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The power of pandemics to change the world

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The impact of the COVID-19 pandemic allowed for health's political recognition at the EU level. It called into question the role of the EU and the added value of a coordinated approach. Two and a half years later, that coordinated approach has been hailed as a success. However, in the current era of permacrisis, there is a risk that health will fall off the EU political agenda. The European Health Union offers an opportunity for increased cooperation to ensure all EU citizens have access to high-quality and affordable healthcare, and more resilient healthcare systems. It also offers the opportunity for the EU to position itself as a global leader in health data, research and innovation, thus advancing the Union's strategic autonomy. As such, health should remain high on the political agenda and the European Health Union must be made a reality. While EU citizens have expressed their desire to put health higher on the EU's agenda, its future relies on the political will of member states.

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Introduction

The power of the European Union (EU) in the area of health has garnered much political attention since the onset of the Covid-19 pandemic. The impact of the pandemic placed the topic high on the political agenda, while the Conference on the Future of Europe (CoFoE) gave new impetus to the discussion on whether or not more competencies are needed for health. History shows that the momentum for discussions about health at the EU level often dwindles once the worst of a crisis has passed.

However, given the cost-of-living crisis and looming economic recession, promoting resilient European health systems is as vital now as it was at the start of the pandemic. The lessons learned from the pandemic must be used to shape the future of EU health policy to secure supply chains, guarantee quality and affordable healthcare for EU citizens, and address shortages in the health workforce.

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Therefore, the realisation of the European Health Union should continue to be a priority. However, this is dependent on the political will of member states.

From Sibiu to Porto and beyond

The Maastricht Treaty in 1992 marked the beginning of the health mandate of the EU. While the scope was limited, it did establish a legal foundation for the adoption of health policy reforms. The treaty established the Union with restricted legislative authority on health-related issues, with a focus on encouraging cooperation between member states and supporting national initiatives. Later modifications to the treaty further strengthened provisions allowing the EU to adopt measures aimed at ensuring a high level of human health protection, and enabling member states to work together on any issues that posed a threat to human health.

Although the principle of ‘Health in All Policies’ was adopted by the Finnish Presidency in 2006, it took a while for health policy to receive the political recognition it deserved.¹ Looking back at the Sibiu Summit in 2019, where health was excluded and

comparing it to the discussions around the Porto Summit in 2021, there was already an evident increase in the attention given to health by the heads of state.

At the end of Jean-Claude Juncker’s term as Commission President, the focus was on being “big on big things,” and it was evident that health was not deemed important enough to be on the agenda. At that point in time, one would not have imagined the prominence health was to receive in the coming years. Juncker’s 2017 State of the Union speech included no mention of health and declared that the Commission should “not march in with a stream of new initiatives or seek ever-growing competences”.² This greatly contrasts Ursula von der Leyen’s maiden State of the Union address in 2020, which put forward a proposal to build a European Health Union, following calls by the French President to construct “*une Europe de la santé*”.³

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The importance of health at the EU level has accelerated extensively owing to the impact of the Covid-19 pandemic. However, this attention to EU health has declined amidst the current permacrisis the EU is facing. For example, President von der Leyen’s 2022 State of the Union speech lacked any reference to the European Health Union. While all attention is understandably focused on the current crises, namely the war in Ukraine and the cost-of-living crisis, it is paramount that health does not lose political momentum. Should this occur, Europe will likely be ill-prepared for future health threats and be increasingly confronted with health inequalities.

Health security in times of war

Indeed, health has a role to play within the context of the more recent crisis. For one, the war in Ukraine has further amplified its relevance. Early actions taken by the Commission and supported by member states have displayed a coordinated and cooperative EU approach. These include a solidarity mechanism to transfer Ukrainian patients, access to vaccination against

infectious diseases, mental health initiatives, and the provision of 10,000 hospital beds across the EU for those fleeing the war-torn country.

The war in Ukraine has also shown the importance of investing in healthcare, as member states most impacted by the ongoing war often have heavily underfunded healthcare systems. Central and Eastern European member states have therefore been calling for the EU's financial support since they have to cover healthcare insurance for Ukrainian refugees themselves.

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Undoubtedly the impact of the pandemic and the war in Ukraine have increased EU action in the field of health. While the principle of subsidiarity as set out in Article 168 of the Treaty on the Functioning of the European Union (TFEU) remains, these events have highlighted the need and indeed benefit of a stronger role for the EU in health. This has raised questions and sparked debate on the evolution of EU power regarding health.

