COVID-19 Nordic Responses

Brokelind, Cécile; Hansson, Åsa

Published in:
Intertax

2020

Document Version:
Publisher's PDF, also known as Version of record

Link to publication

Citation for published version (APA):
Brokelind, C., & Hansson, Å. (2020). COVID-19 Nordic Responses. *Intertax*, *48*(8 & 9), 754-760.

Total number of authors:
2

COVID-19 Nordic Responses

Cécile Brokelind* & Åsa Hansson**

The Nordic countries (Denmark, Finland, Iceland, Norway, and Sweden) have adopted various tax policy measures in order to confront the current economic crisis caused by the downscale of their domestic economies. Despite their common characteristics (size, economic situation, institutional settings), the Nordic countries have adopted different strategies to limit the detrimental effects of the crisis, which this contribution describes and explains. Furthermore, this article compares the short term tax measures adopted in March and April 2020 in these countries and also analyses options for needed reforms to cope with future crises.

Keywords: Tax collection, tax bases, tax policy in times of crisis, state aid.

1 Introduction

At the time of drafting this article, scarcely two months have elapsed since the first measures of social distancing that were supposed to fight the epidemic of Corona Virus Disease 2019 (COVID-19) were adopted in the Nordic countries. As elsewhere, these measures have severely negatively impacted the economy of these small states that often rely on global trade and investments for their growth or survival. Although the Nordic countries (Denmark, Finland, Iceland, Norway, and Sweden) present similar social and cultural characteristics as well as quite comparable tax systems, their economies differ to a large extent.[1] Among the three EU Member States (Denmark, Finland, and Sweden), only Finland is a member of the Eurozone and, as such, would be eligible for the support organized through the European Stability Pact. These differences make comparisons with this country difficult in the article. Additionally, Norway is also not in a comparable economic situation due to the existence of its own resources (the Oil Fund) financing compensation for the shut-down that has been effectuated due to the fight against the epidemic. The other states will most likely have to increase their public debt and address the drastic consequences that this entails. Fortunately, for some of these countries, their public debt levels are relatively low as their share of gross domestic product (GDP) (Denmark 33.2%, Sweden 35.1%, while Finland is at 59.4%, very close to the EU limit of 60% of GDP) places them in a better position than many southern European countries.

The Nordic countries have organized economic support like most other shut-down countries. It should be noted that the shut-down has taken different forms in these countries. Sweden, for instance, has issued some recommendations against meetings of fifty people or more (ten in Denmark and twenty in Iceland) but leaves it to every citizen's discretion to adopt social distancing. Finland has followed the same path and has isolated the most contaminated area in Finland, however, declaring a state of emergency in the country and closing down public facilities and restaurants for two months as from 31 March.[2] Swedish elementary schools and daycares have remained open, primarily to assist working parents to continue working. Norway and Denmark, however, since mid-March, organized a stricter containment of people,

Notes

* Professor in Business Law, Department of Business Law, Lund School of Economics and Management, Lund University, Programme Director of the Masters of European and International Trade and Tax Law (Tax Track). Email: cecile.brokelind@har.lu.se.

** Associate Professor in Economics, Department of Economics, Lund School of Economics and Management, Lund University and Department of Real Estate Science, Lund University and Research Institute of Industrial Economics, and member of the Swedish Fiscal Policy Council. Email: asa.hansson@nek.lu.se.

1 At the moment of drafting this article, the number of deceased was much higher in Sweden than in the other Nordic states, where the shut-down of the economy has been more stringent. All data in this article are updated on 7 May 2020 and due to the daily changes, and are liked to have changed at the time of publication.

2 EU Commission, *State Aid SA.56995 (2020/N) – Finland COVID-19: Framework Scheme for State Aid Measures* (s. 3.1 of the Temporary Framework), C(2020) 2778 final (24 Apr. 2020), fn. 3.

INTERTAX, Volume 48, Issue 8 & 9

sending public sectors employees home, turning to home schooling, and closed their borders. All in all, the cost to the economy is expected to be quite drastic, a decrease of approximately 6% of their GDP in 2020.[3]

The urgent common questions in all of the Nordic countries are what are the governments doing to save employment and help firms' financial situations, and is it enough? Indeed, without enterprises, there is not much to build on after the pandemic is over. Both short-term and long-term measures are being taken in terms of liquidity-enhancing measures, direct support to cover fixed costs, and healthcare related problems.

