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Vaccination Policies in Europe:

A Comparative Study Between
Selected Countries

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Max Planck Institute Luxembourg for Procedural Law

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Abstract

This report sets forth the main findings of the research that we carried out at the Max Planck Institute Luxembourg under the request, and for the benefit of, the Ministry of Health of Luxembourg.

Keywords

Covid-19, vaccination, European Union, EU Member States, European Court of Human Rights, World Health Organisation

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Executive Summary

This report sets forth the main findings of the research that we carried out at the Max Planck Institute Luxembourg under the request, and for the benefit of, the Ministry of Health of the Grand Duchy of Luxembourg.

In the 1st part of the research, we analyzed whether Covid-19 vaccination policy shall envisage compulsory measures or, contrariwise, shall be based on citizens' voluntary adherence. To answer this question, we examined the case-law of the European Court of Human Rights and the main recommendations issued by the European Union and the World Health Organisation. The purpose of the 1st part is to define and assess the general legal framework supporting the selected countries in the establishment of their vaccination policies.

The main findings of the 1st part are the following:

- For the time being, there is no case law at the **European Court of Human Rights** (ECtHR) concerning Covid-19 vaccine. However, the analysis of previous case law on the compatibility of mandatory vaccination in general to the European Convention on Human Rights (ECHR) provides some guidelines on the Court's approach to the issue of a compulsory Covid-19 vaccine. It seems that, given this jurisprudence, mandatory vaccination is deemed as compatible with the ECHR, provided the measure 1) is taken pursuant to a legitimate aim; 2) is necessary for a democratic society; and 3) is suitable for the individual concerned.
- According to Article 168 of the Treaty on the Functioning of the European Union (TFUE), the responsibility for health policy (including vaccination policies) lies mainly with the Member States and the **EU institutions** are entitled only to support and coordinate the action of the Member States. Against this backdrop, the EU Commission did not enter into the debate whether Covid-19 vaccination should be mandatory or voluntary at the national level but insisted more broadly on the necessity to carry out an effective, consistent and transparent wide-reaching communication to build public confidence in Covid-19 vaccines.
- The **World Health Organization** (WHO) expressed a negative opinion on the opportunity to carry out a mandatory Covid-19 vaccination. The WHO recognised that persuading people of a Covid-19 vaccine's merits would be a much fitter strategy. For the WHO, serving the population with reliable data specifically on the benefits of the vaccine through information campaigns and making vaccines available to priority groups such as hospital workers and the elderly, would prove more effective than implementing mandatory vaccination policies.

In the 2nd part of the research, we conducted a comparative analysis between the Member States indicated by the Ministry (France, Belgium, Austria, Germany) and Switzerland to analyse the vaccination strategy of these countries in general terms and with specific reference to Covid-19 vaccination. The purpose of the 2nd part is to understand, and compare the decisions taken to date at the level of the selected States as to their vaccination policies.

The main findings of the 2nd part are the following ones:

- The countries have opted for different **vaccination regimes** either **mandatory** for certain diseases and/or groups of the population, or **voluntary**. In most cases, a **hybrid system** combining mandatory and voluntary vaccination has been implemented.

- In all examined countries, **public authorities** with the exclusion of private entities are entitled to manage mandatory vaccinations by means of legislative or regulatory instruments. In case of **non-compliance with mandatory vaccination**, the country provides different consequences ranging from parental responsibility (up to criminal responsibility in some cases) to the impossibility for the children to attend school and the termination of the employment contract of the employee who did not comply with his/her mandatory vaccination. Even if no specific cases have been identified in the jurisprudence, the selected countries recognize in principle the **liability of the State** for the health damages suffered in relation to mandatory vaccination.
- In all analyzed countries, even in case of **voluntary vaccination**, only public authorities are entrusted with the power to impose vaccination obligations. To incentivize **pro-vaccination** behaviours, most countries have launched large information campaigns concerning the benefits of vaccination.
- As to **Covid-19 vaccination**, all the analyzed countries envisage, for the time being, to deploy a **voluntary vaccination** with a priority being given to specific populations. According to this priority list, **different places** for the execution of the vaccine have been defined. **No relaxation** of the current restrictive measures has been announced for vaccinated people. The implementation of a **vaccination/immunity passport** remains highly controversial in all the countries.

With regard to the scope and goals of our research, it is worth noting the following:

- Given the mandate received by the Ministry and due to time constraints, the Research does not set forth any policy recommendations concerning vaccination strategies. The Research has a descriptive nature aiming at providing an overview of the existing laws, regulations, and practices governing the vaccination strategy within the scope of our analysis.
- Considering the continuously evolving nature of the recommendations and decisions as to Covid-19 vaccination, all the references and conclusions indicated in the Research shall be regarded as relating to the available information up to January 22nd, 2021.

Report

A. Introduction

The World Health Organisation (WHO) estimates that two to three million deaths are prevented every year through vaccination.¹ Vaccines can be used to control an outbreak of infectious disease, either in the case of a pandemic or to prevent infectious diseases as a routine public health measure². Vaccination can have an essential role in protecting individuals from infection, and in reducing the transmission of infections in the population through population immunity and eradication. Population immunity can confer a substantial collective benefit. At the same time, achieving it requires the organised efforts of society in establishing vaccination policies, and the cooperation by the population in taking part to achieve high levels of vaccination coverage. Any situation that brings about a lack of cooperation by some individuals to the extent that population immunity is jeopardised has the potential to have a highly damaging effect on population health. Therefore, a successful vaccination policy shall take into account individual and collective risks and benefits deriving from vaccination. Notwithstanding their importance as a public health prevention tool, vaccination policies appear to be the victim of their own success: a number of serious vaccine-preventable diseases, such as polio and measles, have virtually disappeared in many regions, due to effective vaccination programs; the consequences of these diseases are no longer visible in everyday life.³ Conversely, the increasing proportion of vaccine-hesitant individuals who refuse or delay vaccination have become more visible among certain segments of the population.⁴ The rise in the vaccination hesitancy creates new challenges for the countries aiming to prevent and reduce the burden of vaccine-preventable diseases.

It is in this context of controversy as to the individual and collective pros and cons of vaccination that the analysis of Covid-19 vaccination shall be placed. As underlined by the EU Commission, the development and swift global deployment of safe and effective vaccines against Covid-19 is an essential element in the management of, and the eventual solution to the public health crisis. Vaccination shall play a central role in saving lives, containing the pandemic, protecting health care systems, and helping restore the EU economy.⁵ As Europe learns to live with the pandemic, it is necessary that the Member States identify a vaccination strategy. However, how shall the vaccination strategy strike a balance between individual and collective risks and benefits deriving from vaccination? How shall pro-vaccination behaviour be incited, reducing the vaccination hesitancy without compromising individual rights and freedoms? Which solutions are currently envisaged by the Member States? Which role shall the EU institutions play to ensure the necessary coordination?

¹ WHO, 'Immunization', <https://www.who.int/news-room/facts-in-pictures/detail/immunization> (accessed January 21, 2021).

² NUFFIELD COUNCIL ON BIOETHICS, *Public health: ethical issues*, 2007, p. 53 and ss.

³ Katharina T. Paul, Kathrin Loer, 'Contemporary vaccination policy in the European Union', *Journal of Public Health Policy*, 2019, p. 168.

⁴ WHO, 'Vaccine Hesitancy: what it means and what we need to know in order to tackle it', https://www.who.int/immunization/research/forums_and_initiatives/1_RButler_VH_Threat_Child_Health_gvirf16.pdf?ua=1 (accessed January 21, 2021).

⁵ EU COMMISSION, Communication from the Commission to the European Parliament and the Council, *Preparedness for Covid-19 vaccination strategies and vaccine deployment*, COM(2020) 680 final, p. 2.