Construction of a European Health Union

In November 2020, the Commission published its communication 'Building a European Health Union: Reinforcing the EU's resilience for cross-border health threats' which set out the first building blocks of the European Health Union aimed at bringing "greater overall impact while fully respecting the member states' competence in the area of health".⁴ These first building blocks included proposals to extend the mandates of the European Medicines Agency (EMA) and the European Centre for Disease Prevention and Control (ECDC).

These measures were also accompanied by the establishment of the Health and Emergency Response Authority (HERA) building the foundations for the European Health Union and paving the way for more EU coordination in the area of health. In addition to these proposals, the Commission also announced in

November 2020 the revision of the EU's pharmaceutical framework via its Pharmaceutical Strategy and presented Europe's Beating Cancer Plan as a clear example of the Commission's approach to going beyond pandemic preparedness.

The most recent pillar of the European Health Union, the European Health Data Space, was unveiled in May 2022. It aims to utilise health data by establishing clear guidelines, common standards and practices, infrastructures, and a governance framework for the use of electronic health data by patients and research, innovation, policy making, patient safety, statistics, or regulatory purposes. During the European Commission's press conference on the European Health Data Space, Vice President Margaritis Schinas declared that "health data is power."⁵ The proposal, which is a key pillar of the European Health Union, has the potential to empower research and champion innovation.

A time for action

Before the pandemic, both the European Parliament and the Council of the European Union discussed the increasingly urgent need to address access and affordability of healthcare systems at the EU level, due to the rise of genomics and personalised medicines and treatments. The pandemic put the importance of innovation for the benefit of patients even higher on the political agenda. Indeed, the Parliament's resolution on a pharmaceutical strategy for Europe calls for national and EU measures to address disparities in access to high-quality healthcare services and guarantee the rights of patients to universal, affordable, effective, safe and timely access to essential and innovative medicines.

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The debate about the EU's strategic autonomy has been very much to the fore for some time, and the feeling of unwanted dependency on other parts of the world has been aggravated by the pandemic. The experience with shortages of masks and medicines at the start of Covid-19 which made the EU heavily reliant on China

was just another realisation of the importance of discussions in the EU on the potential repercussions of global supply chains.

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The European Health Data Space, along with the upcoming Review of the Pharmaceutical Strategy, can play a critical role in advancing the EU's strategic autonomy and place the Union at the forefront when it comes to research and innovation. Now is the time for action, and as such, the Parliament and Council should act swiftly to adopt the remaining legislative proposals that are part of the European Health Union package. To ensure the package gets adopted before the 2024 European elections, the Commission should avoid any further delays of the Pharmaceutical Strategy and publish the review in early 2023.

With its competencies in the area of pharmaceutical legislation and the experience gained from the joint procurement of vaccines during the pandemic, the EU can exert influence on health policy. After the 2009 H1N1 pandemic, member states invited the Commission to produce a joint procurement instrument for pandemic vaccines. Even though the instrument was ready in 2014, member states only discovered its full potential when Covid-19 emerged in Europe, and tasked the Commission with negotiating with the industry on their behalf. Going forward, the Commission may want to consider building on the experience of jointly negotiating on behalf of member states and using the joint procurement instrument for rare diseases or other disease-specific areas.

With the departure of the UK post-Brexit, it is essential for the EU to again position itself as a leader in health research and clinical trials. More than ever, it has the means to do so. After fierce discussion between the institutions about the 2021-2027 EU4Health programme, its current budget of €5.1

billion is historically high compared to the previous budget of €452.3 million. Against the backdrop of the pandemic and in light of the European Health Union package, there is a real opportunity for a positive display of EU power in health, both internally and on the global stage.

Health as a global power

The development of a European Health Union not only brings opportunities for the EU internally but also for the geopolitics of global health. The Council's conclusions on strengthening the European Health Union, approved at the EPSCO Council in December 2021, convey a desire for stronger EU leadership in global health. Central to this desire is the need for a more strategic approach to global health leadership in the post-pandemic negotiations, including the negotiation of an important instrument on pandemic preparedness and response.

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The EU's capacity to strengthen global health is intertwined in its internal legal and political capacity for health and can only act externally to the extent that it has the competence to do so internally.⁶ The EU has played a central role in global health and has been viewed as one of the 'main protagonists' throughout the pandemic.⁷ As we move away from this crisis, the EU has the opportunity to solidify itself as a strong global player in the field of health. A key vehicle to achieving this is involvement in the negotiations and drafting of the International Pandemic Treaty. The treaty, which is to be adopted under the World Health Organization (WHO), would enable countries around the globe to strengthen national, regional, and global capacities and resilience to future pandemics.

