



# **Crisis and constraint**

## **The European Commission's response to Covid-19**

Astrid Tollefsrud

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Tollefsrud has a Master of Organization, Work and Leadership from the University of Oslo. She was affiliated with ARENA through an MA student grant.

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## Preface

The EU has expanded in depth and breadth across a range of member states with greatly different makeups, making the European integration process more differentiated. *EU Differentiation, Dominance and Democracy* (EU3D) is a research project that specifies the conditions under which differentiation is politically acceptable, institutionally sustainable, and democratically legitimate; and singles out those forms of differentiation that engender dominance.

EU3D brings together around 50 researchers in 10 European countries and is coordinated by ARENA Centre for European Studies at the University of Oslo. The project is funded by the European Union's Horizon 2020 research and innovation programme, Societal Challenges 6: Europe in a changing world – Inclusive, innovative and reflective societies (2019-2023).

The present report is part of the project's work on EU-internal differentiation (work package 2) and focuses on a very topical and important issue: the European Commission's response to the global health- and economic crisis caused by the Covid-19 pandemic. The European Commission is responsible for policymaking, implementation and harmonisation of EU policies, and as such has had a central role in managing the Covid-19 crisis in Europe. Nevertheless, the Commission's capacities to manage the crisis are limited due to the fact that public health is foremost a Member State competence. Astrid Tollefsrud develops two hypotheses steeped in institutional theory to assess the Commission's response and shows how the EU's built-in bias in favour of market deepening shapes and constrains its ability to address health issues.

John Erik Fossum  
*EU3D Scientific Coordinator*

## Abstract

This MA report analyses how the European Commission has reacted to a global health- and economic crisis caused by the Covid-19 pandemic. The Commission has the pivotal role as the core executive EU institution with key initiating powers that run everyday administration of the EU. Responsible for policymaking, implementation and harmonisation of EU policies, this institution has had a central role in managing the Covid-19 crisis in Europe. Because the crisis quickly showed to cause serious harm on people's health and economy, the need for coordination and appropriate measures was crucial to minimize the damages of the crisis. As EU Member States first took national measures, by closing borders and banning export of important goods, they soon realized that without collective action to beat a transboundary health threat like this, the EU would be as weak as its weakest link. The Commission, however, had limited capacities to manage the crisis as public health primarily is a Member State competence. Health policy has in the EU traditionally been developed as part of the deepening of the market rather than health as a key objective. Integration in this policy area has traditionally developed through new competition regulations. This study therefore investigates whether the Covid-19 crisis has been framed predominantly in terms of economy or health by the Commission, and how in turn this has impacted the ability of the EU for institutional change.

To understand how the Commission and the different actors within this institution have reacted, I use institutional theory. This qualitative case study of the Commission is therefore divided into two institutionalist categories: organisational structure and design, and institutional culture and history. By using the 'pattern matching' method, I analyse whether the findings correspond with the provisional theoretical ideas. Based on the two institutional categories, I propose two different hypotheses. The first hypothesis suggests that the Covid-19 crisis has given the Commission an opportunity to change the organisational structure and design by lifting health up to EU-level. The second says the path dependency in the Commission's response to the crisis and its way of framing health and competition limits the ability for institutional change. I find that, despite the attempts on increased capacity on EU health, through programs as EU4Health, the hegemony of the competition frame indicates that a paradigmatic shift in policies and processes in the health and economic domains seems unlikely. Competition policy, as part of the EU's regulatory functions, is too institutionalized to change drastically.

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I also want to acknowledge the useful comments and practical help from our contact person at the master's programme 'Organisation, management and labor' at the University of Oslo, Lars Erik Kjekshus.

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Astrid Tollefsrud,

Oslo, May 31, 2021

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# Chapter 1

## Introduction

Chinese officials informed the World Health Organisation (WHO) of a cluster of cases of 'viral pneumonia of unknown cause' in Wuhan on 3 January 2020. The WHO classified COVID-19 as a pandemic on 11 March 2020. By 30 June 2020, there were 1.5 million COVID-19 cases and 177 000 deaths declared in the EU/EEA/UK.

(European Court of Auditors 2021)

The global health crisis caused by Covid-19 has created a global public policy emergency with implications on health policies, economic and social policies, security and the free movement of people both within Europe and beyond EU borders (Wolff & Ladi 2020: 1025). The virus – causing fever, respiratory illness and, in worst case, also death – spreads directly through inhalation of droplets and indirectly through contact with contaminated surfaces. As reviewed by the European Court of Auditors, 'the lack of knowledge and data on the disease, especially in the early days of the pandemic, represented a considerable challenge for public authorities' (2021: 7). The EU was at first criticized for being uncoordinated, not acting immediately concerning medical equipment for Italy and not reintroducing internal borders (Wolff & Ladi 2020). Public health is primarily a Member State competence and, according to The Treaty on the Functioning of the European Union (TFEU), the EU has limited responsibilities on this matter (European Court of Auditors 2021: 4).

Despite these weaknesses in coordination and lack of responsibility, it was expected that the EU had to act in order to reduce the fatal consequences brought upon the Member States – even without the right tools and measures to handle the crisis properly. The main dilemma of the crisis for the EU has been how to balance market economy and health measures, especially since the latter has not been a focus area of particular weight in the EU before.

To be able to identify in what way the integration of health policy is moving, it is necessary to find the relevant parts of the EU where policy is being formulated. The Commission is the responsible institution for policy formulation within the EU system. The main question of this report is to examine how the Commission reacted to the crisis. On the basis of a horizontal specialisation one can expect that the European Commission's departmental services will have conflicting perspectives on how to define the crisis, and how to coordinate action on health and economy in the EU. Therefore, investigating how competing frames within the Commission apparatus affect health and economy domains will be a relevant follow-up question that needs to be answered. Regarding the main dilemma of the Covid-19 crisis, the Directorates-General for Health (DG SANTE) and Competition (DG COMP) can serve as preeminent promoters of each of the relevant issue areas. A case study of the Commission's internal competition between these two DGs in the Commission can provide useful information about what kind of policy the respective units are proposing in light of the crisis.

## 1.1 The Commission's response

As mentioned above, public health is primarily a Member State competence and, according to the TFEU, the EU has limited responsibilities on this matter (European Court of Auditors 2021: 4). Article 168<sup>1</sup> in the Treaty says union action shall complement national policies:

Such action shall cover the fight against the major health scourges, by promoting research into their causes, their transmission and their

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<sup>1</sup> Consolidated version of the Treaty on the Functioning of the European Union - PART THREE: UNION POLICIES AND INTERNAL ACTIONS - TITLE XIV: PUBLIC HEALTH - Article 168 (ex Article 152 TEC).



prevention, as well as health information and education, and monitoring, early warning of and combating serious cross-border threats to health.

(TFEU Article 168)

One could easily argue that the Covid-19 pandemic represents such a serious cross-border health threat. The uncoordinated action in the EU the first months of the pandemic raised the question of how the EU will get out of this crisis. Every single policy area suddenly was affected by the pandemic, everything from eurozone policy, to migration, competition and health policy (Schmidt 2020: 1177). Comparing the Covid-19 emergency with previous crisis in the EU, the case of the pandemic might show that the EU is coping with crises differently than before. Wolff and Ladi (2020: 1026) argue that the Covid-19 pandemic proves that the adaptability of the EU to respond to crisis is higher now than in earlier cases. Literature on crisis management has often accused the EU of being ill-equipped in its capacity to manage crises including the Euro area crisis, migration crisis and the Brexit situation (ibid). However, in light of the Covid-19 situation, the EU ‘appeared to have engineered a paradigmatic shift in policies and processes in the health and economic domains’ (Schmidt 2020: 1178).

Drawing on the economical aspect, EU competition policy breaks with the past in most areas. The European Commission, long characterized by its strong commitment to market-based competition, changed paths once the pandemic hit (Meunier & Mickus 2020: 1078). The Commission produced a well-coordinated response through reinterpretations of existing rules, layering new elements onto old rules, and the creation of new ones (Schmidt 2020: 1180). Creating a ‘Cooperation framework’ in anti-trust to make exceptions for business cooperation the Commission launched new rules regarding state aid and suspended existing rules by introducing a temporary framework to enable national governments to counter takeovers. In addition, it also established new EU instruments to deal with problems related to foreign subsidies to promote and protect European competitiveness (Schmidt 2020: 1180). As Meunier and Mickus (2020) point at, ‘the rapid embrace of state interventionism and market coordination has prompted reactions that a radical transformation of the European competition policy regime may be underway’.

Concerning the health policy arena, the EU has generally been inefficient, with minimal competences prior to the Covid-19 crisis. While the European Center for Disease Prevention and Control (ECDC) provided useful information to the member states soon after the pandemic hit, the Civil Protection Mechanism (CPM) did not manage to make member states cooperate efficiently or effectively (Schmidt 2020: 1180). As political decision-making became more uncertain, a need for better policy coordination and public communication emerged. In light of this, the Commission proposed its new health agency, EU4Health. This agency, as a response to Covid-19, will provide funding to EU countries, health organisations and NGOs. By investing 5,1 billion euros, this agency will be the largest health programme ever in monetary terms (Commission 2020a).

According to Schmidt (2020: 1180), the EU4Health programme represents a paradigmatic change and deepened integration made possible by the deal between the Council and European Parliament (EP) on the budget in November 2020. It restored a significant part of the funding proposed for the health agency by the Commission which had been cut out of the Council's budget deal over the summer. In its communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, the Commission on 11 November 2020 urged the need for a stronger health security framework:

European citizens have been increasingly clear that they expect the EU to have a more active role in protecting their health, particularly in protecting them from health threats that transcend national borders. Coordinating and where necessary pooling efforts at European level will deliver more effective responses to the expectations of European citizens in an area which is consistently among their top concerns. We need to heed this call now and in our discussions on the future of Europe. Attention needs to be given also to the risk of popular skepticism on health measures, that is partly triggered by an increase of mis- and disinformation on health issues. Health is a prerequisite for a dynamic economy stimulating growth, innovation and investment

(Commission 2020b)

As we see, the Commission addresses health threats like the coronavirus as something that must be coordinated at a supranational level to work more efficiently in the future. To stimulate growth, innovation, and investment, dealing with health issues across member states will be essential. But how did the Commission react? How is this specific issue (Covid-19) defined in the different parts of the Commission, and do these definitions give any signs of institutional change? As said, these are the questions this project will investigate further.

The development of health policy in the EU can in many ways be seen as a by-product of internal market growth. The basic logic is that the EU has great powers to promote the development and regulation of its internal market (Vanhercke et al. 2020: 37; Greer, Fahy & Rozenblum et al. 2019: 5). Eliminating measures that discriminate on the basis of Member State is a core and deeply entrenched EU power. A legal authorisation like this is an effective way of regulating, for instance, professional qualifications or pharmaceuticals – giving EU Member States common standards at the same time as overriding discriminatory Member State regulations. ‘The result is powerful EU regulations across a range of areas, but also a persistent tendency for them to be developed with the deepening of the market rather than health as a key objective’ (Greer et al. 2019: 2-5).

Along with education and culture, health has traditionally been one of the policy fields where EU Member States and citizens have seen the smallest role for the EU (Vanhercke et al. 2020). This is evident when looking at the ‘carefully circumscribed language in article 168 (5,7)’. In addition, there has also been financial limitations on health policy: the €413 million budget originally proposed for the latest program, comparable to the budgets of previous programs, was described as ‘pocket-money’ by Commission Vice-President Margaritis Schinas (Vanhercke et al. 2020). The regulatory state form in which the EU has evolved makes it difficult for the EU to formulate a health policy that actually focuses on health (Van Schaick & Van de Pas 2020: 2; Vanhercke et al. 2020: 37). Because there is huge variation in Member States’ health systems, knowledge of EU health policy and the added value of European cooperation between Member States’ health ministries tend to be underdeveloped. ‘The EU’s expertise and capacity in the health domain are limited and, in the past, health experts feared more Commission involvement would favor economic

over health interests' (Van Schaik & Van de Pas 2020). The question is if this is evident in the current crisis as well. Because this crisis is still unfolding there is yet little research on this topic, which makes it highly relevant to present-day. It is theoretically interesting because it can say something about how much pressure an important institution as the Commission can handle when such 'shocks to the system' appear. The analysis of this may therefore be a potential contribution to the field of European integration during and after a crisis.

The findings in the study show that there are no signs of radical change to the organisational design of the Commission as a result of the Covid-19 crisis. Competition policy is so deeply entrenched in the regulatory EU system, thus making the institution less adaptable to new demands and problems. This is not necessarily regarded as something negative, as institutions have the ability to live perfectly well with such historical inefficiencies. For health advocates, however, a 'status quo' situation means that public health issues remain a Member State competence, which gives the Commission limited capacity to coordinate health. The EU4Health programme has introduced some new instruments, along with an intensified budget increase, but this has shown not be sufficient in order to further institutionalize EU health policy. In sum, these findings contribute to the literature on path-dependency as well as to the literature on European integration. I argue that, despite no signs of radical change, the reactions of the Commission have not undermined the integration process.

## 1.2 Research design

I conduct a qualitative case-study of the Commission's work on handling the Covid-19 situation in Europe. This research method allows for an in-depth examination of the Commission's approach to crisis management. The chosen method also allows me to conceptualize the Commission's approach within a theoretical framework. I utilize a theory-guided case design, where theoretical propositions guide data collection and analysis. The theoretical assumptions deriving from an institutional logic will be the starting point of this theoretical framework. In this case I have divided the analysis into two categories: i) organisational structure and design, and ii) institutional culture. For my analytical strategy I analyze relevant

official Commission documents, speeches, and statements, where the purpose is to identify and interpret the content of these in light of the theory. This can hopefully point to how the Commission reacted to a global health- and economic crisis. Since my aim is also to describe the Commission's conflicting views on health versus economy, I analyze these conflicts on the basis of a 'health' frame and a 'competition' frame. The objectivity of the theoretical-interpretative lens the theoretical categories and frames provide has been important to control for consistency in the data material.

## 1.3 Outline

The report is structured in the following manner: Chapter 2 presents the theoretical underpinnings of this project and explains why both institutional perspectives and framing are viable for studying the European Commission's approach to regulate health and competition policy measures. This chapter also presents some theoretically informed expectations for the empirical research.

In Chapter 3 I present my methodology. I account for my research method and analytical strategy as well as the data selection and data collection for this project. I also discuss the reliability and validity of the research.

Chapter 4 presents the empirical case descriptions and findings connected to both the political leadership of the Commission, and the relevant Directorate-Generals: DG SANTE and DG COMP. In Chapter 5, I draw on the findings from chapter 4 and detail if the theoretical expectations are substantiated.

In Chapter 6, I will summarize the main findings of this project and their wider implications. I then clarify how this report contributes to the literature on EU health and competition policy and on European integration as such. In closing, I present my conclusion and point to unsettled issues which require further research.

# Chapter 2

## Theory

To better understand how the Commission reacted to the public health crisis that the corona pandemic represents, I begin this chapter with an introduction of the term 'crisis management' in a public administration perspective. Understanding the word 'crisis' is important to further address what is being done in the European Commission to handle the Covid-19 pandemic. Determining what collective effort(s) to take in response to the crisis and ensuring that they are implemented in a coherent manner is closely related to the concept of framing. Actively communicating with the public to collectively define the crisis often leads to a 'competitive framing process'. Therefore, I will also in this introductory part include a specification of the concept of framing to better understand how to use this conceptualisation to interpret the content of policies suggested by different actors in the Commission.

One can assume that the different DGs chosen for the analysis have institutionalized perceptions of appropriate solutions to the problems emerging with the crisis. Drawing on this, it is possible to link the concept of framing to institutional theory, where institutional concepts can help explain how crises are managed, both in structural and cultural terms. I will therefore operationalize the research questions by dividing this into two kinds of hypotheses, where the first one raises the assumption that structural features of the institution are most important when explaining how the Commission reacted to the crisis. The second hypothesis, however, suggests that historical, cultural characteristics are more

important when explaining this. Institutional theory including both structural and cultural aspects to organisations can help to further explain this operationalisation. In relation to both the structural and cultural/historical aspects of institutional theory, I will in each section present some theoretical based expectations for the empirical research.

## 2.1 Crisis management and the process of competitive framing

Major disease outbreaks like the coronavirus serves as a good example of a 'transboundary crisis'. This being a modern crisis in a complex world of interconnected countries it has, not surprisingly, transboundary effects. This interconnectedness and, in the case of the EU, interdependence, facilitate that such a crisis 'can jump not only political boundaries, including international ones, but also functional boundaries between policy sectors' (Blondin & Boin 2018: 460). To understand how the Commission manages such a transboundary crisis is to a large extent dependent on its administrative capacities. Thus, explaining the term 'crisis management' can give important input to the understanding of the processes in which both framing, and the frames' underlying ideas and assumptions, occur.

To manage a crisis is not an easy job, and because managing this puts responsible actors in a difficult and sometimes impossible position, this process distinguishes itself from other public management processes. A crisis is:

[...] a serious threat to the basic structures or the fundamental values and norms of a social system, which – under time and pressure and uncertain circumstances – necessitates making critical decisions.

(Rosenthal et al. 1989, in Blondin & Boin 2018: 461)

The aim is to minimize the impact of a crisis, but the tasks that leaders and policymakers must aim to accomplish in order to minimize this are challenging, especially in an acute response phase (ibid). Determining what collective efforts to make in response to the crisis, ensuring the implementation of these, as well as communicating with the public to collectively define the crisis, must happen simultaneously. The definition of the crisis, or the 'meaning-making' process, often becomes political

where the different ways of framing the crisis competes with each other (ibid: 462).

Using the concept of framing can highlight how these different ways of thinking in the Commission appear. This 'frame competition' do not only promote certain interests, but it is also a part of the communication within this complex institution. Conflicts over different frames occur within an institutional and legal context, and the framing of issues is a way of organizing the work, both politically and legally (Mörth 2000: 174). It is, however, when a particular frame becomes established within a policymaking environment that some actors might 'win', while others will 'lose'. In this way, frames allow actors to make important connections between new or existing facts, information, and analysis – along with values and interests in the policy process (Rhinar 2010: 40).

This function is particularly valuable during periods of uncertainty, ambiguity, or crisis. During these times [...] frames allow actors to link generic interests and values with specific policy alternatives.

(Rhinar 2010: 40)

The perspective of the winning frame may have far-reaching implications for management of the crisis and post-crisis rendering of accountability. 'It can also shorten or lengthen the time span of the crisis by narrowing or widening objectives or acceptable outcomes' (Blondin & Boin 2018: 462). A framing analysis can help reveal policy controversies implying that there might exist conflicting frames depending in which part of the EU organisation one sits (Mörth 2000: 173). According to Kohler-Koch (1997: 62) defining the nature of the issue area is the first step to establish what kind of interests might be affected, since the answer determines in which context the issue is situated.

When researching the impact of the Covid-19 crisis on European integration it is natural to address health and competition as the nature of the issue area. This because the crisis has raised several questions of how to prevent cross-border health threats to secure both citizens and the overall EU economy. Health has traditionally been a policy area of national affairs and has not been subject of the Europeanisation of policy making in the EU. Instead, health has rather been a subject of liberal market dynamics, this being a core function of the EU. The Covid-19 crisis



revealed the dilemma of balancing the market economy through common competition regulations at the same time as carrying out much-needed health measures to minimize the damages of the crisis. Therefore, by framing both 'health' and 'competition' one can say something about how the definition of these issues affect the processing of political ideas and political demands in EU policymaking. Within the EU system, the Commission is responsible for policy formulation. On the basis of this one can expect that there might exist conflicting frames depending on in which part of the Commission one sits.