Against this backdrop, we carried out under the request, and for the benefit of, the Luxembourgish Ministry of Health (the 'Ministry'), the research detailed herein (the 'Research'). The Research, conducted under the supervision of Prof. H  l  ne Ruiz Fabri, was developed and led by Dr. Alessandra Donati, with the collaboration of several researchers of the Max Planck Institute Luxembourg (Dr. Olivier Baillet, Dr. Lily Martinet, Bianca Nalbandian and Dominik Jordi Ornig).

The Research has been divided into two parts corresponding to the main research questions that we developed.

- a) In the 1st part, we analyzed whether Covid-19 vaccination policy shall envisage compulsory measures or, contrariwise, shall be based on citizens' voluntary adherence. To answer this question, we examined the case-law of the European Court of Human Rights and the main recommendations issued by the European Union and the World Health Organisation. The purpose of the 1st part is to define and assess the general legal framework supporting the selected States in the establishment of their vaccination policies.
- b) In the 2nd part, we conducted a comparative analysis between the Member States indicated by the Ministry (France, Belgium, Austria, Germany) and Switzerland to analyse the vaccination strategy of these countries in general terms and with specific reference to Covid-19 vaccination. The purpose of the 2nd part is to understand and compare the decisions taken at the level of the selected countries as to their vaccination policies. In this regard, we checked:
 - (i) whether these countries have a mandatory, voluntary or hybrid vaccination system;
 - (ii) which entities (public or private) are entrusted with the power to impose a vaccination;
 - (iii) which instruments (law, regulation, decree) are used to deal with vaccination;
 - (iv) which are the consequences in case of non-compliance with a mandatory vaccination policy;
 - (v) which is the liability of the State in case of damages resulting from a mandatory vaccination;
 - (vi) which policy instruments are used to incentive (pro) vaccination behaviour; and
 - (vii) which is the intention of the country as to the Covid-19 vaccination and, namely, if: (A) the vaccination will be made mandatory or voluntary, (B) which groups of the population, and with which hierarchy will be concerned by vaccination, (C) in case of voluntary vaccination if other means of indirect obligation are envisaged, for example, the creation of vaccination/immunity passport, and (D) if the country intends to relax the existing restrictive measures for vaccinated people.

With regard to the scope and goals of our research, it is worth noting the following:

- a) Given the mandate received by the Ministry and due to time constraints, the Research does not set forth any policy recommendations concerning vaccination strategies. The Research has a descriptive nature aiming at providing an overview of the existing laws, regulations, and practices governing the vaccination strategy within the scope of our analysis.
- b) Considering the continuously evolving nature of the recommendations and decisions as to Covid-19 vaccination, all the references and conclusions indicated in the Research shall be regarded as relating to the available information up to January 22nd, 2021.

The Research results are detailed under Sections A (General Framework) and B (Comparison between selected countries) below.

B. General Framework

B.1. Research Question

Shall Covid-19 vaccination policy envisage compulsory measures or, contrariwise, shall be based on citizens' voluntary adherence? In this regard, which lessons can be learned by analysing the case law at the European Court of Human Rights and the recommendations issued by the European Union and by the World Health Organisation?

B.2. Our Findings in a Nutshell

- For the time being, there is no case law at the **European Court of Human Rights** (ECtHR) concerning Covid-19 vaccine. However, the analysis of previous case law on the compatibility of mandatory vaccination in general to the European Convention on Human Rights (ECHR) provides some guidelines on the Court approach to a compulsory Covid-19 vaccine. It seems that, given this jurisprudence, the measure of mandatory vaccination is deemed as compatible with the ECHR, provided the measure is taken in pursuance of a legitimate aim, it is necessary for a democratic society, and it is suitable for the individual concerned.
- According to Article 168 of the Treaty on the Functioning of the European Union (TFEU), the responsibility for health policy (including vaccination policies) lies mainly with the Member States and the **EU institutions** are entitled only to support and coordinate the action of the Member States. Against this backdrop, the EU Commission did not enter into the debate whether Covid-19 vaccination should be mandatory or voluntary on a national level but insisted more broadly on the necessity to carry out an effective, consistent and transparent wide-reaching communication to build public confidence on Covid-19 vaccines.
- The **World Health Organization** (WHO) expressed a negative opinion on the opportunity to carry out a mandatory Covid-19 vaccination. The WHO recognised that persuading people on a Covid-19 vaccine's merits would be a much fitter strategy. For the WHO, serving the population with reliable data specifically on the benefits of the vaccine through information campaigns and making vaccines available to priority groups such as hospital workers and the elderly, would prove more effective than implementing mandatory vaccination policies.

B.3. Detailed Analysis

B.3.1. Vaccination at the European Court of Human Rights

With the rolling out of the Covid-19 vaccines worldwide, it is increasingly discussed whether vaccination policies shall envisage compulsory measures or, contrariwise, preferably be based on citizens' voluntary adherence. In this connection, one of the many questions arisen is whether mandatory vaccination might be seen as an unduly interference with human rights. These rights encompass, for instance, the right to respect private life, the right to education, the right to work, the right to privacy and others, which might find protection under the ECHR.⁶ To address such debate, provided below is an analysis of the ECtHR jurisprudence concerning mandatory vaccination policies and their impact on citizens' fundamental rights. This analysis might help draw some reflection on whether, according to the ECtHR, states may or may not oblige their citizens to undertake a compulsory Covid-19 vaccination.

(i) Vaccination at the ECtHR

With the case of *Acmanne and others v. Belgium*, the European Commission of Human Rights (EComHR) underlined already in 1984 how a requirement to undergo medical treatment (or a vaccination), on pain of a penalty, may amount to an interference with the right to respect for private life.⁷ Subsequently, in 1998 with the *Boffa and others v. San Marino* case, the EComHR further defined this concept by affirming that, in that instance, the interference arising from the compulsory vaccination of the applicants' children against hepatitis B was inspired by one of the legitimate aims listed in ECHR Article 8(2). Specifically, the need to protect the public's health and the persons concerned (para 34).⁸ Article 8 of the Convention provides that: 'everyone has the right to respect for his private and family life, his home and his correspondence' and, at the second paragraph, 'that shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary for a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or the protection of the rights and freedoms of others'. After determining that such interference was justified for it was in pursuance of a legitimate aim, the Commission moved further to examine whether it was also 'necessary in a democratic society' as required by the second limb of Article 8 (para 53). According to established ECtHR jurisprudence, the notion of 'necessity in a democratic society' demands a pressing social necessity matching the degree of interference. In particular, this interference must be proportionate to the legitimate aim pursued.⁹ In the case at hand, the EComHR underlined how the domestic authorities enjoy a certain margin of appreciation. The degree and extent of such a margin depend not only on the aim of the interference but also on its

⁶ See Council of Europe, 'Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) as Amended by Protocol No. 11.' Council of Europe Treaty Series 155 (CoE, 1988) <<https://www.echr.coe.int/Pages/home.aspx?p=basictexts&c>> Accessed 20 January 2021.

⁷ *Acmanne and others v. Belgium*, App no 10435/83 (ECtHR, 10 December 1984).

⁸ *Boffa and other 13 v. San Marino*, App no 26536/95 (ECtHR, 15 January 1998).

⁹ *Dudgeon v. the United Kingdom*, App no 7525/76 (ECtHR, 22 October 1981), para 51-53.

form (para 35). First, the Commission stated that the applicant failed to show the vaccine would cause severe problems in his child's specific case. It then specified that the measure taken had not exceeded the margin of appreciation enjoyed by the State. Indeed, a similar vaccination campaign, obliging individuals not to endanger others' health in case their own life is not at risk, had been enacted in most countries (para 35).

