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International Bar Association

IBA Covid-19 Legal Policy Task Force

Questionnaire Answers





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First published in October 2021.

IBA Covid-19 Legal Policy Task Force Report

I. Legal regimes implicated by Covid-19

Communications

Covid-19 data, including personal and health data, is subject to numerous legal regimes. In the European Union, Covid-19 data is a special category of data subject to the General Data Protection Regulation (GDPR). Authorised apps facilitate access and sharing of data by the individual on the basis of consent (eg, Australia, Canada, EU Member States, India, the United Kingdom and the United States). All such apps anonymise information.

Immuni, Italy's contact tracing app, generates randomised codes which are exchanged via Bluetooth with other devices that have the app installed. The app then compares the memorised codes with infected persons. Other apps operate with a similar system, such as Germany's Corona-Warn-App, Switzerland's SwissCovid and Canada's COVID Alert.

Consent-based public health apps are de facto required. Contact tracing in China is performed via localised apps based on the broadly used Alipay and WeChat apps, as well as one app developed at the central level. Because consent is required to download such apps, the data is not anonymised. If they are not installed, access to services and venues is precluded, thereby making them essentially mandatory.

Other countries, such as South Korea, did not develop a specific contact tracing digital app, but have developed, at a central level, an epidemiological investigation per each positive patient by accessing, without consent, surveillance footage, telephone and credit card records.

Other digital tools have been developed, such as immunity passports or digital certificates, that is, certificates that demonstrate that the bearer has antibodies acquired either through recovery from the disease or vaccination. Such certificates can be used to exempt the bearers from quarantine and some social distancing restrictions to allow travel. For example, commencing on 1 July 2021, the EU implemented EU Digital Covid Certificates with a QR code that, when scanned, confirms that the bearer has: (1) been vaccinated; (2) received a negative test result; or (3) recovered from Covid-19.

Antitrust

Covid-19 has increased cooperation among competitors and resulted in some price gouging.

Access to essential items, such as personal protective equipment (PPE), hand sanitiser, alcohol wipes and basic foods, has been the source of significant price gouging. Many authorities have launched investigations (eg, Bulgaria, Brazil, France, Greece and Portugal) or begun to monitor these markets. In Australia, emergency regulations were issued under the Biosecurity Act 2015 to target price gouging and the export of essential goods.

Antitrust authorities have been challenged on procedures. Several jurisdictions simplified their procedures or made them more flexible for proceedings that would usually take months to approve, such as partnerships or joint ventures. These simplified procedures are designed to save industries from bankruptcy due to the economic crisis brought about by Covid-19. Authorities considered lowering thresholds that would block transactions to save companies in sensitive markets. However, 15 months after antitrust discussions started, authorities in general concluded that although regulators should be receptive to failing firm arguments, they are unlikely to relax their rules.

Those in favour of relaxing antitrust procedures have argued that doing so can benefit consumers by securing essential services, increasing distribution of essential goods or bolstering crucial research and development (R&D) projects for vaccines and medicine. However, not all these benefits are positive, and some can result in cartel formation. Antitrust authorities reassessed cooperation in crises to ensure that positive effects and benefits are verified, without negative outcomes such as price increases and illegal market allocations.

Healthcare and life sciences

Several countries have existing constitutional powers to declare an emergency and grant special public health emergency powers to the government. For example, the Political Constitution of the United Mexican States provides for the declaration of an emergency, which grants broad and general authority to the General Sanitary Council and the Minister of Health to take executive action. In other countries, such as France, these emergency powers are counterbalanced by the obligation of the executive to regularly consult Parliament, while ministers may be asked to testify and justify their actions before special parliamentary commissions.

Various areas of law impacted by Covid-19 included:

- public health legislation allowing for emergency health measures, such as lockdowns, use of masks, use of tests, and restricted access to elderly care facilities or other collective areas;
- the regulation of therapeutic goods, including medical devices, medicine, laboratory tests and the governmental procurement process for urgent health supplies;

- the exemption or limitation of emergency health product manufacturers' potential liability for damage caused to patients and, in some cases, the (partial) assumption of this liability by governmental funding; and
- healthcare and medical privacy, personal data protection and electronic records.

A positive consequence of the pandemic was the collaboration between public and private health sectors, including in relation to hospital capacity and workforce shortages/surge in agency staff. However, some private sector businesses were prematurely shut down, which affected the supply of essential pandemic products. Another positive consequence was the faster introduction and facilitation of e-health, e-prescriptions and streamlined access to health personal data for secondary R&D purposes.

The Covid-19 pandemic also demonstrated the capacity of government services and public bodies, as well as Parliament members, to accelerate their procedures for the sake of both fighting against the pandemic and propelling innovation.

Intellectual property (IP) and entertainment

Voluntary waivers and relinquishment of patent rights for some technology and drugs designed to combat Covid-19 were filed.

Countries with poor online systems for the filing and prosecution of trademarks and patents were deeply impacted due to the inability to conduct filing, prosecution and related proceedings. IP litigation was also highly impacted due to the total or partial shutdown of courts and enforcement in various jurisdictions.

Administrative decrees, policies and guidelines have been issued to expedite or abbreviate the approval processes for commercialisation or importation of pharmaceuticals, devices and vaccines.

In some jurisdictions, the number of patent and trademark applications increased in certain areas, such as biotechnology, and there was an increase in the licensing and recordation of the corresponding licence agreements.

Compulsory licences and mandatory patent waivers are subjects of spirited debate in many jurisdictions. Applicable international treaties and various domestic laws in different jurisdictions contemplate the possibility of compulsory licences.

The IBA Intellectual Property and Entertainment Law Committee is of the firm view that patent law is not the problem, and mandatory patent waivers are NOT the solution to defeat Covid-19.¹

Employment and industrial relations

The pandemic has transformed the employment environment.

Companies had to reorganise quickly to ensure the continuity of their operations in the face of unprecedented and difficult working conditions. Remote working became the norm and all activities that were not considered necessary were suspended.

Depending on the jurisdiction, remote working was regulated, and its implementation was potentially subject to the conclusion of collective agreements with trade unions.

Regulations linked to part-time or temporary work have been key to enable:

- employees to receive compensation even if they could no longer work; and
- employers to be indemnified from the compensation paid to employees despite facing a drop in turnover.

Health and safety in the workplace has been altered to:

- give employers the authority to test employees/request they be tested or vaccinated;
- settle the status of employees exposed to the virus who have care responsibilities; and
- lead the employer to reorganise the workplace to ensure that all social distancing measures are respected (particularly tricky on manufacturing and logistics lines).

