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Political and Legal Developments in the EU Law: The Migration Crisis and COVID-19

Mahi Singh

The European Union (EU) is a remarkable example of a supranational organisation in the 21st century political world, where its 27 Member States share power and resources to pursue common economic, environmental, political, and social goals. However, in recent years, it has encountered a myriad of challenges that fracture its structure and competency. This paper examines two such momentous case studies, the Migration Crisis and COVID-19, through a legal and political lens. The research, consisting of legislation and case law, finds systemic flaws within the Common European Asylum System (CEAS) and inefficiency caused by bureaucracy that sometimes causes a stalemate. On the other hand, the initial response to COVID-19 discloses unknown weaknesses in the EU's ability to act as a collective union towards human health.

The paper evaluates the successes and limitations of specific developments to EU law, including directives, economic mechanisms, and financial agreements, showcasing the workings of EU policy making and its impact on Member States. Then, the paper discusses the political implications of these legal developments and their role in redefining human rights for the EU in the 21st century. The paper concludes that the EU's future relies on addressing the political implications of EU law that are essential to reinforce the EU's role in crisis management and to better equip it to promote human development.

Introduction

The European Union (EU) is a supranational organisation comprising 27 Member States sharing common economic, environmental, political, and social goals derived from EU law. The European Commission is the principal legislative body for proposing and passing laws on common interests of the EU and its people.¹ These laws then pass on

1 James McBride 'How Does the European Union Work?', (Council on Foreign Relations, 11 March 2022) <<https://www.cfr.org/backgrounder/how-does-european-union-work#chapter-title-0-4>> Accessed 19 December 2023.

to the European Parliament and the Council of the European Union for approval or rejection. Finally, the implementation, legitimacy, and justifiability of the approved law come under the oversight of the Court of Justice of the European Union (CJEU).

Within the hierarchical structure of EU law are competences that direct the power and authority the EU has over Member States:² 1) *exclusive competences* passed exclusively by the EU, such as trade rules 2) *shared competences* involving both the EU and member states in law legislation, such as migration policy, and 3) *supporting competences* acted upon by member state and supported by the EU without interference. The varied competences preserve the EU's role as an international organisation designed to assist Member States while protecting state sovereignty. However, these competences present both obstacles and benefits for EU legislation, sometimes resulting in crucial political victories like the Schengen agreement, and other times a deadlock.

The creation of and amendments to EU law undergo a scrupulous, multi-channel procedure, reflecting EU's commitment to creating comprehensive laws. However, events like Brexit, rising cost of living, the rise of populist and anti-democratic states, and the Russia-Ukraine War create a tense, volatile stage for the EU.

This paper analyses recent legal and political developments to EU law by examining two momentous case studies: the Migration Crisis and COVID-19. The paper aims to provide an overview of the EU's responses, successes, and shortcomings in these cases through a legal and political lens. The paper evaluates the strengths and weaknesses of specific EU legal instruments including directives and economic mechanisms, revealing the workings of EU policy making and its impact on Member States. Finally, the conclusion discusses the political implications of these legal developments and their role in redefining human rights for the EU in the 21st century.

2 European Commission, 'Areas of EU action' <https://commission.europa.eu/about-european-commission/what-european-commission-does/law/areas-eu-action_en> Accessed 19 December 2023.

Case 1: Migration Crisis

The EU's Unresolved Challenge

2015 marked the beginning of an unprecedented increase in the number of refugees and asylum seekers entering the EU, primarily due to the political chaos in the Middle East such as the civil wars in Libya and Syria. In 2022 among Member States, Germany had the largest numbers with over 2 million refugees and 260,000+ asylum-seekers, followed by France with over 600,000 refugees and 75,000 asylum-seekers.³

Protecting and advancing human rights, including free movement, are among the EU's core values that are in reality overlooked or put on the back burner within EU law. Zanfrini argues that the migration crisis showcases the clash between the EU's inclusive principles of peace, and the Member State's tendency to exclude 'undesirables,' a euphemism for refugees.⁴

For instance, Member States like Hungary and Denmark deliberately neglect their responsibility of immigrants through anti-immigration policies such as forced deportation.⁵ Sometimes, EU values are simply incompatible with the frameworks of Member States. Greece and Italy were hit more negatively by the financial crisis than other states and were incapable of welcoming the large influx of refugees because of their overburdened economy.⁶ Although the EU law is a paragon of human development, these inconsistencies often arise from the EU's inability to consider and provide for individual states' circumstances.

