions associated with non-compliance	Authorities responsible for ensuring compliance and enforcement
	<ul style="list-style-type: none"> <li>• <b>Bremen</b> – fines of EUR 400 for breaching quarantine</li> <li>• <b>Hamburg</b> – fines of EUR 150 for being outside with more than one person from a different household or entering playgrounds<sup>210</sup></li> <li>• <b>Saarland</b> – fines of EUR 200 for leaving place of residence or accommodation</li> <li>• <b>Saxony-Anhalt</b> – fines of EUR 100 for entering playgrounds. Fines of between EUR 250 and EUR 400 for entering the state from another federal state for tourism, education or recovery reasons</li> </ul> <p>All federal states have introduced sanctions for violating social distancing rules and bans on public gatherings.</p> <p>Fines and sanctions introduced at federal state level have changed several times. In particular, the different states have increased their fines in an attempt to tackle rising numbers of infections in their territories.</p>	
ES	<p>Article 20 of Royal Decree 463/2020 on the state of alarm establishes sanctions in cases of ‘non-compliance or resistance to the orders of the competent authorities in the state of alarm’. The above article refers to Article 10 of Law 4/1981 regulating the Law of States of Alarm, Exception and Siege, which indicates that ‘non-compliance or resistance to the orders of the competent Authority in the state of alarm will be sanctioned in accordance with the provisions of the Laws’. The referenced laws include:</p> <p>Article 36.6 of Organic Law 4/2015 on the protection of citizen security, which sanctions people who breach some kind of restriction under the state of alarm, with fines ranging from EUR 601 to EUR 30 000 for ‘disobedience or resistance to the authority or its agents in the exercise of their functions’.</p> <p>Article 37 of Organic Law 4/2015 on the protection of citizen security, which sanctions ‘lack of respect and consideration whose</p>	<p>The security forces deployed to enforce COVID-19-related restrictions include:</p> <ul style="list-style-type: none"> <li>• National police</li> <li>• Civil guard</li> <li>• Entrzaintza</li> <li>• Mossos d’esquadra</li> <li>• Forestal police</li> <li>• Local police</li> </ul> <p>The Interior Ministry reportedly deployed 260 000 police officers to impose the lockdown. In addition to law enforcement authorities, 131 000 military personnel support the police officers.</p>

<sup>210</sup> Ordinance to contain the spread of the SARS-CoV-2 coronavirus in the Free and Hanseatic City of Hamburg (Hamburg SARS-CoV-2 Contamination Ordinance - HmbSARS-CoV-2 Contamination Ordinance), valid from 1 to 20 December 2020.



Country	Sanctions associated with non-compliance	Authorities responsible for ensuring compliance and enforcement
	<p>recipient is a member of the Security Forces and Bodies in the exercise of their security protection functions, when these conducts do not constitute a criminal offence' with fines of between EUR 100 and EUR 600.</p> <p>Articles 550 to 556 of the Penal Code, which sanctions resistance, disobedience or disrespect against law enforcement agents, public officials and members of the armed forces, as well as private security actors in the exercise of their functions. Depending on the modalities and persons against whom they are committed, these offences are punishable by prison sentences that range from six months to four years.</p> <p>Article 57.2 of Law 33/2011 of 4 October on General Public Health, which punishes offences against public health. Sanctions vary depending on whether the offence is qualified as very serious (penalties between EUR 60 001 and EUR 600 000) or serious (penalties between EUR 3 001 and EUR 60 000).</p>	
FI	<p>In the absence of an express and legally binding provision at national level restricting or prohibiting domestic mobility, there are no sanctions directly associated with the movement of persons within Finland.</p> <p>The Communicable Diseases Act, however, establishes that the penalty for a health protection violation is laid down in Chapter 44, section 2 of the Criminal Code (39/1889), which refers to the imposition of <b>a fine or prison sentence of up to three months</b><sup>214</sup>.</p>	<p>It is the duty of the Regional State Administrative Agencies within their respective areas to monitor the legality of the prevention work on communicable diseases and provide related guidance.</p> <p>The National Supervisory Authority for Welfare and Health steers the operation of Regional State Administrative Agencies in the implementation, coordination and harmonisation of the monitoring and related guidance<sup>215</sup>.</p>
FR	<p>Breaching the measures carries a <b>fine of EUR 135</b> (increased to EUR 375 in case of non-payment, or if the sanction is not contested within the time indicated in the contravention).</p> <p>In cases of repeated breaches within 15 days of the first breach, the fine is increased to</p>	<p><b>Police</b> – The fine for contravention can be imposed by the following officers: agents of the national and municipal police; gendarmes; agents of the city of Paris; rural guards<sup>217</sup>.</p>

<sup>214</sup> Section 88 of the Communicable Diseases Act (No 1227/2016).

<sup>215</sup> Section 12 of the Communicable Diseases Act.

<sup>217</sup> Service Public – Direction de l'information légale et administrative (Premier ministre) 'Que risque-t-on si l'on ne respecte pas le confinement?', 4 November 2020, [https://www.service-public.fr/particuliers/actualites/A14421#:~:text=Le%20non%20respect%20de%20confinement,l%20avis%20de%20contravention\)%20%3B&text=ap%20r%C3%A8s%203%20infractions%20en%2030,de%206%20mois%20d%20emprisonnement](https://www.service-public.fr/particuliers/actualites/A14421#:~:text=Le%20non%20respect%20de%20confinement,l%20avis%20de%20contravention)%20%3B&text=ap%20r%C3%A8s%203%20infractions%20en%2030,de%206%20mois%20d%20emprisonnement).