There are few issues in EU studies that have been debated as much as the role of the European Commission in shaping policy outcomes. The Commission's ability to act in a political fashion is linked to this debate since the Commission's ability to engage effectively in political issues has the potential to influence its strength in shaping policy outcomes (Nugent & Rhinard 2019: 203). After the Juncker Commission entered office in 2014, the debate on the Commission's political nature and the political roles it undertakes has intensified. The recent development has showed a reorganisation of the internal structuring of the College of Commissioners<sup>2</sup>, which has given the College a more hierarchical structure and a greater potential for political steering through political leadership (Dinan 2016, in Nugent & Rhinard 2019). More political and less technocratic steering of the Commission has led to what many scholars define as 'presidentialisation': an overall acceptance of the College's work being a subject of the President's political leadership (Egeberg 2013: 129). The policy-oriented horizontal division might also create conflicts between the relative autonomous DGs (Mörth, 2000: 175). The DGs and the several hundred units coupled to them have developed idiosyncratic sub-cultures, *esprit de corps*<sup>3</sup>, and institutionalized perceptions of appropriate problems, solutions and expertise (Trondal 2007: 963). Thus, the organisational culture, through structure, generates frame competition in the Commission.

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<sup>2</sup> A more detailed explanation of the Commission's organisational structure is to be found in the empirical descriptions in Chapter 4.

<sup>3</sup> *Esprit de corps* (French): the feelings, such as being proud and loyal, shared by members of a group of people (Cambridge Dictionary).

## 2.2 Operationalisation

As noted above, crises represent a serious threat to the basic *structures* or the fundamental *values and norms* of a social system, which demand that leaders and policymakers make critical decisions under time and pressure and under uncertain circumstances. In order to better understand how the Covid-19 crisis affects structures, values and norms in the European Commission it is relevant to look further into all these three aspects. Before explaining these institutional features more detailed, I will first operationalize the research questions by introducing two hypotheses. The first hypothesis suggests that redesigning the institution is made possible by the crisis, whereas the second hypothesis on the other hand, consider that this is more difficult because of the institutional path dependencies.

### 2.2.1 Organisational structure and design

Typically, a crisis often prompts increased centralisation of decision making as authorities 'work to display resoluteness and short-cut elaborate procedures' (Blondin & Boin 2018: 462). The European Commission plays a vital role in managing complex transboundary threats: as an autonomous institution with its own budget, it can initiate own programs and form new bodies. Through its formal agenda-setting power, the Commission can also employ the force of expertise and favorize exploiting divisions in Member State preferences in the legislative process (Radaelli 1999, in Boin & Rhinard 2008). This allows the Commission 'both to build crisis management capacities within existing legal competences as well as to expand these competences through new legislation when circumstances allow' (Boin & Rhinard 2008: 11). Centralizing the decision making to the organisational leadership eases the process of designing the organisation to solve the problems according to a set of goals. The institution and its resources are therefore, rather than a constraint, a way of enhancing organisational performance (Peters 2012: 55).

During the last two decades the political leadership of the Commission has increased its role as a formal body within the EU system. The Commission Presidency has been transformed as the result of three interacting components: 1) the strengthening of the office arising from successive treaty reforms, 2) the development of new central

administrative capacities, and 3) entrepreneurship on the part of incumbents who have used the new prerogatives to expand the office and to reconfigure intraorganisational relations, aiming towards establishing central control over policymaking (Kassim et al. 2017: 658). Such 'presidentialisation' (Kassim 2017) may also affect the way the Commission manages crises such as the corona pandemic. As explained above, crises direct the attention to those who have to make critical decisions under such conditions. Leaders and governments are legitimized through that they protect public order, health and safety (Dror 1986, in Boin & Rhinard 2008). Crises, failures, and highly complex policy issues may in this case 'provide opportunities for activist, entrepreneurial international organisation leaders to marshal states behind a cooperative solution' (Sandholz 1999, in Rhinard 2010: 63). Such presidentialisation, where decision making is centralized to the Commission President's office, is a way of 'designing' the organisational structure, making the process of institutional change and/or policy formulation easier. This substantiates the following hypothesis:

*H1: The Covid-19 crisis has given the Commission an opportunity to change the organisational structure and design by lifting health up to EU-level.*

There are, however, limits to design (Pierson 2000). Three key words can describe this limitation: conflict, bounded rationality and ambiguity (Olsen 1988: 16). Regarding the former, empirical studies show that organisations do not work as unified actors: all members do not share the same goals and it is difficult to solve conflicts based on a contract made in the past. Organisations must live with tensions and disagreements, where decisionmakers must convince or negotiate with the affected interests in order to win their support (Olsen 1988: 16). In addition, decisionmakers have limited time and capacity to analyze the assessments and problems they face. Such 'bounded rationality' assumes that decisionmakers have limited knowledge or cognitive capacity and will therefore act on the basis of simplified models of the world (Simon 1965, in Egeberg 2004; Christensen, Røvik & Lægneid 2020).

### 2.2.2 Institutional culture and history

The organisational structure has great significance for what members of the organisation do or can do. They try to act instrumentally rational, but

they also have limitations on their attention and capacity (Christensen et al. 2020: 34ff). In addition, decisionmakers also find themselves in a world where the past, as well as the present and the future, is ambiguous and demands interpretation (March & Olsen 1975, in Olsen 1988). Developing common understandings and socializing the members in formal organisations is just as important as making decisions (ibid). Drawing on this, we see that managing crises through formal rules and procedures, and through centralizing decision-making processes, is challenged by informal processes and improvisation, which also become more common during times of crisis (Blondin & Boin 2018: 462). An important aspect to this is the fact that institutions not only provide strategically-useful information, but they also affect the very identities, self-images and preferences of the actors within them (March & Olsen 1989). Inherited routines, principles and standards makes the institution intrinsically inefficient because it cannot quickly adapt to changed conditions for action or new problems, thus making institutional change more difficult (Christensen et al. 2020). This leads us to a second hypothesis:

*H2: There is a path dependency in the Commission's response to the crisis and its way of framing health and competition which limits the ability for institutional change.*

As we can see, the first hypothesis is connected to the organisational design, whereas the second hypothesis is more centered around the concept of framing, where these frames are products of the culture and history of the institution. The second hypothesis assumes that two different frames (health and competition) are competing for resources within an institutionalized environment that traditionally has been 'gate-keeping' only one of these frames (competition). Institutional theory can help to elaborate on how formal and informal processes in the institution affect the way actors' frame the problems occurring with a transboundary crisis like the corona pandemic.

## 2.3 An institutional perspective on the European Commission

The idea that organisations and institutions are central for understanding the role of values and collective choices in politics can primarily be traced back to the work of March and Olsen (1984; 1989). This 'new'

institutionalism reflects in many ways a traditional format for institutionalism encountered in sociology and organisation theory, rooted in the work of Selznick (1949; 1957), but also way back to scholars such as Emile Durkheim (1922; 1986) and Max Weber (Peters 2012: 27). The theoretical assumptions developed by Weber put much emphasis on 'rational' institutions meeting the demands of modernizing societies (Peters 2012: 129). Fundamentally, Weber's analysis is concerned 'with the manners in which cultural values infuse and shape formal organi[s]ations, no matter the level of socioeconomic and cultural development at which this process occurs' (ibid). He postulates a direct link between cultural values and formal structures in society including formal organisations. With March and Olsen this organisational focus is adopted, saying that endogenous organisational features are structuring politics (1984; 1989). Accordingly, informal and formal institutions are seen as structuring actors' behavior.

Institutional theory consists of many branches, including a differentiation between 'old' and 'new' institutionalism. The former emphasizes how 'organi[s]ational forms, structural components, and rules, not specific organi[s]ations, are institutionalized' (Selznick 1996: 276). *New* institutionalists say, 'not norms and values, but taken-for-granted scripts, rules and classifications are the stuff of which institutions are made' (DiMaggio & Powell 1991, in Selznick 1996). An examination of the European Commission needs to take into consideration both *structural* and *cultural* components of the organisation. Thus, in line with the argument of Selznick (1996), this study encompasses both old and new institutional perspectives to better understand how this institution has handled the Covid-19 crisis.

### 2.3.1 Organisational structure and design

The organisational structure and design, or structure, regulates actors' access to decision processes, defines the interests and goals that are to be pursued and establishes action capacity by assigning certain tasks to certain roles (Egeberg & Trondal 2018: 5). Compared to organisational culture and informal norms, the organisational structure is usually anchored in written texts (ibid). The organisational form affects the content of public policy. 'Thus, it is important to study how public organisations are organized, maintained and changed and how they work

in practice to understand how public policies are designed and implemented and what consequences they have for citizens, users and clients' (Christensen et al. 2020: 10). Formal structures and formal organisations are traits often linked to an instrumental understanding of institutions, where the achievement of certain goals is most important. Here, the means-ends assessments determine how its members behave while carrying out tasks. As a result, instrumental rationality occurs both out of the effects of the structure and the process whereby that structure is determined and formed (Christensen et al. 2020: 22-23). If the organisation is marked by hierarchy, division of labor and routines, and deals with internal vertical specialisation and coordination, it has, according to Weber, a bureaucratic organisational form (ibid: 26). 'Division of labor means that a public organi[s]ation's tasks are grouped into different units and tied to concrete positions – in other words, horizontal speciali[s]ation' (ibid: 26).

Regarding the European Commission, this is an organisation with a complex structure: it has many levels, many units on each level and many connections vertically and horizontally. The European Commission's department-general and unit structure serves as a good example of the horizontal principle of specialisation (Egeberg & Trondal 1999, in Trondal 2008). The Commissioners have policy responsibilities for each of their own 'portfolio' with oversight of one or more Commission department. These departments are known as Directorates-General (DGs) and are organized sectorally (for instance DG Agriculture) or functionally, like DG Budget (ibid). Every DG is divided into several directorates and sub-units, and it is at this unit level where most of the legislative proposals are drawn up. These units consult with stakeholders and build networks to support new ideas (Rhinard 2010: 25).

The horizontal loyalties can be expected to follow sectoral lines. 'Preferences of individual DGs may therefore arise from the retention or expansion of competences, their initial *raison d'être*, the existing policies and instruments they already control, or their stakeholder relationships developed in the past' (Hartlapp et al. 2013: 428). Because of the horizontal way of organizing, 'one might expect this to trigger conflicts among the Commissioners along sectoral or functional lines more often than along territorial (national) lines' (Egeberg 2013: 129). Horizontal policy issues

create conflicts between the relatively autonomous DGs (Mörth 2000: 175). There is, however, cross-cutting mandates with varying breadth and specificity across these horizontal and vertical lines. Actors with sectoral focus such as DG Agriculture face others with more general mandates such as DG Market, and the administrative setup varies strongly with differences in budgets, administrative costs, staff figures or legislative output (Hartlapp et al. 2013: 426-427).

Like national administrative bureaucracies, the Commission's DGs are 'stovepiped' in ways that mirror ministerial government. 'Each DG has traditionally guarded its policy prerogatives closely, and usually has a different organisational culture from the others' (Rhinard 2010: 25). An example of this is how the policy perspectives of DG Industry often have conflicted with those of DG Competition – a conflict along the lines of interventionist versus liberal approaches to economic growth (Peterson 1995, in Rhinard 2010). In addition to different norms and different organisational cultures within the DGs, battles over resources may emerge as well (ibid). These differences within the organisation makes it harder to assume that the Commission has a particular, uniform agenda, and one should therefore expect 'competing problem definitions, solution templates, and regulatory access across these services' (Trondal 2011, in Hartlapp et al. 2013: 427).

This again have implications for the decision-making processes. The complex system of different sub-units within the Commission indicates the existence of coalitions with disparate goals or interests and diverse resources for the articulation of interests. The different sub-units here can all act in an instrumentally rational way, but the results will depend on the resources others have and what they do (Christensen et al. 2020: 24). In addition, the bureaucratic and formal organisational structure makes important decisions property to the political and administrative leadership, based on a vertical and centralized principle. Leaders of bureaucratic organisations can for instance, through instruments such as larger budgets and larger allocations of personnel, utilize institutions to fulfill specific goals. The intra-organisational vertical structure may influence the design process of achieving the goals set out (ibid). Centralized decision-making through the formal organisational structure

allows leaders to have capacity for analysis and often exclusive rights to participate in decision-making (ibid: 37-38).

The endogenous organisational features, both the horizontal and vertical specialisation of tasks, may affect how organisations react to exogenous 'shocks' like the Covid-19 crisis. Crises may cause a fundamental questioning of pre-existing governance arrangements and 'long-cherished beliefs' in existing solutions (Lodge & Wegrich 2012, in Egeberg & Trondal 2018: 22). Accordingly, crises can trigger organisational meltdown but also 'create opportunity structures for organi[s]ational birth' and novel organisational solutions (Jones & Baumgartner 2005, in Egeberg & Trondal 2018). Thus, crises may prompt a redesign of existing structures. Here, designers can exploit external shocks as catalysts for change, formulate reform proposals in accordance with institutional legacies or current institutional fashions, etc. (Olsen 1997, in Egeberg & Trondal 2018). Reform processes may be deliberately organized on a temporary basis in order to achieve particular goals. Here, these processes are seen as decision-making processes that 'allocate attention, resources, capabilities, roles and identities'. Reform organisations have structures, demographics, and locations that distribute rights and obligations, power and resources, and normally do so unevenly (Egeberg & Trondal 2018). Regarding the sectoral specialisation in the Commission lines of conflict in a political space affects the distribution of political power within that space (Schattschneider 1975, in Egeberg & Trondal 2018). Thus, the outcomes will reflect the strength of the various departments and their ability to mobilize their respective stakeholders (ibid).

### *Expectations for the empirical research*

Drawing on this, one can expect that the different actors working with handling the Covid-19 situation all have specific goals they want to achieve. Since different units and actors within the Commission have different goals, one might expect that some would try to exploit this external shock as a catalyst for change, giving them expanded competences beyond what they currently have.

An expectation here is that DG SANTE wants to increase its powers within the Commission apparatus. The problems arising with the pandemic can be solved by lifting health to EU level, and designing the organisation



instrumentally is a way to achieve this goal. Since this department traditionally has had little political power, health advocates may see the value of centralizing health policy to the political leadership during the crisis as they sit on the access and resources to allocate the appropriate instruments (such as larger budgets) and the power to make important decisions. Thus, one can expect to see the goals of DG SANTE and the political leadership converge, as the political leadership too recognizes the value of increasing the focus on public health management in the EU. However, even though structures can make such reforms possible, they also place restrictions on it (Lægreid & Roness 1999, in Egeberg & Trondal 2018). This implies that such 'radical' redesign is difficult, and that reforming the organisational structure must happen within the existing institutional framework of the Commission.

Contrary to DG SANTE, one can expect that DG COMP does not want any radical institutional changes. The 'long-cherished beliefs' of fair competition in the internal market, a core function-area of DG COMP, has been challenged by the Covid-19 crisis, and made it difficult for this part of the Commission to achieve their goals of assuring fair competition between Member States in the EU. Thus, one can assume they want to reinforce competition regulation to how it was before the pandemic hit – with open borders, free movement of labor, stringent regulation of state-aid measures and preventing or controlling trusts or other monopolies (antitrust measures). In this case one can expect that DG COMP accepts reform processes only if they are organized on a temporary basis in order to achieve particular goals (such as protecting industries and businesses in Member States affected by the crisis).

Reading this, it is evident that the Commission's formal structure indicates the existence of disparate goals or interests. This raises the question of *why* the different sub-units may have these diverging interests. According to March (1994), it is important to consider the multiple actors and identities within organisations. The fact that the Commission is a complex and fragmented organisation with competing interests, makes the question raised above impossible to answer without encompassing elements of the institutional culture.

### 2.3.2 Institutional culture and history

To explain the culture of politics in EU is problematic because we cannot identify a European culture. However, 'within individual institutions norms and values accumulate and create a kind of *institutional culture*' (Bulmer 1997, emphasis added). March and Olsen (1989) highlight the role of norms and values and argue that this goes beyond 'mere structure to include such aspects as administrative culture'. What is meant by this is that institutional norms, the codes of conduct and values provide some kind of stability to a political system which is very fluid in character (Bulmer 1997). In regard to the EU, the efforts by all institutions to respect the subsidiarity principle is an example of such systemic norms. Likewise, norms and values may also be attached to individual institutions, such as the Commission. The 'pro-integration' mission of the Commission is an example of a norm resulting out of the institution's rules on the one hand, and the institutional culture on the other (Bulmer 1997).

Common institutional practices emerge as a result of interactive processes of discussion among the actors in a given network: they discuss shared problems and how to interpret and solve them. Out of these discussions the actors develop shared cognitive maps, incorporating a sense of 'appropriate<sup>4</sup> institutional practices which are then broadly adopted' (March & Olsen 2009; Hall & Taylor 1996: 950). The institutional setting is thus also a site for socializing institutional participants in the prevailing values and norms. Collective processes of interpretation and concerns for social legitimacy go beyond considerations of efficiency<sup>5</sup> (Hall & Taylor 1996: 953).

Although the rules and identities of a well-developed organi[s]ational culture may be pretty consistent, one still cannot ignore the fact that the complexity of public policy and public administration also produces inconsistencies and multiplicity, giving

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<sup>4</sup> The logic of appropriateness is a perspective on how human action is to be interpreted. Action, policy making included, is seen as driven by rules of appropriate or exemplary behavior, organized into institutions. The appropriateness of rules includes both cognitive and normative components (March & Olsen 2009).

<sup>5</sup> New institutionalists do not deny that human behavior can be rational or purposive but underline the extent to which individuals turn to established routines or familiar patterns of behavior to realize their purposes (Hall & Taylor 1996: 939).

rise to competing definitions of which attitudes and actions are culturally appropriate.

(Christensen et al. 2020: 47).

These competing definitions are clearly linked to the concept of framing. A central question here is how the definition of political issues is affecting the processing political ideas and political demands in policy making (Daviter 2012). A policy frame<sup>6</sup> can be mobilized by strategically minded officials in support of policy change, for instance by linking policy options to broader societal values. Seeing policy frames as referents of action, frames legitimate certain decisions and activate certain issues, actors, and special type of knowledge (Rein & Schön 1996). Frames define problems and determine what a causal agent is doing with what costs and benefits, usually measured in terms of common values (Entman 1993: 52). This emphasis on common values is an important part of the institutional perspective on organisations. Here the 'beliefs, paradigms, codes, cultures and knowledge' embedded within the institutions are important elements, contributing to the overall institutional values. Thus, it is difficult to isolate formal institutional rules from the normative context (March and Olsen 1989: 26, in Bulmer 1997).

According to the American organisation theorist Philip Selznick institutions are organisations infused with values: '[r]eal institutions embody societal values and strive to impose those same values on society' (Christensen et al. 2020: 42). When formal organisations develop informal norms and values in addition to the formal variety, they acquire institutional features. Such institutionalisation adds important characteristics to an organisation, but this process necessarily takes time (Selznick 1957, in Egeberg 2004). Organisations are growing increasingly complex by adding informal norms and practices, but in order to become a real institution however, Selznick argued that 'the "grown-up" and complex organisation also had to be infused with value beyond the technical requirements of the task at hand' (Egeberg 2004: 205). This organic process where informal norms grow gradually makes for a more

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<sup>6</sup> A 'frame' can be many things: it can be seen as a scaffolding (an inner structure); a boundary that sets off phenomena from their contexts (like a picture frame); a cognitive/appreciative schema of interpretation; or a generic diagnostic/prescriptive story (for instance a problem framing) (Daviter 2012).

complex organisation less flexible or adaptable to new demands, but it also equips the organisation with ‘new and necessary qualities that will potentially help the organisation to solve tasks more expediently and function well as a socially integrated unit’ (Christensen et al. 2020: 43). The taking on of values, beliefs and behavioral norms that are deemed important for their own sake also happens in the eye of the larger community where the organisation finds itself (Egeberg 2004: 205).