3 Ibid.

4 Laura Zanfrini, 'Europe and the Refugee Crisis: A Challenge to Our Civilization' *United Nations* (September 2023). <<https://www.un.org/en/academic-impact/europe-and-refugee-crisis-challenge-our-civilization>>

5 Andres Kluth, 'Why Europe can't solve its mass migration problem' (*The Japan Times*, 4 May 2023) <<https://www.japantimes.co.jp/opinion/2023/05/04/commentary/world-commentary/europe-migration-problem>> Accessed 26 December 2024.

6 Graham Butler, 'Legal Responses to the European Union's Migration Crisis' (2018) 19 (2) *San Diego International Law Journal*, 278. <<https://digital.sandiego.edu/ilj/vol19/iss2/4>>

Further, the EU notoriously externalises its migration crisis to states beyond its borders. Externalisation, poorly disguised as border protection, has worsened the migration crisis by misusing funds and resources.⁷ Akkerman criticises the EU's 'empty rhetoric' to uphold human rights while funding detention centres in states like Libya that subject immigrants to gross systematic human rights violations including sexual violence, enslavement, and torture.⁸ This undermines the EU's responsibility to protect migrants by implementing laws on its Member States.

This is partly due to the EU's limited control over *external borders*, or borders between an EU Member State and a non-Member State, such as Greece-Turkey. As enshrined in Article 67(2) of the Treaty on the Functioning of the EU,⁹ the EU can establish a 'common policy on asylum, immigration and external border control.' However, Protocol No. 23 clarifies that the authority over external borders remains within Member States.¹⁰ To demonstrate, Greece exercises sovereignty over its external border with Turkey, implementing brutal measures such as steel fences to curb illegal immigration from Turkey.¹¹ This legislative power over external borders bestowed upon Member States, rather than an EU body, can render the EU's multi-institutional structure and border management superfluous.

7 Lorena Stella Martini and Tarek Megerisi, 'Road to nowhere: Why Europe's border externalisation is a dead end' (*European Council on Foreign Relations*, 14 December 2023) <<https://ecfr.eu/publication/road-to-nowhere-why-europes-border-externalisation-is-a-dead-end/>> Accessed 29 January 2024.

8 Mark Akkerman, '*Outsourcing Oppression: How Europe externalises migrant detention beyond its shores*' (2021) ResearchGate, 4. <https://www.researchgate.net/publication/351634385_Outsourcing_Oppression_How_Europe_externalises_migrant_detention_beyond_its_shores> Accessed 29 January 2024.

9 Consolidated Version of the Treaty on the Functioning of the European Union [TFEU 2008] OJ C115/13. <https://eur-lex.europa.eu/eli/treaty/tfeu_2012/oj> Accessed 25 January 2024.

10 Ibid.

11 'Greece expands fence along border with Turkey' (*DW News*, 21 January 2023) <<https://www.dw.com/en/greece-expands-fence-along-border-with-turkey/a-64477858>> Accessed 10 April 2024.

Developments to EU Law

1. Reception Conditions Directive Recast (RCDr) proposed in 2016 and agreed in 2017 aims to administer safe reception of asylum seekers across the Member State.¹² It is a recast of the 2013 Directive 2013/33 that serves as one of the cornerstone sources of the EU asylum system and sets out the minimum reception conditions of migrants upon their arrival in a Member State.¹³

The 2016 recast fills the gaps in the 2013 Directive to address the EU's inconsistency and failure to harmonise with the different Member States in determining reception conditions. Additionally, it requires Member States to guarantee a dignified standard of living to increase applicants' self-reliance and integration through education, residence, and access to the labour market.¹⁴ The recast also emphasises transparency with applicants on their rights and privileges when migrating to another state, fostering an understanding between institutions and individuals. This is complemented by a fair judicial procedure to determine the legality and eligibility of immigrants arriving in a Member State.