1 In a joint statement, IBA Intellectual Property and Entertainment Law Committee Co-Chairs Gregor Buehler and Ozge Atilgan Karakulak, and Senior Vice-Chair Alejandro Luna, stated:

'Now more than ever, during the Covid-19 pandemic, the world has witnessed the relevance of pharmaceutical innovation; not only in the prompt reaction and response to offer various vaccines to confront the invisible enemy, but also with promising new products to cure the illness. New vaccines, products and medical devices to face the pandemic do not arise spontaneously, but rather derive from the virtuous circle of previous innovation, research and development, whose main engine stems from a healthy patent system. Facing a demand derived from a global pandemic, there are not enough raw materials, manufacturing plants, distribution and materials for preservation of products to solve the problem that is not attributable to the patent system.

'Evidence of the problem to overcome the pandemic, arises from scarce goods and services, not from the patent system. On the other hand, the clear evidence is that the new treatments and vaccines arose from this innovation industry stimulated by the patent system, therefore, we consider that the problem is not the patent system, nor the solution lifting patents, but the establishment of measures to facilitate access to inputs through a system that fosters a balance between stakeholders, innovators and governments.

Fierce debates centred on disciplinary measures or dismissal of employees who refuse to be vaccinated, tested or follow sanitary instructions.

Social security issues have been raised regarding workers working remotely for an employer located in another country.

Pandemic-dedicated laws have also been issued in most countries, such as

- regulation forcing employees to take paid leave; and
- compensating employees whose work meant they came into regular and unavoidable contact with the public during the pandemic.

International commerce and distribution

FORCE MAJEURE

Force majeure clauses apply to an event that prevents or delays a party from performing and may be invoked if the party concerned proves that: (1) the event preventing performance was beyond its reasonable control; (2) could not reasonably have been foreseen at the time of the conclusion of the contract; and (3) its effects could not reasonably have been avoided or overcome. The parties usually provide a list of examples of such events, including war, insurrection, acts of terrorism, epidemics, natural disasters or other extreme natural events.

The consequences are suspension of the obligation to perform and release from any liability for non-performance or delay and from any other remedies for breach of contract. The other party may suspend performance. The clause is intended to last for the duration of the events of force majeure that prevent performance.

It is clear, therefore, that Covid-19 could only justify non-performance if the pandemic met the conditions of 'externality, unforeseeability and unavoidability'. However, proving that the pandemic precluded performance by proving effects that could not reasonably have been avoided or overcome may not be automatic.

MAC AND MAE CLAUSES

'Material adverse change' (MAC) and 'material adverse effect' (MAE) clauses are common in contracts that have a time lag between performance and conclusion. They render the completion of the transaction conditional on the fact that, prior to the execution of the relationship: (1) no extraordinary circumstances or events occur or are likely to cause significant negative changes in the political, economic, financial, currency or market context which would, by extension, have a substantially detrimental effect on the transaction or on the parties' financial position; (2) there are no extraordinary circumstances that entail significant adverse changes in the political, economic, financial, currency, regulatory or

market environment which would, by extension, have a materially adverse effect on the same transaction or on the financial, asset, economic or income situation of either party (MAE); and (3) there are no facts relating to one or both parties that would have the effect of modifying the activity of one or both parties or their respective financial, asset, economic or income situation (MAC).

Covid-19 may or may not qualify because pandemics might not be among the events that the parties expressly intended to exclude from the scope of application, depending on whether it might constitute an event such as to affect the general context in which the contractual relationship is to be performed or it is a 'material' event – that is, it significantly affects the economic transaction and the overall structure of the parties' interests.

The Delaware Supreme Court has favoured a restrictive interpretation of materiality, stating that the events considered by such clauses are relevant not in themselves, but only if they produce significantly prejudicial effects not reversible in the short- or medium-term, but rather capable of persisting in the long-term 'to be measured in years rather than months'.

Covid-19 cannot in and of itself be considered sufficient to constitute a MAC or a MAE. These are the effects of the pandemic, which, at the outcome of a verification that takes into account the peculiarities of the concrete case and the interests pursued by the parties, must prove to be capable of consistently prejudicing the structure of the transaction envisaged by the same contracting parties, explaining repercussions of a lasting nature and not exhaustible in a limited period of time.

HARDSHIP CLAUSE

Hardship clauses, which are widespread in international trade, came to the fore during the pandemic. They are negotiated provisions intended to be applied when events occur that substantially alter the balance of the contract, either because of an increase in the cost of performance effected or a decrease in the value of counter-performance. Such clauses entitle the party disadvantaged by such events to suspend performance and ask the other party to renegotiate the contract. In the event that the renegotiation attempt fails, the clauses may further provide for the intervention of a third party (including a judge or arbitrator).

Hardship may be translated as 'inconvenience' and, therefore, could only occur with respect to events: (1) that occur or become known to the party affected by the contractual imbalance after the conclusion of the contract; if the change of circumstances capable of altering the equilibrium of the contract began gradually before its conclusion, hardship tends to be excluded, except where these circumstances had a sudden and unexpected development in the course of the relationship; and (2) that occur or become known to the party affected before the performance. Hardship is relevant only with respect to services that have yet to be rendered. Any increase in the cost of the service or decrease in the value of performance occurring later is irrelevant.

Technology

The virus has led to increased use of both healthcare-related and non-healthcare-related technologies. The privacy and security issues of remote communication technologies have been highlighted greatly during the pandemic.

Technology is being extensively used for testing, immunity passports, telehealth, medical artificial intelligence (AI) and healthcare robots. And while extensive data collection in the form of individuals' physical location and health status occurred to promote public health, governments' collection of tracking and location data relating to Covid-19 test results and vaccination information leads to obvious privacy concerns, including relations to the digital means through which data is collected and stored, and the lack of due informed consent of the data subject.

Social isolation and lockdowns have necessitated an increased reliance on technologies. Surveillance by private parties/corporates is of equal concern when it comes to privacy rights. These private players include employers, consumer-facing corporations and education providers.

As such, digital inequities are coming to the forefront. There is a disparate impact of employee surveillance on different groups, such as women, people of colour, the lesbian, gay, bisexual, and transgender (LGBT) community, older people and other people from marginalised groups. Students are an especially vulnerable population when it comes to privacy. Moreover, people in lower income groups the world over have been unable to adopt technology and thereby may experience further marginalisation.

There are concerns that the surveillance and data collection measures implemented by governments may become permanent and thus privacy infringements may continue indefinitely.

Governments must balance data privacy and public health in their responses to Covid-19. The World Health Organization (WHO) has called for data collection and processing to be rooted in human rights and implemented with due regard to applicable international law, data protection and privacy principles, including the United Nations Personal Data Protection and Privacy Principles.

Immigration and nationality

The Covid-19 pandemic has seen a range of responses from states that have affected international mobility and movement of people across borders, seen as one of the greatest threats to controlling the spread of the virus. The responses have created a multi-tiered hierarchy of laws affecting nationals, permanent residents, visa holders and temporary travellers, with some overarching rules applying to all, but with myriad complex travel restrictions based on nationality, immigration status, purposes of travel and source or transit country.