The organic process Selznick is talking about is clearly connected to the historical development of institutions. Inherited routines, principles and standards make institutional change more difficult, and strategies induced by a given institutional setting may ‘freeze’ over time into worldviews which are disseminated by formal organisations and will ultimately shape the self-images and basic preferences of the actors involved in them (Hall & Taylor 1996). Amongst examinations of inertia in political organisations, references to March and Olsen (1989) occur regularly, with conceptual use of ‘institutional repertoires’ which act as a barrier to change because organisational leaders effectively only drawing from pre-existing solutions rather than considering new ones (Greener 2004: 6). Thus, institutions are robust against change and attempts on reform, and redesigning institutions is therefore more difficult, according to this perspective (Olsen 1984; Krasner 1987, in Olsen 1988). The historical development has a social causation which is ‘path dependent’, meaning that ‘institutions are seen as relatively persistent features of the historical landscape and one of the central factors pushing historical development along a set of “paths”’ (Hall & Taylor 1996: 938).

The basic assumption here is that the policy choices made when an institution is being formed, or when a policy is initiated, will have continuing and largely determinate influence over the policy far into the future (Skocpol 1992, in Peters 2012: 70). ‘The path may be altered, but it requires a good deal of political pressure to produce that change’ (Peters 2012: 70). Cultural norms and values that make their mark on an organisation in its early and formative years have great significance for the path of development it follows further on (Christensen et al. 2020: 51). We see that organisations are established at a specific point in history and the specific cultural contexts or norms and values at the time leave permanent impressions on the organisation.

To explain how institutions produce such paths, some scholars have emphasized how past lines of policy condition follow policy by encouraging societal forces to organize along some lines rather than others – either to adopt particular identities, or to develop interests in policies that are costly to shift (Hall & Taylor 1996: 941). In relation to this they point to the unintended consequences and inefficiencies generated by existing institutions – contrary to the image of institutions as more purposive and efficient (ibid: 941-942; March & Olsen 1984). This is what is often called ‘historical inefficiency’:

From the vantage point of instrumental logic, the institution is intrinsically inefficient because it cannot quickly adapt to changed conditions for action or new problems. Yet from a cultural perspective, one could argue that it is perfectly possible for an institution to live with such historical inefficiency over time.

(Christensen et al. 2020: 52)

In line with such historical inefficiency, they divide the flow of historical events into periods of continuity punctuated by ‘critical junctures’. This being moments when substantial institutional change takes place, thus creating a ‘branching point’ from which historical development moves onto a new path (Hall & Taylor 1996: 942). The American political scientist John Kingdon described this phenomenon as ‘windows-of-opportunities’ (ibid). Kingdon emphasized that strong leaders often, both in an instrumental and cultural sense, participate as ‘change entrepreneurs’ to both open windows and ‘jump through them to secure changes’ (Christensen et al., 2020: 50). Cristopher Pollitt, a British administrative researcher, has also pointed to breaks in the path as a result of crisis or a combination of a long path-dependent period and breaks, along with Kingdon’s concept of ‘windows of opportunities’ (ibid: 53). This corresponds well with what many historical institutionalists use to explain such critical junctures; they often stress the impact of economic crisis and military conflict (Hall & Taylor 1996: 942).

The Covid-19 crisis can potentially be an example of such a critical juncture, being a ‘branching point’, which directs EU health and competition policy in new directions. There is an overarching expectation among new institutionalists that exogenous shocks lead to changes (Tosun et al. 2014). It is therefore interesting to see if actors use the crisis as a

‘window of opportunity’ and appear as ‘change entrepreneurs’. The close interactions between the Commission and the external environment suggest that ‘these fluid coalitions are held together not only by instrumentally defined self-interest, but also by collectively shared values and consensual knowledge’ (Mörth 2000: 176). Thus, it is important to research how both structural and cultural features of the Commission affect the policy outcomes. The question is, however, if the political leadership and policymakers can find the appropriate actions to solve the problems arising out of the crisis.

The framing of the issue that each of these advocates proposes draws on an institutional perspective. Decision makers find themselves in a world where the past, as well as the present and the future, is ambiguous and demands interpretation. The interpretation of the problems is shaped by frames. Frames and institutions are linked because institutional frameworks make organisations or political systems as a whole more receptive to some types of frame and argument (Princen, 2018: 540). In line with the political maxim that one should ‘never waste a good crisis’ (Boin et al. 2009, in Princen 2018: 543), one can expect that each of the actors, DG COMP and DG SANTE, will try to frame the event in a way that suits their political agenda.

### *Expectations for the empirical research*

As we can read out of the theoretical propositions above, the process of interpreting the situation is important here: the collective processes of interpretation and concerns for social legitimacy is more decisive than efficiency and means-ends assessments of the organisation. Here, we can expect the different actors to link their policy options to broader societal values, where the framing of these legitimate their actions. One can therefore expect that DG COMP on their side will try to avoid health measures eliminating competition regulations and legitimating this by emphasizing the importance of the internal market and a strong EU economy – in line with what many think the EU has been all about since the beginning. This also reflects the fact that DG COMP is a highly institutionalized part of the Commission. Their way of thinking is connected to traditional ways of doing things. Another expectation here is therefore that the concept of historical inefficiency is easier to identify within DG COMP.

As to DG SANTE, however, this a relatively 'new' DG within the Commission and therefore not as institutionalized as DG COMP. An expectation here is that this DG will try to take advantage of the Covid-19 crisis, using it as a window-of-opportunity to break with the path dependent market orientation of the EU. In this case, the actors will operate as policy entrepreneurs. One can expect that they will frame Covid-19 as a health crisis, where overcoming health threats and 'saving lives' are most crucial. Accordingly, DG SANTE will emphasize normative considerations: they will highlight the critical damages the crisis will have on people's health and the only way to prevent this in the future – in line with a logic of appropriateness – is to increase the Commission's capacity to coordinate health policies in the EU.

Researching whether there are structural or cultural/historical causes to the policy development in light of the Covid-19 crisis is interesting. I am, however, aware that the theoretical categorisation is quite broad, which can potentially lead to difficulties in analyzing the empirical material – especially with regards to the cultural aspect. This may be a methodological weakness. To further elaborate on this and other aspects connected to the choice of research design, I will now move on with the methodology-chapter.

# Chapter 3

## Methodology

In this chapter I will introduce my methodological choices. To begin with, I will present my research method (a single-case study) as well as my research strategy, which is guided by theoretical propositions. Secondly, I will present my main sources for the analysis, this being official EU documents and secondary literature. I will then continue by elaborating on the specific analytical strategy for the empirical material, namely a document analysis. In the final section I will then discuss the reliability and the validity of the findings.

### 3.1 Research method and design

This report raises the question of how the Commission has reacted to the challenges posed by the Covid-19 crisis. To be able to study this in-depth, a qualitative method can help to understand the processes by which events and actions take place. As Maxwell (2009: 221) points to, a major strength of qualitative studies is their ability to 'get at the processes that lead to these outcomes, processes that experimental and survey research are often poor at identifying'. The starting point for a qualitative research project is having one or more theoretical traditions that define a boundary of interesting approaches to a problem within a specialized field (Tjora 2012: 26). I have in the previous chapter outlined why the problems connected to the Covid-19 crisis are interesting to dig into by using specific theoretical contributions and in light of these theories proposed two hypotheses that makes the theory measurable through empirical



observations. The reason for wanting to do more research on this specific topic was evoked by a curiosity of investigating how an important institution like the Commission handles a complex, transboundary health crisis like the corona pandemic. I also wanted to research if the reactions and the framing of the issues are affecting the European integration process as such.

### 3.1.1 A single-case study

The main purpose of this project is to provide an in-depth study of one empirical case: the European Commission. Even though I am looking at different organisations within the Commission, it is important to note that these do not serve as independent cases but aim at highlighting the overall development of the Commission as such. Case study research provide an opportunity to gain a deep holistic view of the research problem, and may facilitate 'describing, understanding and explaining a research problem or situation' (Baxter & Jack 2008). Because I am interested in describing the Commission's reactions, as well as understanding the underlying mechanisms causing internal competition on how to interpret or define the crisis, this case study is descriptive and interpretative-explanatory in nature.

According to Yin (2009) clearly defining the research problem is probably the most important step in the entire research project. When designing a research project, one important first step is to consider if the research design is adjusted to the research question. Case studies are described as the preferred research method when *how* and *why* questions are posed (Yin 2009). This project has raised the following questions: i) *How did the Commission react to the Covid-19-crisis*, and ii) *how do competing frames within the Commission apparatus affect health and economy domains in the EU as a result of the Covid-19 crisis?* Thus, the 'how's' of these research questions indicates that a case study is most appropriate. However, *how* and *why* questions are usually quite broad and may not provide enough guidance on what data needs to be collected. Thus, deriving more specific propositions/hypotheses may be beneficial (Baškarada 2014).

This study's departure point is the theoretical propositions derived from the review of the literature, which are then applied to the collection- and analysis of the data (Hyde 2000, in Pearse 2019). Such a deductive

qualitative analysis implies that data collection activities are guided on the basis of provisional theoretical ideas (Boeije 2002, in Baškarada 2014). In contrast to statistical sampling, the goal of such theoretical sampling is 'not to undertake representative capture of all possible variations, but to gain a deeper understanding of the cases in order to facilitate the development of theories' (Baškarada 2014). As shown in the previous chapter, these theoretical ideas descend from institutional perspectives on organisational design and institutional culture. In this case a deductive thematic analysis can be used as a method for identifying, analyzing and reporting patterns (themes) within the data (Braun & Clarke 2006, in Pearse 2019). This 'pattern matching', originally described by Campbell (1975) is one form of analysis which is recommended for case study research (Hyde 2000; Yin 2009, in Pearse 2019). Although this has its origins in quantitative studies using small samples (Campbell 1975), it can also be used qualitatively to test hypotheses and in this way complement a deductive thematic analysis (Hyde 2000).

Pattern matching can be used when conducting research on a single case and involves identifying the patterns in data, and then comparing this against one or more patterns that are proposed in the literature (Yin 2009; Almutairi et al. 2014; Gibbert et al. 2008, in Pearse 2019). The theory to be tested is thus articulated before starting with the data selection (Hyde 2000). Here, usually two alternate theories are put forward for testing, which typically set out competing patterns of outcomes that are then tested empirically (Almutairi et al. 2014, in Pearse 2019). In this study I have based this pattern matching on two different approaches within the institutionalist perspective to see if there is evidence of more emphasis on structural features or on more cultural features when reacting to a crisis and when framing the issues arising with it. However, it is worth mentioning that these two approaches are not necessarily mutually exclusive – structure and culture are traits often connected to each other. These two approaches therefore complement one another to provide a fuller explanation of the phenomenon being studied (Hopper & Hoque 2006, in Pearse 2019). Theoretical reasons for sampling cases include revelation of something unusual/unexpected, seeking replication/falsification, elimination of alternative explanations, and elaboration of emerging theory (Eisenhardt & Graebner 2007, in Baškarada 2014). The associated flexibility of such a method provides an

ability to collect the most relevant data, where the multiple sources of evidence lead to enhanced validity and reduced bias (ibid).

## 3.2 Sources

The data collected for this purpose is mainly official EU documents, hereunder programme proposals, legislation, speeches, press statements and factsheets found by using the advanced search function on the European Commission's official website<sup>7</sup>. These primary sources can help to describe 'what has been done', 'what is being done' and 'what goals have been set for the future'. In addition to describing this, the data is also seen in light of the theoretical propositions, hereby explaining the processes that occur within the institution. During the research process, I found that using only primary sources for describing and explaining this was not sufficient. The official documents do not give any information about the institutional culture in the Commission. Hence, I turned to secondary literature to better understand the cultural and historical developments of the different actors and units. The secondary literature is based on previous research on EU health and competition, as well as research done on the Commission as such. This has helped to gain further insight to both historical and present characteristics to the Commission, both in structural and cultural terms – which again is crucial for the understanding of the reactions and different ways of framing the Covid-19 crisis.

Because this study has limitations concerning both time, resources, and scope, I realized that including all the available data material on the Commission's search site from the outbreak of the crisis (February 2020) until present day would be too comprehensive. Thus, I decided to narrow down the search to a time period between February 2020 (when the crisis started to unfold) until November 2020 (when the Commission presented the EU4Health program). The EU4Health programme may serve as a good indicator for describing whether there are signs of radical change in the Commission. Narrowing down the search until the launch of this

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<sup>7</sup> The Commission offers an advanced search in their documents from 1974 until present day. See website: <https://ec.europa.eu/commission/presscorner/advancedsearch/en>

programme was therefore essential in order for me to answer the research questions.

The advanced search function allows to explicitly search for documents related to the different Directorate-Generals by filtering the search by either key words, policy area or College member. In addition, it is possible to adjust the search to filter out documents that have been published before and after a certain date. Here, I searched for Covid-19 as a policy area and chose the specific Commissioner (which led me to the right DG) in the time between 1 February until 20 November, this to make sure all the relevant material was included.

### 3.3 Document analysis

Because this study is analyzing information gathered from documents, it was natural to do a document analysis. Again, due to the study's limitations in time and scope, doing a document analysis can be fruitful because this method is less time-consuming than other methods, such as for example observation or in-depth interviews (Bowen 2009: 31). This was a major advantage concerning the fact that this study has been carried out from the 'home office' due to Covid-19 restrictions. Documents are in the public domain (read: Internet) and are 'obtainable without the authors' permission' (Bowen 2009). In addition, documents are 'unobtrusive' and 'non-reactive' – that is, they are unaffected by the research process (ibid). Thus, using documents is beneficial when considering the reflexivity<sup>8</sup> in the research.

Furthermore, documents also provide stability to the research. As Merriam (1988, in Bowen 2009) points at, 'the investigator's presence does not alter what is being studied'. Documents, then, are suitable for repeated reviews (Bowen 2009: 31). Documents of all types can help the researcher uncover meaning, develop understanding, and discover insights relevant to the research problem (Merriam 1988, in Bowen 2009). This has also been the main purpose of the document analysis I have conducted. However,

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<sup>8</sup> Reflexivity – which requires an awareness of the researcher's contribution to the construction of meanings attached to social interactions and acknowledgment of the possibility of the investigator's influence on the research – is usually not an issue in using documents for research purposes (Bowen 2009).

it is important to mention that doing a document analysis may serve the research with some potential weaknesses too. An example of this, which may be relevant for this study, is that an incomplete collection of documents suggests 'biased selectivity' (Yin 2009). In an organisational context this means that the available documents are likely to be aligned with the organisation's policies and procedures and with the agenda of the organisation's principals (Bowen 2009). Using a broader variety of documents, such as newspaper articles or documents from other EU organisations, would therefore increase the overall validity because these would not have been 'colored' by the organisational environment in the Commission. In addition, the fact that the analysis uses secondary literature to explain aspects of the institutional culture, suggests that interpretations of other researchers may have affected the way I have interpreted the issues.

As mentioned in the section above, the method for analyzing the selected documents is a deductive thematic analysis using a form of pattern recognition in the data. Before I could start the process of analyzing, I first had to skim through a good deal of documents to find the ones that could identify the patterns proposed in theory. As such, the first step of the thematic analysis entails a kind of content analysis along with the pattern-matching process. Content analysis is the process of organizing information into categories related to the central questions of the research – here the aim is to do a first-pass review, in which meaningful relevant passages of text is identified (Bowen 2009: 32). After finding the right texts, I then did a more thorough examination of these to further interpret the content. Here, my aim was to identify the patterns in data so that these could be compared to the patterns proposed in theory. This process involves a careful, more focused re-reading and review of the data, so that it fits into the category construction introduced by the theoretical approaches (Bowen 2009). Reading the various texts was therefore a thoughtful process of selecting parts of the text material that could either fit into the category 'organi[s]ational structure and design' or 'institutional culture and history'. Because these categories were not always explicitly evident in the data, the analytical process relies on skills, intuition, and data-filtering through an interpretive lens. Such an interpretative process points to an acknowledgement of the research having subjective imprints, which again have implications for the validity and reliability of the research per se.

### 3.4 Reliability and validity of the research

Within the interpretative tradition which qualitative research is based on, it is well-known that complete neutrality does not exist. Here, the position of the researcher is both a resource but also something that could be an interference in the research process (Tjora 2012: 204). Because of my educational background in European studies, I already had some knowledge of the EU and the integration process on beforehand, which was useful when developing precise research questions. On the other hand, having adequate knowledge of an issue may also be a disadvantage if the researcher brings too many preconceptions into the research process (Tjora 2012). However, the 'pattern matching' technique derived from specific theoretical propositions has helped me to distance myself from these preconceptions as this requires that the findings are interpreted through a theoretical-interpretative lens, rather than just through previous knowledge and subjective thoughts on the subject. This method therefore enhances the reliability of the research. In different circumstances, with more time and resources available, a triangulation of methods – by conducting interviews with relevant actors – would have strengthened the reliability even further (Baškarada 2014).

Concerning the validity of the research, an important question to ask is whether the empirical analysis measures what the theoretical reasoning adds up to (Tjora 2012). As mentioned earlier, the relatively 'broad' theoretical categories may not manage to encompass all relevant aspects to the phenomenon that is studied. Hence, the research design may have affected the results because I may have been too focused on making the data correspond with the theoretical categories. As a result of this specific details may have been excluded. Additionally, as mentioned above, an incomplete collection of documents suggests 'biased selectivity' (Yin 2009). Here I have argued that by using a broader variety of documents would increase the overall validity because these would not have been affected by producers of the texts (here: the Commission). However, I find that the selected documents are trustworthy sources of information for my purpose, which is to investigate how the Commission reacted to the Covid-19 crisis and how different actors within this organisation have 'framed' this.

# Chapter 4

## Empirical descriptions and findings

This chapter presents both empirical descriptions and important findings connected to DG SANTE, DG COMP and the Commission as such. In order to understand how the European Commission is structured, what this institution does and how it has reacted to the Covid-19 crisis I will start off by giving a general introduction to this institution, followed by relevant empirical findings on how the Commission overall reacted to the crisis. Here, an important actor is the Commission President.

I will then continue with presenting DG SANTE by giving a general introduction of this specific Directorate-General, followed by empirical material of relevant work (hereunder specific committees and agencies) and its propositions on how to overcome the challenges the EU is facing. After giving some insight to this, I will move on with DG COMP. Understanding how this specific part of the Commission works and what kind of direction it wants the EU to move on from here is important because it can say something about traditional ways of working and thinking, and how this may conflict with actors promoting new health policy.

Drawing on the theoretical framework I will in this chapter highlight formal structures and informal institutional and cultural features by presenting both current characteristics to the different units and their development over time. This will hopefully provide a better

understanding of how the Commission reacted to the crisis and what kind of competing frames are taking place.