However, there are two major challenges to the RCDr. Firstly, any EU directive is transposed depending on Member States' judgement of when and how to achieve a certain result.¹⁵ By granting Member States freedom in the way they interpret, implement, and define the

12 European Commission, 'Reception conditions' (*Migration and Home Affairs*, 2016) <https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system/reception-conditions_en> Accessed 4 January 2024.

13 Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast) [2013] OJ L180/96 Art. 1. <<http://data.europa.eu/eli/dir/2013/33/oj>>

14 Commission, 'Proposal for a Directive of the European Parliament and of the Council laying down standards for the reception of applicants for international protection (recast)' COM(2016) 465 final. <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52016PC0465>>

15 European Commission, 'Types of EU Law' <https://commission.europa.eu/law/law-making-process/types-eu-law_en#:~:text=Regulations%20are%20legal%20acts%20that,entirety%20on%20all%20EU%20countries> Accessed 27 January 2024.

conditions of the RCDr, the fate of the EU asylum system remains ambiguous.

This was recently observed in the C-808/18 *Commission v. Hungary* (2020) case when the European Commission brought legal action against Hungary for violating various articles of crucial EU law pieces including Directive 2013/33 and the EU Charter. Hungary had set up transit zones at the Serbian-Hungarian border and adapted its legislation on the right to asylum to allow derogations from certain EU asylum law rules.¹⁶ The commission cited Hungary's failure - or denial - to provide adequate, necessary conditions for asylum seekers, as well as restricting applications and allowing detention. Hungary regularly cited the incompatibility of its national legislation with EU law, but the Commission reinstated the primacy of EU law over national law.¹⁷ In 2020, the CJEU judgement ruled that Hungary had failed in fulfilling its obligations under EU law and called for immediate action to comply with the EU laws and fundamental values enshrined in the Charter.¹⁸

However, Hungary has still not addressed many aspects of the CJEU judgement. This case law is an example of EU directives regarding asylum law failing to be implemented into the legislation of Member States, giving them the freedom to customise their criteria of who enters their territory and what rights the entrants are entitled to.¹⁹

Secondly, the RCDr has been overpowered by other recent legal developments in the EU, namely the *Instrumentalisation Regulations*.

16 European Commission, 'Migration: Commission refers HUNGARY to the Court of Justice of the European Union over its failure to comply with Court judgement' (2021) <https://ec.europa.eu/commission/presscorner/detail/en/ip_21_5801> Accessed 3 April 2024.

17 EUR-Lex, 'Primacy of EU law (precedence, supremacy)' (EUR-Lex) <<https://eur-lex.europa.eu/EN/legal-content/glossary/primacy-of-eu-law-precedence-supremacy.html#:~:text=The%20principle%20of%20the%20primacy>> accessed 6 April 2024.

18 Case C-808/18 *European Commission v Hungary* (2020).

19 Samantha Velluti, 'The revised Reception Conditions Directive and adequate and dignified material reception conditions for those seeking international protection' (2016) 2(3) *International Journal of Migration and Border Studies* <<https://www.inderscience.com/offers.php?id=77640>>

In 2021, Belarus was accused of instrumentalised migration that facilitates the illegal passage of migrants to the neighbouring countries of Latvia, Lithuania, and Poland as a means of political manipulation. Identifying this as an “emergency situation of a sudden inflow of third country nationals” under Article 73(8) of the TFEU, the European Commission proposed provisional protection measures that have since been codified.²⁰ These new regulations restrain other states from posing similar threats as Belarus to the security of the EU,²¹ but they also undermine existing legal frameworks like the RCDr by allowing derogations. Moreover, an emergency becomes a “daily reality” and states now have the incentive to limit the entry of refugees into their territory and increase hostility towards them through actions such as delayed application processing.²²

Therefore, although the EU aims to harmonise reception conditions for asylum seekers, the 2016 recast and novel EU legal developments fragment and impede state response to the entry and accommodation of immigrants.