All things considered, the economic stimulus is estimated to amount to 3.4% of the GDP in Sweden (compared to 1.3% during the 2008–09 crisis).[4] In the analysis presented by the Swedish Finance Minister, the numbers are based upon a somewhat optimistic scenario in which the Swedish economy will begin to grow again beginning in 2021 with between 3%–5% of the GDP, provided that measures are taken.[5] There are three types of measures being taken in Sweden, i.e. temporary short-term unemployment for employees financed by the state; postponement of tax payments by all business taxpayers; and direct support to businesses both in the form of loans or guarantees for loans and direct support to cover fixed costs. Compared to Sweden, the economic stimulus has been more generous in Denmark and Norway. In early April, the corresponding numbers to enterprises and businesses were 2.6% and 4.6%, respectively.[67] The support to employees has also been more generous in Denmark and Norway. For instance, in Denmark, the government covers salaries up to 75% for those employees that are sent home, which could cost as much as 13% of the GDP if it is in effect for three months.[8]

The long-term consequences of this crisis are already predicted by economists to excessively exceed the financial crisis of 2008. The International Monetary Fund (henceforth IMF) predicts the decline of real GDP to be 6% or more in all of the Nordic countries in 2020. Currently, the IMF is predicting the downturn to be relatively brief and that the GDP will increase by 3%–6% in the Nordic countries in 2021. The uncertainty about this is obviously substantial and depends on whether there will be additional waves of the spread of Covid-19. The speed and magnitude of this crisis together with the significant uncertainty concerning the length of the pandemic make it extremely difficult to deal with this crisis. Pandemics are not new and neither are economic crises, however, the effects of the pandemic and the measures taken to stop the spread of it have the world economy coming to a drastic halt. Traditional fiscal and monetary policies to stimulate the economy are not adequate as it is not a matter of stimulating demand but rather providing life-support to healthy firms and avoiding mass unemployment. At a later stage when economies open up, traditional stimulation policies are likely needed to reinvigorate them. The Nordic countries went into this crisis with very low interest rates (Sweden just ended a nearly five-year period of negative rates with a current rate of 0%; Denmark is still at -0.65; Norway is at 0.25; Iceland is at 1.75%; and Finland is at the European Central Bank (ECB) rate of zero) and, hence, have limited capacity to stimulate the economy with traditional monetary policies. To a large extent, they are left to rely on fiscal policies which tend to be less efficient than monetary policies at stimulating the economy. In addition, these countries are all small open exporting economies relying to a large degree on international trade. Even if Sweden has not locked down its economy to the same extent as others, the industry is dependent on inputs from the rest of the world and to be able to export. These countries are thus very vulnerable to trade conflicts and reduced international trade, limiting their domestic policies' effectiveness on the economy and making them dependent on what occurs internationally.

Hence, designing and evaluating these extraordinary measures is extremely difficult as the situation is unique and has never before been experienced. Irrespective of how states define their priorities and organize first-aid help for their economies, the authors will address the long-term issues raised in the variety

Notes

3 European Commission, *European Economic Forecast* (2020), https://ec.europa.eu/info/sites/info/files/economy-finance/ip125_en.pdf (accessed 27 May 2020). In Sweden, the Confederation of Swedish Enterprise estimates that 25% of the total economy is closed down, causing the equivalent of EUR 10 billion loss of income per month, and the cost for two months of shut-down and half of it for the next five months would cost Sweden EUR 50 billion, i.e. 10% of its GDP, and this is without the cost of the measures that are being taken to support the disrupted business life. Webinar (in Swedish), *Corona-tre alternativa scenarier*, https://www.svensktnaringsliv.se/bilder_och_dokument/corona-tre-scenarierpdf_773013.html/BINARY/Corona%20-%20tre%20scenarier.pdf (accessed 27 May 2020).