In 2010 the ECtHR was requested to rule in the *Jehovah's Witnesses of Moscow v. Russia* case, which referred to mandatory vaccination during an epidemic.¹⁰ In this instance, the ECtHR held that: *'free choice and self-determination were themselves fundamental constituents of life and that, absent any indication of the need to protect third parties, the State must abstain from interfering with the individual freedom of choice in the sphere of health care, for such interference can only lessen and not enhance the value of life'* (para 136). One could read the cited passage as signalling that the right to private life could, in principle, be limited for the protection of third parties.¹¹ Yet, the Court held the interference with the applicants' right to freedom of religion and association was not justified in this case. In fact, the domestic courts did not offer 'relevant and sufficient' reasons demonstrating that the applicant community forced families to break up, that it infringed the rights and freedoms of its members or third parties, that it incited its followers to commit suicide or refuse medical care, that it impinged on the rights of non-Witness parents or their children, or that it encouraged members to refuse to fulfil any duties established by law. According to the Court, the domestic courts' sanction was excessively severe, given the domestic law's lack of flexibility and disproportionate to pursuing a legitimate interest.¹²

In the 2012 *Solomakhin v. Ukraine* case¹³, the applicant was involuntarily vaccinated against diphtheria during an outbreak. In line with its case-law, the ECtHR held that a person's physical integrity was covered by the concept of 'private life' protected by Article 8 of the Convention. The Court emphasised that a *'person's bodily integrity concerns the most intimate aspects of one's private life, and that compulsory medical intervention, even if it is of a minor importance, constitutes an interference with this right'* and that a *'compulsory vaccination – as an involuntary medical treatment – amounts to an interference with the right to respect for one's private life, which includes a person's physical and psychological integrity, as guaranteed by Article 8(1)'* (para 33).¹⁴ It was also further noted that such interference was provided by law and pursued the legitimate aim of protecting public health. The Court then examined whether such interference was to be deemed necessary in a democratic society as required by Article 8(2) of the Convention. At para 36, the Court expressly stated that *'the interference with the applicant's physical integrity could be said to be justified by the public health considerations and necessity to control the spreading of infectious diseases in the region'*. Moreover, the Court highlighted how the medical staff had checked the applicant's suitability for vaccination prior to carrying out the vaccination. This, in the eye of the Court, entailed that necessary precautions had been taken to ensure that the medical intervention would not be to the applicant's harm *'to the extent that would upset the balance of interests*

¹⁰ *Jehovah's Witnesses of Moscow v. Russia*, App no 302/02 (ECtHR, 10 June 2010).

¹¹ Spyridoula Katsoni, 'Do compulsory vaccinations against COVID-19 violate human rights? An assessment of the measure's compatibility with the European Convention on Human Rights' (*volkerrechtsblog*, 2 December 2020) <<https://voelkerrechtsblog.org/articles/do-compulsory-vaccinations-against-covid-19-violate-human-rights/>> Accessed 7 January 2021.

¹² And that, accordingly, a violation of Article 9 of the Convention, read in the light of Article 11, had occurred.

¹³ *Solomakhin v. Ukraine*, App no 24429/03 (ECtHR, 15 March 2012).

¹⁴ See also *Y.F. v. Turkey*, App no 24209/94 (ECtHR 22 July 2003).

between the applicant's personal integrity and the public interest of protection health of the population' (para 36).¹⁵ For these reasons – also coupled with the fact that there was no evidence that the vaccine in question had harmed the applicant's health – the Court found no violation of Article 8 of the Convention. By this judgment, it has been noted how the Court seems to have laid down two criteria to assess the necessity of the interference by a compulsory vaccination in a democratic society.¹⁶ The first is public health considerations that demand the control of the spreading of infectious diseases. The second is assessing whether necessary precautions had been taken with regard to the suitability of vaccination for the individual case at hand.¹⁷

More recently, the Grand Chamber of the ECtHR has been requested to pronounce on compulsory vaccination and the consequences of some Czech parents' refusal to comply with the Czech national legislation thereon in the pending *Vavříčka and others v. the Czech Republic* case. Self-evidently, this case might be seen as pivotal, for the Grand Chamber will rule on the issue of a mandatory vaccine in the context of the Covid-19 Pandemic. This case originates from some parents' refusal to administer all or part of the compulsory vaccines in the Czech Republic to their children. The Czech authorities sanctioned the applicant parents based on noncompliance with domestic law. The sanctions were a fine for one parent, and the prevention from enrolling their children in nursery school for the other five parents. The parents mainly invoked their right to respect their private and family life, freedom of conscience, and the right to education.¹⁸ Specifically, the Grand Chamber will have to judge whether the obligation to vaccinate and the sanctions taken by the State against the parents' respect freedom of conscience and the right to education and their right to respect for their private and family life (art. 8 and 9 of the Convention and art. 2 of Protocol No.1 to the Convention). Interestingly enough, in one of the submitted written observations to the Court made by non-parties to the proceeding, the European Centre for Law and Justice (ECLJ) underlined that Europe is quite divided on the subject of mandatory vaccines.¹⁹ Several European states have not set up any mandatory vaccination policy, and some others have acknowledged the right of individuals to conscientious objection. The ECLJ seems to view this lack of uniform approach as implying that States enjoy a wide margin of appreciation.²⁰

¹⁵ *Solomakhin v. Ukraine* (n 13) at 6.

¹⁶ Aikaterini Tsampi, 'Public Health and the European Court of Human Rights: Using Strasbourg's Arsenal in the COVID-19 Era' (*Global Health Law Groningen*, 27 March 2020) <<https://www.rug.nl/rechten/onderzoek/expertisecentra/ghlg/blog/public-health-and-the-european-court-of-human-rights-27-03-2020?lang=en>> Accessed on 5 January 2021.

¹⁷ However, it is worth recalling that the existence of a public health necessity and the suitability of the individual for vaccination recently elaborated by the Court seems to have been already enucleated by the Commission in the *Boffa v. San Marino* case (see n 8 at 1-2).

¹⁸ Registrar of the Court, 'Grand Chamber to examine case concerning compulsory vaccination' (ECHR, 6 January 2020) <<https://hudoc.echr.coe.int/app/conversion/pdf?library=ECHR&id=003-6600415-8750713&filename=Relinquishment%20in%20favor%20of%20the%20Grand%20Chamber%20Vavricka%20v.%20Czech%20Republic%20and%205%20other%20applications.pdf>> Accessed 20 January 2021.

¹⁹ See European Center for Law and Justice, 'Observations écrites soumises en tierce intervention à la Cour européenne des droits de l'homme par le Centre européen pour le droit et la justice (ECLJ), dans l'affaire Pavel VAVŘIČKA et autres c. République tchèque (Requête n°47621/13)', (ECLJ, 1 March 2016) <<http://media.aclj.org/pdf/OBS-ECLJ-Pavel-VAV%20C5%981%20C4%8CKA-et-autres-c.-R%20C3%A9publique-Tch%20C3%A8que.pdf>> Accessed 5 January 2021

²⁰ See, *X, Y and Z v. the United Kingdom*, App no 75/1995/581/667 (ECtHR, 22 April 1997), para 44.