A broad range of government departments from national security, defence, immigration, health, foreign affairs and disease control are involved in issuing regulations, notices, updates and policies covering these restrictions. Across most countries, temporary immigration policies have been rolled out to enable those trapped in countries as visitors or unable to remain lawfully in the territory, whether through automatic extensions of visas or simplified visa extension processes, while employment-based criteria have been loosened to allow migrants to remain in compliance with their visa conditions even if they are not working or being paid.

- Many states responded by introducing (or extending) states of emergency, often with a constitutional legal basis and often framed in a national security context.
- The US was notable for its continued use of presidential executive orders and proclamations ordering border closures and the exclusion of non-nationals and permanent residents.
- A large number of countries introduced regulations to restrict travel and require passengers (nationals and non-nationals) to quarantine on arrival and to take pre- and post-travel Covid-19 tests.
- Administrative circulars, notices, policy guidance and information published on national government websites were frequently used, often with regular amendments, to implement temporary changes to policies across a wide range of areas, such as employer compliance, lifting certain visa conditions, waiving visa criteria and introducing flexibility around the effect of absences on visa maintenance.
- A number of countries amended their administrative practice and application processes (using technology) to dispense with the need to sign documents, file physical documents or attend visa centres in person.

At the regional level, the EU might have been the most obvious candidate for implementing a fully coordinated response at both internal borders within the Schengen Area and at the external border. However, the closure of internal Schengen borders (some already in place following the migrant 'crisis' of 2015) and the suspension of free movement of people guaranteed by the Treaty on the Functioning of the European Union (TFEU) followed swiftly from early outbreaks in Italy. The EU sought to coordinate an EU-wide response to the pandemic through a series of European Commission recommendations and guidance on travel restrictions into the EU. This resulted in consistency in travel restrictions and the definition of 'essential' travel, identifying high-risk countries, and provided greater clarity to travellers and global businesses seeking to send staff into EU Member States. However, the entry restrictions were and remain highly fragmented, and were often driven by economic recovery concerns, such as the resumption of tourist travel.

At the multilateral level, the striking feature is the lack of engagement of the Member States of various multilateral organisations and forums (eg, the UN, WHO, World Trade Organization (WTO), Group of Seven (G7) and Group of Twenty (G20)) and in particular, the failure to follow commitments in the WHO's International Health Regulations 2005 (IHR), which specifically seek to avoid travel restrictions as these are considered ineffectual against the spread of pandemics.

The kinds of measures taken include:

- **targeted source country border closures:** restricting the entry of non-nationals from designated high-risk countries for ten to 14 days before entering the intended host state; the US introduced such a measure through a presidential proclamation on 31 January 2020 in relation to China, which remains in force;
- **blanket border closures** for all non-nationals and residents;
- **'essential travel' regulations**, deployed through schemes such as the US National Interest Exemptions, allowing certain travellers to travel and/or avoid self-isolation;
- **exit permits and exit/entry bans for nationals:** a number of countries required exit visas (eg, India) for those wishing to leave, and there was intra-governmental coordination to allow the exit of travellers being repatriated; Australia was one of the few countries that imposed exit bans on its own nationals without residency outside Australia, and also prohibited the entry of its own nationals from India – a step heavily criticised by the UN as a breach of Article 12 of the International Covenant on Civil and Political Rights (ICCPR);
- **suspension of border immigration processing:** for example, the US suspended this measure for people arriving from Mexico or Canada, while Bahrain suspended it for visas upon arrival;
- **closure of immigration infrastructure:** the closure of in-country visa application centres/residence registration centres and forced closure of overseas visa application centres and consulates where visas could be filed due to local lockdown restrictions was a widespread problem due to the vast majority of countries requiring in-person filing and biometric submission, interviews and physical submission of documents; premium/priority processing, frequently used for employment-based applications, was suspended in many countries;
- **emergency provisions enabling stranded travellers to extend their visas** if unable to depart within the period the temporary visa or admission validity (90 days to 180 days), including automatic extension of visas and residence permits (eg, Saudi Arabia), simplified online systems for requesting temporary extensions of visas (eg, UK exceptional assurance), tolerance of overstay or new rules allowing late applications and late filing of documents;

- **relaxation of exclusion to healthcare based on immigration status:** many countries permitted migrants who, due to their immigration status or visa conditions, might normally be excluded from accessing healthcare to obtain such care;
- **relaxation of immigration requirements:** many countries instituted a temporary relaxation of visa conditions, including income thresholds for family visas, salary levels for employment-based migrants, pre-employment immigration checks, physical presence requirements, job creation requirements, language testing, integration tests and in-country visa switching conditions;
- **digital nomad visas:** a number of countries implemented new long-stay visa categories to allow travellers to work remotely for overseas employers; this was focused on bolstering the tourist trade in some locations and attracting skilled migrants to others; and
- **permanent residence and nationality law eligibility requirements:** certain countries introduced policies to tolerate absences due to Covid-19 when considering permanent residence and citizenship applications, which typically require significant presence in the host country to qualify.

Anti-corruption

Covid-19 has proven both a source of corruption and an obstacle to related investigations and enforcement. The procurement of medicine, medical devices and other related products were subject to such urgency that it undermined transparency and accountability mechanisms. More broadly, Covid-19 has served to justify investigative delays and the softening of certain compliance standards and controls.

II. Consequences and results of applicable laws

Communications

The major obstacles that impeded contact tracing systems from fully realising their potential have been legal systems, such as those of the Western world, under which each individual has the choice whether or not to install or use the apps.

TousAntiCovid, the app developed by the French government, as of October 2020, had been downloaded and activated only 4,843,149 times (in a population of more than 67 million people), and daily access to the app was lower than 200,000.

COVID Alert, developed by Canada, as of 8 July 2021, has been downloaded only 6,592,387 times (in a population of more than 38 million people), and only 34,013 people reported having been tested positive for Covid-19 to the app.

Healthcare and life sciences

Applicable laws have proven inadequate to deal with the effects of Covid-19. Issues include:

- a lack of coordination between government authorities and difficulty interpreting the legal authority to order lockdowns and other sanitary measures;
- difficulty acquiring and distributing medical supplies, such as facemasks or hydroalcoholic gel, resulting in shortages and confusion. Most acute was the shortage of oxygen in India and African countries, such as Tunisia, and medical equipment such as artificial respirators, intensive care beds or healthcare staff PPE in the EU;
- unclear regulations for the emergency approval of tests, medical devices and equipment. For example, Mexico had no clear emergency approval pathway for vaccines;
- conditional approval of only briefly tested vaccines and lack of access to critical health data, creating vaccine scepticism; and
- unclear regulation relating to triage, given a lack of hospital infrastructure to treat patients.

Nonetheless, some countries, such as Israel, clearly showed that their healthcare and centralised public health systems were highly effective during the pandemic.