2. The *EU Asylum Agency* (EUAA) was renamed in 2022 to replace the former European Asylum Support Office.²³ The purpose of the rebranding is to increase the powers of the EU asylum system and to eliminate most divergences between Member States for smoother integration processes of asylum seekers.²⁴ It also serves as a portal to

20 TFEU 2008 (n 11) Art. 78(3).

21 Commission, ‘Proposal for a Council Decision on provisional emergency measures for the benefit of Latvia, Lithuania and Poland’ COM (2021) 752 final. <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021PC0752>> Accessed 3 April 2024.

22 Mirko Forti, ‘Weaponisation of Migrants? Migrants as a (Political) Weapon and the EU Regulatory Response: What to Expect Now’ (EJIL: *Talk!*, 10 March 2022) <<https://www.ejiltalk.org/weaponisation-of-migrants-migrants-as-a-political-weapon-and-the-eu-regulatory-resp-onse-what-to-expect-now/>> Accessed 3 April 2024.

23 European Commission, ‘Common European Asylum System’ (*Migration and Home Affairs*) <https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system_en> Accessed 26 December 2023.

24 Steeve Peers and Catherine Barnard, *European Union Law* (4th Edn, Oxford University Press 2023), 801. <<https://www.oxfordlawtrove.com/display/10.1093/he/9780192863836.001.0001/he-9780192863836-chapter-25>>

information and data about migration in the EU, training for asylum officials, and coordinates emergency responses.²⁵

The issue with the EUAA emerges from a lack of power and control over specific tasks as the EUAA merely supports and assists Member States,²⁶ preserving important powers such as reinforcement and supervision of immigrants for the Member States themselves. Accordingly, although the EUAA may give operational suggestions or propose ways to support the EU asylum system, the implementation is up to the Member States' decisions. The disbalance and division of power within the EU thus poses challenges and leads to inefficiency. Vimont similarly argues that some political leaders lacking 'political will' are more interested in using the migration crisis as a political agenda to further their own interests.²⁷

Lastly, the bureaucratic and institutional nature of the EUAA makes it difficult to diversify policy implementation.²⁸ At its core, the EUAA remains unchanged and still follows the same foundational principles laid out in the EASO - a name change and minor tweaks has not produced any new provisions or sources to help the EU solve its migration crisis. Despite having institutions and mechanisms to deal with migration, the EU fails to capitalise on their potential.

3. *The New Pact on Migration and Asylum* is the most recent EU development agreed by the EU Parliament and the European Commission in December 2023. Expected to be adopted by April 2024, it extends the EU Pact on Migration and Asylum, which gives [?rskey=EnuW0G&result=2#ref_he-9780192863836-chapter-25-note-106](https://doi.org/10.4337/9781789905427.00018) Accessed 3 April 2024.

25 Salvatore F. Nicolosi and David Fernandez-Rojo, 'Out of control? The case of the European Asylum Support Office' (2020) *Controlling EU Agencies*, 177-195. <<https://doi.org/10.4337/9781789905427.00018>>

26 *Ibid.*, 186.

27 Pierre Vimont, 'Judy Asks: Is Migration Europe's Achilles Heel?' *Carnegie Europe* (24 November 2022) <<https://carnegieeurope.eu/strategieurope/88486>> Accessed 6 January 2024.

28 Johan Ekstedt, 'Bureaucratic configuration and discretion in asylum case processing: the case of the EUAA in Greece' (2023) 11(22) *Comparative Migration Studies*, 10. <<https://comparativemigrationstudies.springeropen.com/articles/10.1186/s40878-023-00345-0>>

EU Member States flexibility on determining the eligibility of migrants in their countries.²⁹

The agreement came under fire from human rights groups in the form of a remarkable open letter from Caritas Europa, consisting of 57 organisations such as Amnesty International, EuroMed Rights, and Oxfam. Together, they argue that the agreement will lead to harmful practices such as child detention and possible discrimination and instead called for ‘human solutions’ and ‘fair responsibility’,³⁰ terms constantly repeated in the real, of EU migration laws. The agreement represents an overall lack of actual reformation of the EU asylum system.

EU lawmakers have defended the agreement and emphasised the safety it brings to Member States, advertising it to the public as a tool for migration management. Under improved border procedure, asylum seekers who may pose a security threat to the accepting state will be rejected.³¹ However, this procedure is susceptible to unfair treatment as an individual may be unjustly deemed to be a threat or to be an illegal applicant.