4 Prior to the announcement on 15 Apr. 2020 of a Spring Budget in Sweden for which a total of EUR 30 billion is contemplated to face the crisis. Upon the 24 Apr., the minister of Finance announced a total of approximately EUR 34 billion, *see* Finance minister Magdalena Andersson, *Läget i ekonomin och användningen av regeringens åtgärder* 26 (24 Apr. 2020), https://www.regeringen.se/4987ce/contentassets/0571e1364e1f4a3191c7742b84501f28/presentationsbilder-laget-i-ekonomin-och-anvandningen-av-regeringens-atgarder.pdf.pdf (accessed 27 May 2020) Sweden has created a system for short-term leave, is deferring payment of employers' social security contributions, there is a preliminary tax on salary and VAT, and is organizing temporary suspension of employers' sick pay liability. SMEs, cultural, touristic, and sport activities are targeted in the support-package.

5 Andersson, *supra* n. 4.

6 F. Carlgren, *Större stimulanser i Norge och Danmark*, Ekonomifakta (7 Apr. 2020), https://www.ekonomifakta.se/Artiklar/2020/april/storre-stimulanser-i-norge-och-danmark/ (accessed 15 Apr. 2020).

7 Skatteministeriet, *Yderligere 35 mia. kr. til danske virksomheder* (18 Apr. 2020), https://www.skm.dk/aktuelt/presse/pressemeddelelser/2020/april/yderligere-35-mia-kr-til-danske-virksomheder (accessed 27 May 2020).

8 D. Thompson, *Denmark's Idea Could Help the World Avoid a Great Depression, The* Atlantic, https://www.theatlantic.com/ideas/archive/2020/03/denmark-freezing-its-economy-should-us/608533/ (accessed 27 May 2020).

and non-coordinated measures presented in this article. Several issues must be analysed after a broad presentation of a number of tax policy measures adopted during March and April in some of the Nordic states. For instance, the authors wonder how different tax policies can distort competition between neighbours and whether that is a problem. Another issue is to know how beneficial some measures actually are, such as granting cash-flow advantages by postponing tax collection when the total interest rate on deferred payment (6%) will be higher than most bank loans at market rates or limiting access to employers' support with thresholds (more or less than twenty-five employees, turnover of a certain value, etc.). Other issues are misuse and the perverse incentive effect of the support that may further damage the economy rather than helping it. Finally, the long-term consequences on the tax policy landscape remain the most debated issues on which the authors would like to comment.

2 A variety of fiscal measures

2.1 *No Coordination?*

It is striking to read from the different finance ministers' homepages and official announcements that no coordination of actual tax measures was contemplated.[9] Ideally, a 'best practice' exchange could have occurred, however, the urgency obviously never allowed that possibility. Surprisingly, this was also the case for measures taken to deal with the virus that were taken independently by each country despite the virus' lack of respect for borders.

The range of tax measures taken by the Nordic countries can be classified into two categories, i.e. cash-flow measures and tax-base reductions linked to the loss of turnover or due to rebates on prices.[10] Stated differently, the second kind of measures addresses tax bases foregone, and the budgetary consequences of this economic loss will have to be compensated. The rescue packages (i.e. direct supports paid to economic actors) are not addressed under this section as they do not only involve tax measures but will be addressed in the next section on state aid law. Instead, a brief overview of the tax measures adopted in the fields of corporate income tax (CIT), valued added tax (VAT), other indirect taxes, and miscellaneous taxes is presented briefly hereafter in a comparative perspective.

2.2 *Cash Flow Measures*

Cash-flow measures vary to a large extent but are concentrated on both taxes and social security fees. In most Nordic countries, their tax administration for both individuals and legal entities is managed through a personal account from which advance tax is levied and repayments and tax adjustments are carried out (Pay As You Earn, PAYE system). Since taxes are levied in a real-time situation in which no income is realized, an adjustment is necessary.

Denmark, for instance, through an initial 4-action package, has allowed a temporary increase in the amount of credit balance on corporate tax accounts, meaning that tax debts are not enforced until 20 November 2020 (at this precise moment) and also deadlines for tax returns are postponed. The tax debts are not charged with interest in favour of the state (as in Sweden). In the field of VAT, small and medium-sized businesses that have paid VAT for the second half and fourth quarter of 2019 will have the opportunity to be repaid the amount as an interest-free loan.