## 4.1 The European Commission

Investigating how the European Commission has handled the Covid-19 situation in the EU requires a deeper understanding of how this institution is organized. Additionally, in order to understand how decisions happen in organisations, it is important to take into account the multiple actors and identities within organisations (March 1994; 1997). Studying the preconditions for strategic and coherent action in a multi-organisation characterized by ambiguity, different policy styles, multiple interests, identities, functions and an inconsistent organisational set-up problematizes the actorness of the Commission (Mörth 2000: 174). The fact that the Commission is a complex and fragmented organisation with competing interests, requires a further dismantling of the institution. To conceptualize the Covid-19 crisis as an exchange of interests, one way to do this is by examining the Commission's formal and informal structures. An important part of this formal and informal structure is also the role of the Commission President. Hence, this section will also direct a substantial focus towards the Commission presidency.

### 4.1.1 Institutional characteristics

The European Commission represents one of the most powerful international executive institutions worldwide and has the pivotal role as the core executive EU institution with key initiating powers that run everyday administration of the EU (Trondal 2007: 962). The Commission is like a government and is therefore composed of a political executive wing with the Commissioners and their personal staff, and an administrative wing consisting of the departments and services (Egeberg 2013: 126). Much like national executives, the Commission is responsible for the initiation and formulation of policies, usually in the form of legislative, budgetary, or programme proposals. In addition, the Commission is also responsible for monitoring the implementation of EU policies within EU member states (ibid: 126-127). Even if it is no doubt that also the actions of the administrative branch also have political significance, for instance by providing expertise and capacity for policy development, there is still a distinction between the Commission's



political leaders (the College of Commissioners) and the officials who sit in the Commission's departments and services (ibid).

To make sure the Commission acts collectively there are strong internal mechanisms supporting the College of Commissioners, with any decision by the Commission subject to multiple levels of internal consultation (Greer et al. 2019: 33). This being between DGs (interservice consultation), between the cabinets of the Commissioners and through collective consideration by the College themselves (ibid). The College consists of 27<sup>9</sup> Commissioners, including the Commission President. 'Within the Commission's internal decision-making process, contentious issues that have not been resolved at the lower echelons of the Commission are lifted to this formally political level in the last instance' (Egeberg 2013: 129). To ensure that all initiatives are aligned with the political priorities of the President, the European Commission is supported by the Secretariat-General (SG) which coordinates the work across the entire Commission and steers new policies through other EU institutions (Greer et al. 2019: 33). The Secretariat-General is led by a President, having a role similar to a national prime minister (Egeberg 2013).

As a result of the present size of the College, more issues are being taken care of through direct interaction between the President and the specific Commissioner(s) affected. In regard to this development questions concerning a 'presidentialisation' of decision-making in the Commission has been raised. This question points to a development where the Commission President has moved away from being a *primus inter pares* to a *primus super pares*<sup>10</sup> (Kurpas et al. 2008, in Egeberg 2013).

There are multiple reasons for this formalisation and institutionalisation of the President's position, most of which stem from a perceived need to enable the President to exercise greater discipline over a College that has grown substantially in size owing to EU enlargements. The President's increased powers include a greater ability to influence the nomination of Commissioners, to

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<sup>9</sup> The number of Commissioners has been reduced to 27 after UK leaving the EU, December 2020.

<sup>10</sup> Egeberg (2013): *Primus inter pares*: "first among equals". *Primus super pares*: "first above equals".

exercise political direction over the College, to determine Commissioners' portfolios, and to dismiss Commissioners if necessary.

(Kassim et al. 2017)

Here, history tells us that, in a climate increasingly hostile to 'Europe', perceiving 'Brussels' as a source of 'red tape'<sup>11</sup>, José Manuel Barroso (Commission President from 2004 until 2014<sup>12</sup>) believed that only strong presidential leadership could restore respect for the Commission (Kassim et al. 2017: 660). The new direction wanted to overcome the Commission's fragmentation of its services into silos and bureaucratic capture of Commissioners by their director general and develop a singularity of purpose. According to Kassim and colleagues (2017) this was also the only effective available path following an expanded College due to EU enlargement. Barroso now wanted the Commission President to be responsible for determining both strategy and policy and insisted on a more limited role for the College (Commission 2004). Along with the financial crisis of 2008, Barroso further emphasized a programmatic approach to legislation, with a focus on robust internal mechanisms to ensure policy initiatives were clearly thought through, avoiding unnecessary complexity and demonstrably added value. 'For Barroso, the crises reinforced the need for strong presidential leadership' (Kassim et al. 2017: 661). Through the establishment of the Commission President's pre-eminence during Barroso I, he was able to further centralize decision making in Barroso II (ibid). This development is relevant to take into consideration also when researching how the current Commission President has handled a transboundary crisis like the corona pandemic.

#### 4.1.2 Commission reactions to the Covid-19 crisis

Today's Commission is led by Commission President Ursula von der Leyen. The 60-year-old German gynecologist only started her political career in her early 40s, joining the Christian Democratic Union Party in

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<sup>11</sup> Cambridge Dictionary definition of "red tape": Official rules and processes that seem unnecessary and cause delays. From: <https://dictionary.cambridge.org/dictionary/english/red-tape>

<sup>12</sup> Former Colleges of Commissioners. From: [https://ec.europa.eu/info/former-colleges-commissioners\\_en](https://ec.europa.eu/info/former-colleges-commissioners_en)

Germany in the 1990s and working in the German government from 2005 and onwards (Webster 2019). Until her appointment in 2019 she had never had an EU job, but she is familiar with Brussels as she has grown up there. She is the first female President of the European Commission, a mother of seven, and has a master's degree in public health (ibid). As member of the academic staff at the Department of Epidemiology, Social Medicine and Health System Research at Hanover Medical School from 1998 until 2002<sup>13</sup> there is reason to say that she may possess some insight to the challenges the corona pandemic has brought.

Only after a few months as Commission President, von der Leyen had to coordinate a response to an unforeseen global health crisis. On March 2, she established a corona response team at political level to coordinate the response to the pandemic, 'bringing together all strands of action – from medical, to economic, to mobility and transport' (von der Leyen 2020a). At the joint press conference with the Commissioners Lenarčič (crisis management), Kyriakides (health), Johansson (home affairs), Vălean (transport) and Gentiloni (economy)<sup>14</sup>, von der Leyen explained the set-up of this response team:

The corona response team has basically three main pillars. The first pillar is the medical field. It includes topics from prevention and procurement. There are relief measures, information and foresight. It is always in close cooperation with ECDC and our European Medicines Agency. The second big and important column is the pillar that covers mobility, from transport to travel advice and also to the Schengen-related questions. The third pillar covers the economy. It is looking in-depth at various business sectors – such as tourism or transport, trade, but of course, it is also looking at the value chains and at the broader macro-economic picture we have.

(von der Leyen 2020a)

Only a week after this first official statement of EU action, there was held a videoconference with EU leaders on the response to the Covid-19

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<sup>13</sup> Biography (Commission website): [https://ec.europa.eu/commission/commissioners/2019-2024/president\\_en](https://ec.europa.eu/commission/commissioners/2019-2024/president_en)

<sup>14</sup> The College of Commissioners (2019-2024): [https://ec.europa.eu/commission/commissioners/2019-2024\\_en](https://ec.europa.eu/commission/commissioners/2019-2024_en)

outbreak. Here, the Commission received a mandate to further step up its response to the coronavirus, and coordinate Member State actions (Commission 2020c). President von der Leyen announced a 'Corona Response Investment Initiative' that should enable around EUR 60 billion of unused cohesion policy funds to be redirected to the fight against the coronavirus (Commission 2020e). The proposal of the 'Coronavirus Response Investment Initiative' urged the need to mobilize available cash reserves to fight the crisis immediately. To promote necessary investments the Commission proposed a release of about 8 billion euros of investment liquidity (Commission 2020e). The proposal was accepted by the European Parliament and the Council and entered into force on 1 April 2020 (Commission 2020c). After the video conference with the EU leaders, von der Leyen said:

Let me be very clear: The Commission is working flat out on both fronts. The European Commission will, in a daily phone conference with the Health Ministers and the Ministers of Internal Affairs, coordinate the necessary measures. Secondly, the Commission will assemble a team of epidemiologists and virologists from different Member States to give us guidelines on the European level. The European Commission is now taking stock of the available protective equipment and respiratory devices as well as their production and distribution capacity. Those are crucial for the entire health sector. On research and development, we will reinforce the European initiative to fund targeted research on the Coronavirus. We have mobilised €140 million of public and private funding for promising research on vaccines, diagnosis and treatment.

(Commission 2020f)

In addition to emphasizing the coordination of health measures, she also addressed the importance of taking the right measures to secure EU economy:

On the economic front: First and foremost, we must act at the macro-economic level. We will use all the tools at our disposal to make sure the European economy weathers this storm. This requires coordination between Member States, the Commission and the ECB. [...]. I am working on the following measures to support Member States in their efforts: We will make sure that state aid can flow to

companies that need it; Secondly, we will make full use of the flexibility which exists in the Stability and Growth Pact; I will come with concrete ideas before the Eurogroup on Monday. So on both these fronts, we will clarify the rules of the game for Member States very quickly. [...]. Today marks an important step in a coordinated response that the 27 Heads of State and Government, the President of the European Council and the Commission have been calling for. Now it is time for action.

(Commission 2020f)

In the weeks and months following these first statements on EU action, the Commission continued to initiate further activities on how to cope with the crisis<sup>15</sup>. The majority of these actions involved taking economic measures, through funding, and through activating fiscal framework's general escape clause, hereby allowing Member States to undertake measures to deal adequately with the crisis, while departing from the budgetary requirements that would normally apply under the European fiscal framework (Commission 2020c). In addition, on 16 June, the Commission launched its vaccine strategy to accelerate the development, manufacturing and deployment of vaccines against COVID-19. With its vaccine strategy, the Commission will 'support efforts to accelerate the development and the availability of safe and effective vaccines in a timeframe between 12 and 18 months, if not earlier' (Commission 2020c).

Before this, on 28 May, the Commission also proposed the establishment of EU4Health – a Programme for the Union's action in the field of health for the period 2021-2027. In the proposal's reasons and objectives, it started with quoting von der Leyen in her speech to the European Parliament on March 26, where she said that:

We will stop at nothing to save lives. The Covid-19 crisis is the biggest challenge the European Union (EU) has faced since the Second World War, and it has demonstrated that if each country tries to tackle pandemics on its own, the EU will be as weak as the weakest link.

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<sup>15</sup> See complete timeline of EU action here: [https://ec.europa.eu/info/live-work-travel-eu/coronavirus-response/timeline-eu-action\\_en](https://ec.europa.eu/info/live-work-travel-eu/coronavirus-response/timeline-eu-action_en)

Every health system has struggled in tackling this crisis, and this has affected every citizen in one way or another.

(Commission 2020d)

In this proposal the Commission also states that the EU4Health programme will be the key instrument to build a European Health Union:

Europe needs to give a higher priority to health, to have health systems ready to provide state of the art care, and to be prepared to cope with epidemics and other unforeseeable health threats in line with the International Health Regulations (IHR). Whilst the overall framework for preparedness, early warning and response is already in place under Decision 1082/2013/EU of the European Parliament and of the Council of 22 October 2013 on serious cross-border threats to health, COVID-19 has shown the need to significantly boost the EU's capability to respond effectively to such major health threats. An ambitious self-standing Programme, to be called the EU4Health Programme, will be the key instrument for delivering it

(Commission 2020d)

On 11 November 2020, the Commission then launched this new EU4Health program, making sure this will pave the way to a strong European Health Union. With a budget more than ten times that of previous health programs, EU4Health 'will pave the way to a strong European Health Union' (Commission 2020g). Actions like tackling cross-border health threats, making medicines available and affordable, and strengthening and digitalizing health systems will be financially supported through this programme (ibid). The Commission here legitimized the launch of such an ambitious self-standing programme by referring to a recent EU survey, where the results show that '66% of EU citizens would like to see the EU given more say over health-related matters' (ibid). In her State of the Union Speech (16 September 2020), which the communication from the Commission on 11 November also refers to, Ursula von der Leyen called on Europe to draw lessons from the crisis.

[...] Our first priority is to pull each other through this. To be there for those that need it. And thanks to our unique social market economy, Europe can do just that. It is above all a human economy

that protects us against the great risks of life - illness, ill-fortune, unemployment or poverty. It offers stability and helps us better absorb shocks. It creates opportunity and prosperity by promoting innovation, growth and fair competition. Never before has that enduring promise of protection, stability and opportunity been more important than it is today.

(von der Leyen 2020b)

In her speech she also listed several actions of the EU during the pandemic, such as creating green lanes for goods and ensuring that critical medical supply could go where it was needed. And, as she clearly points out, Europe achieved this 'without having full competences'. She therefore follows up by saying 'for me, it is crystal clear - we need to build a stronger European Health Union' (ibid). In order to make this health union a reality, von der Leyen then urged the need to draw lessons from the health crisis by making the EU4Health programme future proof and strengthening EU crisis preparedness and management of cross-border health threats through reinforcing and empowering health agencies, are important steps towards this union. Von der Leyen also emphasize that 'it is clearer than ever that we must discuss the question of health competences'. This, she said, 'is a noble and urgent task for the Conference on the Future of Europe' (von der Leyen 2020b).

Based on the corona virus response team that was established on March 2, 2020, the first pillar of this team is the medical field, including topics from prevention and procurement. As von der Leyen said at the joint press conference on this date, this pillar is in close cooperation with the European Centre for Disease Prevention and Control (ECDC) and the European Medicines Agency (EMA). Both of these agencies are closely connected to the Commission's Directorate-General for Health: DG SANTE.

## 4.2 DG SANTE

### 4.2.1 Institutional characteristics

From its French acronym for health, DG SANTE is the Commission's Directorate-General responsible for EU policy on health and food safety. Politically, it is led by Commissioner Stella Kyriakides (Cyprus) and her

Cabinet. Administratively, it is led by Director-General Sandra Gallina (Italy) (Commission 2020h). This DG aims to protect and improve public health, ensure Europe's food is safe and wholesome, protect the health and welfare of farm animals, and protect the health of crops and forests (ibid). The immense structuring power of EU treaty bases on EU politics means that it is relatively easy to identify the formal place of EU public health policy (Greer & Jarman, 2021: 35). DG SANTE has its mandate in Article 168 in the Treaty of the Functioning of the EU (TFEU). Article 168 (4) gives the EU competences to harmonize Member State health laws in the areas of organs and substances of human origin, blood and blood derivatives, pharmaceuticals, and measures in the veterinary and phytosanitary fields. Regarding taking incentive measures for combating cross-border health threats, however, ordinary legislation<sup>16</sup> is required (Greer et al. 2019: 34).

Outside of Article 168 the EU has a mandate to protect public health via action on consumer protection, the environment, and occupational health and safety – the latter covered by article 153 in TFEU. In other areas of health, the EU is restricted to 'complementing', 'encouraging' and 'coordinating' Member State initiatives which can be enacted through guidelines, indicators and monitoring. Because of the small size of the DG (about 300 employees in total, and the quite limited finances) the tendency has been to make use of soft(er) powers, such as creating networking forums and platforms (ibid: 35).

Historically, this DG (formerly known as DG SANCO) was first established in 1999, with the Prodi Commission. The reason for establishing this DG at the time came as a result of the EU's 'foundational' health crisis: the BSE episode<sup>17</sup> (Greer et al. 2019: 14). The spread of this 'mad cow disease' in 1996 revealed that agriculture, an established area of the EU internal market, failed to regulate a rapidly changing food system (ibid). The Prodi Commission therefore decided to move health regulation

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<sup>16</sup> This means that the directly elected European Parliament has to approve EU legislation together with the Council. From: [https://europa.eu/european-union/law/decision-making/procedures\\_en](https://europa.eu/european-union/law/decision-making/procedures_en)

<sup>17</sup> Bovine Spongiform Encephalopathy (BSE), more known as "mad cow disease", could – if ingested by humans – give them the fatal neurodegenerative variant Creutzfeldt-Jakob Disease (Greer et al. 2019: 14).



away from its previous home in an industry-promoting directorate such as agriculture. This move aimed at strengthening public health and reduce bureaucratic and political incentives to downplay public health issues (Greer et al. 2019: 15).

Once a policy arena exists in the EU, and once there is authori[s]ation to act for health, then the EU political system begins to reward policy entrepreneurs. The Health Strategy and Health Programme and the new Directorate-General for Health and Consumer Protection (DG SANCO at the time) anchored the new EU health policy arena, with a set of programmes, priorities, experts and advocates intersecting with the DG, the Commissioner and health ministers to define and act in the new EU policy arena.

(Greer et al. 2019: 15)

The BSE crisis had a profound constitutional impact on the EU, giving the EU power to harmonize Member State policies in the specific areas of organs, substances of human origin, blood and blood derivatives, and specific measures in the veterinary and phytosanitary fields (Brooks, de Ruijter & Greer 2020, in Vanhercke et al. 2020: 35). Followed by the ‘uncoordinated and ineffective response’ to the SARS outbreak in 2003, the EU then established the European Centre for Disease Prevention and Control (ECDC)<sup>18</sup> in 2005, with the aim of monitoring and surveilling communicable diseases (Greer et al. 2019: 84; Greer & Jarman, 2021).

It was created as a European agency, and its role is to be a network center, standardizing and Europeanizing data and procedures; a resource center, building capacity and sharing expertise; and a data hub. This model, typical of EU agencies, gave it a role in practical Europeani[s]ation, especially for smaller member states with less capacity of their own, without threatening member states’ autonomy or empowering the Commission.

(Greer & Jarman 2021: 34)

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<sup>18</sup> The ECDC can be traced back to the 1980s, when the EU began to fund research, training and disease-specific monitoring networks, evolving into a network for monitoring and surveillance of communicable diseases, formalized in 1998 (Greer et al. 2019; European Parliament 1998).

The Commission had the main coordinating role of these ad hoc networks between national authorities (Greer et al. 2019: 85). However, EU-level action can be overshadowed by failures in Member States' risk management and response systems (Greer et al. 2019: 86). Communicable disease control is difficult to coordinate and integrate. There is huge variation in Member State's capacities, with different organisations, resources and skills. In addition, disease control policy is politically linked to the logic of crises and collective action: 'outside of crises, it is hard to find energy for collective action, whereas in crises, countries can sometimes overcome the barriers to collective measures and take actions' (Greer et al. 2019: 84).

Given that Member States' capacity for risk assessment and management is variable when it comes to diseases and health threats, the EU can provide complementary legislative competence to coordinate Member States' responses (ibid: 85). Since different Member States have different infrastructures, resources and politics, and are not always willing to cooperate since they still retain competence with respect to national healthcare budgets, the EU has not been given the 'full range of powers that are associated with a coherent communicable disease control and response system' (ibid). For almost its entire history, dating twenty years back, the two salient characteristics of EU public health policy have been its weak legal basis and the minimal enthusiasm from Member States for creating significant health policy at EU level (de Ruijter 2019; Vanhercke et al. 2020: 33).

Thus, looking at history we see that crisis response and management has been a weak point of European action on health threats. This became very clear during the swine flu pandemic in 2009: several Member States secured themselves influenza vaccines and antiviral medications and declined to share among each other (ibid). The lack of legal powers and capabilities to intervene makes the ECDC, and the Commission as a whole, less visible. The swine flu pandemic of 2009, however, gave rise to joint procurement as an EU policy instrument (Vanhercke et al. 2020: 36). The Joint Procurement Agreement (JPA), as a part of the 2013 Health Threats Decision, facilitates collective purchasing of medicines, medical devices and other goods or services, hereunder laboratory equipment or personal protective equipment. All this with sufficient financing to

support high-volume purchases (ibid). This joint procurement for medical countermeasures is led by the EU Health Security Committee<sup>19</sup> (Vanhercke et al. 2020: 35). The Health Security Committee relies directly on the work of the ECDC, which also, together with the European Medicines Agency (EMA<sup>20</sup>), has a seat at the table. This committee, especially with the information given by the ECDC, showed to provide useful information to the member states soon after the outbreak of the Covid-19 virus in Europe (Schmidt 2020: 1180).