- in Turkey, the number of hospitals, intensive care units (ICUs) and healthcare workers were sufficient for operating 24/7;
- in Australia, residents had government-subsidised access to Covid-19 testing and vaccines for those vaccinations that were Therapeutic Goods Administration (TGA)-approved and available; and
- in France, the pandemic also accelerated the launch of new healthcare system reform, called the 'Sègur de la Santé', which included the reorganisation of territorial healthcare services, reopening of beds in public hospitals and the enhancement of healthcare professionals' status.

IP and entertainment

Emergency authorisation for pharmaceuticals was given through *sui generis* proceedings that included a special review of clinical information, clinical trials and the acceptance of foreign agency certificates. Emergency authorisation expedited approval. In some countries, emergency approval excluded the private sector from the commercialisation and distribution of the vaccines. Delays were avoided by

forfeiting preventive IP analysis, such as the 'patent linkage' mechanism, to prevent patent violation when issuing marketing authorisation.

Employment and industrial relations

Applicable laws resulted in substantial changes in the work environment, including:

- a change in management rules/strategy to take into consideration the development of remote working;
- a new work relationship, with the development of technology-assisted meetings, for eg, via Zoom;
- new modes of negotiation with employee representatives;
- strategies/actions for dealing with employees who refused vaccination; and
- development of flexible working to adjust quickly to an ever-changing environment.

Questions arose regarding the legality of employers requesting information on employees' health or using Covid-19 tracking apps to obtain testing and vaccination data.

International commerce and distribution

The consequences depend on individual contracts and applicable laws. The effects are different depending on how the Covid-19 pandemic has been classified in contracts and whether delays in contract performance have resulted from it. Effects vary, from termination of contracts to the liability of the party that has failed to perform.

Technology

The unique characteristics of this pandemic have seen responses in the use of new technologies, including remote communications platforms, healthcare robots, medical AI, heat sensing and contact tracing. This has resulted in most states becoming surveillance states. While we can raise the alarm for privacy and civil liberty violations, the emergency nature of the pandemic overrides many such criticisms.



Credit: Who is Danny/Shutterstock

Immigration and nationality

The border closures and travel restrictions implemented throughout the pandemic, together with the impact of lockdown restrictions in most states, had significant effects on global mobility and freedom of movement. It necessitated urgent action to resolve the immediate problem of stranded passengers and implement temporary measures to confront the longer-term issues of visa holders affected by widespread lay-offs and job retention policies, and the shutdown of the immigration system.

STRANDED TRAVELLERS

As a result of travel bans and border closures, often made at very short notice, a large number of passengers were not able to leave or return to countries where they held temporary visas. Repatriation flights of nationals were organised from affected high-risk countries, with some bilateral coordination. Quarantine on arrival regimes were deployed in some countries, while others had none at all. Many countries issued frequently asked questions (FAQs) on their national websites to help those affected. Many implemented automatic extensions of temporary visas, often with multiple extension dates as the pandemic continued

through several waves. A variety of additional measures were put in place, ranging from simplified online systems for requesting temporary extensions of visas, tolerance of overstay or temporary policy changes allowing late applications and late filing of documents. These were often supported by immigration contact centres that foreign nationals could contact if their visas were expiring. Many of these policies were announced through travel advisories, circulars, notices and policy guidance published on government websites. Some states issued separate notices updating previous guidance, while others simply updated the relevant page so it was often difficult to understand what policy changes had been made by the last iteration.

'ESSENTIAL TRAVEL' REGIMES

'Essential travel' regimes were put in place to define essential travel, often with no clear definitions, opaque application processes and discretionary treatment of requests. Although undertaken unilaterally (apart from in the EU), many rules were similar and included government and health staff, national infrastructure-related occupations and freight drivers, who were permitted to enter and, in some cases, exempt from quarantine requirements. Some countries, such as the UK, introduced a wide range of categories of workers exempt from self-isolation on arrival, including some surprising inclusions, such as film production companies and elite sports people. 'National interest' exemptions and similar regimes allowing travel for defined groups continued to grow throughout the pandemic, including those bringing investment/significant economic activity/job retention. The European Commission recommended that EU Member States include highly skilled workers in their exempted categories. The categories were often broad, announced through online guidance and policy announcements.

EXIT PERMITS AND EXIT BANS

Exit bans on nationals leaving their own territory run contrary to human rights norms, in particular, Article 12 of the ICCPR. In Australia, the Health Minister's emergency powers under the Biosecurity Act 2015 were challenged in the Federal Court, which found that the act gave the minister broad powers to impose such bans.

SHUTDOWN OF THE GLOBAL VISA AND IMMIGRATION APPLICATION INFRASTRUCTURE

The pandemic revealed that many countries still have arcane visa application processes, which fail to use existing digital technologies, often on the pretext of data security or immigration fraud. In the vast majority of countries, these processes require the physical submission of original documents and passports at consulates and application centres, in-person submittal of biometrics (fingerprints and facial scans), face-to-face interviews, in-person collection of document/visas

once the decision is made, in-person registration in the country after arrival (usually at a police station or municipal register), and similar ‘bricks and mortar’ application centres and paper-heavy applications for in-country visa extensions. Some countries insist on wet signatures for applications. These processes and the effect of local lockdowns meant that the immigration infrastructure came to a grinding halt. Pending applications were left pending, and many migrants already in the country could not apply to extend their visas. Asylum cases were delayed and there were reports of asylum applicants unable to submit their claims for refugee status. Some states opened regional asylum application centres and some allowed asylum interviews to be conducted via video conference.

ACCESS TO HEALTHCARE FOR MIGRANTS

The UN reiterated the universal right to health on a non-discriminatory basis. While many countries did relax access and put in place policies to allow migrants with no status to access healthcare for Covid-19-related treatment, migrants in an irregular situation still avoided contact with health services or were not informed of these exceptions. While some countries advised undocumented migrants that they could access test, treatment and vaccinations irrespective of their immigration status, there remained a large number of barriers to accessing healthcare systems, such as needing to present proof of insurance or social security numbers.

RELAXATION OF IMMIGRATION REQUIREMENTS

Due to the sudden lockdowns that began in March 2020, a wide variety of immigration-related measures were implemented in numerous countries:

- right to work/pre-employment checks could be carried out remotely as could notifications of change of work address resulting from stay-at-home lockdown restrictions;
- reporting of salary changes for those on job retention schemes, which ranged from generous waivers of these rules to some states retaining existing laws on failure to pay migrant workers with the risk of fines and debarment from employers filing future applications;
- in-country switching, in which certain countries allowed visitors to apply for long-stay visas due to visa application centres and consulates abroad being closed; and
- certain countries introduced policies to tolerate absences due to Covid-19 when considering permanent residence and citizenship applications, which typically require significant presence in the host country (presence requirement to qualify).

IMPACT ON LOW-PAID MIGRANT WORKERS

The economic downturn exacerbated already precarious employment and living conditions for low-paid migrant workers in countries where the use of such migrants is prevalent. The high incidence of Covid-19 cases in these populations linked to cramped living conditions and mass repatriation to countries of origin prompted some states to modify traditional employee dependency on their employers to enable them to switch employment, while a number of states expanded access to healthcare and implemented automatic visa extensions, speeding up reforms that were already on the table in some states.