Norway instead staggers the payment of 2020 advance taxes in four instalments without inferring a liability to late payment interest. Deadlines for tax payments for several taxes such as VAT, self-employed advance tax, payroll taxes, etc. are currently postponed by one month or more. A system of carry-back for tax losses is also implemented. In *Finland*, interest charged on unpaid taxes through a payment arrangement are lowered from 7% to 4%, and no late-filing penalties nor registration of late payments will apply. *Iceland* also organizes deferral of PAYEs payments upon authorization for employers as well as other taxes such as CIT, VAT, and property taxes and also social security payments. In *Sweden*, similar measures of postponing payments and tax returns are organized for a longer time scale (one year for VAT reported annually), and Swedish CIT paid from January to March will be refunded on the taxpayers' tax accounts.

2.3 *Tax Bases Measures*

The extent of measures introduced by the Nordic states differs significantly depending on the countries' state of budgetary distress. Concerning business taxation, neither *Finland* nor *Denmark* have enacted any specific tax base relief for business taxation (at the time of the drafting of this article).

Notes

[9] For a wider range of comparison *see* C. Enache et al., *Tracking Economic Relief Plans Around the World During the Coronavirus Outbreak*, Tax Foundation, Coronavirus Country by Country Responses, https://taxfoundation.org/coronavirus-country-by-country-responses/#tracking (accessed 7 May 2020).

[10] Some secondary sources of information were used for this informative section, *PWC's comparative table: PWC, Navigate Tax, Legal and Economic Measures in Response to COVID-19*, https://www.pwc.com/gx/en/services/tax/navigate-the-tax-measures-in-response-to-Covid-19.html?c=Denmark%3BNorway%3BFinland%3BIceland%3BSweden&tax-trade-regulatory=tax-payments-amnesties%3Btax-reporting (accessed 27 May 2020).. Furthermore, the OECD also publishes secondary sources in a report: Organisation for Economic Co-operation and Development (OECD), *supra* n. 4.

However, both *Norway* and *Sweden* have introduced tax base amendments in the business sector and, more recently, have temporarily lowered employers' social security contributions from 1 March 2020 to 30 June 2020.[11] *Norway*, with a substantial share of the economy involved in shipping and oil extraction industries, has proposed a temporary scheme entailing an increase of the initial depreciation from 20% to 30%, and the establishment of a temporary tax balance group for ships (not included in the tonnage tax scheme) in short sea shipping. The depreciation rate for this group is proposed to be 20%. Furthermore, the Norwegian Parliament has asked the government to come up with a proposal for a new model for management incentives, e.g. taxation of stock options for start-ups for the 2020 budget. On the top of this, *Norway* introduced a carry forward for losses in the corporate sector.

Sweden[12] has introduced a temporary specific rule on the tax allocation reserves so that sole proprietors who are severely affected by the COVID-19 outbreak will receive tax cuts. Under this temporary relief, 100% of the taxable profits for 2019, up to EUR 100.000, can be set aside in the tax allocation reserve which can then be set off against possible future losses. Sole traders and individual taxpayers who are partners in Swedish partnerships can receive back the preliminary tax they paid in 2019. However, this rule is not a reduction of the definitive tax bases under corporate tax rules but a type of carry back similar to the one that Norway implemented.

Regarding consumption taxes, some states have reduced some of the rates of VAT (Norway, Iceland) and even refunded VAT for some sectors of the economy (such as construction of residential properties and related activities, charitable and sport organizations in Iceland).

While these economic measures alleviate most actors' recurrent and fixed charges at the moment, postponing the payment to a later occasion (various deadlines in various states), they do not tend to compensate for the loss of revenue caused by a total or even partial shutdown of domestic and cross-border commerce. As will be seen in the next section, this remedy can trigger EU state aid rules and deserves a separate analysis as, under Articles 107.1, 107.2, and 107.3 TFEU, any aid (meant as not temporary) granted by a Member State that distorts competition must be notified for authorization unless it is encompassed within group exemptions or exceptions.

3 State aid law and the nordic countries

As early as 13 March 2020, the European Commission issued a communication making clear that all measures taken by EU Member States to face the economic downturn need to accord with state aid rules, both ensuring efficiency of aids and avoiding harmful subsidy races 'where Member States with deeper pockets can outspend neighbours to the detriment of cohesion within the EU'.[13]

Among the support measures that remain out of reach of state aid prohibition, are general measures applicable to all companies such as wage subsidies and suspension of payments of taxes and social contributions, and direct financial assistance to consumers. Therefore, most of the measures described above are not required to fall within the scope of prohibited state aid measures as they do not distort competition.