But, as we can see, in urgent situations with domestic pressures, the governments of Member States have tended to take national measures, sometimes against the interests of other Member States. The outbreak of the Covid-19 virus is a recent example of this. During the first weeks of the Covid-19 crisis, in February and early March 2020, the EU appeared to be side-lined and national interests dominated (Vanhercke et al. 2020). And in the EU, Italy's plea for help was ignored despite the presence of formal coordination mechanisms 'as governments sought to protect their own supplies in the face of imminent threat' (ibid).

#### 4.2.2 DG SANTE's reactions to the Covid-19 crisis

Following the Commission's timeline on EU action DG SANTE opened an alert notification on the Early Warning and Response System (EWRS) on 9 January 2020. Then, on 17 January, the Health Security Committee had their first meeting on the novel corona virus (Commission 2020c). In this meeting they mostly discussed the situation in Wuhan, China. In addition, the ECDC presented a summary of the Rapid Risk Assessment, highlighting the risk assessment had changed since the last week 'given that there is now more information concerning reported cases outside of

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<sup>19</sup> Depending on the severity of health threats, Member States are represented in the Health Security Committee (formally a part of the EU Health Security regime since 2013) by ministerial officials 'with relatively high clearance and the political mandate to decide on mutual coordination' (Vanhercke et al. 2020: 35).

<sup>20</sup> EMA: An independent agency that cooperates with national regulatory authorities in EU countries and with DG SANTE in a partnership known as the European medicines regulatory network. It also interacts with patients, healthcare professionals and academia, and works together with its sister agencies, particularly the ECDC and the European Food Safety Authority (EFSA). From: [https://europa.eu/european-union/about-eu/agencies/ema\\_en](https://europa.eu/european-union/about-eu/agencies/ema_en)

China'. However, they stated that there remained a lack of information on the transmission mode and the source of infection, but that there were indications of person-to-person transmission (Health Security Committee 2020). During the weeks in January there were no official Commission press conferences on the coronavirus situation, but the Health Security Committee continued to meet every week, sharing information and decisions made at national level and coordinating this between Member States, the ECDC and the EMA (Brooks, de Ruijter & Greer 2020).

As mentioned above, the Health Security Committee is in charge of the Joint Procurement Agreement. The JPA for medical countermeasures, enabled by Decision 1082/2013/EU, was used throughout 2020 in response to the Covid-19 crisis. But since this is predominately a preparedness tool, it is not designed to deal with an on-going crisis. 'However, in the proposed Regulation for serious cross-border threats to health, elements of the legal framework of the joint procurement agreement will be enhanced, as it remains a key tool for preparedness' (Commission 2020b). Strengthening the JPA as key EU procurement process, whilst mitigating the risk of internal competition for limited resources or parallel national tracks, through an 'exclusivity clause' are important steps to enhance this. This exclusivity approach, 'implemented in the EU vaccines strategy, has proven successful', the Commission states.

As the virus continued to break out all over the EU during the spring of 2020, the DG SANTE, with Commissioner Kyriakides, continued to update European citizens and EU institutions on the situation. On 24 February, the first remarks came from Commissioner Kyriakides, as a part of the joint press conference with the Commission President. In her speech she said that the risk assessment by the ECDC now takes into consideration the situation in Italy, and that this would be further discussed with all Member States at the Health Security Committee meeting which would take place the same day (Kyriakides 2020a). On 26 February, Kyriakides held another speech at a press conference on Covid-19 in Rome, Italy:

[...] given how quickly the situation can change, as we have seen over the past days, even if we are currently in the containment phase, our public health care response across the EU must be ready to deal with

increased numbers of COVID-19 infections and we are working to coordinate and align this. To this effect, we have requested Member States to review their pandemic plans as well as health care capacities, including capacity for diagnosing, laboratory testing and procedures for contact tracing. All Member States need to inform us about their preparedness plans and how they propose to implement them. This is the kind of crucial information that we all need to have if the virus spreads further and I urge Member States to share this with us and each other, as this is important for our mutual security.

(Kyriakides 2020b)

Seeing the tendency of Member States taking unilateral measures to protect their own populations made it clear that this was not the effective way of overcoming the virus (Commission 2020b). 'Reintroduction of internal border controls, for example, disrupted mobility and the daily life of millions of people living and working in border regions. They disrupted vital supply chains and prevented the flow of essential goods and services across the internal market' (ibid). Then, stepping up the coordinative role, Kyriakides on a press conference on 28 May introduced the EU4Health program. Here, she addressed the Commission's recovery package:

As part of this package, the new EU4Health Programme will be a game changer, a real paradigm shift in how the EU deals with health, and a clear signal that the health of our citizens is more than ever before a priority for us. This crisis has made clear that our collective response capacity needs to be brought to a different level. The calls during the crisis have been loud and clear: we need more Europe in the area of public health.

(Kyriakides 2020c)

At this press conference she also addressed how the Commission has stepped up to the challenges of the pandemic with 'an over 2000% budget increase compared to current resources for health', which allows to face the current challenges, but also to invest in EU health systems for the future (ibid). This programme shall help to ensure the strengthening of national health systems and support Member States in their efforts to make them more resilient and better performing. This underlines that the EU4Health programme 'is not just about crisis management', but it will

also ‘be established to improve diagnosis and treatments of other diseases’ in the future, thus serving as ‘a new chapter for EU health policy’ (Kyriakides 2020c).

In the communication to the European Parliament and the Council on building a European Health Union on 11 November 2020, the Commission urged the need for a stronger European health security framework ‘in order to better protect lives and the internal market [...]’ (Commission 2020b). The first proposals are, as they then point to, envisaged within the current Treaty provision (particularly in respect of Article 168 of the TFEU). And as they say here, ‘by upgrading the EU framework for cross-border health threats’, these first building blocks of the European Health Union will bring ‘greater overall impact while fully respecting the Member States’ competence in the area of health’ (Commission 2020b). Concretely, this Communication is accompanied by three legislative proposals: ‘an upgrading of Decision 1082/2013/EU<sup>21</sup> on serious cross-border health threats, a strengthening of the mandate of the European Centre for Disease Prevention and Control (ECDC), and an extension of the mandate of the European Medicines Agency (EMA)’. Furthermore, the communication links to the proposal for enhancing the Civil Protection Mechanism, proposed by the Commission in June 2020. ‘Together, these proposals will put in place a robust and cost-effective framework to enable EU Member States to respond to future health crises as a Union’ (Commission 2020b).

On 11 November, at the press conference on Building a European Health Union, Kyriakides started out with addressing the weaknesses of the system at the outbreak of the pandemic:

The past year has shown us that fragmentation makes all Member States more vulnerable. We all witnessed the effects of the uncoordinated national measures during the first weeks and months of the outbreak. We also saw the lack of readiness and preparation,

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<sup>21</sup> This upgrade ‘could include strategic stockpiling of essential medical supplies or capacity building in crisis response, preventive measures related to vaccination and immunisation, strengthened surveillance programmes. It should facilitate the setting up of an integrated cross-cutting risk communication framework working in all phases of a health crisis - prevention, preparedness and response’ (Commission 2020b).

with shortfalls in medical equipment, testing capacity, coordination and other areas.

(Kyriakides 2020d)

The solution to these uncoordinated national measures is building a European Health Union, she says. This will give the EU 'stronger legislation to act and support Member States in situations of serious cross border threats to health' (ibid). In addition, she underlines that core EU agencies working with public health will get increased capacity:

We are also making sure that our two EU Agencies who have been at the forefront of our work, the European Centre for Disease Prevention and Control (ECDC) and the European Medicines Agency (EMA), have the necessary capacity to fully play the role we need them to. This will be a step change for EU's collective capacity to respond and coordinate.

(ibid)

However, the EU4Health proposal underlines that the programme will be implemented in full respect to the responsibilities of the Member States, 'for the definition of their health policy and for the organi[s]ation and delivery of health services and medical care as stated in Article 168 TFEU. The subsidiarity principle is therefore respected' (Commission 2020b). The EU 'shall therefore have competence to carry out actions to support, coordinate or supplement the actions of the Member States [...]' (ibid).

In addition to being a public health crisis, this also a serious economic crisis: 'For Europe as a whole, the economic shock was the biggest following the Second World War, with Euro area output falling in two quarters as much as it had risen over the last 15 years' (Lagarde 2020, in Ladi & Tsarouhas, 2020: 1047). In light of this, the Commission introduced new instruments to deal with problems related to foreign subsidies to protect and promote European competitiveness (Meunier & Mickus, 2020). As we now will see, EU economy and EU competitiveness are two sides of the same coin.

## 4.3 DG COMP

### 4.3.1 Institutional characteristics

DG COMP is the Commission's Directorate-General for competition regulation within the EU and aims to provide the people in Europe with better quality goods and services at lower prices regulated through fair competition (Commission 2020i). It is led by Executive Vice-President and Commissioner Margrethe Vestager (Denmark), and headed by Director-General Olivier Guersent (France), who is the administrative counterpart to the responsible Commissioner (ibid; Rhinard 2010: 25). The Commissioner watches over the rules established in EU competition law and is assisted by the Director-General for Competition and acts in close cooperation with the national competition authorities (NCAs<sup>22</sup>) of the various Member States (Russo et al. 2010: 3). In addition, there has been a recent development of relying on economists' advice in competition policy issues. Since 2003, DG COMP has a Chief Economist position supported by a team of IO economists (ibid: 5). This is a result of an increased need to justify the benefits of competition (advanced by IO thinking) and the close scrutiny exercised by European Courts. Because of this, the Commission has adopted a more economic and effect-based approach in its decisions (ibid).

Historically, the European Union's competition policy has been an important part of the EU's work ever since it was set out in the Treaty of Rome in 1957:

The treaty instituted 'a system ensuring that competition in the common market is not distorted'. The aim was to create a set of well-developed and effective competition rules, to help ensure that the European market functions properly and provide consumers with the benefits of a free market system.

(Commission 2014: 3)

The formal place of EU competition policy has its mandate in Article 101-106 in the Treaty of the Functioning of the EU (TFEU). Competition is,

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<sup>22</sup> The NCAs are gathered in the European Competition Network (ECN), an enforcement network with the aim of ensuring coherent application of EU competition rules across the Member States. The ECN consists of the NCAs of each Member State and staff from DG COMP, and is legitimated through legislation, Regulation 1/2003, together with a soft law Network Notice and a joint statement by the Commission and the Council (Vantaggiato, Kassim & Wright 2020).



however, highlighted already in the introductory part of the Treaty which is dedicated to the principles inspiring the objectives, tasks and institutions governing the EU. Here, article 3(3) identifies one of the general objectives of the EU the achievement of ‘a highly competitive social market economy’ (Russo et al. 2010: 4). The EU has great powers to promote the development and regulation of its internal market. Eliminating measures that discriminate on the basis of Member State (for instance protectionism for national businesses or citizens) is a core and deeply entrenched EU power (Greer et al. 2019: 2-3). A legal authorisation like this means that the effective way to regulate is as a part of the development of the internal market.

DG COMP prepares decision in three broad areas: antitrust, merger and state aid cases. In general, competition policy is about applying rules to ensure that companies compete fairly with each other. ‘This encourages enterprise and efficiency, creates a wider choice for consumers and helps reduce prices and improve quality’ (Commission 2014). To fight anticompetitive behavior, review mergers and state aid and encourage liberalisation is a core function of the Commission’s work in this policy area (ibid). Seen as a complement to internal market regulation establishing free movement and fostering free competition, competition law is justified by the goal of ensuring EU Member States a fair market. Aiming at economic agents, it shall prohibit them from distorting market competition (Greer et al. 2019: 140). The decisions, interpretations and opinions coming from this part of the Commission often have far-reaching implications for industry structure and individual firms (Russo et al. 2010: 5). DG COMP has in recent years actively promoted competition, not only because of the growth in EU Member States, but also because enforcement has become stricter. As a result, there has been an increase in recent fines and new and stringent fining guidelines (Russo et al. 2010).

Competition policy has often been a case of centralized EU power. From the mid 1980s competition policy emerged as one of Europe’s most effective ways of regulating and integrating markets (Wilks 2005: 431). During these years the Commission also expanded its jurisdiction, most

notably through 'Regulation 17'<sup>23</sup>. Several other important rules came in the following years, for instance the liberalisation of regulated (often state-dominated) sectors such as telecommunications and energy. This development has made competition policy the most centralized and powerful EU competence (ibid: 432). In addition, through establishing the already mentioned Chief Economist position in 2003, and through the Merger Regulation of 2004, has not only empowered DG COMP, but also transformed it into a global actor with a key priority of fostering cooperation with other competition authorities (Aydin & Thomas 2012: 536). Here DG COMP has tried to pursue policy convergence and acceptance of competition norms (ibid). Recently, there has also been a shift in focus towards promoting sustainable growth, competitiveness, and job creation as part of the Europe2020 strategy for smart, sustainable and inclusive growth (ibid: 532). As a result of this EU competition policy has become an integral part of the single European market, thereby underlining the goal of ensuring that the European market functions properly and providing consumers benefits of a free-market system set out with the Treaty of Rome in 1957 (ibid).

Looking at the history, there is no doubt that the Commissioner for competition always has been one of the most powerful positions in the Commission, and the impact of enforcement prepared by DG COMP has grown steadily during the last three decades (Russo et al. 2010: 7). EU competition policy, as the 'first supranational policy' (Wilks & McGowan 1996) is regarded today as 'an intrinsic element of the internal market and an indissoluble part of the European project' (Akman & Kassim 2009). For almost thirty years, the Commission has promoted competition and enforced strict rules. State aid levels have been reduced from 1.12% of total EU GDP in 1992 to below 0.8% in 2000 and kept it around this level ever since, 'eliminating the market-distorting sectoral aid almost completely' (Meunier & Mickus, 2021: 1080). However, in the wake of the Covid-19 pandemic, the EU has centralized merger control and expanded its state aid provisions to various sectors of the economy – 'in contrast with established competition policy orthodoxy developed during the 1980s and

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<sup>23</sup> This regulation requires that all agreements between firms which could possibly affect trade between Member States had to be approved by the Commission (Wilks 2005: 431).

1990s' (ibid). The pandemic therefore seems to affirm more reforms to competition policy to ensure that it protects European industries (ibid: 1087).

#### 4.3.2 DG COMP's reactions to the Covid-19 crisis

As described in the first section of this chapter, the Commission President at the joint press conference on 2 March launched a corona response team at political level to coordinate the response to the pandemic, 'bringing together all strands of action – from medical, to economic, to mobility and transport' (von der Leyen 2020a). Here, she introduced three pillars of this response team, the third pillar covering the economic aspect, which 'is looking in-depth at various business sectors – such as tourism or transport, trade, but of course, it is also looking at the value chains and at the broader macro-economic picture we have' (Commission 2020d). Then, at a joint press conference with Commissioner Vestager on 13 March, von der Leyen highlighted that:

[I]n this moment, flexible EU state aid rules enable Member States to take swift action to support companies and citizens [...]. The serious disturbance to the Italian economy created by the Coronavirus will lead the Commission to authorise wide ranges of state aid measures to remedy the situation.

(von der Leyen 2020c)

Another example of this early response in exemptions from state aid rules was the Commission approval of Denmark's compensation for companies that had to cancel events with a large number of participants (ibid)<sup>24</sup>. Alongside this, we saw that the Commission also on this day adopted proposal to provide liquidity into the economy by setting up a 37-billion-euro Corona Response Investment Initiative 'to grant support to the

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<sup>24</sup> On 10 March 2020, the Commission received a notification from Denmark (the first State aid notification linked to the COVID-19 outbreak) on a scheme to compensate organisers of events with more than 1,000 participants that had to be cancelled due to the COVID-19 outbreak. The Commission took a decision to approve this measure within 24 hours of receiving the notification from Denmark. It stands ready to provide assistance based on this template to other Member States that wish to implement similar measures. From: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0112#footnote4>

healthcare sector, to the labor market and to support SMEs from all affected sectors' (ibid). In a statement from Commissioner Vestager on the same day, she further addressed the measures on state aid and the economic impact of Covid-19:

The situation we're dealing with is changing fast. There's every possibility, a high risk, that the strains on our economies will grow. Governments may need to give state aid on a much larger scale. And our rules allow for wide-ranging support, throughout the economy, in Member States that are facing a serious disturbance to their economies.

(Vestager 2020a)

She continues by saying that the Commission is ready to respond as it was with the financial crisis of 2008:

[...] At that time, the Commission adopted a Temporary Framework, guiding Member States as to how to use state aid to help stabilise the European economy, while protecting the single market. And we're now working on a new framework, so that we have it ready, if it becomes necessary.

(ibid)

Furthermore, in a statement after the Commission's proposal for this State aid Temporary Framework to support the economy in the context of the Covid-19 outbreak (based on TFEU, Article 107(3)(b) to remedy a serious disturbance across the EU economy), Vestager on 17 March said:

Managing the economic impact of the COVID-19 outbreak requires decisive action. We need to act fast. We need to act in a coordinated manner. EU State aid rules provide a toolbox for Member States to take swift and effective action.

(Vestager 2020b)

She then set out two goals to manage this, the first being that businesses have the liquidity to keep operating, or to put a temporary freeze on their activities, if need be, and that support reaches the businesses that need it (ibid). The second goal is that support in one Member State does not undermine the 'unity that Europe needs, especially during a crisis'. Here, she said that the EU as a whole has to be able to 'rely on the European

single market’ to help the economy to overcome the outbreak, and to ‘bounce back strongly afterwards’ (ibid). Vestager highlighted in her statement that the aim was to have this Temporary Framework in place in ‘the next few days’. The State aid Temporary Framework<sup>25</sup> was adopted two days later, on 19 March, serving the Member States guidelines on how to act (Commission 2020j). Vestager compared this quick response with the financial crisis of 2008, saying that during this crisis ‘it took three weeks from the launch of the internal consultation of the framework until adoption. We are able to act even faster today than we did in response to the financial crisis a decade ago because we are building on the experience gained from the 2009 framework’ (Vestager 2020b).

Regarding antitrust, DG COMP on 8 April 2020, provided guidance on allowing limited cooperation among businesses, especially for critical hospital medicines during the Covid-19 outbreak. In a press release Vestager said:

We need to make sure that there is sufficient supply of the critical hospital medicines used to treat coronavirus patients. To avoid the risk of shortages of essential and scarce products and services because of the unprecedented surge in demand due to the pandemic, we need businesses to cooperate and do it in line with European Competition rules. So to ensure supply we will urgently provide businesses with sufficient guidance and comfort to facilitate cooperation initiatives boosting the production of products in high demand.