Arguments from human rights groups similarly suggest otherwise. Amnesty International censured the EU for externalising border control and outsourcing refugee protection to non-EU states such as Albania and Turkey.³² This exemplifies the EU’s failure to invest in fair

29 Ashifa Kassam, ‘Campaigners call on EU leaders to veto ‘costly and cruel’ changes to migration law’ (*The Guardian*, 19 December 2023) <<https://www.theguardian.com/world/2023/dec/19/campaigners-call-on-eu-leaders-to-veto-costly-and-cruel-changes-to-migration-law>> Accessed 4 January 2024.

30 Caritas Europa, ‘Open letter for better migration policies’ (Caritas.eu, 19 December 2023). <<https://www.caritas.eu/open-letter-for-better-migration-policies/>> Accessed 4 January 2024.

31 Council of the EU, ‘The Council and the European Parliament reach breakthrough in reform of EU asylum and migration system’ (20 December 2023) <<https://www.consilium.europa.eu/en/press/press-releases/2023/12/20/the-council-and-the-european-parliament-reach-breakthrough-in-reform-of-eu-asylum-and-migration-system/>> Accessed 6 January 2024.

32 Amnesty International, ‘EU: Migration Pact agreement will lead to a surge in suffering’ (20 December 2023) <<https://www.amnesty.org/en/latest/news/2023/12/eu-migration-pact-agreement-will-lead-to-a-surge-in-suffering/>> Accessed 4 January

and consistent asylum systems to protect immigrants and a negligence to regulate its borders by diverging to other channels and states to solve EU matters.

On the other hand, a beacon of hope emerging from this agreement is the solidarity shown by the EU Member States as they overcome their previous differences over migration policies. Another positive of the agreement is its aim to reduce the burden and load on those Member States that receive the highest number of asylum applications. The new agreement will introduce tools like relocation and financial contributions from other Member States to support a receiving state that may not have the complete ability to support incoming asylum seekers.³³

Case 2: COVID-19

COVID-19 introduced new challenges by reducing individuals' mobility and complicated the migration crisis by increasing the risk and difficulty of refugees and asylum seekers to cross borders. Border closures and strict travel restrictions particularly limited the safety of individuals fleeing political chaos, violence, or danger who were then prevented from entering safer territories during the spread of the virus.

The involvement of the EU to mitigate disasters and emergencies involving multiple states has become increasingly crucial. Hecke et. al. refer to crisis management as being part of the EU's DNA.³⁴ COVID-19 was an exemplary global situation that upended and reformed institutions and put EU solidarity to the test. It strengthened and rebranded the role of the EU as a 'crisis manager'³⁵ as it toiled to

2024.

33 Council of the EU (n 30).

34 Steven Van Hecke, Toine Paulissen and Britt Vande Walle, 'How Covid-19 Hit Brussels and Beyond: The EU's Crisis Management Tested by a Pandemic' in Olivier Costa and Steven Van Hecke (eds), *The EU Political System After the 2019 European Elections* (1st Edn, Palgrave Macmillan 2023), 382. <<https://link.springer.com.ezproxy1.lib.gla.ac.uk/book/10.1007/978-3-031-12338-2>>

35 Susanna Villani, 'Perspectives of Solidarity within the EU Legal Order in the Time of the Covid-19 Pandemic' (2023) 4(1) *Yearbook of International Disaster Law Online*, 72. <https://doi.org/10.1163/26662531_00401_006>

coordinate and manage dialogue between Member States to deal with the pandemic.

The EU's COVID-19 Failure

The EU's delayed response was met with strong criticism in the early days for being unable to tackle the pandemic as a collective unit. Notably is EU's denial of Italy's appeal for the immediate provision of health equipment in the wake of a national depleting source of masks and gloves.³⁶ The EU's embarrassing blunder during this critical time called for stronger law and propositions to better navigate through the pandemic.

During this period, the EU updated existing programs and created new health bodies like the Stability and Growth Pact to deal with the crisis.³⁷ However, there was a lack of solidarity in the EU's response as a whole to the pandemic. Member States dealt with the pandemic within the frameworks of their own government and laws, which to the rest of the world seemed amiss given the resources available to EU Member States.