However, and unless the aid falls under the de minimis threshold, aids intended to compensate for the damage caused by a natural disaster or exceptional occurrence (Article 102 (2)b of the Treaty on the Functioning of the European Union-TFEU) or aid intended to remedy a serious disturbance in the economy (Article 107(3)b TFEU) need to be submitted to the commission for approval. Similar rules apply in the Nordic countries' non-EU Member States (Norway and Iceland) through Articles 61(1) and 61 2(b) of the European Economic Area (EEA) Agreement.

In its Temporary Framework for State Aid associated with the coronavirus outbreak, the EU Commission is extending the existing types of support that Member States can grant to undertakings that are in need.[14] For example, it now enables Member States to provide zero-interest loans up to the nominal value of EUR 800.000 per company, guarantees on loans covering 100% of the risk, or equity. This can also be combined with so-called de minimis aid (to increase the aid per company to up to EUR 1 million) and with other types of aid. These are meant to help small and medium size enterprises' (SMEs')

Notes

[11] This article focuses on tax measures excluding social security measures. However, the Swedish Parliament has allowed employers to receive a reduction of employers' contributions for a maximum of thirty of their employees for payments made during 1 Mar. through 30 June 2020.The reduction means that only an old-age pension contribution (10.21%) of compensation up to SEK 25,000 (EUR 2500) per payee and per month must be paid.For a list in English of the measures adopted by the Swedish Government, please *see* Government Offices of Sweden, *Economic Measures in Response to COVID-19* (16 Mar. 2020), https://www.government.se/articles/2020/03/economic-measures-in-response-to-covid-19/ (accessed 27 May 2020).

[12] SE: Prop 2019/20:100.

[13] European Commission, Communication from the Commission to the European Parliament, the European Council, the Council, the European Central Bank, the European Investment Bank and the Euro group, *Coordinated Economic Response to the COVID-19 Outbreak,* COM(2020) 112 final (13 Mar. 2020), s. 5.

[14] European Commission, Communication from the Commission, *Temporary Framework for State Aid Measures to Support the Economy in the Current COVID-19 Outbreak*, COM (2020) 1863 final (19 Mar. 2020). *See also* European Commission, *State Aid: Commission Approves € Million Danish Loan Schemes to Support Start-ups Affected by Coronavirus Outbreak* 296, Press release (5 May 2020), https://ec.europa.eu/commission/presscorner/detail/en/ip_20_810 (accessed 27 May 2020).

liquidity problems and are largely relied upon in Scandinavia.

Since 19 March 2020, the European Commission has taken thirty-nine state aid decisions to approve forty-nine national measures that provide much needed liquidity to European businesses, many of them triggered by France and Germany but also the Nordic EU Member States. The commission has also adopted several decisions on national measures under Article 107.2(b) TFEU on aid to compensate for exceptional circumstances.

Denmark was the first Nordic state to apply for and obtain one of them for approximately EUR 1.3 billion, compensating the self-employed in the sectors of culture and sports for the losses of turnover suffered due to the coronavirus outbreak. The grants that are awarded will cover 75% of the expected loss of turnover for a period of three months, calculated on the basis of the average monthly turnover in 2019, reaching a maximum of EUR 3.000 per month and per person.[15] The series of applications for several reliefs and grants to the EU Commission deals with a state guarantee on a revolving credit facility in favour of Scandinavian Airlines System (SAS),[16] a scheme to compensate companies particularly affected by the COVID-19 outbreak,[17] a scheme to compensate self-employed for damages,[18] and a compensation scheme for the cancellation of events related to COVID-19.[19] All of these systematic plans were passed under Article 107.2 TFEU. Other schemes are also passed under Article 107.3.b TFEU.[20] Denmark has introduced some direct compensation schemes to cover fixed costs that companies cannot cover due to the shutdown. However, in a recent amendment to the aid measures, companies registered in tax haven countries will no longer be eligible for aid. Moreover, firms applying for an extension of Danish state aid must now promise not to pay dividends or make share buy-backs in 2020 and 2021. An additional condition was expressed by the finance minister requiring the proof that applicants do pay the tax to which they are liable under international agreements and national rules. 'Companies based in tax havens in accordance with EU guidelines cannot receive compensation, insofar as it is possible to cut them off'.