In March 2022, the Council adopted a decision which authorises the Commission, for matters falling within Union competence, to negotiate an international agreement on pandemic prevention, preparedness and response. Not only are these negotiations important

in terms of better preparing the world for future pandemics, but also in terms of giving the EU a platform from where it can influence the global health sphere. Therefore, in its capacity as EU negotiator, the Commission must prioritise its role in the ongoing negotiations for an international agreement on pandemic prevention, preparedness and response and, use the opportunity to portray itself as a true leader in global health.

The future of EU power in health

The current state of health in the EU and the aforementioned measures and initiatives are accompanied by rich debate in the healthcare community on the need to rethink what more can be done at the EU level to promote and protect health and well-being.⁸ This debate frequently revolves around the contrasting demands for increased EU action and resistance to deeper integration in the field of health. However, when examining the role of the EU in health today and in the future, it is too narrow to look exclusively at (public) health policy. This holds true both in the internal setting and more globally, as health has strong linkages to other policy areas such as social and long-term care, industrial policy, trade and employment policy for health workforce-related questions. Without accounting for these areas, it is almost impossible to get the full picture of the EU's influence in the field of health.

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Even though health is still primarily a member state competency, there is further potential for health policy at the EU level. Over the years, the Commission has gradually expanded its influence on health-related matters via other Council formations. For example, the 'One Health' approach advocated for by the Commission means health is discussed by Ministers for Agriculture. Another example is the European Semester. Originally established as a fiscal instrument in the midst of the 2007-2008 financial crisis, the European Semester's country specific recommendations started to cover social and health-

related objectives over time.

The construction of a European Health Union to date exhibits the role the EU can have in supporting member states within the current treaty framework. The expansion of the ECDC and EMA mandates and the establishment of HERA promote EU collaboration in the face of future crises. Further initiatives including the EU Beating Cancer Plan portray the role the EU can have in specific areas of health, giving scope for such initiatives in other disease areas. In this vein, further EU action in health is possible without treaty change.

However, health policy reform and the realisation of a European Health Union with further competencies can go hand in hand. Following citizens' recommendations from the CoFoE, providing the EU with more competencies in health and changes in Article 168 TFEU are on the indicative list of treaty amendments.

When debating the issue of treaty change for health, a key question must be considered: what would further competencies be needed for?

When debating the issue of treaty change for health, a key question must be considered: what would further competencies be needed for? The European Health Union initiative suggests that to maximise the benefits of EU membership, member states must endow the EU with further health competencies and that doing so could enhance the power of member states rather than the EU. The existence of a legal basis does not mean that the EU will become all-powerful to determine the law in that field. Rather, it would provide for an assessment of the added value of the EU and the proportionality of EU action that must be undertaken.⁹ However, any such treaty change would require the political will of member states. As experience shows, when the worst moments of (a health) crisis are over, political attention easily drifts towards other areas.

However, these questions may become more pertinent again with the announcement that the Commission will follow in the footsteps of the Parliament in backing a European Convention. Of course, this

should not be overstated and in no way guarantees that the Council will support a European Convention and is willing to (re)consider the future of health in the EU.

Undoubtedly, health policy, health research and innovation, and the broader issue of health security should be a priority for the EU.

Undoubtedly, health policy, health research and innovation, and the broader issue of health security should be a priority for the EU. The Parliament and the Council must adopt the remaining European Health Union legislative proposals in a timely manner. Furthermore, the Commission should consider expanding the joint procurement instrument for rare diseases and other disease-specific areas, while the EU should also position itself as a leader in health research and clinical trials. Additionally, the EU should strive to further elevate its role at the international level to address the lack of a common EU approach against cross-border health threats. As such the Commission must utilise its position as a negotiator in the discussions on the International Pandemic Treaty and present itself as a true leader in global health.

In addition to these actions and against the backdrop of the CoFoE recommendations, the institutions along with the wider health community must continue to explore what the future of EU health should look like and whether or not a change in the treaty is required to achieve this. However, only if member states show the political will to make the European Health Union a reality will the EU be able to further improve the resilience of healthcare systems in Europe. This is a primary goal, especially in the era of permacrisis.¹⁰ Member states should not be so quick to forget the added value of EU cooperation and coordination in the field of health, and the economic and social benefits of a healthy population.

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