(Vestager 2020c)

This guidance was adopted into a Temporary Framework Communication and on 8 April 2020. In the communication from DG COMP on this, they write in the concluding remarks that they encourage pro-competitive cooperation aimed at addressing the challenges undertakings are facing due to the crisis, and they are committed to

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<sup>25</sup> The new Temporary Framework will enable Member States to (i) set up schemes direct grants (or tax advantages) up to €500,000 to a company, (ii) give subsidised State guarantees on bank loans, (iii) enable public and private loans with subsidised interest rates. Finally (iv), the new Temporary Framework will recognise the important role of the banking sector to deal with the economic effects of the COVID-19 outbreak, namely to channel aid to final customers, in particular small and medium-sized enterprises (Commission 2020i).

provide antitrust guidance and support to facilitate the proper and swift implementation of cooperation that is needed to overcome the crisis 'to the ultimate benefit of citizens' (Commission 2020k). Here, they also say that the Commission will continue to closely and actively monitor relevant market developments to detect instances of undertaking advantage of the current situation to breach EU antitrust law, and that it will not tolerate 'conduct by undertakings that opportunistically seek to exploit the crisis as a cover for anti-competitive collusion or abuses of their dominant position (including dominant positions conferred by the particular circumstances of the crisis), by, for example, exploiting customers and consumers (e.g. by charging prices above normal competitive levels) [...]'. Eventually, it is stated that the Communication 'shall remain applicable until the Commission withdraws it (once it considers that the underlying exceptional circumstances are no longer present)' (Commission 2020k).

A tool which DG COMP introduced to assist Member States in interpreting this framework was so-called 'comfort letters'. An example of such a comfort letter is one given to 'Medicines for Europe' (an association of pharmaceutical manufacturers, and participating companies in relation to a voluntary cooperation project to address the risk of shortages of critical hospital medicines for the treatment of coronavirus patients). In this comfort letter, Director-General Olivier Guersent, approves their submission by highlighting that the cooperation's overall purpose is to effectively increase supply and production of urgently needed Covid-19 medicines. He justifies this approval by referring to the fact that 'the Commission understands that the pharmaceutical industry is currently acting to adapt its stock and production capacity to the sudden, pan-European surge in demand for certain hospital medicines, leading to an acute risk of medicine shortages in the EU'. In his concluding remarks he then points to the importance of not taking advantage of this opportunity of business cooperation:

[C]onduct amounting to opportunistically seeking to exploit the crisis as a 'cover' for non-essential collusion or other anticompetitive behaviour will continue not to be tolerated by the Commission. [...]. The cooperation set out in MfE's submission of 6 April 2020 does not raise concerns under Article 101 TFEU. In reaching this conclusion, we have consulted also the National Competition Authorities that

together with the European Commission constitute the European Competition Network.

(Guersent 2020)

Comparing the measures on state aid with measures on antitrust, it is no doubt that most of the work of DG COMP during the Covid-19 crisis has been to make state aid decisions for the Member States<sup>26</sup>. Regarding the launch of the EU4Health programme in November 2020, DG COMP has no publications concerning this. However, the Proposal for the EU4Health program<sup>27</sup> has several economical aspects to it. Point 7 of the proposal says for instance that the programme should ‘place emphasis on actions in relation to which there are advantages and efficiency gains from collaboration and cooperation at Union level and actions with an impact on the internal market’ (Commission 2020d). Additionally, point 41 says the following:

The policy objectives of this Programme may be also addressed through financial instruments and budgetary guarantees under the InvestEU Fund. Financial support should be used to address market failures or sub-optimal investment situations, in a proportionate manner and actions should not duplicate or crowd out private financing or distort competition in the internal market. In general, actions should have a clear European added value.

(Commission 2020d)

The importance of the internal market in this crisis is further emphasized in Ursula von der Leyen’s State of the Union Speech on 26 September:

The pandemic reminded us of many things we may have forgotten or taken for granted. We were reminded how linked our economies are and how crucial a fully functioning Single Market is to our prosperity and the way we do things. The Single Market is all about opportunity

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<sup>26</sup> See complete overview of coronavirus related state aid decisions here: [https://ec.europa.eu/competition/state\\_aid/what\\_is\\_new/covid\\_19.html](https://ec.europa.eu/competition/state_aid/what_is_new/covid_19.html)

<sup>27</sup> Proposal for a Regulation of the European Parliament and of the Council on the establishment of a Programme for the Union's action in the field of health –for the period 2021-2027 and repealing Regulation (EU) No 282/2014 (“EU4Health Programme”).

- for a consumer to get value for money, a company to sell anywhere in Europe and for industry to drive its global competitiveness. And for all of us, it is about the opportunity to make the most of the freedoms we cherish as Europeans. It gives our companies the scale they need to prosper and is a safe haven for them in times of trouble. We rely on it every day to make our lives easier – and it is critical for managing the crisis and recovering our strength. Let's give it a boost. We must tear down the barriers of the Single Market. We must cut red tape. We must step up implementation and enforcement. And we must restore the four freedoms – in full and as fast as possible.

(von der Leyen 2020b)

This statement highlights how important it is for the Commission to preserve the internal market to make the EU prosper. Looking at all the empirical material presented in this chapter, it is clear that the Commission has taken many actions to overcome the challenges of the pandemic. There are connections between the political leadership and the specific DGs, and the different solutions that are put to the table are products of both the structure and the culture of the respective policy areas as well as the Commission as a whole. To explain this further, I will now analyze this by 'pattern matching' this with the theoretical perspectives from Chapter 2.



# Chapter 5

## Analysis

This chapter draws on the findings above. The aim is to see connections between the empirical cases, the secondary literature, and the theoretical propositions in Chapter 2. The theoretical based expectations were drawn up according to a division into two categories: organisational structure and design, and institutional culture and history. This division makes the basis for the analysis as well. Starting with organisational design, I here want to point out what kind of instruments and tools the Commission has put in place as a result of the crisis. Then, moving on with institutional culture, I will analyse whether the reactions to the crisis have been a result of the historical development and the institutional culture within the different parts of the Commission. In this case it is relevant to use the concept of framing in order to interpret the content of policy that has been developed as a result of the Covid-19 crisis. The second part of the analysis is therefore divided into 1) a health frame, and 2) a competition frame. Because the selected official Commission documents are limited in explaining the institutional culture, I draw on established knowledge from secondary literature to provide sufficient substance to the cultural aspects. Thus, this chapter analyses material from both primary and secondary sources in light of the theoretical categories. In sum, the analysis will hopefully provide important insight to how the Commission has reacted to the crisis, and how the competing frames may affect policy outcomes in health and economic domains.

## 5.1 Organisational structure and design

### 5.1.1 The Commission President

Crisis often direct attention to those who must make critical decisions under such conditions, which often prompts increased centralisation of decision-making as authorities work to display resoluteness and short-cut elaborate procedures. Here, people often look to leaders and governments because they are the ones protecting public order, health and safety (Dror 1986, in Boin & Rhinard 2008). Drawing on my theoretical based expectations from Chapter 2, an assumption connected to the institutional organisational structure and design, is that the political leadership in the Commission (the Commission President) possess the access and resources to allocate instruments, such as larger budgets or the power to make important decisions and can as a result of this utilize the institution to gain capacities to coordinate health in a larger scale than before. I will now analyze if this expectation is substantiated in the empirical findings.

The Secretariat-General and the Commission President coordinates the work across the entire Commission and ensure that all initiatives are aligned with the political priorities of the President. As a result of EU enlargement, the size of the College has increased and has urged the need to enable the President to exercise political direction over the College, to determine Commissioners' portfolios and so on (Kassim et al. 2017). This has been part of an historical development, where previous Presidents have – often as a result of major crises – stressed the need for strong presidential leadership (ibid: 661). Because of this, it is interesting to see if this way of 'designing' the Commission leadership through crisis management has occurred with the Covid-19 crisis as well.

The current Commission President, Ursula von der Leyen, has introduced several new initiatives to cope with the challenges the EU is facing due to the corona pandemic. Measures such as daily phone conferences with the Health Ministers and Ministers of Internal Affairs, the assembly of a team of epidemiologists and virologists from different Member States and taking stock of available protective equipment and respiratory devices (also the production and distribution of these) serve as good indicators of coordinating initiatives coming directly from the President. In addition, the Corona Response Investment Initiative of 13 March, 2020 – enabling

the mobilisation of cash to immediately fight the crisis – shows that economic measures have been important instruments to deal with the crisis. The mobilisation of 140 million euros of private and public funding was crucial to initiate research on vaccines, diagnosis and treatment (Commission 2020f). As the findings show us, the macro-economic view on using all the tools at the Commission's disposal was essential to make sure that the European economy could 'weather this storm' (ibid). In addition, departing from the budgetary requirements that would normally apply under the European fiscal framework, enabled Member States to undertake measures to deal adequately with the crisis. Highlighting that 'it is clearer than ever that we must discuss the question of health competences' in her State of the Union speech (von der Leyen 2020b), von der Leyen also confirms that health has gained attraction in the Commission policy system. Additionally, the introduction of the EU4Health programme on 11 November 2020, is a further proof of this. Looking at the findings here, we saw that von der Leyen called on Europe to draw lessons from the crisis. This by strengthening the EU's health security framework, promoting reinforced crisis preparedness and response role of key EU agencies such as the ECDC (von der Leyen 2020b).

These competencies are drawn up in the EU4Health program. EU4Health will create reserves of medical supplies for crises, a reserve of healthcare staff and experts that can be mobilized to respond to crises across the EU and increased surveillance of health threats. An important part of the programme is to provide more funding for health policies. By investing €5.1 billion, therefore becoming the largest health programme ever in monetary terms, EU4Health will provide funding to EU countries, health organisations and NGOs (Commission 2020g).

The EU4Health programme therefore serves as an example of institutional design in the Commission, where the political leadership has introduced new instruments, mainly by providing money, to deal with transboundary health threats in the future. This way of designing the institutional structure in the Commission so that the institution possesses the right tools to coordinate health in a larger scale than before, shows that instrumental action is a way of achieving the goals set out with the new health program. The bureaucratic and formal organisational structure has made decisions here property of the political leadership, based on a

vertical and centralized principle. Vertical specialisation expresses the intended division of labor across hierarchical levels. Within organisations, leaders interact more frequently across organisational units and are exposed to broader flows of information, which makes them better equipped to consider a wider set of goals, alternatives, and consequences when making choices (Egeberg & Trondal 2018). Because, as we have seen, crises often prompt increased centralisation of decision-making in order to short-cut elaborate procedures, this calls for more political and less technocratic steering. In the Commission this tendency of letting the overall work of the College become a subject of the President's political leadership is called 'presidentialisation'. Based on the findings in this study, we see that von der Leyen has had exclusive rights to participate in decision-making. This is, as we have seen, both a result of the formal organisational structure and the historical development of enabling the President to exercise political direction over the College. The findings in Chapter 4 indicate that much of the initiatives to coordinate the crisis, through specific economic measures, came from the political leadership and the Commission President. This may therefore substantiate the assumption that, in times of crisis, leaders of institutions play a vital role because they have the power to make critical decisions and have access to allocate the appropriate instruments.

The question is how radical these new instruments are in terms of organisational design. Through its formal agenda-setting power, we have seen that the Commission can employ the force of expertise and favorize exploiting divisions in member state preferences in the legislative process (Radaelli 1999, in Boin & Rhinard 2008). Because of this, the Commission can both build crisis management capacities *within* existing legal competences as well as to *expand* these competences through new legislation when circumstances allow (Boin & Rhinard 2008). Based on the findings in this study, the introduction of instruments such as EU4Health indicates that the Commission and its leadership has with this crisis built its crisis management within the existing legal framework. However, to further investigate if the crisis has allowed for an expansion of legal competences, paving the way for more radical change, we must take a closer look at the department which most likely would favor such a change.

### 5.1.2 DG SANTE

DG SANTE has in many ways benefited from the decisions on providing more money to coordinating health policy in the EU. Drawing on the expectations outlined in the theory, an assumption is that DG SANTE may think the problems arising with the pandemic can be solved by lifting health to EU level, and instrumentally designing the organisation through specific instruments is a way to achieve this goal.

DG SANTE has its formal mandate in the TFEU's Article 168. Article 168 (4) gives the EU competences to harmonize Member State health laws in the areas of organs and substances of human origin, blood and blood derivatives, etc. But taking incentive measures for combating cross-border health threats, however, requires that the European Parliament has to approve EU legislation together with the Council (Greer et al. 2019: 34). In addition, Article 168 also points to the fact that union action shall only complement national policies. Hence, the EU is restricted to 'complementing', 'encouraging' and 'coordinating' Member State initiatives which can be enacted through guidelines, indicators and monitoring (ibid: 35).

The carefully circumscribed language in Article 168, along with the financial limitations on health policy, shows that DG SANTE has quite limited powers to deal with health issues across the EU. Because DG SANTE is a product of the horizontal way of dividing labor sectorally within the Commission, the horizontal loyalties of this DG can be expected to follow sectoral lines: preferences may arise from the retention or expansion of competences, its initial *raison d'être*, the existing policies and instruments they already control, or their stakeholder relationships developed in the past (Hartlapp et al. 2013). Accordingly, the horizontal way of structuring the organisation leads to a variation in the DGs administrative setup, with differences in budgets, administrative costs, staff figures or legislative output (Hartlapp et al. 2013). Because DG SANTE is a relatively new DG, established in 1999 (at the time DG SANCO), is quite small (about 300 employees), and has historically had rather low budgets, they rely on the work of agencies to gather information and to work out new policy proposals. The ECDC is a clear example of this: its role is to be a network and resource center, building

capacity and sharing expertise, without threatening Member States' autonomy or empowering the Commission (Greer & Jarman 2021).

Establishing new agencies can be understood as a way of designing the organisation so that it meets the demands of society. DG SANTE has done this several times, always as a result of previous health crises in the EU. Here, the BSE episode in 1996, the SARS outbreak in 2003 and the swineflu pandemic in 2009, are all examples of health threats that have caused an expansion of competences for DG SANTE. The swine flu pandemic of 2009 revealed weaknesses in EU health coordination: Member States secured themselves influenza vaccines and antiviral medications and declined to share with other Member States (Vanhercke et al. 2020). This, as we see in the empirical material, gave rise to the Joint Procurement Agreement (led by DG SANTE's Health Security Committee), which shall facilitate collective purchasing of medicines, medical devices, laboratory equipment and personal protective equipment. The findings here show us that the JPA was used throughout 2020 in response to the Covid-19 crisis but being a preparedness tool, it is not designed to deal with ongoing crises, thus again revealing weaknesses of the EU system in coordinating the right health measures. Looking at the data from the Covid-19 crisis, especially with regards to this, one can imply that history repeats itself.

As a result of this, we see that the Commission then (in its proposed Regulation for serious cross-border health threats) proposes an enhancement of this tool by highlight an 'exclusivity clause' that shall prevent the risk of internal competition for limited resources between Member States (Commission 2020b). This proposal came as a result of seeing the Member States taking unilateral measures to protect their own populations, not thinking about solidarity with others, which after all is the core principle of the EU. The EU4Health program, proposed on 28 May, introduced several mechanisms to safeguard European solidarity. A key element of this proposal is, as we read out of Chapter 4 (section 4.2.1), *upgrading* the EU framework: an upgrade of Decision 1082/2013/EU on serious cross-border health threats, a strengthening of the mandate of the ECDC and an extension of the mandate of the EMA. Additionally, this framework will enhance the Civil Protection Mechanism (Commission 2020b). In sum, this upgraded framework will bring greater overall impact of the EU while fully respecting the Member States' competence in the

area of health. Reading this, there is evidence of Article 168 remaining, which means that public health still primarily is a Member State competence, giving the EU limited responsibilities (European Court of Auditors 2021). For almost its entire history, dating twenty years back, the two salient characteristics of EU public health policy have been its weak legal basis and the minimal enthusiasm from Member States for creating significant health policy at EU level (Vanhercke et al. 2020: 33).

Thus, the bureaucratic organisational form of the Commission, along with the formal place of public health in the EU treaty, limits DG SANTE ability to act when crises such as the corona pandemic occur. As time passed in these following months the weaknesses in Member States' capacities revealed themselves, and as the Commission states in the Proposal for the establishment of the EU4Health Programme 'experience from the ongoing Covid-19 crisis has demonstrated that there is a need for a further firm action at Union level to support cooperation and coordination among the Member States [...]' (Commission 2020d). The findings also show that Commissioner Kyriakides on the same day follows up by underlining how the crisis has made clear that the collective response capacity needs to be brought to a different level, and that there is a need for 'more Europe in the area of public health' (Kyriakides 2020c). Consequently, the Commission stepped up to the challenges of the pandemic with 'an over 2000% budget increase' on health. As part of the 5,1 billion euro budget for the EU4Health program, core EU public health agencies will get increased capacity. This to make sure that the ECDC and the EMA have the necessary capacity 'to fully play the role we need them to' (Kyriakides 2020d).

Looking at the findings on DG SANTE, both the historical development and the last year's reactions to the crisis, this shows us that EU health to a large extent is connected to the theoretical understanding of institutional structure and design. The 2000% increase in budget spending on health from 2021-2027 is a clear evidence that the further integration of health means taking instrumental action. The findings also show that both European citizens and the EU think the problems arising with the pandemic can be solved by lifting health to EU level. Here, the Commission, with DG SANTE and Commissioner Kyriakides, have emphasized the importance of specific instruments (such as programs and

agencies) and tools (for instance budget increase). The theoretical expectation of solving the problems with the pandemic by instrumentally designing the organisation is, however, only partially substantiated. The instrumental design (mainly through the EU4Health program) has shown not to expand the EU's competencies on health. Rather, the EU4Health programme proposes an *upgrading* of the existing framework (only Decision 1082/2013/EU), a *strengthening* of the ECDC and an *extension* of the EMA's mandate. Hence, the language of this programme shows that this organisational design will only happen within the already existing institutional framework. Because of this, radical changing the organisational design through lifting health up to EU level shows to be rather difficult.

In addition, the fact that Article 168 requires ordinary legislation when it comes to taking incentive measures for combating cross-border health threats, may also point to how dependent DG SANTE is on the Commission President. This because it is the Commission President and its Secretariat-General who steer new policies through other EU institutions (Greer et al. 2019). Therefore, the assumption that DG SANTE sees the value of centralizing health policy to the political leadership during the crisis, in order to receive a larger budget and the opportunity to coordinate the crisis through initiating new programs such as EU4Health, is substantiated. However, this 'programmatic approach' to legislation (an approach which shall reduce unnecessary complexity and ensure policy initiatives being in line with the political leadership's priorities), points to a tendency of introducing programs as a solution to problems jumping functional boundaries between policy sectors. Such programs may not have major consequences for the organisational design but come rather as a result of the leadership's responsibility to make compromises across these policy sectors. I will now move on with analyzing the organisational structure of DG COMP to see how the goals and means-ends assessments of this part of the Commission may differ from DG SANTE.

### 5.1.3 DG COMP

There is no doubt that the mission of DG COMP corresponds well with the EU's core functions, namely the goals of safeguarding the internal market and the competitiveness of European businesses – in line with the



regulatory state form in which the EU has evolved (Majone 1999). The formal place of DG COMP is to be found in Article 101-106 in the TFEU which give the EU great powers to promote the development and regulation of its internal market by eliminating measures that discriminate on the basis of Member State (Greer et al. 2019). Being a central part of the EU since the Treaty of Rome of 1957, this proves that competition has a bigger and more fundamental role within the formal structure of the Commission than for instance health. One of the key principles and a general objective of the current Treaty, highlighting the achievement of 'a highly competitive social market economy' (Article 3), substantiates this.

