
The Effects of the Covid-19 Pandemic on the Regulation of the Economy

The Effects of the Covid-19 Pandemic on the Regulation of the Economy: A Discussion

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The sweeping nature of the Covid-19 pandemic is having devastating effects on all sectors of the economy. This new development has not just caused consumers to restrict their usual spending. It has caused governments all over the world to limit travel, free movement as well as social and economic activity.

All of these governmental and social responses directly and indirectly affect companies and their operations. As a result, countries and international organisations are implementing a variety of fiscal and legislative measures to minimise the economic impact of this crisis. These measures ensure the performance of—or allow for reasonable changes to—ongoing contracts; protect the free movement of goods around the globe; safeguard employees' rights; and establish financial relief packages and rescue policies to keep companies afloat.

The papers in this section analyse the implications of the crisis and the measures announced or discussed by national governments and international organisations to minimise its effects from a variety of perspectives. These papers emphasise key issues that should feature prominently in short as well as long-term regulatory reforms. Overall, they advocate for more inclusive and just approaches to regulatory reforms than those implemented so far, in the immediate aftermath of the crisis.

Dr. Johanna Hoekstra investigates the judicial approach to the enforceability of obligations arising from international commercial contracts when one of the parties cannot perform their obligations due to the Covid-19 pandemic if the contract is regulated by transnational commercial law. In her paper, Johanna suggests that courts would use the existing legal instruments—the Convention for the International Sale of Goods, the UNIDROIT Principles of International Commercial Contract, and the principles of the *lex mercatoria*—to promote a pragmatic interpretation of existing contracts. This pragmatic approach of the judiciary is likely to result in predictable rulings and, therefore, encourage parties to be cooperative and flexible in their dealings.

The pragmatic approach of the judiciary is not restricted to the international level or cross-border disputes. It is one of the main attributes of the judicial approach adopted by English courts in domestic insolvency cases. In his paper, Dr. Eugenio Vaccari focuses on some specific emergency measures enacted in the area of the insolvency law by the UK government. Particularly with reference to the suspension of wrongful trading, Eugenio warns of the risk that measures branded to save companies and, ultimately, jobs can have unwanted side-effects. These include delaying the inevitable (i.e. winding-up of unprofitable businesses) and unduly restricting legal rights (i.e. the creditors' rights to hold

directors accountable for improper use of company's assets), thus raising social and justice issues.

This “justice perspective” is further explored and expanded in the remaining two papers of this section. Dr. Jessica Lawrence writes on trade policies, support measures and equivalent barriers to trade subject to World Trade Organisation (WTO) law. In her paper, Jessica challenges not simply the legality and permissibility, but also and more importantly the desirability of these measures in light of their potential crippling effect on some less developed economies. Jessica concludes that it is reductive and, ultimately, inadequate to articulate international rules solely designed to promote the neo-liberal purpose of facilitating global trade.

Dr. Niall O'Connor follows a similar approach in presenting an overarching analysis of the virus' intrusion into working conditions through the lens of the “right to work”. Niall highlights the components of the right to work and its fundamental, social nature. He observes that its key features (right to a decent work, to freely enter into a profession/job, to fair working conditions and to be shielded against dangerous working environments) may critically counteract the employers' right to conduct a business, especially in the immediate aftermath of the crisis. In his paper, Niall observes that reliance on the “right to work” can ensure a robust employee-protective response to the pandemic for a variety of employees. These include: (i) frontline workers who had to continue going to their workplaces for the whole period of the crisis; (ii) home workers; and (iii) furloughed workers.

The economic effects of the Covid-19 pandemic will be felt for years to come. The devastating effects on companies and trade may be prolonged by the approach of public health officials, who are attempting to minimise the impact of the Covid-19 virus on the population. More importantly, the Covid-19 pandemic will have extensive and long-lasting (perhaps, permanent) effects on the way we conduct our lives. Where 9/11 resulted in permanent changes for the aviation and travel industries, it is safe to assume that no sector of the economy will be unaffected by the exogenous shock caused by the current crisis.

These societal and economic developments will impact the law regulating the economy, particularly in the long term. Speculating on how extensive the impact on regulations will be is premature and inappropriate at this stage, as no-one can reasonably predict the magnitude of changes caused by the Covid-19 pandemic on people's lives. The papers included in this section suggest that, at least in the immediate aftermath of the crisis, states will resort to domestic, un-coordinated solutions. In line with patterns observed in other recent crisis—such as the Great Financial Crisis and the 2001 recession—co-ordinated approaches are likely to be developed after the emergency phase. The papers reported in this section are designed to inform the discussion on these co-ordinated approaches and provide arguments for a more inclusive and just approach to regulatory reforms.

To conclude, the papers in this section do not aim at offering a comprehensive or exhaustive investigation of the effects of the Covid-19 pandemic on economic regulations. However, they suggest that similar legal and non-legal issues arise in a variety of sectors of the economy, at a domestic and international level. They also suggest the need for a more inclusive regulatory debate, as the interests of less sophisticated and “vocal” players—such as emerging economies, employees, small businesses and suppliers—have been frequently overlooked in the emergency measures adopted by governments in the aftermath of the crisis. As a result, these papers offer a tool to analyse the adequacy

of immediate responses and highlight issues that should be considered in any informed discussion on co-ordinated responses to the challenges raised by the Covid-19 pandemic.