A closer inspection of the comparatively brief Article 168 of the TFEU reveals the Union's restricted role in the health domain.³⁸ Health falls under the EU's *supporting competences*, whereby the EU can only support Member States in implementing decisions derived from national policies and the general population of the Member State. The EU lacks the legal capacity to enact its own binding laws upon Member States.

Finally, the unforeseen global collapse caused by the onset of COVID-19 proved to be a herculean task transgressing the European borders. The EU's initial confusion thus was not abnormal or

36 Daniel Boffey and others, 'Revealed: Italy's call for urgent help was ignored as coronavirus swept through Europe' (*The Guardian*, 15 July 2020) <<https://www.theguardian.com/world/2020/jul/15/revealed-the-inside-story-of-europes-divided-coronavirus-response>>

37 Van Hecke (n 29), 387-88.

38 TFEU 2008 (n 11).

unjustified, and criticism only arose a few months into the pandemic when signs of flaws within the EU system threatening people's health emerged.

Developments to EU Law

1. The *Recovery and Resilience Facility* (RRF) is the centrepiece of the *Next Generation EU* (NGEU) plan, a major EU project undertaken during the pandemic to support EU Member States.

It is an economic recovery plan worth 800 billion euros taking two primary forms - loans that will be repaid by Member States, and grants repaid by the EU budget.³⁹ Interestingly, RRF funds are not reserved merely for COVID-19 recovery such as creating jobs or improving health facilities. The funds are also utilised for investments in digitalisation and supporting gender equality, indicative of EU's commitment to long-term visions and goals.

The acceptance and success of RRF is impressive given the initial opposition from EU Member States. Nine states, including France, Italy, and Spain backed common debt called 'coronabonds' as a means of providing economic recovery.⁴⁰ However, the idea was shot down by Germany, Netherlands, Austria, and Finland, refusing to engage in 'debt sharing'.⁴¹

The back and forth between the two groups of states during a critical time where people were losing lives everyday was regarded as a shame by the media and the public. Perhaps it was the embarrassment and pending responsibility of the EU that it owed to the world that pushed the RRF forward, or perhaps it was the natural urgency of the pandemic, but in the end, the EU Commission was able to go ahead

³⁹ European Commission, '*NextGenerationEU*' (2020) <https://commission.europa.eu/strategy-and-policy/eu-budget/eu-borrower-investor-relations/nextgenerationeu_en> Accessed 7 January 2024.

⁴⁰ Euronews, 'What are 'corona bonds' and how can they help revive the EU's economy?' (Euronews.business, 26 March 2020) <<https://www.euronews.com/business/2020/03/26/what-are-corona-bonds-and-how-can-they-help-revive-the-eu-s-economy>> Accessed 7 January 2024.

⁴¹ Ibid.

with its plan.

2. The EU Joint Procurement Agreement (JPA) existed before the spread of COVID-19, but its role as a vital solution in 2020 led to its further development.

The lack of EU's competences in the health sector was evident through the confusion and complications faced by the Union during COVID-19. With this joint agreement, the EU becomes more involved in the provision of medical supplies to Member States in an economical and timely manner.⁴² Reasonable prices, reduced costs, and equitable access provided under the JPA reduce EU fragmentation to develop a 'European Health Union'.⁴³

Improving and expanding JPA will further add to the EU's portfolio as a crisis manager by being better replete with the appropriate measures for dealing with future emergencies. The JPA's success is also reflected in the increased number of signatory Member States, rising from six to 37, in a transition from nationalistic behaviour to solidarity.⁴⁴ Other Member States, realising the potential and merit of the JPA, have started leaning towards this mechanism after seeing its positive benefits and management to the terrors of the pandemic.

The flexibility of JPA, however, is a double-edged sword.⁴⁵ Member States are allowed to opt in or out of the agreement when they want. This tempts Member States to join the agreement in crucial times

42 Emma McEvoy and Delia Ferri, 'The Role of the Joint Procurement Agreement during the COVID-19 Pandemic: Assessing Its Usefulness and Discussing Its Potential to Support a European Health Union,' (2020) 11(4) *European journal of Risk Regulation*, 851-863. <<https://doi.org/10.1017/err.2020.91>>

43 Eoin Ryan, 'New dawn for the EU's joint procurement crisis response' (*Pharmaceutical Technology*, 19 October 2022) <<https://www.pharmaceutical-technology.com/pricing-and-market-access/eu-joint-procurement/>> Accessed 9 January 2024.