Antitrust

The main pillars of antitrust laws were not affected; only how authorities managed certain procedures was implicated.

Anti-corruption

Countries reacted differently to anti-corruption enforcement. In some, enforcement ceased or decreased significantly. In others, the focus shifted more to Covid-19-related issues.

In many countries, efforts to simplify and accelerate procurement undermined improvements in transparency and accountability achieved in recent decades. For example, 'Guidance from the European Commission on using the public procurement framework in the emergency situation related to the Covid-19 crisis' (2020/C 108 I/01) substantially reduced certain deadlines and facilitated direct awards under certain circumstances, sometimes even without publication.² Likewise, Article 22 of the Turkish Public Procurement Code permits direct procurement in light of considerations such as necessity.

The lack of a firm commitment against corruption in certain countries may have fuelled an overall feeling of public distrust. For example, in Turkey, (now former) Trade Minister Ruhsar Pekcan was accused of nepotism following a report alleging she favoured her spouse's company in government tenders. The Minister reportedly directed the Ministry of Trade to purchase 9m lira (\$1.1m) worth of disinfectant from two companies owned by her husband. But the case was closed with no prosecution and the Trade Minister was dismissed from her position (she denied any wrongdoing).³

In Brazil, allegations of corruption have been made regarding the purchase of overpriced doses of vaccines by the Ministry of Health. Brazil's Federal General

2 See Arts 2.2–2.3, Guidance from the European Commission on using the public procurement framework in the emergency situation related to the Covid-19 crisis (2020/C 108 I/01) at [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020XC0401\(05\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020XC0401(05)&from=EN) accessed 6 October 2021.

3 Diego Cupolo, 'Erdogan fires trade minister amid scandal, reshuffles cabinet' (*Al-Monitor*, 21 April 2021) at www.al-monitor.com/originals/2021/04/erdogan-fires-trade-minister-amid-scandal-reshuffles-cabinet#ixzz72U6cjaWF accessed 8 September 2021.

Prosecutor recently opened an investigation into President Bolsonaro's omissive role in the alleged corruption (Bolsonaro denies any misconduct).⁴

In the US, following the enactment of the Coronavirus Aid, Relief, and Economic Security Act (the 'CARES Act'), political preferences allegedly featured in selecting certain early recipients of loans. The US Department of Justice is actively investigating potential fraud, false statements and money laundering related to the CARES Act, Paycheck Protection Program, Economic Injury Disaster Loan programme and unemployment insurance programmes.⁵

In Germany, allegations of corruption during the pandemic have been made regarding politicians recommending, facilitating or brokering deals for the sale of masks. Prosecutors are investigating these politicians.⁶

In 2020, the UN Office of Drugs and Crime published a report addressing the concerns related to corruption.⁷ The G20 also addressed the issue in its Good Practices Compendium on Combating Corruption in the Response to Covid-19.⁸

Notwithstanding the many initiatives to combat corruption, these efforts have not changed the overall negative public perception of corruption prevention. According to Transparency International's Global Corruption Barometer 2021, 29 per cent of EU residents used well-connected friends or family to receive medical care during the pandemic, and at least six per cent of people paid bribes to access healthcare, which is equivalent to more than 106 million people across the bloc.⁹ According to Transparency International, since the beginning of the pandemic, healthcare has become a focus of corruption with citizens urgently needing medical support and vaccinations. This survey clearly demonstrates the serious impairment of anti-corruption efforts throughout the pandemic.

4 Luciana Magalhaes and Samantha Pearson, 'Brazil Opens Criminal Probe Into President Over Indian Vaccine Deal' (*The Wall Street Journal*, 3 July 2021) at www.wsj.com/articles/brazil-prosecutors-to-investigate-president-bolsonaro-over-vaccine-contract-irregularities-11625337818 accessed 8 September 2021.

5 US Department of Justice Office of Public Affairs, 'Justice Department Takes Action Against COVID-19 Fraud' (26 March 2021) at www.justice.gov/opa/pr/justice-department-takes-action-against-covid-19-fraud accessed 8 September 2021.

6 Anna-Maija Mertens, 'Germans concerned about big businesses dominating political decisions. Global Corruption Barometer – European Union 2021 in focus' (Transparency International, 15 June 2021) at www.transparency.org/en/blog/gcb-eu-2021-corruption-survey-germany-business-dominating-politics-lobbying# accessed 8 September 2021.

7 United Nations Office on Drugs and Crime, *Covid-19 Vaccines And Corruption Risks: Preventing Corruption In The Manufacture, Allocation And Distribution Of Vaccines* at www.unodc.org/documents/corruption/COVID-19/Policy_paper_on_COVID-19_vaccines_and_corruption_risks.pdf, accessed 30 September 2021.

8 United Nations Office on Drugs and Crime, *Good Practices Compendium on Combating Corruption in the Response to COVID-19* at www.unodc.org/pdf/corruption/G20_Compndium_COVID-19_FINAL.pdf, accessed 30 September 2021.

9 Transparency International, 'Global Corruption Barometer EU: People worried about unchecked abuses of power' (15 June 2021) at www.transparency.org/en/news/gcb-eu-2021-survey-people-worry-corruption-unchecked-impunity-business-politics accessed 8 September 2021.

III. The implication of applicable laws for international coordination and collaboration

Communications

The European Data Protection Board has pointed out that:

‘the world is facing a significant public health crisis that requires strong responses, which will have an impact beyond this emergency. Automated data processing and digital technologies can be key components in the fight against COVID-19. However, one should be wary of the “ratchet effect”. It is our responsibility to ensure that every measure taken in these extraordinary circumstances are necessary, limited in time, of minimal extent and subject to periodic and genuine review as well as to scientific evaluation.’

The European Commission has implemented interoperability between some of the contact tracing apps available in various Member States, through a gateway set up by T-Systems and SAP, and hosted in the European Commission’s own data centre in Luxembourg.

Currently in Europe, there are 20 contact tracing apps, based on the decentralised system (ie, the calculation concerning contact with devices owned by a positive individual are performed within the app the individual installed on their own device) that are potentially interoperable. Eighteen of them can already communicate with each other: Stopp Corona App (Austria), Coronalert (Belgium), Stop COVID-19 (Croatia), CovTracer-EN (Cyprus), eRouška (Czech Republic), Smittestop (Denmark), Koronavilkku (Finland), Corona-Warn-App (Germany), COVID Tracker (Ireland), Immuni (Italy), Apturi Covid (Latvia), Korona Stop LT (Lithuania), COVID Alert (Malta), CoronaMelder (Netherlands), Smittestopp (Norway), ProteGo Safe (Poland), #OstaniZdrav (Slovenia) and Radar Covid (Spain).

Within the EU, there are countries, such as Sweden and Luxembourg, that have not envisaged the development of contact tracing apps.