(ii) Covid-19 Vaccination at the ECtHR

At the moment of writing, there is no case-law of the Strasbourg Court concerning Covid-19 vaccine.²¹ However, the above-analysed case law on the compatibility of mandatory vaccination to the ECHR provides some guidelines on the Court approach to the issue of a compulsory Covid-19 vaccine (or, more broadly, to the point of vaccines in pending cases such as the [Vavříčka and others v. the Czech Republic](#)). It seems that, given the previous jurisprudence, the measure of compulsory vaccination is deemed as compatible with the ECHR, provided the measure is taken in pursuance of a legitimate aim, it is necessary in a democratic society, and it is suitable for the individual concerned. Consequently, one shall query whether a potentially compulsory Covid-19 vaccine can be regarded as in pursuance of an (i) legitimate aim,²² (ii) necessary for the meaning of Convention and (iii) suitable for the recipients. It also holds true that the unprecedented circumstances may change the Court's course of reasoning. Indeed, States efforts to combat the ongoing pandemic, which has demanded unparalleled constrictions of citizens' rights and freedoms, might call for the Court reconsideration of the very balancing of rights exercise given the crucial importance of the right to health under the current times. In this connection, it is useful to recall how the margin of appreciation enjoyed by the States in dealing with pandemics was relatively wide in the cases above, which is why one may be drawn to think that a putative measure of compulsory Covid-19 vaccination, might not per se be seen as a failure in the balancing exercise to be performed by States with regard to the competing interests.²³ Nonetheless, another essential parameter of such balancing exercise remains to be evaluated, namely whether the legitimate aim of public health protection could be reached through less intrusive means. May public health protection be pursued by means of, for instance, the compulsory vaccination of a specific age group, the obligation of mandatory vaccination to the whole population might tilt the balance to a finding of unlawful interference. Moreover, as mentioned above, to be compatible with ECHR a compulsory vaccination should be suitable for each individual required to undergo it. As reasoned in the [Boffa and others v San Marino](#) case, the vaccination's suitability is to be assessed on an *ad hoc* basis. In contrast, the burden of proof on the demonstration of the reason(s) why in the specific case mandatory vaccination is unsuitable lies with the individual at issue, who will have to demonstrate a probability that the vaccine will cause severe problems to her/his health.²⁴ In conclusion, the threshold to be met for the ECtHR to show a mandatory vaccination's unlawfulness seems to be relatively high.

²¹ On 3 December 2020, the Committee of the European Court of Human Rights decided in the case of *Le Mailloux v. France*, App no 18108/20 (ECtHR, 15 November 2020) on the adequacy of French Covid-19 measures. The applicant, a French national, invoking Articles 2, 3, 8 and 10 of the Convention complained of the 'failure by the State to fulfil its positive obligations to protect the lives and physical integrity of persons under its jurisdiction. He complained in particular of restrictions on access to diagnostic tests, preventive measures and specific types of treatment, and interference in the private lives of individuals who were dying of the virus on their own'. The Court found that the applicant had not demonstrated he had been directly affected by such measures, and that he should have had first impugned the compatibility of such measures with the Convention before the French courts. See [Kushtrim Istrefi](#), 'ECHR Decides the First Case Regarding Covid-19 Measures' (*ECHRblogspot*, 3 December 2020) <http://echrblog.blogspot.com/2020/12/echr-decides-first-case-regarding-covid.html> Accessed 7 January 2021.

²² Assuming that the measure was introduced through an accessible and foreseeable legal provision it should be deemed as legitimate, (n 18, at 6).

²³ *Ibid*, at 6.

²⁴ *Ibid*.

B.3.2. Vaccination Under EU law

According to Article 168 of the TFEU, the responsibility for health policy (including vaccination policies) lies mainly with the Member States, and the EU institutions are entitled only to support and coordinate the action of the Member States. Despite the fact that national strategies may differ due to divergent healthcare system capacities, population structure or epidemiological situation, it is important to ensure the coordination of national responses to the pandemic. This is essential to protect not only the functioning of the EU internal market but also the pursuit by the Member States of a high level of protection of human health. Against this backdrop, the EU Commission has issued several documents setting forth a common European vaccination framework.²⁵ Particularly relevant for the research question at stake, is the communication issued by the Commission on October 15, 2020, concerning the preparedness for Covid-19 vaccination strategies and vaccine deployment.²⁶ Herein, the Commission recalls that the development and swift global deployment of safe and effective vaccines against Covid-19 remains an essential element in the management of and the eventual solution to the public health crisis. Vaccination will play a central role in saving lives, containing the pandemic, protecting health care systems, and helping to restore the EU economy. In this context, 'it is imperative that the Member States follow a common vaccination strategy for vaccine deployment'.²⁷

Within the boundaries set forth by the TFEU, and to ensure the coordination of the Member States, the Commission sets out key elements to be taken into consideration by the Member States for their Covid-19 vaccination strategies. In this regard, the Commission does not enter (for lack of competence) into the debate whether Covid-19 vaccination should be mandatory or voluntary on a national level but insists more broadly on the necessity to carry out an effective, consistent and transparent wide-reaching communication on vaccines.²⁸ This communication is essential to build public confidence in the vaccines. This is particularly true that the very speed at which Covid-19 vaccines are currently being developed, is likely to make the build-up of trust in such vaccines particularly challenging, with citizens raising concerns about the safety of vaccines developed in such a short timeframe. Therefore, it is important that the Member States provides citizens with objective, accurate, factual and targeted information about the importance and the deployment of Covid-19 vaccines.²⁹ Moreover, as the availability of the vaccines improves, vaccines strategies and their objectives will need to be adjusted accordingly. To meet these objectives and, considering the impossibility to vaccinate all the population at the same time, the Commission invites the Member States to prioritise the vaccination to the following groups (unranked): healthcare workers; persons over 60 years of age; persons whose state

²⁵ EU Commission, Commission Decision approving the agreement with Member States on procuring Covid-19 vaccines on behalf of the Member States and related procedures, COM (2020) 4192 final;; EU COMMISSION, Communication from the Commission to the European Parliament, the European council and the Council, *A united front to beat COVID-19*, COM(2021) 35 final. EU Commission, Communication from the Commission to the European Parliament, the European council, the Council and the European investment bank, *EU Strategy for COVID-19 vaccines*, COM/2020/245 final; EU Commission, Communication from the Commission to the European Parliament, the European council and the Council, *A united front to beat COVID-19*, COM (2021) 35 final.

²⁶ EU Commission, Communication from the Commission to the European Parliament and the Council, *Preparedness for Covid-19 vaccination strategies and vaccine deployment*, COM (2020) 680 final.

²⁷ *Ibid*, p 2.

²⁸ *Ibid*, p 4.

²⁹ *Ibid*, p 9.

of health makes them particularly at risk; essential workers outside the health sector; workers who cannot socially distance vulnerable socioeconomic groups, and other groups at higher risk.³⁰

B.3.3. Vaccination at the World Health Organization

In a public statement delivered on December 2020, the WHO officers stated that the UN health institution does not foresee mandatory vaccinations being introduced worldwide to stop the spread of the coronavirus.³¹ WHO officers expressly said that making the Covid-19 vaccine compulsory would be the wrong road to take, as history is not exempted from examples of past mandated vaccine policies which backfired creating greater opposition to vaccines instead.

The WHO has recognised that persuading people on a Covid-19 vaccine's merits would be a much fitter strategy. Serving the population with reliable data specifically on the benefits of the vaccine through information campaigns and making vaccines available to priority groups such as hospital workers and the elderly, would prove more effective than implementing mandatory vaccination policies. According to the statements above, it would remain up to individual countries the extent to which they intend to conduct their vaccination campaigns against the coronavirus pandemic.³²

In light of a widespread feeling of vaccines mistrust among populations, WHO experts stressed that convincing the public to take the vaccines as they become available might prove a rather difficult task.³³ In this sense, the WHO Strategic Advisory Group of Experts on Immunization (SAGE) has worked on several documents that aims at providing countries with a proper guide as to the enactment of their vaccination policies vis-à-vis Covid-19.³⁴ The next SAGE (extraordinary) virtual meeting will be held on Thursday 21 January 2021 to officially propose recommendations to WHO on the use of Covid-19 vaccine(s).³⁵

In April and later in November 2020, the WHO published specific guidelines for countries to adjust public health and social measures to the next phases of the Covid-19 response.³⁶ In connection to the

³⁰ Ibid, p 11.

³¹ Reuters, 'WHO does not envisage Covid-19 vaccines being made mandatory' *Reuters* (7 December 2020) <<https://www.reuters.com/article/us-health-coronavirus-who/who-does-not-envisage-covid-19-vaccines-being-made-mandatory-idUSKBN28H2DF>> Accessed 8 January 2021.