44 McEvoy (n 39), 859-60.

45 Natasha Azzopardi-Muscat, Peter Schroder-Bäck and Helmut Brand, 'The European Union Joint Procurement Agreement for cross-border health threats: what is the potential for this new mechanism of health system collaboration?' (2017) 12(1) *Health Economics, Policy, and Law*, 53. <<https://doi.org/10.1017/S1744133116000219>>

(such as COVID-19) when they need urgent medical care, but also makes it possible for them to leave the agreement. This raises concerns over how easy it is to create political division in the JPA, which could threaten the EU's solidarity and the power of EU law. Fortunately, for the most part, the JPA was the EU's saviour during the pandemic and is expected to continue fostering cooperation between the Member States rather than dividing them.

3. *The Support to mitigate Unemployment Risks in an Emergency* (SURE) was a scheme introduced as a financial support system to mitigate unemployment risks during the pandemic. Together, the EU provided €98.4 billion to 19 Member States to cover unemployed individuals, enterprises, and sectors such as food and manufacturing.⁴⁶

According to Claeys,⁴⁷ SURE has a 'lighter' and 'more agile' framework as compared to other EU financial programs. This facilitates the disbursement to Member States, especially severely impacted states like Italy and Spain that received the largest amount of crucial loans to bolster their crumbling economy. This EU provision additionally introduced the concept of short-term work schemes to Member States like Cyprus and Greece which lacked such reinforcements when the pandemic hit as opposed to pre-conditioned states like Belgium and Germany.⁴⁸ This aligns with the EU's vision to integrate more states not just politically and geographically, but also to accommodate existing Member States to adopt common measures and frameworks, helping unify EU policy.

However, the NGEU and SURE plans significantly increased the EU's

46 European Commission, 'SURE' (*Economy and Finance*, 2023) <https://economy-finance.ec.europa.eu/eu-financial-assistance/sure_en> Accessed 27 January 2024.

47 Grégory Claeys, 'The European Union's SURE plan to safeguard employment: a small step forward' (*Bruegel*, 20 May 2020) <<https://www.bruegel.org/blog-post/european-unions-sure-plan-safeguard-employment-small-step-forward>> Accessed 26 January 2024.

48 Grégory Claeys, Conor McCaffrey and Lennard Welslau, 'What will it cost the European Union to pay its economic recovery debt?' (*Bruegel*, 9 October 2023) <<https://www.bruegel.org/analysis/what-will-it-cost-european-union-pay-its-economic-recovery-debt>> Accessed 26 January 2024.

scale of borrowing and debt.⁴⁹ Economists have expressed concern about how and when these loans will be repaid, possibly requiring new EU budget resources or increasing Member States' contribution to the budget. This will affect people as the repayment effect trickles down to households and their consumption decisions.

Redefining Human Rights

The evaluation of developments in EU law introduced by the migration crisis and COVID-19 have a profound effect on human rights. The EU remains a dynamic force committed to protect and uphold human rights through regular negotiations and amendments of law, alongside the creation of new legislation, to respond to unfamiliar challenges arising in the world.

The collaborative endeavour of the EU body and its Member States to protect their people - and the global community by extension - from COVID-19 is one such example of a rebound from near-collapse. The provision of vaccines, stronger healthcare systems, and initiatives like the NGEU plan and the RRF positioned the EU as a strong symbol of political and social solidarity. The EU further protected people's economic human rights by increasing social cohesion and reducing poverty.⁵⁰ Additionally, the revision of the 2016 RCDr reflects the EU's robust willingness to constantly evolve and adapt laws to protect individuals, such as Article 25 demanding special and necessary protection of individuals victim to torture, harassment, or rape.⁵¹

On the other hand, although founded on principles of integration and international cooperation, the EU faces internal fractures, casting doubt on its functioning. The EU is far from resolving the permacrisis of migration and struggles with its dysfunctional *Common European Asylum System* (CEAS), raising serious concerns of human rights violation. Divergent and polarising responses from EU states

49 Ibid.

50 European Commission, 'Recovery and Resilience Scoreboard' (2024) <https://ec.europa.eu/economy_finance/recovery-and-resilience-scoreboard/index.html?lang=en> Accessed 7 January 2024.