As the theory indicates, the horizontal specialized division of labor within formal organisations may result in an instrumental rationality that occurs both out of the effects of the structure and the process whereby that structure is determined and formed (Christensen et al. 2020). Such instrumental rationality makes the achievement of certain goals an important driving factor for the organisation. Being a central part of the Commission's formal structure, one can expect that DG COMP would not be in favor of any radical institutional changes. Rather, one can expect they want to preserve their central role within the existing institutional framework, which to a large extent cherishes their core function of safeguarding fair competition in the internal market. The Covid-19 crisis has nevertheless challenged DG COMP's execution of tasks and made it difficult to achieve their goal of assuring such fair competition between Member States. Thus, one can expect they have a goal of reinforcing stringent regulation to how it was before the pandemic hit. A further expectation is therefore that DG COMP accepts reform processes only if they are organized on a temporary basis in order to achieve particular goals that are important for their own sake (such as protecting affected European industries and businesses). I will now see if these expectations are substantiated in the empirical material.

The development of relying on economists' advice in EU competition policy issues, as a result of an increased need to justify the benefits of competition (advanced by IO thinking), has made the Commission adopt a more economic and effect-based approach in its decisions (Russo et al. 2010). To fight anticompetitive behavior, review mergers and state aid,

and encourage liberalisation are core functions of DG COMP (Commission 2014). Aiming at economic agents, competition regulation shall prohibit these from distorting market competition, and the decisions coming from this part of the Commission often have far-reaching implications for European industry and businesses. In addition, the modernisation reforms have empowered DG COMP and transformed it into a global actor, hence making it an integral part of the EU and the internal market. Looking at history, we see that the work of this particular DG has resulted in a reduction in state aid levels, almost completely ‘eliminating the market-distorting sectoral aid’ (Meunier & Mickus 2020).

Then, however, the Covid-19 crisis hit. The question is therefore how DG COMP reacted to this and how this could be connected to the organisational structure. As pointed out from the Commission President at the joint press conference with Commissioner Vestager on 13 March, the serious disturbances to the Italian economy made it clear that ‘flexible EU state aid rules’ had to be authorized by the Commission in order to remedy the situation (von der Leyen 2020c). Vestager then, agreeing with the President, says that ‘there’s every possibility, a high risk, that the strains on our economies will grow’ and that ‘governments may need to give state aid on a much larger scale’ (Vestager 2020a). Even though this does not correspond well with the established competition policy orthodoxy developed during the 1980s and 1990s, the rules of the TFEU (Article 107 [3], b) allow for wide-ranging support in Member States that are facing a serious disturbance to their economies (Vestager 2020a; Vestager 2020b). In light of this, DG COMP then introduced a proposal for a State aid Temporary Framework, giving Member States the opportunity to support businesses so that they have the liquidity to keep operating, or to put a temporary freeze on their activities. Here, Vestager also underlined the importance of using this temporary framework to support the businesses that need it, thereby indicating that taking advantage of the freedoms given is not allowed (Vestager 2020b).

When it comes to antitrust, the Commission also launched some new temporary instruments to deal with the challenges of the Covid-19 crisis. In order to assure that businesses cooperate in line with European competition rules, this framework provides guidance on what is seen as allowed within the rules of the EU. The ‘comfort letter’ tool shall in this

case provide individual assessments to the businesses' submissions for such cooperation. As we can read out of one of these comfort letters, signed by Director-General Olivier Guersent, 'the Commission understands that the pharmaceutical industry is currently acting to adapt its stock and production capacity to the sudden, pan-European surge in demand for certain hospital medicines, leading to an acute risk of medicine shortages in the EU' (Guersent 2020). In line with this the application from 'Medicines for Europe' was approved because there was not raised any concern of them seeking to exploit the crisis as a 'cover' for non-essential collusion or other anticompetitive behavior, and because this association of pharmaceutical manufacturers and participating companies would provide Europe with essential medicines to cope with the Covid-19 crisis. Additionally, it is in this case also worth mentioning that this framework too shall only 'remain applicable until the Commission withdraws it - once it considers that the underlying exceptional circumstances are no longer present' (Commission 2020k). This indicates, similar as with the State aid *Temporary* Framework, that this way of working with antitrust is only temporary too.

What we can read out of the introduction of these two frameworks is that they both represent a 'crisis management' way of implementing new tools and instruments, as a part of a temporary institutional design, to enable the Commission to make the necessary adjustments evoked by the Covid-19 situation. As Commissioner Vestager highlights in her speech at the launch of the State aid Temporary Framework, managing the economic impact of the Covid-19 outbreak requires decisive action. She underlines how the EU state aid rules serve as a useful '*toolbox* for the Member States to take swift and effective action' (Vestager 2020b, emphasis added). This statement indicates that the Commission *can* be designed to be purposive and efficient when it comes to managing crises. The State aid Temporary Framework was adopted in only a few days (Commission 2020j). Comparing this quick implementation with the response to the financial crisis of 2008, Commissioner Vestager said that in 2008 'it took three weeks from the launch of the internal consultation of the framework until adoption' (Vestager 2020b). However, with this crisis she says that the Commission is able to act even faster because it is building on the experience gained from the 2009 framework (ibid). This statement from Vestager indicates that the Commission can adapt quickly to new

challenges, here by designing the institution rapidly through the introduction of appropriate measures.

However, the findings indicate that DG COMP does not see this as a permanent solution to competition regulation, emphasizing how both frameworks shall only be 'temporary'. This may substantiate the expectation saying that DG COMP wants to reintroduce stringent competition regulation to how it was before the pandemic hit. In addition, the statement from the Commission President in her State of the Union Speech, also underlines that the Commission as such above all emphasize how important the Single Market is for European citizens. She says that the pandemic has given a reminder of how linked the Member States' economies are, and 'how crucial a functioning Single Market is' for the EU's prosperity. The core function of this market, she says, is to secure citizens and businesses fair competition (von der Leyen 2020b).

Drawing on this, we see that both DG COMP and the political leadership underline how the economic damages of the crisis substantiates their focus on boosting fair competition as a prerequisite for economic growth in the EU, where efficiency and means-ends assessments towards the market are important to make the EU a competitive economy in the world. As theory tells us, reform processes may be deliberately organized on a temporary basis in order to achieve particular goals. Such reform organisations have structures that distribute rights and obligations, power and resources – and normally do so unevenly across the organisation. Lines of conflict in a political space affects the distribution of political power within that space, and the outcomes reflects the strength of the various departments and their ability to mobilize their respective stakeholders (Egeberg & Trondal 2018). The findings show that DG COMP has been given rights and obligations to deal adequately with the challenges to state aid and antitrust, and it has had the power and resources to coordinate this effectively. I will argue that this is very much a result of their formal place within the Commission's organisational structure. The findings indicate that the political power of this institutional heavyweight has enabled DG COMP to mobilize stakeholders who have seen these temporary frameworks as necessary. The expectation of DG COMP not wanting any radical changes to the

organisational design, is substantiated through the 'temporary' connotation.

It is, however, as pointed out in theory, important to take into account how the framing of issues is an effect of decisionmakers finding themselves in a world where the past, as well as the present and the future, is ambiguous and demands interpretation (Olsen 1988). The organisational structure still has great significance for what the members do or can do, but there are limitations on their attention and capacity – in line with a 'bounded rationality' (Simon 1965, in Egeberg 2004). This means that only looking at structure and design, in the means of formal rules and procedures and through a centralisation of decision-making processes, is not sufficient. Thus, also considering the aspects of institutional culture and history is essential to understand how the Commission reacted the crisis, and to understand how the process of competing frames may affect the political outcomes.

## 5.2 Institutional culture

Based on the analytical material so far, one can safely say that members of organisations do not necessarily work as unified actors. Different members have different goals, and it is often difficult to solve conflicts on the basis of a contract made in the past. Thus, organisations must live with tensions and disagreements, 'where decisionmakers must convince or negotiate with the affected interests in order to win their support' (Olsen 1988). In this case, we see that the interpretation of problems is shaped by frames. And, as pointed out earlier, institutional frameworks make organisations or political systems as a whole more receptive to some types of frame and argument (Princen 2018). This section will therefore dig deeper into how both health advocates and competition advocates frame the Covid-19 crisis. Drawing on the political maxim that 'one should never waste a good crisis', it is reason to believe that both sides will try to frame the problems in a way that suits their political agenda (Boin et al. 2009, in Princen 2018). I now want to investigate which type of frame or argument the Commission is most receptive to.

### 5.2.1 Framing health

As seen in the section above, DG SANTE finds its formal place in Article 168 in the EU treaty. This formal positioning has implications for the organisational culture because it facilitates common institutional practices, where members discuss shared problems and how to interpret and solve them (Hall & Taylor 1996). Article 168 may therefore guide the members of DG SANTE on how to behave appropriately, organized into the institution. In this sense the structure affects the culture. Although there is a clear link between institutional structure and culture, this part of the analysis will focus on the institutional features of the organisation, where it develops informal norms and values in addition to the formal variety.

Compared to DG COMP, which has been an essential part of the formal structure of the Commission since the implementation of the Treaty of Rome in 1957, DG SANTE is a relatively 'new' DG within the Commission (established with the Prodi Commission in 1999). One can therefore assume that this DG is not as institutionalized as DG COMP is, since – as Selznick argues – this process necessarily takes time (Selznick 1957, in Egeberg 2004). Highly institutionalized organisations can, however, be less adaptable to new demands where their 'institutional repertoires' act as a barrier to change because it is seen as more efficient to draw from pre-existing solutions rather than considering new ones (March & Olsen 1989). Based on this, an expectation for the empirical research is that DG SANTE will try to take advantage of not being as institutionalized and use the Covid-19 crisis as a window-of-opportunity to break with the past, which has often prioritized a more market-oriented approach to overcome challenges in the EU. In this case, DG SANTE and other actors within health can act as policy entrepreneurs, interpreting the challenges with Covid-19 as a 'health crisis', where preventing health threats and 'saving lives' are most important. As I also pointed out as expectations in the theory, DG SANTE will therefore emphasize normative considerations, highlighting the critical damages the crisis will have on people's health, where the only appropriate way to prevent such damages in the future is to increase their capacity to coordinate health policy in the EU. Let us now see if these theoretical based expectations are substantiated in the data material.

Looking at history, we see that the EU has long had strong competition (anti-trust) law, with a powerful executive role for the Commission. Eliminating measures that discriminate on the basis of Member State (for instance protectionism for one's own citizens or businesses) is a 'core and deeply entrenched EU power' (Greer et al. 2019). Likewise, when it comes to health policy and regulations, there has been a persistent tendency for them to be developed with the deepening of the market rather than health as a key objective (ibid). This may point to the theoretical idea saying that the historical development of institutions has a social causation which is 'path dependent', where institutions are seen as relatively persistent features of the historical landscape. The tendency of focusing on promoting development and regulation of its internal market, implies that this strategy induced by a given institutional setting has 'frozen' over time into a worldview which has been disseminated by the Commission's formal organisation and has been shaping the self-images and basic preferences of the actors involved (Hall & Taylor 1996). Competition policy, an essential part of the EU regulations since 1957, has made its mark on the organisation in its early and formative years and the specific cultural contexts or norms and values at that time has left permanent impressions on the Commission. This has implications for actors that want to change this 'worldview'. In order to break with this path dependency, a good deal of political pressure is required to produce a change. As we have seen, crises often put a good deal of political pressure on decision makers and may therefore create 'branching points' from which historical development moves onto a new path. Disease control policy is politically linked to the logic of crises and collective action too: 'outside of crises, it is hard to find energy for collective action, whereas in crises, countries can sometimes overcome the barriers to collective measures and take actions' (Greer et al. 2019).

In this case, health advocates may use the meaning-making process of a crisis to establish a frame that competes with the traditional way of framing health policy in the EU. An example of such a meaning-making process in light of the Covid-19 crisis can be found in the statement from Ursula von der Leyen on 28 May, speaking to the European Parliament. In her speech she highlighted that the Covid-19 crisis represents the biggest challenge the EU has faced since World War II, and that the Commission 'will stop at nothing to save lives' (Commission 2020d).

Additionally, saying that the crisis has demonstrated that if each country tries to tackle pandemics on its own ‘the EU will be as weak as its weakest link’ (ibid). This implies that the EU must deal with the challenges collectively.

Despite the attempts on framing health in ways that could enable the Commission to act as a policy entrepreneur, breaking with the paths of past in which the EU has not been given the ‘full range of powers that are associated with a coherent communicable disease control and response system’, communicable disease control showed to be difficult to coordinate and integrate with this crisis as well. The huge variation in Member State’s capacities, with different organisations, resources and skills was evident with the Covid-19 outbreak: Member States took unilateral measures to protect their own populations by reintroducing internal border controls, which disrupted the mobility of workers and vital supply chains, preventing the flow of essential goods and services across the EU (Commission 2020b). These unilateral measures quickly showed to be counterproductive in order to effectively overcome the challenges posed by the crisis. The findings show that the EU did not manage to provide an urgent response in the first days and months of the virus outbreak, a fragmentation making ‘all Member States more vulnerable’ (Kyriakides 2020d). The lack of readiness and preparation, with shortfalls in medical equipment, testing capacity, coordination and other areas, clearly show that the EU system had major shortcomings when it comes to health management.

The solution to these shortcomings is the EU4Health programme which shall ‘help to ensure the strengthening of national health systems and support Member States in their efforts to make them more resilient and better performing’ (Kyriakides 2020c). The introduction of the EU4Health programme is a key element of the health advocates’ response to the crisis. As Kyriakides stated at the presentation of the programme on 28 May, ‘the new EU4Health program will be a game changer, *a real paradigm shift in how the EU deals with health*, and a clear signal that the health of our citizens is more than ever before a priority for us’ (Kyriakides 2020c, emphasis added). In addition, by saying that the crisis has made clear that the collective response capacity needs to be brought to a different level, and that there is a need for ‘more Europe in the area of public health’, shows



that the EU, with DG SANTE as a key advocate, wants to move in a new direction where public health policy obtains a more formal anchoring within the Commission apparatus.

However, the EU4Health proposal states that ‘the program will be implemented in full respect to the responsibilities of the Member States, for the definition of their health policy and for the organi[s]ation and delivery of health services and medical care as stated in Article 168 TFEU. The subsidiarity principle is therefore respected’ (Commission 2020b). The EU ‘shall therefore have competence to carry out actions to *support, coordinate or supplement* the actions of the Member States [...]’ (ibid, emphasis added). One can therefore argue that, despite the attempts from health advocates to frame the crisis as an opportunity to increase EU action on public health, the EU4Health programme is not as revolutionary as one might think. Once again, the language of the proposal suggests that the Commission will stick to their ‘complementing’, ‘encouraging’ and ‘coordinating’ role which Article 168 in the Treaty gives them.

This support to Member States’ health actions shall again emerge from specific EU agencies. Drawing from the theoretical proposition of inertia in political organisations, the tendency is to draw from pre-existing solutions rather than considering new ones. The solution of strengthening the mandate of EU health agencies is, if we look at the history of health policy development, a solution which has characterized EU health policy since its early days. Both the ECDC and the JPA have arose as a result of other transboundary health threats in the EU (the SARS outbreak in 2003 and the swineflu pandemic in 2009). Even though the Covid-19 has provided health advocates with a ‘good deal of political pressure’, the content of the EU4Health programme does not point to any major de facto changes to EU health competences and capacities.

Even though there are clear proofs of both the Commission President and DG SANTE (with Commissioner Kyriakides in front) trying to act as policy entrepreneurs, framing the Covid-19 crisis as mainly a ‘health crisis’, where saving lives and prioritizing citizens’ health is most important, the fact that health policy not being as ‘institutionalized’ within the EU makes an increase of its capacity difficult to achieve. The findings, however, substantiate that health advocates to a large extent have emphasized the normative aspects of the crisis, in line with the values of

solidarity, 'saving lives' and protecting Europeans against the 'great risks of life – illness, ill-fortune, unemployment or poverty' (von der Leyen 2020b). Framing the crisis on the basis of these values can potentially lead to these values and norms being gradually implemented into the Commission's formal variety, hence 'institutionalizing' health over time. As Selznick argues, in order for this to happen, the organisation has to be infused with value 'beyond the technical requirements of the task at hand' (Selznick 1957, in Egeberg 2004). The Covid-19 crisis has shown that most EU citizens would like to see the EU given more say over health-related matters (Commission 2020g). If the Commission embodies these societal values into the institution, this may embed a new set of norms, values and routines – in line with a 'logic of appropriateness' that shapes individuals' action within the institution (March & Olsen 1989). The close interactions between the Commission and its external environment suggest that 'these fluid coalitions are held together not only by instrumentally defined self-interest, but also by collectively shared values and consensual knowledge'. As Ursula von der Leyen underlines in her State of the Union Speech, '[Europe] offers stability and helps us better absorb shocks. [...]' (von der Leyen 2020b). Saying that the enduring promise of protection, stability and opportunity has 'never been more important than it is today', shows that the EU to a large extent is concerned with its social legitimacy, where the EU's 'protecting' role in crisis situations legitimize the actions of the Commission.

Because this crisis has shown to be a serious threat to the fundamental values and norms, especially the systemic norm of pro-integration in the Commission, the reframing of health, which this crisis has enabled, can over time be embedded in the institutional culture giving health a new dimension within the collectively shared values of the Commission. As history tells us, 'once there is authori[s]ation to act for health, the EU systems begins to reward policy entrepreneurs' (Greer et al. 2019). With a new set of programs, priorities, experts, and advocates intersecting with the DG, the Commissioner and health ministers are given power to define and act in this arena. However, the definition of the crisis and the 'meaning-making' process has become political and given rise to different ways of framing the issues. In a complex institution as the Commission other actors have tried make important connections between new and existing facts, information and analysis along with their values and

interests in the policy process. One actor wanting to ‘make its mark’ on the policies coming out of the Covid-19 crisis is DG COMP. The actors within this organisation will most likely link their generic interests and values with specific policy alternatives. Hence, analyzing how ‘competition’ has been framed during the past year can reveal significant policy controversies. Revealing this can imply which frame is ‘winning’ this meaning-making process and point to what implications this may have for management of the crisis and the post-crisis rendering of accountability.

### 5.2.2 Framing competition

The organisational structure of the Commission, with special regards to the horizontal specialisation of sectorally divided DGs, has led to the Commission being ‘stovepiped’ in a way that can mirror ministerial governments. Because of horizontal structure each DG has developed its own organisational cultures, where they traditionally have guarded their policy prerogatives closely (Rhinard 2010). The findings show that the Covid-19 crisis has caused interventionist approaches, where the centralisation of merger controls and expansion of state aid provisions to various sectors of the economy was crucial to protect European industries (Meunier & Mickus 2020). Looking at the policy prerogatives of DG COMP, this is in conflict with the norm of liberal approaches to economic growth. To take a further look at the shared cognitive maps of competition advocates can help to understand what kind of institutional practices they find appropriate in light of the ongoing crisis, and what kind of societal values they link their policy options to.

The European Commission, long characterized by its strong commitment to market-based competition, changed paths once the pandemic hit (Meunier & Mickus 2020: 1078). ‘The rapid embrace of state interventionism and market coordination has prompted reactions that a radical transformation of the European competition policy regime may be underway’ (ibid). However, as outlined in my theoretical expectations, DG COMP will try to avoid health measures eliminating competition regulations by framing ‘competition’ in line with the norm of liberal approaches to economic growth. One can assume that they will highlight the importance of a well-functioning internal market to ensure a strong EU economy – in line with what many think the EU has been all about

since the signing of the Treaty of Rome in 1957. Their beliefs, paradigms, codes, culture, and knowledge reflect in many ways the overall institutional values of the Commission as such. Hence, this reflects that DG COMP has been part of the organic process of informal norms growing gradually into the institution making it less flexible and adaptable to new demands. The traditional way of framing ‘competition’ is therefore to a large extent connected to the historical inefficiencies caused by the institutional culture. To see if the reactions to the crisis imply a radical transformation of EU competition policy must therefore take into consideration how deeply ‘institutionalized’ this part of the Commission is. The unintended consequences and inefficiencies generated by the institutional culture may imply that such radical change is difficult to achieve.

