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QUESTIONNAIRE TOPIC I: EU EMERGENCY LAW

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EU emergency law refers to the legal framework and measures adopted by the EU institutions and Member States to deal with situations of crisis or urgency that threaten the stability and functioning of the EU. It can involve different types of legal acts supported by institutional practice and judicial interpretation, as well as non-legislative acts, such as guidelines or communications. Depending on the nature and scope of the crisis, EU emergency law can rely on different legal bases and procedures.

Under this definition, the EU emergency law builds up its scope around the concepts of “emergency” and “crisis”. The concept of “necessity” is sometimes associated with the latter. The list of emergencies and crises that can fall within the ambit of the EU emergency law is extensive and vastly diverse: from natural disasters and pandemics through economic calamities to mass migrations and wars.

The national reports are intended to provide valuable insights into the practice of Member States, with the aim of fleshing the EU’s tools in addressing situations of emergency.

From the legal viewpoint, the rules forming EU emergency law concern predominantly the action by the EU itself, accompanied by some escape clauses allowing Member States to disregard their obligations stemming from EU law in extraordinary situations.

In the legal landscape so configured, where the situations calling for the application of emergency measures are regrettably abundant, a number of institutional and constitutional questions set on two axes arises.

The first axis concerns the inquiry as to whether, and if so to what extent, the responses to the emergencies shift the institutional balance and come at the price of abandoning the pre-existing safety valves of the EU and domestic legal order. In other terms, this is the question how the EU and domestic legal order itself accommodates the actions taken out of necessity by its institutions in the face of unforeseen and urgent situations.

The second axis takes the perspective of EU Member States and has a constitutional dimension. It relates to the interplay between the competences of the EU and its institutions, on the one hand, and the Member States, on the other hand. This can concern the action of a Member State

taken regardless of an EU action (eg. supply of medicinal products regardless of EU common purchases) or even an action taken in contradiction of the general EU policy and obligations stemming for this Member State from EU law (eg. an unilateral ban of agricultural products despite the existence of EU trade rules).

The challenges on both these axes require articulating emergency law with, first, the fundamental freedoms of the internal market, second, the democratic dimension of the functioning of the EU, including its procedures and values, and third, the human and fundamental rights. In particular with regard to the latter, the relationship between EU emergency law and human/fundamental rights is ambivalent: at times, the emergency law can be seen as an obstacle to certain fundamental rights; in certain other scenarios, reliance on EU emergency law can be necessary to ensure respect of such rights.

Section 1: The concept of “emergency” and other associated notions in the legal orders of the Member States

1. Does the law of your Member State distinguish between situations of “emergency”, “crisis” and/or “necessity”? If so, what are the differences in law? Are there any other relevant categories that are closely associated to the concepts of “emergency”, “crisis” and “necessity” in your country’s legal order that deserve mentioning and what are the factors that justify differences among them?
2. Does the law of your Member State provide for a general constitutional/legislative framework to cover situations of emergency more broadly, or are these situations governed by policy-specific sectors, or both?
3. What are the triggering events that justify the implementation of the framework on situations of emergency?
4. Are there any specific constraints of a formal/procedural nature that constrain or condition the way in which an emergency is handled through legal instruments (specific declarations from an authority, need to introduce a parliamentary statute, judicial authorisation, etc...)?
5. Has EU law had any influence or relevance in defining general or policy-specific situations of emergency in the legal order of your Member State?
6. Are there any precedents in the practice of your Member State in which a situation of “emergency”, “crisis” and/or “necessity” has been triggered by prior

EU action, or it has been handled together by EU and national authorities through both EU and national emergency instruments?

Section 2: The constitutional framework governing emergency law in the Member States

1. Can you describe the constitutional provisions in the law of your Member State which govern situations of emergency? Do these provisions have a prior history or do they reflect previous constitutional or legislative regimes prior to the enactment of the current Constitution?
2. What is the institutional distribution of power in the declaration or implementation of emergency measures? In particular, can you describe the role of Parliament, Government and the courts, as well as any other relevant institutional player playing a role in this regard?
3. In the case that your Member State is a decentralised state, are there any specific regional frameworks applicable to situations of emergency? In the case of national situations of emergency, do the regional/local authorities play a specific role?
4. In case a situation of emergency is triggered under domestic law, how would situations of conflict between the implementation of constitutional provisions and EU or international law be resolved? Are there any specific provisions in this regard, or are there any relevant precedents in the national case-law addressing this scenario?
5. How are fundamental rights protected in cases in which national emergency law is applied? Are there specific constitutional/legislative provisions providing any guidance on how to protect fundamental rights and ensure their protection, or is this a matter left exclusively to the courts? Are there any specific non-judicial bodies entrusted with this task?
6. Are there any precedents in the practice of your Member State in which EU fundamental rights or EU fundamental freedoms of the internal market came into conflict with domestic emergency measures?

Section 3: Statutory/executive emergency law in the Member States

7. In case there are specific legislative or executive provisions/framework/s applicable to specific policy-oriented areas of practice, in which situations of emergency are addressed in the law of your Member State, could you describe them?

8. In the case that your Member States includes both constitutional *and* legislative/executive rules on emergency situations, how are the two regimes differenced? Have there been any situations of conflict between constitutional and legislative/executive frameworks governing the same situation?
9. Are there any constitutional limits on Parliament or Government when making use of emergency powers governed by legislative/executive provisions?
10. The fact that an emergency measure is introduced by the EU, does it alter in any way the balance and distribution of power of the Member State?

Section 4: Judicial review of emergency powers in the Member States

11. In general, what is the jurisdiction of the courts of your Member State when hearing actions challenging measures to address situations of emergency?
12. Are there any procedural specificities applicable to the courts when reviewing the actions of public authorities in situations of emergency?
13. What is the standard of review used by the courts of your Member State when reviewing the actions of public authorities in situations of emergency?
14. Does the principle of proportionality play any role in the judicial review of actions of public authorities in situations of emergency? If so, are there relevant differences between the principle of proportionality under national law and the principle of proportionality under EU law?

Section 5: Implementation of EU emergency law in the Member States

15. When the authorities of your Member States implement EU measures governing situations of emergency (EMU, public health, immigration, energy, banking resolution, etc...), are there any specific principles of national law that interact with principle and rules of EU law?
16. When implementing EU emergency measures in the past, can any gaps or shortcoming be identified in the practice of your Member State? In particular, are there any relevant implementation practices referring to the enforcement of EU measures taken under Article 78(3) TFEU, Article 122 TFEU or any of the EU legislative measures introduced in the course of the COVID-19 pandemic?