In respect of other schemes dealing with tax relief, very few are notified to the Commission or to the EFTA Surveillance Authority (ESA).[21] While *Norway* notified many schemes, including direct grants for start-up facilitators, cancellation or postponement of sport, volunteer, cultural events, guarantee schemes for loans to airlines or medium-sized companies over the SME EU threshold,[22] *Iceland* applied for a publicly guaranteed loan for all businesses in one single scheme.[23]

Sweden applied under Article 107.3.bTFEU and obtained authorization for a scheme of rent rebate for tenants[24] (EUR 453 million), a loan guarantee scheme to airlines,[25] and guarantees on loans for enterprises until June (EUR 9 billion).[26] Additionally, Sweden obtained, on the basis of Article 107.2 TFEU, favourable decisions on a state guarantee to compensate SAS for damage caused by the COVID-19 outbreak[27] and for a scheme to compensate damages due to cancelled or postponed events.[28] For an updated list of measures, the reader is referred to the EU Commission's homepage on state aid decisions that have been granted.[29]

4 Comments and remarks

Despite their common cultural and societal features, the Nordic states have employed different means and scale, some of them going much further than others to assist their domestic economic actors. While there is no doubt

Notes

15 European Commission, *State Aid SA.56685 (2020/N) – DK – Compensation Scheme for Cancellation of Events Related to COVID-19,* C(2020) 1698 final (12 Mar. 2020), https://ec.europa.eu/competition/state_aid/cases1/202011/285054_2139535_70_2.pdf (accessed 7 May 2020).

16 DK: SA 56795, *Compensation for the Damage Caused by the COVID-19 Outbreak to Scandinavian Airlines* (15 Apr. 2020).

17 DK: SA.56774, *Compensation Scheme to Companies Exposed to Large Turnover Decline Related to COVID-19* (8 Apr. 2020).

18 DK: SA.56791, *Temporary Compensation Scheme for Self-Employed Financially Affected by the COVID 19* (23 Mar. 2020).

19 DK: SA.56685, *State Aid Notification on Compensation Scheme Cancellation of Events Related to COVID-19* (12 Mar. 2020).

20 DK: SA 56708, *Danish Guarantee Scheme for SMEs Affected by COVID-19* (21 Mar. 2020), DK: SA.56808, *Liquidity Guarantee Scheme Under the Temporary Framework for State Aid Measures to Support the Economy in the COVID-19 Outbreak* (30 Mar. 2020), DK: SA.56856*, State Loan for the Danish Travel Guarantee Fund as a Result of COVID-19* (2 Apr. 2020).

21 For a complete and updated survey of the state aid schemes decisions of both the ESA and the EU Commission, *see* ESA, *State Aid Rules and COVID-19*, http://www.eftasurv.int/state-aid/state-aid-rules-and-covid-19/state-aid-rules-and-covid-19 (accessed 27 May 2020).

22 Cases no.85036, 85071, 85047, 84974, 85041, 84976, 84979. For links to the decisions *see* http://www.eftasurv.int/state-aid/state-aid-rules-and-covid-19/ (accessed 27 May 2020).

23 IS: Case no. 85036, doc no. 1124827, decision 040/20/COL, http://www.eftasurv.int/da/DocumentDirectAction/outputDocument?docId=5329 (accessed 27 May 2020).

24 SE: SA.56972, *COVID-19 – Rent Rebate for Tenants* (15 Apr. 2020).

25 SE: SA.56812, *Loan Guarantee Scheme to Airlines Under the Temporary Framework for State Aid Measures to Support the Economy in the Current COVID-19 Outbreak* (11 Apr. 2020).

26 SE: SA.56860, *COVID-19: Government Guarantee Programme for Companies* (2 Apr. 2020).

27 SE: SA.57061, *Sweden – Compensation for the Damage Caused by the COVID-19 Outbreak to Scandinavian Airlines* (21 Apr. 2020).

28 SE: SA.57501, *COVID 19 – Aid for Cancelled or Postponed Cultural Events in Sweden* (22 Apr. 2020).

29 European Commission, *State Aid Rules and Coronavirus*, https://ec.europa.eu/competition/state_aid/what_is_new/covid_19.html (accessed 27 May 2020).

that Nordic countries face comparable economic issues, i.e. small economies dependent on exports and access to foreign markets, it remains striking how reactions have differed from one state to another.