³² Kate O'Brien, director of the WHO's immunisation department said that she does not think that 'mandates are the direction to go in here, especially for these vaccines' and that 'is a much better position to actually encourage and facilitate the vaccination without those kinds of requirements' and *ibid*.

³³ See, *Roffa* (n. 8).

³⁴ SAGE, 'Critical Evidence Questions for Covid-19 Vaccines Policy Making Advisory Group of Experts (SAGE) on Immunization Working Group on Covid-19 Vaccines. (SAGE, 15 October 2020) <<https://www.who.int/publications/m/item/critical-evidence-questions-for-covid-19-vaccines-policy-making>> Accessed 13 January 2021.

³⁵ WHO, Extraordinary meeting of the Strategic Advisory Group of Experts on Immunization (SAGE) on 21 January 2021 <[https://www.who.int/news-room/events/detail/2021/01/21/default-calendar/extraordinary-meeting-of-the-strategic-advisory-group-of-experts-on-immunization-\(sage\)--21-january-2021](https://www.who.int/news-room/events/detail/2021/01/21/default-calendar/extraordinary-meeting-of-the-strategic-advisory-group-of-experts-on-immunization-(sage)--21-january-2021)> Accessed 13 January 2021.

³⁶ WHO, 'Considerations in adjusting public health and social measures in the context of Covid-19' (WHO, 2021) <<https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance/critical-preparedness-readiness-and-response-actions-for-covid-19>> (accessed 8/1/2021).

Covid-19 vaccine rollouts,³⁷ WHO director-general Tedros Adhanom Ghebreyesus urged countries, which have started deploying vaccines, to prioritise those most in need. According to the WHO guidelines, health workers at high risk of infection should be a top priority, followed by people at the highest risk of severe disease or death due to their age, thereby easing health systems' pressure. The director-general said they should later be followed by people with a higher risk of severe disease due to underlying conditions, and marginalised groups at higher risk.³⁸

Behavioural research conducted by the WHO Technical Advisory Group (TAG), and published in October 2020, has flagged how one of the most significant problems related to Covid-19 vaccination lies in its acceptance from the public. As the WHO stated, "vaccine acceptance is the next hurdle".³⁹ The TAG report aimed to extract all-encompassing evidence-based principles applicable across a wide range of populations and settings. However, individual and group differences might not have been thoroughly considered by this study, which, as the TAG itself acknowledges, should be further deepened.⁴⁰ Most importantly, by this report, WHO TAG shown how vaccine acceptance, along with the vaccination uptake, can be increased by adopting three strategies, as summarised below:

- Creating an enabling environment – which means making vaccination easy, quick and affordable, in all relevant respects.
- Harnessing social influences – especially from people who are particularly trusted by and identified with members of relevant communities, *i.e.* healthcare workers, institutional staff, scientists etc.
- Increasing motivation – through transparent dialogue and clear communication concerning uncertainty and risks, including the safety and benefits of vaccination. A standard theme is an engagement with communities in developing and implementing ad hoc strategies to support vaccination uptake. According to the TAG, building trust and ensuring that messages come from trusted endorsers are essential to a successful strategy. Engaging in dialogue with communities from the very beginning to understand their different motivations can be a good starting point for designing strategies to tackle specific barriers. Lessons learned from other outbreaks (*e.g.* the 2018 Ebola outbreak in the Democratic Republic of Congo) also highlight the need to monitor community sentiments and needs through regular feedback mechanisms to adapt strategies accordingly.⁴¹ It also has been bore into mind that behavioural drivers can

³⁷ Also see European Centre for Disease Prevention and Control, 'COVID-19 vaccination and prioritisation strategies in the EU/EEA', (ECDC, 22 December 2020) <https://www.ecdc.europa.eu/sites/default/files/documents/COVID-19-vaccination-and-prioritisation-strategies.pdf>. Accessed 21 January 2021.

³⁸ See, WHO, 'Evidence to recommendations for Covid-19 vaccines: Evidence framework - A framework to inform the assessment of evidence and formulation of subsequent Covid-19 vaccine recommendations' (WHO, 10 December 2020). World Health Organization, 'SAGE values framework for the allocation and prioritization of COVID-19 vaccination' (WHO, 14 September 2020) <<https://apps.who.int/iris/handle/10665/334299>> Accessed 8 January 2021. Also see WHO, 'SAGE roadmap for prioritizing uses of Covid-19 vaccines in the context of limited supply' <www.who.int/publications/m/item/who-sage-roadmap-for-prioritizing-uses-of-covid-19-vaccines-in-the-context-of-limited-supply> (accessed 8/1/2021).

³⁹ World Health Organization, 'Vaccine acceptance is the next hurdle' (WHO, 4 December 2020) <<https://www.who.int/news-room/feature-stories/detail/vaccine-acceptance-is-the-next-hurdle>> Accessed 13 January 2021.

⁴⁰ For instance, the TAG report has not taken into consideration factors such as that part of the population may be hesitant toward vaccination due to beliefs that they have a low risk of infection; others may have concerns about vaccines' safety. In contrast, others may be hesitant because of religious values or lack of trust in the health system.

⁴¹ UNICEF - CASS, 'Social Science Support for COVID-19: Lessons Learned Brief 4 Social sciences evidence on barriers to healthcare seeking during the DRC Ebola outbreak' (UNICEF-CASS, 22 May 2020) <<https://reliefweb.int/report/world/social-science-support-for-covid-19-lessons-learned-brief-4-social-sciences-evidence-on-barriers-to-healthcare-seeking-during-the-drc-ebola-outbreak>>

shift in time. Consequently, monitoring and responding to these changes in a timely manner becomes essential.

[science-support-covid-19-lessons-learned-brief-4-social-sciences-evidence](#)> Accessed 8 January 2021. These briefs have been developed by UNICEF for the CASS, under Wellcome-DFID grant. They have been reviewed and contributed to by partners from GOARN-research, Anthological, London School of Hygiene and Tropical Medicine (LSHTM), Harvard Humanitarian Initiative (HHI), International Federation of the Red Cross (IFRC), Institute of Tropical Medicine Antwerp (ITM), Translators without Borders (TWB), MSF-Epicenter, NOVETTA and Oxford University.

C. Comparison Between Selected Countries

C.1. Research Questions

1. Is the vaccination regime mandatory, voluntary or hybrid?
2. If the vaccination is mandatory:
 - a) Which public authorities are competent to deal with vaccination issues?
 - b) Which instruments (law, regulation, decree) are used to deal with vaccination?
 - c) Which are the consequences in case of non-compliance? Is a penalty system provided for? Which penalties are established (financial penalties, educational penalties, *i.e.* interdiction for the non-vaccinated child to go to school, loss of parental rights)?
 - d) At your knowledge, was the State/government ever considered liable in the past concerning any vaccination issue? Can you refer to any relevant cases?
3. If vaccination is made voluntarily:
 - a) Which entities (public or private) may impose an obligation to carry out a vaccine?
 - b) Which policy instruments are used to incentive (pro) vaccination behaviour (vaccination campaigns, parental initiative, information tools, other behavioural tools)?
4. Which is the intention of the country as to the Covid-19 vaccination?
 - a) Will the vaccination be made mandatory or voluntary?
 - b) Which groups of the population, and with which hierarchy will be concerned by vaccination?
 - c) Where will the vaccination be executed (hospitals, vaccination centres, etc....?)
 - d) If voluntary, are other means of indirect obligation envisaged, for example, the creation of vaccination passport? In which cases and by which entities (public or private) could these indirect means be applied?
 - e) Will restrictive measures (mask, social distancing, eventual lockdown, etc.) be relaxed for vaccinated people or not? If yes, after the first injection or subject to the second?