Country	Sanctions associated with non-compliance	Authorities responsible for ensuring compliance and enforcement
	<p><b>EUR 200</b> (increased to <b>EUR 450</b> in the case of non-payment within the given deadline, or if the sanction is not contested within the time indicated in the contravention).</p> <p>If someone commits three breaches within a 30-day period, the sanction is of EUR 3 750, and they can face up to <b>six months' imprisonment</b><sup>216</sup>.</p> <p>Article 3136-1 of the Public Health Code includes the offence of non-compliance with the lockdown.</p>	<p>In May 2020, the Interior Minister announced that 12 000 law enforcement officers had been tasked with ensuring the curfew<sup>218</sup>.</p> <p>On 3 November 2020, a government spokesperson announced to the media that since the start of the second lockdown, 100 000 checks by the authorities had given rise to 14 000 verbalisations (reports of non-compliance)<sup>219</sup>.</p> <p>A total of 250 000 law enforcement officials (gendarmes) were deployed across the country to enforce the second lockdown.</p>
HU	<p>The violation of lockdown measures, including curfew and the ban on gatherings, is considered a <b>misdemeanour</b>. Act C of 2012 on the Criminal Code: Section 322/A (1); Section 337 (1).</p> <p>Non-compliance leads to fines associated with the violation of 'security measures', including curfew. These fines range from HUF 100 000 to HUF 1 million<sup>220</sup>.</p> <p>Incarceration of up to eight years is also foreseen.</p>	<p>Compliance with security measures is monitored by the <b>police</b> with the assistance of the Hungarian <b>armed forces</b>.</p>
IT	<p>A set of <b>administrative and criminal sanctions</b> are currently associated with different cases of non-compliance with the COVID-19 containment measures.</p> <p>Non-compliance with the lockdown or curfew rules is generally punished by an <b>administrative sanction</b> (fine) ranging from <b>EUR 300 to EUR 400</b><sup>221</sup>. The penalty increases by up to one third if the violation occurs with the use of a vehicle. In the case of repetition of the violation, the administrative sanction is</p>	

<sup>216</sup> Décret n° 2020-1310 du 29 octobre 2020 prescrivant les mesures générales nécessaires pour faire face à l'épidémie de covid-19 dans le cadre de l'état d'urgence sanitaire.

<sup>218</sup> Ibid.

<sup>219</sup> RMC (2020), '90.000 PV établis en moins de 15 jours pour "non-respect" du confinement', 12 November, <https://rmc.bfmtv.com/emission/information-rmc-confinement-90-000-pv-etablis-en-moins-de-15-jours-pour-non-respect-du-confinement-2005191.html>.

<sup>220</sup> Government Decree 479/2020 (XI.3).

<sup>221</sup> Article 4, para. 1, Decree-Law 25 March 2020 n. 19. Prior to the entry into force of Decree-Law n. 19, violating the lockdown was considered a criminal offence, punishable under Article 650 of the Italian Criminal Code.

Country	Sanctions associated with non-compliance	Authorities responsible for ensuring compliance and enforcement
	<p>doubled and the ancillary one is applied to the maximum extent<sup>222</sup>.</p> <p>The (administrative or criminal) sanctions mentioned above only apply if the fact does not constitute a more serious <b>criminal offence</b>, including:</p> <p><b>False declaration to a public official</b> (i.e. presenting a false certificate or declaration to justify exemption from lockdown or curfew rules). Punishable by imprisonment from one to six years<sup>223</sup>.</p> <p><b>Violation of quarantine by individuals who test positive</b> for the virus. Punishable by imprisonment from 3 to 18 months, with a fine from EUR 500 to EUR 5 000<sup>224</sup>.</p> <p><b>Spreading the virus negligently</b> or favouring propagation of the virus through negligent conduct, causing the death of innocent people. Punishable by imprisonment from 3 to 12 years<sup>225</sup>.</p>	
LT	For individuals, failure to comply with self-isolation requirements could result in a fine of between EUR 60 and EUR 1 500 <sup>226</sup> .	n.a.
NL	<p>No sanctions are expressly or specifically foreseen for non-compliance with mobility restrictions.</p> <p>Administrative sanctions (fines) only apply to failure to wear a mask (EUR 95), being outside or in a public space with more than four people (EUR 48 for people aged between 13 and 15 years, and EUR 95 for people over 16 years)<sup>227</sup>.</p>	Police

<sup>222</sup> Article 4, para. 1, Decree-Law 25 March 2020 n. 19.

<sup>223</sup> Articles 495 and 496 of the Criminal Code.

<sup>224</sup> Article 260 of the 'Consolidated Health Laws'.

<sup>225</sup> Article 452 of the Criminal Code. See Gentilucci, P. (2020), 'La possibile rilevanza penale del cosiddetto negazionismo del Covid-19', *Giurisprudenza Penale* Vol. 10.

<sup>226</sup> Beniušis, V. (2020), 'Lithuanian parliament adopts €6,000 fines for breaking quarantine rules', *LRT English*, 1 April.

<sup>227</sup> See <https://www.politie.nl/en/themes/corona-virus-and-police-work.html>.