The EU has adopted a unified approach with the introduction, effective on 1 July 2021, of the EU Digital Covid Certificate. The adoption of this certificate builds on the framework established by the proposal for a resolution on a common framework for an EU certificate adopted by the European Commission on 17 March 2021, and on the implementation of guidelines concerning the technical specification for the system by the representatives of the Member States within the eHealth Network on 22 April 2021. On 20 May 2021, the European Parliament and the Council of the EU reached an agreement on the European Commission proposal of 17 March 2021.

The EU Digital Covid Certificate covers information concerning vaccination, testing and recovery from the illness. It is available free of charge in digital and paper-based format and it bears a digitally signed QR code. EU Member States will refrain from imposing additional travel restrictions on the holders of the EU Digital Covid Certificate unless they are necessary and proportionate to safeguard public health.

European institutions highlighted how the EU Digital Covid Certificate, available both in paper form as well as electronically, should facilitate free movement within the EU and not be a precondition to free movement, which is a fundamental right within the EU.

EU Member States have agreed on a coordinated approach to the restrictions of free movement in response to the Covid-19 pandemic, which includes a colour code for the classification of regions based on the epidemiological situation. Through the Re-open EU application, citizens are able to access the latest information on coronavirus measures and travel restrictions currently in force in the various EU countries.

Antitrust

Virtual sessions and meetings have made antitrust authorities more connected. Virtual sessions have allowed not only debates related to routine procedures and topics, but also provided for rapid reaction to the pandemic. Examples include studies shared by the Organisation for Economic Co-operation and Development that provide guidelines for companies entering into collaboration agreements with competitors, and International Competition Network publications about partnerships during this period.

Healthcare and life sciences

Most countries reported a lack of coordination and harmonisation between local applicable laws and international health measures. The extent of the lack of coordination differed across countries.

In Mexico, a lack of coordination between the US and Mexican governments resulted in the closure of manufacturing facilities, which adversely affected health product supplies. The Mexican legal system only 'links' the country to the IHR regarding epidemiological vigilance and reporting. However, the country is not legally bound. There was a 'complete absence of international legal harmonisation and coordination'.

The Dutch and French governments effectively collaborated with the EU to acquire the right to medical device and vaccine supplies.

The EU also adopted a series of measures, for instance, on public tenders, to simplify rules for the procurement of health supplies, and built a research platform, VACCELERATE.EU, aimed at accelerating cooperation and research for the fight against the virus and its variants. The European Medicines Agency issued guidance on the management of clinical trials during Covid-19 (Version 4 04/02/2021) to facilitate clinical trial projects. The agency put in place rapid review procedures related to Covid-19 aimed at delivering assessments of applications from sponsors in the shortest possible timeframes, while ensuring robust scientific opinions.

However, the EU embargo on the exportation of the AstraZeneca vaccine adversely affected many countries, including Australia.

IP and entertainment

The debate on the waiver of patent rights caused confusion regarding the eventual scope of the waiver. The original proposal was addressed to all patent technology for Covid-19; however, many countries announced that they would support the waiver only if it were temporary and limited to vaccines. There is no consensus about patent waivers or their potential scope, terms and conditions.

The IP Committee rejects patent waivers, recognising that innovation driven by the patent system facilitated widespread access to safe and efficient Covid-19 vaccines in record time; this is not spontaneous but the result of years of investment in R&D promoted by the internationally recognised patent system. Solutions to defeat the pandemic are found in cooperation between governments, international organisations and transnational pharmaceutical companies per the Covid-19 Vaccines Global Access ('COVAX') mechanism to accelerate the development, production and equitable access to Covid-19 tests, treatments and vaccines.

Employment and industrial relations

Overall, most countries reported a lack of connection and harmonisation between local applicable laws and international measures, specifically as regards governing law and social security regulation.

International commerce and distribution

Several international organisations have attempted to provide a framework of principles to be followed because of the effects of Covid-19 on international contracts.

The European Law Institute Principles for the Covid-19 Crisis and the International Institute for the Unification of Private Law (UNIDROIT) note on the use or interpretation

of the UNIDROIT Principles of International Commercial Contracts are useful, where contracts are subject to UNIDROIT. The purpose of the UNIDROIT note is to help parties use the principles when drafting.

Rather than prescribing specific solutions, the document guides the reader through the process, leading the reader to ask appropriate questions and consider the relevant facts and circumstances of each case. Naturally, solutions will vary according to the disparate context of the pandemic in each jurisdiction and, even with a flexible set of rules such as the principles, there is no one-size-fits-all approach.

Technology

International coordination and collaboration has been an unstated but obvious outcome of the pandemic. Governments are talking to each other at levels they never did before.

It has been suggested that the GDPR excessively limits the sharing of data outside the EU. The GDPR encourages a risk-averse approach for organisations in relation to data protection, and therefore the cross-border sharing of data. Data localisation in this form may have been previously justified as it protects the data of EU citizens from the lax data protection legislation in other countries, as well as minimising the risk of data breached via hacking and other measures by containing the data within the EU. However, the GDPR and the limitations it places on the cross-border sharing of data hamper global research relating to Covid-19 as it limits the data available to researchers. Global data sharing is important for the efficient analysis of research. As is well known, data sharing granted researchers earlier access to the virus's whole genome sequences (crucial for enabling vaccine development) than they would have otherwise been able to.

Thus, the pandemic appears to provide a valid reason for the loosening of interpretation of the GDPR and other similar data localisation methods to encourage highly beneficial international coordination and collaboration.

Immigration and nationality

MULTILATERAL LEVEL

At the multilateral level, the IHR were specifically adopted by WHO Member States to prevent, protect against, control and provide a public health response to the international spread of disease. Under IHR commitments, responses to these health threats must be undertaken in ways that are commensurate with and restricted to public health risks, and that avoid unnecessary interference with international traffic and trade, including movement of people. In addition, Article 3 of the IHR requires that any measures be implemented 'with full respect for the dignity, human rights, and fundamental freedoms of persons'.

By implementing overnight travel bans and entry restrictions, it is arguable that Member States breached their commitments (both general and reporting) by relying on their ability to take sovereign action under Article 3.4 of the IHR. Article 43 of the IHR does permit signatory states to implement health measures in accordance with their national law, which achieved the same or greater levels of protection than the WHO recommendations. However, such measures 'shall not be more restrictive of international traffic or intrusive to persons than reasonably available alternatives that would achieve the appropriate level of health protection'.

While the WHO did subsequently include travel restrictions as part of a range of possible measures to be used by states, it is important to reflect on why Member States may have departed from their commitments and reverted to reactive unilateral national measures. As both the ICCPR and IHR require proportionate and the least-intrusive measures, it is equally important to ensure that a proper evaluation of the effectiveness of travel bans and restrictions in stopping the spread of the virus is undertaken. A number of studies have been carried out that have concluded that while travel bans may slow the initial spread for a short period, the evidence of these bans being effective in preventing the spread is much less clear. Further comprehensive research is urgently needed in this area in light of the major social, economic and political impact of such measures.