C.2. Our Findings in a Nutshell

- The analyzed countries have opted for different **vaccination regimes** either **mandatory** for certain diseases and/or groups of the population or **voluntary**. In most cases, **a hybrid system** combining mandatory and voluntary vaccination has been implemented.
- In all examined countries, **public authorities** with the exclusion of private entities are entitled to manage mandatory vaccinations by means of legislative or regulatory instruments. In case of **non-compliance with mandatory vaccination**, the country provides different consequences ranging from parental responsibility (that in some cases can bring to criminal responsibility) to the impossibility for the children to attend school and the termination of the employment contract of the employee who didn't comply with his/her mandatory vaccination. Even if no specific cases have been identified in the jurisprudence, the selected countries recognize in principle the **liability of the State** for the health damages suffered in relation to mandatory vaccination.
- In all analyzed countries, even in case of **voluntary vaccination**, only public authorities are entrusted with the power to impose vaccination obligations. To incentivize **pro-vaccination** behaviours, the majority of the countries have launched large information campaigns concerning the benefits of vaccination.
- As to **Covid-19 vaccination**, all the analyzed countries envisage, for the time being, to deploy a **voluntary vaccination** with a priority being given to specific groups of the population. According to this priority list, **different places** for the execution of the vaccine have been defined. **No relaxation** of the current restrictive measures has been announced for vaccinated people. The implementation of a **vaccination/immunity passport** remains highly controversial in all the countries.

	QUESTION	FRANCE	BELGIUM	AUSTRIA	GERMANY	SWITZERLAND
1.	Is the vaccination regime mandatory, voluntary or hybrid?	<p>The vaccination regime in France is hybrid; it combines mandatory vaccinations and voluntary vaccinations. Two types of vaccinations are mandatory unless contraindication: general mandatory vaccinations (e.g. for diphtheria, tetanus, and poliomyelitis), and mandatory vaccinations for specific categories of persons exposed to professional risks of contagion (e.g. staff working in private and public institutions for elderly care). The vaccination calendar published yearly by the Ministry of Health also makes recommendations concerning different voluntary vaccinations. The vaccine against influenza is recommended, for instance, for persons older than 65 years of age, persons that are at risk of complications, and certain professionals, like travel guides.</p>	<p>It is a fragmented regime with several layers of decision-making: one vaccine (antipolyomelitis) is currently mandatory for the whole population on a federal level, and a few are for specific categories of workers (e.g. each health worker is submitted to mandatory hepatitis B vaccination, whilst workers such as farmers or veterinaries are to be vaccinated against tetanus). The rest, namely whether voluntary or mandatory, differ from one</p>	<p>The vaccination regime in Austria is voluntary for the general population. Nevertheless, according to the Austrian Epidemic Act, workers in the health sector, and specific vulnerable persons in a specific region can be asked to take precautions, including vaccinations.</p>	<p>The vaccination regime is voluntary with the exception of the rubella vaccine, which was made mandatory in March 2020.</p>	<p>There is no mandatory vaccination, but a series of recommended vaccinations established at the federal level. Nevertheless, cantonal authorities can make vaccination mandatory for certain groups of particularly exposed people, if serious danger is established.</p>

			<p>community to another. At the time being, recommended vaccines both for the French and Flemish communities are the following:</p> <p>- for children: diphtheria, whooping cough, type b Haemophilus influenzae, hepatitis B, measles, rubella (German measles) and mumps;</p> <p>for pregnant women and people older than 65: influenza.</p>			
2.	<p>If the vaccination is mandatory: a) Which public authorities are competent to deal with vaccination issues?</p>	<p>a) The Ministry of Health establishes the vaccination policy and publishes the vaccination calendar. To accomplish this task, the</p>	<p>a) The vaccination regime partly depends on the division of competences</p>	N/A	<p>a) For the rubella vaccine, federal agencies are competent for the acquisition,</p>	N/A

	<p>b) Which instruments (law, regulation, decree) are used to deal with vaccination?</p> <p>c) Which are the consequences in case of non-compliance? Is a penalty system provided for? Which penalties are established (financial penalties, educational penalties, <i>i.e.</i> interdiction for the non-vaccinated child to go to school, loss of parental rights?</p> <p>d) At your knowledge, was the State/government ever considered liable in the past concerning any vaccination issue? Can you refer to any relevant cases?</p>	<p>Ministry of Health is assisted by the <i>Haute Autorité de santé</i> (HAS), who issues opinions and recommendations on vaccination, like the inclusion of a specific vaccine in the calendar. A technical commission on vaccination (<i>Commission technique des vaccinations</i>) was created within the HAS to undertake all the missions relating to vaccination. <i>Santé publique France</i>, the national public health agency is responsible for epidemiological monitoring, the surveillance of the population's health, the prevention and promotion of health. The <i>Agence nationale de sécurité du médicament et des produits de santé</i> (ANSM), a public administrative body, evaluates the benefits and risks deriving from the use of health products including vaccines.</p> <p>b) Only law can render a vaccination mandatory because it infringes upon individual</p>	<p>within the State as laid down under article 5 sect. 1, l, 8 of the <i>Loi spéciale des réformes institutionnelles du 8 aout 1980</i>. According to that provision, Belgium's communities are responsible for health measures regarding prevention, which includes vaccination. The federal government remains responsible, under the same disposition, for 'national prophylactic measures'. This provision is interpreted as granting the federal government exclusive</p>		<p>transport and distribution to the respective regions, which are then in charge of organizing local vaccination centres and deploying the vaccine based on their own regulation.</p> <p>b) The government created a legal right to receive a vaccine against Covid-19 by means of regulation. This right is subject to the availability of vaccine doses and extends to uninsured residents of Germany. It also lays down the groups to enjoy</p>	
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		<p>liberties. A decree may suspend obligatory vaccines for all or part of the population following the epidemiological evolution and situation.</p> <p>c) As of 2018, the person, or the persons, holding parental authority are personally responsible for respecting the eleven mandatory vaccinations. A child not vaccinated may not attend childcare, school, holiday camps or any community of children. Vaccinations are declared on a health notebook (<i> carnet de santé</i>). Admittance to any collective establishment for children requires the production of this notebook. Although non-compliance with vaccination obligations is no longer an infraction since 2018, failure to comply with mandatory vaccinations may still be prosecuted under general law as endangering a minor's life. In the case of mandatory vaccines in connection with a</p>	<p>competence for mandatory vaccination only.</p> <p>b) Statute and statute-enabled decrees are used for federally mandatory vaccinations, whether for the general population or for specific categories (e.g. workers). The vaccination regime at the community level is organized <i>via</i> statute-enabled decrees.</p> <p>c) Parents who fail to comply with mandatory vaccination against poliomyelitis are punishable by a fine, 8 days to a</p>		<p>priority vaccinations.</p> <p>c) The compulsory rubella vaccination regime requires children to prove that they are immunized when entering schools or Kindergarten. A doctor's note about having passed an infection or a vaccination certificate can serve as proof. In the absence of such proof, children can be excluded from schooling, and their parents can be fined.</p> <p>d) A number of cases have been brought before</p>	
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		<p>professional occupation, non-compliance may be used as a ground to terminate an employee's work contract.</p> <p>d) We didn't find any reference to any specific case. However, the <i>Office national d'indemnisation des accidents médicaux, des affections iatrogènes et des infections nosocomiales</i> compensates all injuries resulting from a mandatory vaccination.</p>	<p>month imprisonment or only one of these sanctions. In case of several infractions within two years of the latest condemn, sanctions can be doubled. Failure to comply with mandatory vaccinations for specific categories of workers are sanctioned by the termination of their work contract.</p> <p>d) General liability regimes, criminal and civil, appear to be applicable to vaccines and could be implemented in case of health problems generated by the vaccination. Liability</p>		<p>German courts based on liability rooted in Section 60 of the German Infection Protection Act, for instance, a case of liability for vaccination-related damages that ultimately led to the exodus of the patient. Additionally, there are recent reports of out-of-court settlements between individual and public authorities for vaccination damages.</p>	
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			of the State regarding mandatory vaccination can also be implemented before administrative courts.			
3.	<p>If vaccination is made voluntarily:</p> <p>a) Which entities (public or private) may impose an obligation to carry out a vaccine?</p> <p>b) Which policy instruments are used to incentive (pro) vaccination behaviour (vaccination campaigns, parental initiative, information tools, other behavioural tools)?</p>	<p>a) Only the law can impose a mandatory vaccination. Private entities may not impose additional obligations.</p> <p>b) The 2016 action plan to renovate France's vaccination policy provided for a citizens consultation, which entailed two opinion surveys, two juries (one composed of citizens and the other of professionals), and a participatory online space to collect opinions on vaccination. In 2019, the government launched the first national promotion campaign on vaccination with posters, a television spot, and, at the</p>	<p>a) Regional Communities and their governments may impose obligations by requiring prior vaccination for access to public services. Vaccination can only be made mandatory through an act of Parliament. Private employers cannot refuse or discriminate workers who have refused to submit to vaccinations,</p>	<p>a) While the ministry of health and the chancellery organize the funding and acquisition of vaccines, the nine Austrian regions ("Bundesländer") are competent to distribute them according to the federal vaccination plan. Employers are not entitled to impose vaccinations on employees. However, the refusal by an employee to carry out a vaccination</p>	<p>a) The German Infection Protection Act allows the federal ministry of health to order vaccination by regulation in case of a transmissible disease with severe symptoms exists within the population, and an epidemic distribution is foreseeable. These criteria seem to be fulfilled for the case of the Covid-19 pandemic.</p>	<p>a) The legal basis to answer the question is the <i>Loi fédérale sur la lutte contre les maladies transmissibles de l'homme</i> of 2012. Two provisions may allow the <i>Conseil fédéral</i> to decide extraordinary measures: Article 6 (particular situations) and Article 7 (extraordinary situations) Article 6 clearly states that the <i>Conseil fédéral</i> may 'declare compulsory vaccinations for endangered population groups, particularly exposed people and people carrying out certain activities.' Pursuant to Article 7, in case of an extraordinary situation, the <i>Conseil federal</i> can impose the</p>