The findings in Chapter 4 give indications that both the political leadership in the Commission and DG COMP to a large extent have emphasized the importance of taking unilateral measures to cope with the economic consequences of the corona pandemic. As secondary literature tells us, ‘eliminating measures that discriminate on the basis of Member State’, such as protectionism for national businesses or citizens, ‘is a *core* and *deeply entrenched* EU power’ (Greer et al. 2019, emphasis added). The Covid-19 crisis, however, evoked a challenge to this traditional way of framing competition. I will now therefore take a further look both at the historical path dependencies of competition policy, and the institutional values and norms resulting out of this.

As I have pointed out earlier, the evolution of competition policy has been a vital part of the EU since the signing of the Treaty of Rome in 1957. Here, the treaty ‘instituted a system ensuring that competition in the common market is not distorted’, with the aim of ensuring that the European market functions properly and provides consumers with ‘the benefits of a free market system’ (Commission 2014). Thus, with this treaty, competition policy made a mark on the institution in its early and formative years, which put this policy area on a path that has had great significance for the institution’s development further on. The specific cultural contexts or norms and values at the time has to a large extent left permanent impressions on the Commission (Christensen et al. 2020). The Commissioner for competition has always been one of the most powerful

positions within the Commission, and the impact of enforcement prepared by DG COMP ‘has grown steadily during the last three decades’ (Russo et al. 2010). From the mid 1980s competition policy emerged as one of Europe’s most effective ways of regulating and integrating markets (Wilks 2005). In the years following this came an expansion of the Commission’s jurisdictions, a liberalisation of regulated (often state-dominated) sectors, and a restructuring of DG COMP with the establishment of the Chief Economist position of 2003 and the Merger Regulation of 2004 (Wilks 2005; Aydin & Thomas 2012). These developments over time have empowered DG COMP and transformed it into a global actor, where it tries to pursue policy convergence and acceptance of EU competition norms (Aydin & Thomas 2012). Analyzing this historical development makes it clear that the strategies induced by the institutional setting of the Treaty of Rome back in 1957 has ‘frozen’ over time into a worldview disseminated in the Commission’s formal organisation and is ultimately shaping the self-images and basic preferences of the actors involved (Hall & Taylor 1996).

This organic process where the informal norms of a ‘liberali[s]ation of markets’, ‘ensuring fair competition’ and so on, has gradually made the Commission, with DG COMP, more complex and less flexible to new demands. But, as pointed out in theory, this process has also equipped the organisation with ‘necessary qualities that will potentially help the organisation to solve tasks more expediently and function well as a socially integrated unit’ (Christensen et al. 2020). With the Covid-19 crisis the weaknesses of health policy revealed themselves, but regarding competition on the other hand, as I also argued in section 5.1, DG COMP and Commissioner Vestager managed to solve essential tasks related to state aid and anti-trust quickly. The ‘Cooperation framework’ in anti-trust made exceptions for business cooperation, and regarding state aid the Commission suspended existing rules by introducing the temporary framework to enable national governments to counter takeovers (Meunier & Mickus 2020). As we can read out of the findings, DG COMP writes in the communication on temporary anti-trust measures, that they

[E]ncourage pro-competitive cooperation aimed at addressing the challenges undertakings are facing due to the crisis, and they are committed to provide antitrust guidance and support to facilitate the

proper and swift implementation of cooperation that is needed to overcome the crisis *to the ultimate benefit of citizens*.

(Commission 2020k, emphasis added)

This shows that ‘competition’ and the flexible solutions put forward by competition advocates is framed as something giving citizens ‘ultimate benefits’. In addition, when introducing the State aid Temporary Framework, Vestager said that ‘support for businesses in one Member State does not undermine the unity that Europe needs, especially during a crisis’ (Vestager 2020b). Accordingly, to rely on the single market is essential to help the economy weather the outbreak and ‘bounce back strongly afterwards’ (ibid). Regarding anti-trust, Vestager stated that ‘to avoid the risk of shortages of essential and scarce products and services because of the unprecedented surge in demand due to the pandemic, we need businesses to cooperate and *do it in line with European Competition rules*’ (Vestager 2020c, emphasis added).

These statements indicates that ‘competition’ is framed in line with the traditional norms and values linked to this policy area, and that only by safeguarding these values the unity of the EU will be preserved. By saying that the Member States have to ‘rely on the European single market’ in order to make the economy ‘bounce back strongly’ after the crisis, and that ‘businesses need to cooperate in line with EU competition rules’ points to the path dependent processes of keeping competition regulations as an integral part of both the Commission and the EU as such. This is substantiated if we again turn to the Commission President’s State of the Union Speech, where she says that ‘the pandemic reminded us of many things we may have forgotten or taken for granted. We were reminded how [...] crucial a fully functioning Single Market is to our prosperity and *the way we do things*’ (von der Leyen 2020b, emphasis added). ‘The way we do things’ in this case refers to how the single market gives the opportunity for ‘a consumer to get value for money, a company to sell anywhere in Europe and for industry to drive its global competitiveness’ (ibid). Here, we see a clear link to the role of EU competition policy. Then, also by saying that the single market ‘gives companies the scale they need to prosper’ and that it is ‘a safe haven for them in times of trouble’ illustrates how the problem with competition is defined, measured in terms of common values (Entman 1993). Tearing down the barriers of the

Single Market, cutting red tape, stepping up implementation and enforcement, and restoring the four freedoms ‘in full and as fast as possible’, are highlighted as mechanisms to overcome the challenges of the crisis (von der Leyen 2020b).

Seeing the Commission President underlining these common values substantiates how framing competition legitimate certain decisions and active certain issues, actors, and special type of knowledge (Rein & Schön 1996). And, as we have seen, with competition advocates such as DG COMP, Commissioner Vestager and the President herself, this policy frame is to a large extent mobilized by linking policy options to broader societal values – namely the value of ensuring Europeans with the safety, the freedoms, and the predictability they need. The Covid-19 crisis has not only been a serious threat to these ‘internal market values’, but an even bigger threat to the health of European citizens.

However, it is an interesting finding that neither DG COMP nor the Commissioner of Competition address the much-discussed EU4Health program. When searching for statements or other kinds of documents by DG COMP on this matter, I could not find anything. This finding may imply that the policy area of competition does not see this as relevant for neither their ‘technical tasks at hand’ nor their ‘values beyond these’. When going through the policy proposal for the EU4Health program, I explicitly searched for content addressing competition policy. Here, I found in point 7 that the programme should, in line with the goals of the Union action and its competences in the area of public health, ‘place emphasis on actions in relation to which there are advantages and efficiency gains from collaboration and cooperation at Union level and *actions with an impact on the internal market*’ (Commission 2020d, emphasis added). Additionally, the findings show that point 41 in the proposal says that ‘financial support should be used to address market failures or sub-optimal investment situations, in a proportionate manner and actions should not *duplicate or crowd out private financing or distort competition in the internal market*’ (ibid, emphasis added). Consequently, all actions should have a clear European added value.

Looking at a programme proposal with 47 different regulation proposals, I was surprised how little content explicitly dealt with market objectives. But, as the content of the two points above tells us, in the area of public

health, emphasis should be put on actions with an impact on the internal market, whereby such actions should focus on advantages and efficiency gains from collaboration and cooperation. The ‘exclusivity clause’, with the aim of mitigating the risk of internal competition for limited resources or parallel national tracks, serves as a good example to enhance this. Additionally, this exclusivity clause has also been implemented in the EU’s vaccines strategy (Commission 2020b). This also with a clear European added value.

Although DG COMP does not have any publications on the EU4Health programme (as shown in Chapter 4), and although the EU4Health programme barely mentions ‘competition’, the developments we have seen so far may imply that the traditional ‘competition’ frame remains. Despite the fact that the Commission changed paths once the pandemic hit, the role of EU competition policy is so strongly institutionalized that a ‘radical transformation of the European competition policy regime’ is not likely to happen. Due to its heavy weight, both in structural and cultural terms, the beliefs, paradigms, and codes related to competition policy indicate that the framing of this issue is to a large extent ‘winning’ the framing contest. As theory tells us, the perspective of the winning frame may have far-reaching implications for management of the crisis and post-crisis rendering of accountability (Blondin & Boin 2018). Because the EU is so dependent on a single market that functions properly, serving citizens freedoms and predictability, safeguarding these values is the appropriate way of dealing with the challenges arising with the crisis. By introducing temporary frameworks for both state aid and anti-trust, the Commission has made clear that competition regulation is not put aside. Additionally, by emphasizing that these temporary adjustments are put in place in order to make the EU capable of ‘bouncing back strongly afterwards’, competition advocates show how crucial their presence is to ensure this – both during and after the crisis.

The findings thus indicate that the path dependency of EU competition regulation is a path difficult to alter, regardless of the level of political pressure. The competition frame is a result of the adoption of particular identities, beliefs, paradigms, codes, values and norms – and has resulted in policies which are costly to shift (Hall & Taylor 1996). This has made the Commission, according to an instrumental logic, historical inefficient



because it cannot adapt to changed conditions for action or new problems. However, from a cultural perspective, 'it is perfectly possible for an institution to live with such historical inefficiency over time'.

### 5.3 Synthesizing the findings

Analyzing how the Commission's organisational design and institutional culture have affected the way of managing a transboundary crisis like the corona pandemic has demonstrated how intertwined these theoretical categories are. They are complementary rather than mutually exclusive. The organisational design, through formal structure, tasks, and written texts (such as the TFEU), has implications for the institutional culture. One example of this is how the horizontal structure in the Commission, by specializing policy areas sectorally, has made different DGs guarding their policy prerogatives closely and generated different organisational cultures. For instance, some DGs would favor interventionist approaches to economic growth, whereas others favor liberal approaches to this. DG COMP is a prominent example of an actor emphasizing the norms of liberal market dynamics. Not just the horizontal specialisation has implications for the institutional culture. As we have seen, the vertical structure of dividing labor across hierarchical levels within the organisation, has also made important decisions property to the political leadership. This tendency of centralizing decision-making is not emerging independently from the institutional culture either. First of all: crises, failures and highly complex issues can provide opportunities for activist, entrepreneurial leaders to marshal states behind a cooperative solution. This because leaders are legitimized through that they protect public order, health, and safety. Secondly, history tells us that previous crises have reinforced the need for strong, presidential leadership. The overall acceptance of relying on the political leadership is something that has been 'institutionalized' in the Commission over time, hence connecting structural features with values and norms growing into the organisation.

Reciprocally, the different institutional cultures also have implications for the organisational design, especially with regard to reform processes. Here we have seen that the different perceptions of appropriate problems, solutions, and expertise, have affected the way of 'designing' solutions in response to the crisis. An example of this is how DG SANTE has framed

the crisis as a serious threat to people's lives, serving the people of Europe with the risk of illness, ill-fortune, unemployment, and poverty. This way of framing the crisis has prompted the need for designing new features to the Commission, with DG SANTE contributing to this as a 'change entrepreneur', taking advantage of the possible window-of-opportunity the crisis has elicited. Another example of how institutional culture affects the organisational design is, as latterly discussed, DG COMP's way of framing the crisis as a barrier to fair competition and economic growth. This emphasis reflects the overall values and norms of DG COMP, and to overcome these barriers they have introduced specific frameworks on a *temporary* basis. This temporary allusion has been their way of solving the problems through organisational design at the same time as upholding their beliefs, paradigms, codes, culture, and knowledge.

It is, however, not just the theoretical categories that are complementary: health and competition as such serves as good examples of EU policy areas that have shown to be dependent on each other during this crisis. The crisis has shown how a health problem evidently became a competition problem. EU competition policy is dependent on a single market without any internal borders or other regulatory obstacles to the free movement of goods and services. The Covid-19 crisis has, however, caused several obstacles to this. Through March and April 2020, national governments adopted border closures and bans on the export of crucial supplies, obstructing freedom of movement within the EU. Because of the economic decline caused by the crisis, Member States suddenly saw the need for protecting their own industries and businesses. EU competition regulators realized the necessity of this and allowed the Member States to put aside the usual stringent EU regulations on state aid and anti-trust.

Moreover, when looking at the historical development of EU health policy, we also see how dependent the health sector is on competition regulation. Health policy too is dependent on a well-functioning single market with a free movement of medical supply and health care staff. There is a need for the EU to be able to regulate fair competition on medical supplies, on the production of medicines, on the distribution of vaccines, etc. As health policy traditionally has been one of the policy fields where EU Member States- and citizens have seen the smallest role

for the EU, the launch of the EU4Health programme could be seen as an attempt at lifting health up to EU level.

However, the findings tell us that the proposals in this programme very much remain faithful to the language of the Treaty, emphasizing that EU action on health will continue to serve as supplementary to the actions of Member States. This indicates that a radical change of EU health policy has not been observed through the analysis of the selected documents. In regard to competition policy on the other hand, the analysis shows that competition advocates have to a large extent undergone several 'radical' exceptions during the crisis. However, because of the institutional 'stickiness' deriving from a path-dependent focus on preserving stringent competition regulation as part of a functioning single market, they have framed these exceptions as 'temporary'. This again substantiates the assumption that competition advocates wish to return to stringent competition regulation the way it was before the pandemic hit. In this case, a radical change is not wanted. Looking at the institutional characteristics and the history of DG COMP, this demonstrates that competition policy is too institutionalized to change drastically. Because of its institutionalized nature – as compared to DG SANTE – the most likely outcome is that the 'competition frame' prevails, thus blocking attempts on radical reforms in the Commission. Competition policy therefore serves as an example of how institutions appear to be historical inefficient.

# Chapter 6

## Conclusion

This study has raised the question of how the Commission reacted to the Covid-19 crisis. The pandemic, representing a serious cross-border health, has affected every single policy area of the EU, from eurozone policy, to migration, competition, and health policy. I have in this study taken a closer look at competition and health (these being vital parts of the crisis management) in order to better understand the reactions coming from the Commission. Comparing the Covid-19 emergency with previous crises in the EU, it has been discussed if the EU is coping with crises differently than before. Some scholars have claimed that the pandemic has proved that the adaptability of the EU to respond to crisis is higher now than in earlier emergency situations. Here, some argue that the Covid-19 situation appeared to have engineered a 'paradigmatic shift in policies and processes in the health and economic domains' in the EU (Schmidt 2020). This statement awakened a curiosity in me to research whether such a shift is taking place or not. However, as I argue in this study, there is a path dependency in the Commission's response to the crisis and its way of framing health and competition which limits the ability for institutional change. This argument thus demonstrates that a paradigmatic shift seems unlikely.

Regarding how the Commission has responded to the crisis, there is documentation of the statement saying that the EU is coping with crises differently now than earlier. Looking at the data I have selected for the purpose of this study we see that, despite some hesitation at first, the EU

quickly began to play a more active role as the value of collective action became apparent to national governments in the Member States. However, responding effectively requires interagency and intergovernmental coordination. Each decision must be implemented by a variety of organisations and effective implementation requires that these organisations work together. Getting public bureaucracies to adapt to crisis circumstances is a tough, and sometimes impossible, task. This because most public organisations are designed to conduct routine business in accordance with values such as fairness, lawfulness, and efficiency (Boin & Rhinard 2008).

The management of crises on the other hand, requires flexibility, improvisation, and the occasional breaking of rules. With the Covid-19 crisis, the lack of knowledge and data on the disease, especially in the early days of the pandemic, represented a considerable challenge for public authorities. Despite this, it was expected that the EU had to act, even though they did not have the right tools and measures to handle the crisis properly. Because the Commission is responsible for policy formulation, it plays a pivotal role in such crisis management. So, how did the Commission react? And how has it managed to balance the intra-organisational conflicting interpretations of the crisis?

In line with the research questions and the operationalisation of the theoretical categories in this study, a first hypothesis was that the Covid-19 crisis has given the Commission an opportunity to change the organisational design by lifting health up to EU-level. This hypothesis therefore suggests that a paradigm shift in health policy is underway. However, the findings show no signs of such changes in the Commission's design. I have argued that despite the attempts from health advocates to use the crisis as a window-of-opportunity to appear as 'change entrepreneurs', the language in the EU4Health programme shows that health policy sticks with the traditional way of managing public health in the EU: it remains a Member State competence, in line with the principles of Article 168 in the TFEU.

This is to a large extent linked to the second hypothesis, which, on the other hand, suggests that the path dependency of the Commission and its way of framing health and competition limits the ability for institutional change. Even though DG COMP accepted an 'occasional breaking of its

stringent competition rules’ as a part of their temporary frameworks, the institutional characteristics and historical development of EU competition policy shows that a radical shift to this would be too costly. The path-dependency of competition policy has made its norms and values so deeply integrated in the Commission, thus making it historical inefficient because it cannot adapt to changed conditions for action or new problems. Because of the regulatory nature of competition policy, and the fact that this regulatory state form is so deeply entrenched in the EU, we can expect the competition frame to prevail – hence limiting the capacity in the health domain as this continues to be a policy area developed with the deepening of the market rather than health as a key objective. Thus, much of the evidence points to what health experts have feared, namely that more Commission involvement favors economic over health interests.

This study shows that most of the evidence substantiates the second hypothesis. It shows that, even though the crisis has caused a fundamental questioning of pre-existing governance arrangements and ‘long-cherished beliefs’ in existing solutions, the Commission’s reactions (through measures such as the EU4Health programme and temporary frameworks on anti-trust and state aid) do not point at any novel organisational solutions. Rather, the changes proposed in the EU4Health program, and the exceptions made through the temporary competition frameworks, have all been developed within the existing institutional framework.

Even though much of the findings indicate that no radical organisational changes are taking place, it is, however, important to underline the fact that the Commission has indeed been listening to European citizens, who have been clear that they expect the EU to have a more active role in protecting their health in the future. The 2000% budget increase for EU health policy from 2021-2027 is a clear proof of an increased focus on public health. Additionally, the Commission has appeared as a key player in the global discussions on Covid-19, much because of a strong and visible leader who has been taking the damaging effects of the pandemic seriously. Also, the quick response from DG COMP in allowing exceptions for state aid measures in the Member States has, as compared to the financial crisis in 2008, shown that the Commission has improved its crisis responsiveness. Finally, the fact that public health has gained attention in the EU policy system, may also be the start of a new chapter

for public health policy. We have during the last year seen how much damage a virus can do. Hence, by directing more focus on how to improve EU measures on health in the future, this may potentially contribute to an increased institutionalisation of this policy area as well. In sum, the findings in this study do not point to any signs of European disintegration. Rather, the Commission's reactions, by emphasizing the value of collective action, indicate that actions on health and competition have given the integration process a boost.

However, since this study has been limited to the time between February and November 2020, it has not included the most recent developments in the EU such as vaccine production- and rollout. This is also a subject concerning both health- and competition policy. Hence, further research on this may therefore contribute to an analysis of the institutionalisation of the respective policy areas. Additionally, because this study has only been investigating intra-organisational developments in the Commission, it would be even more fruitful to research the interaction with other relevant EU institutions to gain a deeper insight to the conflicting perspectives. Accordingly, a comparative study of Member States' actions to the crisis would also help to explain the variations between the Commission's and the Member States' competencies on health and competition.

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