WTO

Though the WTO, Australia, Canada, the Republic of Korea, New Zealand and Singapore issued a Joint Ministerial Statement on Covid-19 on 13 May 2020, which called for the establishment of 'guidelines to allow, on an exceptional basis, essential cross-border travel for purposes such as maintaining global supply chains, including essential business travel, in accordance with national laws and regulations, without undermining the efforts to prevent the spread of the virus'. The WTO also issued a report on the impact of travel restrictions on trade, calling for a review of lessons learned.

EU

The EU Council presidency activated its integrated political crisis response mechanism from the end of January 2020, moving this to full activation mode by early March and confirming a commitment to coordinate measures concerning travel and the protection of free movement. The EU Civil Protection Mechanism was activated in January 2020 to repatriate EU Citizens. The EU was, however, slow in responding to the proliferation of uncoordinated ad hoc national internal and external border measures, and its failure to properly scrutinise both the legality and proportionality of national travel bans and restrictions was highlighted. EU Member States may deviate from the Schengen Borders Code to impose temporary internal restrictions, but many exceeded the periods permitted for

these and failed to notify the European Commission. Some Member States used public policy and public security to justify the reintroduction of border controls, often blurring the distinction between these two grounds and the distinct ground of public health. The EU Communications adopting a temporary restriction on international non-essential travel on 16 March 2020 (the 'EU Travel ban') and free movement of critical workers (30 March 2020) were non-binding. On 30 June 2020, a recommendation was adopted on the loosening of the restrictions on all non-essential travel to the EU (plus Schengen-associated states) and permitting entry to those coming from 'safe list' countries. Disagreements between Member States were reported, with the 54 countries originally proposed being reduced to 14 (plus China on a reciprocal basis). National priorities such as reopening tourism and reciprocity appear to have taken precedence over the scientific rationale for maintaining border controls. Five Member States deviated from the recommendation allowing essential travel from third countries. The EU has been criticised for the enforcement and evaluation gap in relation to restrictions on free movement across internal borders, an area where it has clear legal competence, and for Member States failing to comply with the general EU principle of sincere and loyal cooperation.

The European Commission has reviewed the EU's response to Covid-19 travel bans and restrictions on free movement and intends to put forward a revised Schengen Borders Code to address lessons learned as to the preservation of Member States' possibility to introduce internal border controls as a measure of last resort.

REGIONAL TRADE ORGANISATIONS

Regional trade organisations, such as the Caribbean Community and Mercosur, took limited action to put in place protocols for border closures that might inform national and regional policy decisions, as did the Association of Southeast Asian Nations, albeit the latter had much more open contacts with the US and China at the early stage of the pandemic.

Anti-corruption

Notwithstanding the pandemic, international coordination and collaboration has persisted, especially among jurisdictions more heavily involved in cross-border cases. Where possible, technology has been used to bridge distances. On the other hand, the work of local agencies in charge of providing material support to such international cooperation undoubtedly was adversely impacted in many respects.

IV. National laws that worked under the stress of the pandemic

Communications

During the outbreak, most countries implemented a set of rules favouring remote work, as well as digitisation of the educational system and public administration. These changes led to an effective and increased adoption of remote work and electronic services by civil servants, including with respect to public services, court hearings and school activities.

Antitrust

Countries mostly pursued more agile mechanisms of antitrust analysis, especially for cooperation in the pandemic. For example, some jurisdictions have enacted emergency laws to relax or suspend deadlines, such as Brazil and France. In Hungary, the competition authority was granted special powers in July 2021 to initiate an 'expedited sector inquiry' to assess any major market distortions, such as drastic price hikes, brought about by the pandemic (eg, in the construction materials industry).

Healthcare and life sciences

Many countries, including Australia and some EU Member States, were able to review or simply enforce their existing laws regarding the registration and regulation of therapeutic goods to fast-track necessary products, including the launching and priority approval of clinical trials, diagnostic tests and vaccines.

Contract law was flexible to allow contracts between governments and hospitals and the private sector pharmaceutical and medical device companies for the supply of therapeutic goods, including vaccines and intensive care supplies.

The intellectual property (IP) system allowed the industry to quickly respond to the pandemic due to the years of investment in scientific research prior to the pandemic. Dependable IP enabled firms to understand and select complementary technologies to invest in and then piece together all the necessary components or understand where different components were needed to be sourced or developed. For example, developing an mRNA vaccine requires mRNA stabilisation technology for which there are separate and diverse IP holdings and ownership. The rights to mRNA stabilisation were available to mRNA vaccine developers through various sources and could be obtained under negotiable terms. In both stepwise and parallel fashion, firms assembled and developed the many processes and components needed.

Legislation governing the private healthcare system was effective in some countries, while in others it was not. The legal requirement for all persons to have a full

healthcare insurance package in the Netherlands did not 'present serious problems', despite the general lack of medical resources and capacity. In Israel, universal legally moderated membership in one of the four national health maintenance organisations proved a key to success in vaccination and testing.

Most countries reviewed or accelerated their healthcare system and reimbursement processes to allow e-health, including telemedicine and electronic prescribing, and health information websites and hotlines, with aims including, but not limited to:

- use telemedicine to assist intensive care against Covid-19;
- deliver new devices and tools for faster, cheaper and easier diagnosis;
- use telemedicine and AI to diagnose and monitor patients safely and to reduce the burden on health systems;
- protect healthcare workers; and
- support and foster the uptake of innovative tools and technologies by small companies.

There is a lack of consensus as to whether constitutional emergency powers worked in the face of the pandemic. Constitutional powers were described as 'anachronistic, weak and impractical' for confronting the pandemic in some countries. On the other hand, it was also argued that governments lacked leadership and efficacy, rather than regulation. These contrasting arguments were particularly prevalent for the Mexican Political Constitution and laws such as the General Health Law and Medical Supplies Regulations. Other governments have also been reproached for a lack of transparency and consistency. Constitutional powers should be flexible enough to allow governments to 'pivot' depending upon the circumstances in an emergency but traditionally this has not been the case.

IP and entertainment

There was a notable increase of licensing and transfer of technology in connection with the R&D of Covid-19-related products, and the corresponding approval proceedings and private and public acquisitions. In order to incentivise and attract new products to defeat the virus, patent offices in some jurisdictions implemented special or abbreviated proceedings to protect innovation related to Covid-19.

Employment and industrial relations

Several pre-existing regulations have been under stress during the pandemic, especially:

- part-time or temporary work schemes;
- collective redundancy processes;
- social security regimes and conditions of payment of the contributions by the employer;
- health and safety regulations including the employer's obligation to ensure health and safety at the workplace; and
- potentially, the regulation of industrial accident/sickness in the case of contamination at the workplace and related employer's liability.