There are differences in the constitutional composition that can explain some of the divergence even though the differences in how the various countries have reacted to the pandemic tend to be overstated in the popular media. In contrast to Denmark and Norway, the Swedish Constitution grants public agencies independence of the government in order to ensure that decisions are based upon knowledge rather than short term political gain, that is, ministerial rule is forbidden. Hence, in Sweden, decisions are made by the Swedish Public Health Authority while, in other countries, decisions are made by politicians listening to experts as they see fit.

In addition, the state of urgency is not ruled under similar legal frameworks in these states. For instance, the Swedish Government cannot come up with any measure that is not found in the legal framework even in times of urgency and the need for rapid decision-making.[30] The delegation of normative power even in times of crisis is not possible outside the framework specified in various regulations in the field of health protection, war, weapon act, etc.[31] Locking down individuals, therefore, was not a legal option for the Swedish Government, at least unless a specific law would have entitled the legislator to do so (which may still occur if the situation becomes really worse). For instance, in order to be able to increase public spending, the government had to amend the Finance Act and propose for the spring budget to increase the budget ceiling by a dramatic increase of 7% of the GDP. In Denmark, as a contrast, laws can be installed relatively quickly and, due to corona, this process has been hastened.[32]

France took an equivalent approach by voting an extraordinary delegation law in favour of the government which allows decision making without the compulsory two week reflection time at the parliament. The lockdown, therefore, is 'legally secured' through extraordinary legal means to which Sweden is not likely to come.

In French constitutional law, the government was allowed, under a law of April 1955, to take measures in cases of 'crisis and war' without the consent of neither the parliament nor the Constitutional court (usually, the law can never enter into force until two weeks have passed between the parliamentary votes because it may be relevant with the constitutional court's opinion on the law). Apparently, France was inspired by this 1955 law and established a special law within a few days in March 2020,[33] granting the government with the power to coordinate France's health protection.

Beyond the mere constitutional legal comparative issues, some issues of value for future reforms of tax systems need to be further investigated. For instance in Sweden, the initially announced budgetary costs linked to compensation of employers and individual business owners initially appeared to be (mid-March) out of proportion with the actual use of aids announced by the finance minister. Indeed, the compensation took the form of a temporary relief for fixed charges which means that social security fees were still levied at the full rate, generating a slight revenue for the state. Therefore, the actual cost to be borne by the state was limited to the loss of tax bases linked to reduced business activity in all sectors and not the mere loss of social security fees and certainly not for a total of EUR 30 billion. Therefore, even though the economy has not completely collapsed, Swedish businesses encounter difficulties and cannot pay fixed costs such as social security fees without full activity, leading to the need for additional budgetary measures and state aids. The next problem is to know whether saving all sectors of the economy at any price would help filling in the states' funds as it would generate taxable bases and avoid the state paying unemployment benefits in the event that businesses close down. An alternative would be to rapidly design a path of reform in which not only short term but also long term benefits would be gained.

It is not an easy task to design appropriate measures as there is substantial uncertainty about the length of the pandemic and whether there will be future waves of the virus. Countries may want to ensure some opportunity for future stimulus packages. The Nordic countries have selected different measures both when it comes to dealing with the pandemic and the economy for which Denmark and Norway versus Sweden are probably prominent as being the most diverse. Obviously, stricter lockdown policies require a greater amount of economic support, however, the countries also differ to the extent they are willing to save existing firms and the timing of the support. Denmark quickly installed generous measures while Sweden was slower but willing to do more later but also accepting and stating that some firms will not make it, possibly because the economy was heading into a downturn already before the corona pandemic. The strategy that countries have chosen will place them in different

Notes

30 SE: Instrument of Government, 1974:152, Ch. 8, para. 7 and para. 5. For explanations *see* Sveriges Riksdag, The *Constitution of Sweden, The Fundamental Laws and the Riksdag Act* 49 (2016), https://www.riksdagen.se/globalassets/07.-dokument–lagar/the-constitution-of-sweden-160628.pdf (accessed 27 May 2020).

31 SE: Instrument of Government, 1974:152, Ch. 15 for war for instance. *See* H. Strömberg, *Normgivningsmakten enligt 1974 års regeringsform* 107 (3d ed., Juristförlag Lund 1999).