51 Directive 2013/33/EU (n 13) Art 25

to the migration crisis further give rise to complicated perspectives and dissidence. Discrimination, harassment, and abuse faced by immigrants prevail worldwide, exacerbated by the rise of populist and far-right sentiment in some states. Concerningly, the misanthropist views and actions of state governments pose a danger to European politics and vilify the migration crisis.

Despite the 2016 RCDr designed to elicit non-discrimination and safety of asylum seekers, unlawful practices such as forced detention continue. Additionally, there is a discrepancy between Member States proclaiming solidarity to protect immigrants at the EU-level, and abiding to obligations and their national implementation. In 2017, French President Emmanuel Macron directed his appeal to Member States who bear the responsibility to facilitate immigrants' lives and integration.⁵² However, in 2023 France adopted a regressive immigration bill that attacks both foreign nationals and asylum seekers,⁵³ revealing inconsistent state behaviour.

Together, the six developments to the EU law redefine and reinforce human rights through legal revisions, collaboration among Member States, and creating better frameworks to oversee the implementation of EU law. Although the EU showcases an awareness of the challenges faced by people, involvement in tackling the challenges is slow, hampered, and omnipresent.

Conclusion

In the past decade, EU law has transcended standard norms of international law, transforming into a convoluted network of international dialogue and cooperation. This paper has analysed two among a myriad of challenges the EU faces in the 21st century and how polarisation and diverging opinions within the EU persistently

52 'French President Emmanuel Macron on the European Migration Crisis and the Future of the European Union' (2017) 43(4) *Population and Development Review*, 759-763. <<https://doi-org.ezproxy1.lib.gla.ac.uk/10.1111/padr.12116>>

53 53 Eva Cossé, 'French Lawmakers Adopt Regressive Immigration Bill' (Human Rights Watch, 20 December 2023) <<https://www.hrw.org/news/2023/12/20/french-lawmakers-adopt-regressive-immigration-bill>>

render it difficult to create effective laws.

The migration crisis plagues the EU and its policymakers and continues to remain a point of debate among its Member States. As some Member States outrightly discourage asylum seekers into their territory, it disrupts the CEAS and the laws enshrined within that govern and protect asylum seekers. The EUAA has been integral in generating reports and ancillary data to assist policymakers and governments create and reform laws. However, the merit of RCDr and the 2023 pact are weighed down by the freedom granted to Member States to individualistically adopt EU legal acts. It opens a gap for Member States to agree to EU laws on paper, but bypass actual implementation and regular surveillance to ensure human rights compliance.

The EU's lack of solidarity and cohesion was also observed in its initial dealing of COVID-19 when signs of flaws within the EU system threatened people's health. Member States juggled between personal, national responsibilities and international obligations in a narrow timeframe. Eventually, the Member States arrived on the same page through diligence from the EU's principal organs such as the Commission and the Parliament. Necessary legal developments enacted to combat the pandemic consisted of instruments providing financial support, medical supplies, and issuing guidelines. This is evidently why the JPA and RRF received widespread appreciation for convincing even reluctant Member States to get onboard the joint mission.

While the migration crisis highlights systemic flaws in the EU, the advocacy of the media, human rights organisations, and the general public becomes increasingly important in challenging the EU to uphold integrity. The resolution of the pandemic and lessons learned from it keep hope alive for future potential of the EU and Member States. The ever-changing political landscape of the international system and spewing conflicts, combined with changing priorities, complicate the process to create a holistic EU law. Still, crisis management remains essential to the survival of the EU and has in fact strengthened the system by fostering cooperation and peaceful resolutions. The EU

law continues to transform and extend the betterment of people, their rights, and their development. Moving forward, the EU needs to find a balance between the legal and political implications of its laws to deliver its promises and future achievements.

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