		<p>regional level, information and preventions booths during the European Immunization Week. An important information tool is the 'vaccination info service' website designed under the supervision of <i>Santé publique France</i>.</p>	<p>which are not legally mandatory.</p> <p>b) Information and promotion of pro-vaccination behaviours are mainly conducted via the vaccination calendars that adopted and implemented by Belgium's main communities. They are publicly available on their respective websites.</p>	<p>recommended by the employer can be a cause of termination of his/her contract.</p> <p>b) Austria is introducing a central digital register of vaccinations. This shall enable a reminder system, which allows to individually reach persons that are not or no longer immunised. Moreover, multi-channel information campaigns have been launched to support pro-vaccination behaviours.</p>	<p>Generally, this requires the consent of the federal chamber of the German parliament but can be issued without for a maximum duration of one year in urgent cases. As long as there is no publicly imposed obligation, employers are not entitled to require vaccinations.</p> <p>b) A multi-channel information campaign is underway with information being distributed through federal and regional newspapers, radio, tv-spots, homepages and a</p>	<p>necessary measures for the entire or a part of the country. At the cantonal level, Article 22 of the law can allow making certain vaccinations mandatory under the same limitations and conditions.</p> <p>b) Cantonal authorities may play a role of incitation to vaccination by informing the population about the national vaccination plan as well as by regularly checking the vaccination status of children during their mandatory schooling and of any person subject to a recommended vaccination.</p>
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					hotline to encourage people to get vaccinated.	
4.	<p>Which is the intention of the country as to the Covid-19 vaccination?</p> <p>a) Will the vaccination be made mandatory or voluntary?</p> <p>b) Which groups of the population, and with which hierarchy will be concerned by vaccination?</p> <p>c) Where will the vaccination be executed (hospitals, vaccination centres, etc....?)</p> <p>d) If voluntary, are other means of indirect obligation envisaged, for example, the creation of vaccination passport? In which cases and by which entities</p>	<p>a) For the time being, Covid-19 vaccination is voluntary and free.</p> <p>b) In the first phase (January-February 2021), persons living and working in nursing homes or assisted living, people older than 75 years of age living at home, firefighters, health and home care professionals older than 50 years of age or suffering from comorbidities are prioritized to be vaccinated. The second phase starting in March 2021, concerns persons that are affected by a risk factor (aged between 65 and 74 years old, suffering from a chronic illness) and health professionals. The third phase opens the vaccination to the rest of the population.</p>	<p>a) The Interministerial Conference, which includes both federal and regional governments, decided on the 19th of November 2020 that Covid-19 vaccination would be voluntary.</p> <p>b) Belgium's vaccination strategy is divided into three stages, which correspond to three categories of people and the projected availability of vaccine doses: - Phase I a): residents and staff</p>	<p>a) Reiterated press releases underscore the government's intention to carry out vaccinations on a voluntary basis only.</p> <p>b) The current vaccination strategy envisages three stages of a vaccine deployment. The first stage in January and February 2021 shall target high-risk patients as defined by a medical commission, over 80-year-olds, employees in the health sector and residents of different homes. The second stage will target senior citizens below</p>	<p>a) Reiterated press releases underscore the government's intention to carry out voluntary vaccination only.</p> <p>b) The German vaccination strategy envisages two phases, the first of which is subdivided into two sub-stages. During the first phase, a centralized vaccination deployment targets vulnerable group. The second phase will then entail a widespread decentralized</p>	<p>a) The Minister of Health Alain Berset and the <i>Office fédéral de la santé publique</i> stated clearly the absence of obligation: no more than with any other disease, there will not be general compulsory vaccination against Covid-19.</p> <p>b) The <i>Office fédéral de la santé publique</i> established a 5-tier strategy. The first group of vulnerable and elderly persons comprises people from 75 years old and people with a chronic disease involving the highest risks, regardless of their age. People between 65 and 74 years old and people under 65 with chronic illnesses who have not yet been vaccinated will follow. The second group includes doctors, nurses and health workers. In the third group are</p>