International commerce and distribution

National responses to the consequences for international trade and distribution contracts varied from country to country. Each has its own concept of force majeure, unforeseeable impossibility and so on, and the solution may vary considerably. In some jurisdictions, these concepts are not even expressly regulated in a relevant law or code.

Technology

Various national laws allowed for efficient pandemic responses and aided the reduction of primary and secondary effects of Covid-19. Most countries relied on disaster recovery and emergency conditions laws, which provided governments with greater powers to act (and override several municipal laws and citizens' rights) than in the normal course. E-governance – the use of the IT in public administration – also had a revival during the pandemic, allowing governments access to their citizens and their needs.

As digital technologies transform methods of healthcare delivery and are embraced within the health, social and public response to the pandemic, attention should be directed to the 'inverse information law' ('digital inverse care law') and digital inequality. People who are most in need of support (in particular, older people and those experiencing social deprivation) are often least likely to engage with digital platforms. While the response to the pandemic represents a sustained shift to the adoption of digital living and engagement, which will continue beyond the pandemic, it is important to understand the underlying factors contributing to digital inequality. A response to this would be to avoid digital inequality contributing to health inequality in the future.

Immigration and nationality

In the face of the pandemic and lockdowns, there were some positive developments in how states to issues of immigration and nationality.

FLEXIBILITY

Although states were given little choice in the matter, the willingness to provide flexibility through automatic visa extensions, waiver or relaxation of visa rules and conditions, and the required transparent online policy messaging, was welcome.

HEALTHCARE VISAS

The UK granted free year-long extensions to health workers whose visas expired during the pandemic and France invited migrant health workers to apply for accelerated naturalisation. Certain states (six US states, alongside Argentina, Chile, Colombia, Mexico and Peru) made it easier for foreign trained refugee and migrant healthcare professionals to work in healthcare by accelerating or easing residence and registration/licensing requirements.

INNOVATION

As lockdown prevented visa applicants from attending visa application centres in person, new technologies were deployed to facilitate visa filing and processing. The UK developed an app to reuse biometric data and submit applications using mobile technology linked to applicants' passports and biometric chips. The US began reusing biometric data on certain applications. Many applications can now be filed using an online process (eg, Nigeria's temporary residence).

COMMUNICATIONS

In response to fast-moving data on infection rates, global travel restrictions and local lockdowns, immigration authorities were required to move at pace to communicate clear messages to stranded travellers and temporary residents about automatic visa extensions, waiver of certain rules and other related information. Governments used their online presence to communicate using FAQs and simple messaging, often using social media channels to reach migrant communities.

VULNERABLE MIGRANT WORKERS

Some countries initiated/accelerated policy programmes to provide better support to low-wage migrant workers whose visas were dependent on their employment by granting access to healthcare and requiring employers to

provide suitable accommodation. Some states ended the practice of *kafala*, where employees were controlled by their sponsors with few rights. While these developments were overdue, it is unclear to what extent these measures alleviated poor living conditions for migrant.

ANTI-CORRUPTION

A number of enforcement authorities around the world continue to investigate and prosecute pandemic-related misconduct. Such efforts are challenged by the reality that different countries have varying legal landscapes and capacities to pursue such violations.

V. National laws that impeded the pandemic response

Communications

The major obstacle impeding contact tracing systems from fully realising their potential, besides technical issues, is that each individual has the choice whether to install or use contact tracing apps. Moreover, the lack of a centralised data collection process across many legal systems precluded the cross-referencing of data, which could have proven effective in combating the pandemic. The effectiveness of many contact tracing apps was marred by practical issues including the voluntary reporting of a positive test or that public healthcare professionals were manually inputting positive test reports into the system.

Antitrust

Potentially beneficial cooperation between competitors could have been prevented by obstacles inherent in competition laws. However, there are no reports of this situation among committee members. On the contrary, some countries have relaxed the analysis of collaborative agreements between competitors, such as the US allowing for more flexible measures to assess certain types of cooperation (eg, the possibility to receive comfort letters from the European Commission).

Healthcare and life sciences

Many countries reported challenges within their public health legislation, including:

- a lack of clarity on the extent of government powers: in the Netherlands, the allocation of legal authority between national and regional authorities was unclear, and the General Health Law in Mexico gave 'general and unspecific' powers to health authorities;

- a lack of clarity concerning whether vaccines could be mandated by employers without government orders or the way health protection protocols should be implemented with instructions frequently changing; and
- there were several reported issues with PPE and vaccine logistics management:
 - poor organisation and upscaling of testing and distribution of vaccines, as well as purchasing and distributing medical supplies;
 - legislation on data protection may have slowed down innovative projects (eg, in France, the dispute around Microsoft hosting data processed by the French health data hub, the aim of which is to foster innovation in the health domain in France); and
 - a lack of transparency with the public regarding supply agreements, terms, prices and relevant data, resulting in anti-vaccination attitudes; in Turkey, less than 50 per cent of the population has been vaccinated as there is no regulation to make vaccines compulsory.

IP and entertainment

Many national laws were amended to combat the emergency, mainly to allow governments to acquire and manage health supplies.

Transnational pharmaceutical companies cooperated with governments and organisations on the common goal of achieving equitable access to vaccines.

IP protection has not been an impediment to vaccination progress. Regulatory issues, raw material, complex technology, high costs of production, storage and distribution of complex biologics are, among others, causes that would interrupt or prevent prompt vaccine access. The liberation or waiver of patents will not solve those supply problems.

Employment and industrial relations

In most countries, national laws have been quickly adapted to pandemic constraints. National laws may impede pandemic responses when countries do not regulate part-time or temporary work or ensure a high level of protection of employees' health and work/life balance. In several countries it is impossible to force employees to:

- be tested/vaccinated to enter the workplace; or
- to work remotely.

Immigration and nationality

TRAVEL BANS

Assuming that the purpose of travel bans and restrictions was to slow or stop the spread of Covid-19, it is too early to say with any great level of confidence whether these measures alone had a significant impact. Research from early health crises (human immunodeficiency virus (HIV) and severe acute respiratory syndrome (SARS)) found that travel bans and other discriminatory travel restrictions had little long-term impact other than slowing the initial spread by a few days. The few studies on the impact of such restrictions on Covid-19 show a limited impact, which when weighed against the enormous social, political and economic costs of such measures, and in the context of little or no evidence base to support them, appears to show them to be disproportionate, nativist reactions to the illusory spectre of foreigners continuing to spread the virus. The total closure of some borders and high securitised quarantine policies, such as Australia and New Zealand, appear to have worked, but they were part of a much broader set of tools, including test and trace and a localised approach to dealing with outbreaks, and may be specific to the economic and geographic locations of these countries. In highly integrated regional economies, such as the EU, they appear to be disproportionate.

Anti-corruption

Trade-offs between speed, on the one hand, and transparency and accountability, on the other, sometimes frustrated pandemic responses. Moreover, fraud and other malfeasance too often undermined the use of critical resources intended to help diminish the pandemic's impact.



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