32 Folketinget, *Folketinget og coronasituattionen*, https://www.ft.dk/da/aktuelt/tema/folketinget-og-coronasituationen (accessed 27 May 2020).

33 FR: LOI n 2020–290 du 23 Mar. 2020 d'urgence pour faire face à l'épidémie de covid-19. JORF nr 72 (24 March2020), texte, nr 2.

positions when the pandemic has ended. Once restrictions mitigating the spread of corona begin to diminish, it is likely that countries will need to stimulate their economies in more traditional ways.[34] As already mentioned, the role that monetary policies can play is limited due to already very low interest rates. Fiscal policies will hence have to play a larger role. How severe the economic downturns will be and how much is required in order to create confidence in the economy again depends on how long the restrictions are in place. In addition, the longer the restrictions remain, the greater the risk is that the pandemic will have long-term effects on international trade and globalization which will require countries to become more independent. This will likely drive up prices and especially hurt small open export dependent countries such as the Nordic states.

It is very likely that the international competition will intensify, and countries will start out in different positions, that is, the playing field will not be levelled. Countries may use fiscal policies to attempt to gain competitive advantages. At the same time, increased revenues may be needed to reduce public debts as they are expected to increase by 11.5% of the GDP in Denmark, 10% in Finland, and 7.4% in Sweden in 2020.[35] The issue of a level playing field may be especially severe comparing northern and southern Europe. Thus far, the Nordic states appear to have experienced less hardship from corona and, consequently, also economically, so are in a more advantageous position with stronger public finances to help reinvigorate their own economies. If solidarity is lacking, this will put pressure on the EU and particularly the European Monetary Union (EMU).

A more principal question that should be addressed before the next possible drastic event is who is responsible to cover the costs that arise? Who is the most appropriate agent to carry the risk – the government or firms and individuals? If the latter, are risks like these insurable by private enterprises? In addition, should multinational firms and small domestic firms be treated differently when it comes to risk carrying and, consequently, the support that should be distributed? It would be convenient to have answers to these questions in place the next time something like this is experienced.

Finally, it can be sadly feared that the asymmetric responses brought by the EU and EEA states to the fight against the downturn of the economy will endanger the already weakened international and EU cooperation, as acknowledged in literature showing the return of the nation-state.[36] The differences in economic support granted by each sovereign state were, until now, strictly monitored within the EEA and even in the WTO legal system for the need of securing fairness in the conditions or circumstances in which competition occur. However, worrisome arguments based on moral rather than legally based reasoning emerge here and there. It has been proposed in Denmark, France, Poland, and Sweden that 'companies located in tax haven' or 'corporation paying a dividend to their shareholders' are excluded from the support package without any other reason than 'fairness' as these economic actors are not considered to be in a difficult economic situation. It is doubtful that such a requirement is based on actual sources of law, compelling shareholders to commit to company rescue or substitute the state or insurance companies in times of trouble. If this is the target of these measures, it should be expressed lawfully and legally with the risk that private equity and investments decrease dramatically in a long-term perspective.

Moreover, is it possible to refuse temporary relief to a domestic company employing domestic workers whose employment would instead be terminated without the support just because the ultimate company owner is not established in Denmark? This seems quite far-fetched, of course, and despite the fact that the EU commission passed such a 'fair' scheme under the 'relaxed state aid rules', how does this help save domestic jobs?

Finally, stronger international leadership and cooperation could be hoped for as it is still the case that global problems require global solutions. It appears that a lot of goodwill in private initiatives could inspire such global leadership. The Volvo group, for instance (with a main Chinese owner), discloses a series of gifts and benefits in kind (3D printing and assembly capability for employees' voluntary production of face masks, secure food supply by additional freight, donate used laptops to poor or foster families through municipalities in Poland, etc.)[37] irrespective of how many dividends are distributed. It is time to focus on the substance in the debate on how to repair the damaged economy.

Notes

34 *See* the range of potential extraordinary revenue raising measures such as carbon taxing and in depth tax reforms suggested by the OECD, *supra* n. 4, at 42.

35 *See* European Commission, *supra* n. 3.

36 *See* for instance *The European Union and the Return of the Nation State,* (A. Bakardjieva Engelbrekt et al. eds, Palgrave 2020).

37 Volvo, *We Can All Make a Difference*, https://www.volvogroup.com/en-en/covid-19.html (accessed 27 May 2020).