<p>(public or private) could these indirect means be applied?</p> <p>e) Will restrictive measures (mask, social distancing, eventual lockdown, etc.) be relaxed for vaccinated people or not? If yes, after the first injection or subject to the second?</p>	<p>c) For the time being, the vaccination takes place in vaccination centres.</p> <p>d) A bill introduced in December 2020 on creating a permanent regime for the management of sanitary emergencies sparked discussions on a vaccination passport provoking a public backlash. As a consequence, the bill was postponed.</p> <p>e) In its recommendations concerning the vaccination strategy, the HAS has advised that, in consideration of current data on transmission, vaccinated people should continue to respect social distancing measures.</p>	<p>of elderly residences; healthcare professionals (hospitals, 'first line');</p> <p>- Phase I b): people aged 65 or above, 45-65 patients with comorbidities, professionals who perform 'economic and social essential functions';</p> <p>- Phase II: other risk groups and eventually rest of the adult population.</p> <p>c) Following the three-stages approach, vaccination will be executed in different places:</p>	<p>the previous threshold of 80 and employees working in companies deemed to form part of critical infrastructure from February to April 2021. Starting in the second quarter of 2021, the third stage targets the public ranked according to the recommendations of the national vaccination council.</p> <p>c) During the first stage of deployment, the vaccine will be administered close to the location of the receivers, i.e. directly in a home for its residents, at the workplace for employees of hospitals and</p>	<p>routine vaccination targeting the general population.</p> <p>c) Throughout the first phase, the distribution to specified points across the country is organized on a federal level, while storage and acquisition of accessories are organized by the states. The second phase is expected to see that more quantity vaccines are available through wholesalers and pharmacies to the general population. During the first deployment phase, vaccinations will be limited to vaccinations</p>	<p>listed the close relatives of vulnerable people. In the fourth, we find the residents of centres for people with a handicap. In the fifth, all the remaining adults on a voluntary basis.</p> <p>c) Switzerland is in the process of opening <i>ad hoc</i> vaccination centres in independent sites (gyms, buildings of the <i>protection civile</i>, etc.) and in hospitals. The caregivers are called upon to perform the injections. Mobile teams are also set up, in particular, to vaccinate in nursing homes. In a second moment, pharmacies will be able to distribute the vaccine, once the available doses are higher.</p> <p>d) At the level of federal policy, the <i>Office federal de la santé publique</i> (OFSP) encouraged the doctor to strongly recommend vaccination in</p>
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			<p>- Phase I a): elderly residences, healthcare institutions;</p> <p>- Phase I b): local and larger vaccination centres;</p> <p>- Phase II: I locations under points a) and b) above are to be complemented with schools, businesses, etc.</p> <p>d) Belgium's Federal Government publicly rejects means of mandatory indirect vaccination.</p> <p>e) So far, Belgian authorities have not announced any</p>	<p>medical institutions, etc. The second stage will then see an expansion to mobile vaccination teams, vaccinations on-site at companies and institutions deemed to belong to critical infrastructure and individual doctor's offices. In the third stage, regional and local administrations shall establish vaccination points, and companies with a significant number of employees may administer vaccines to their staff.</p> <p>d) No plans regarding the creation of a vaccination/immunity</p>	<p>centres with mobile teams, the details of which are determined by the federal states. In the second phase, medical institutions, general practitioners (GP's) and company doctors will be administering vaccines as well.</p> <p>d) Schools or employers may enforce only publicly imposed vaccination obligations. No other means of indirect obligation are envisaged.</p> <p>e) The government has maintained a clear stance of not</p>	<p>case of chronic disease involving high risks. Nevertheless, the OFSP did not exclude the possibility to use an application on mobile phones, with a digital code, to simplify the recognition of vaccinated individuals.</p> <p>The idea of a vaccination/immunity passport is still much debated.</p> <p>d) In Switzerland, the position of the OFSP for the moment goes against the relaxation of sanitary measures even for vaccinated people.</p>
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			<p>intention to relax restrictive measures for vaccinated people.</p>	<p>passport or other means of indirect obligation have been reported so far</p> <p>e) For the time being, restrictive measures will not be lifted for vaccinated people.</p>	<p>granting any liberties to vaccinated people. However, recent media reports indicate that drafts for future quarantine regulations may contain exceptions to the test and quarantine requirements for vaccinated people.</p>	
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C.3. Detailed Analysis

C.3.1 France

1. Is the vaccination regime mandatory, voluntary or hybrid?

The vaccination regime in France is hybrid; it combines (i) mandatory vaccinations, and (ii) voluntary vaccinations.

Each year, the Ministry of Health publishes a vaccination calendar, after an opinion is handed down by an independent scientific, administrative authority, *la Haute Autorité de santé* (HAS).⁴² The calendar lists mandatory and voluntary vaccinations applicable to French residents.⁴³

(i) Mandatory Vaccinations

In France, two types of vaccinations are mandatory unless contraindication (a) general mandatory vaccinations, and (b) mandatory vaccinations for specific categories of persons exposed to professional risks of contagion.

Before delving into the details of these two types, it is worthy to note, that the constitutionality of mandatory vaccinations was challenged in 2015.⁴⁴ Through a procedure called '*question prioritaire de constitutionnalité*' (QPC),⁴⁵ applicants argued that mandatory vaccinations entailed risks, which could be incompatible with the right to health granted by the Preamble of the Constitution of 1946 (para 11). The Constitutional Council rejected the applicants' claim; it held that the legislator defines the vaccination policy to protect individual and collective health from severe and contagious diseases and by taking into account scientific, medical, and epidemiological evolutions. The Constitutional Council also emphasized that an exemption from mandatory vaccination was provided in cases of contraindications. Thus, in France, mandatory vaccinations are in conformity with the Constitution.

Similarly, in 2019, the *Conseil d'État*, the supreme court for administrative justice in France, found that mandatory vaccinations constituted a lawful interference with the exercise of the right to physical integrity derived from the right to respect for private and family life enshrined in Article 8 of the

⁴² Public Health Code, art L. 3111-1. All French codes, laws and regulations may be retrieved on the website Légifrance available at <<https://www.legifrance.gouv.fr/>> accessed 15 January 2021.

⁴³ Ministère des solidarités et de la santé, *Calendrier des vaccinations et recommandations vaccinales 2020*, March 2020, available at: <https://solidarites-sante.gouv.fr/IMG/pdf/calendrier_vaccinal_29juin20.pdf> accessed 15 January 2021, 18-19.

⁴⁴ Conseil constitutionnel, *Décision n°2015-458 QPC*, 20 March 2015. The decision and additional resources (commentary, doctrinal references, and translations) are available at: <<https://www.conseil-constitutionnel.fr/decision/2015/2015458QPC.htm>> accessed 15 January 2021.

⁴⁵ This procedure may be translated loosely as 'application for a priority preliminary ruling on the issue of constitutionality'.

European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).⁴⁶ However, the *Conseil d'État* deemed the interference justified by the goal to attain a sufficient vaccination coverage to reach herd immunity for the benefit of the whole population.⁴⁷ Therefore, the interference with the right to physical integrity was justified and proportionate to the goal pursued. Similar reasoning was also used to dismiss arguments grounded on Article 9 of the ECHR (Freedom of thought, conscience and religion) and Article 2 (Right to education) of the first additional protocol to the ECHR. Finally, in the same case, the *Conseil d'État* found that mandatory vaccinations were compatible with consent obligations for health interventions set out in article 6§2 of the Convention on Human Rights and Biomedicine⁴⁸.

(a) General mandatory vaccinations

Before 2018, in France, only three vaccinations were mandatory: vaccinations against diphtheria, tetanus, and poliomyelitis.

In the light of epidemic outbreaks and insufficient vaccination coverage, in 2016, the Ministry of health drafted an action plan⁴⁹ to renovate France's vaccination policy.⁵⁰ A law was adopted in 2017 switching the status of eight vaccinations from recommended to mandatory.⁵¹ This law marks a turning point for the legal regime of vaccines in France. Consequently, for children born after the 1st of January 2018, unless medical contraindication, are mandatory the following eleven vaccinations against:

- diphtheria;
- tetanus;
- poliomyelitis;
- whooping cough (pertussis);
- haemophilus influenza type b;
- hepatitis B;
- invasive pneumococcal diseases (*streptococcus pneumoniae*);
- meningococcal serogroup c;

⁴⁶ Conseil d'État, 6 May 2019, No 419242, available at: <<https://www.conseil-etat.fr/fr/arianeweb/CE/decision/2019-05-06/419242>> accessed 15 January 2021.

⁴⁷ *ibid* para 12.

⁴⁸ *ibid* para 16.

⁴⁹ Marisol Touraine Ministre des Affaires sociales, de la Santé et des Droits des femmes, *Présentation du plan d'action « pour une rénovation de la politique vaccinale en France »*, 12 January 2016, available at: <http://social-sante.gouv.fr/IMG/pdf/160112_-_intervention_mt_-_plan_vaccination.pdf> accessed 15 January 2021.

⁵⁰ The action plan was elaborated in consideration of an opinion on vaccination policy handed down by the Haut Conseil de la Santé Publique in 2014 and a 2016 report drafted by Sandrine Hurel formulating 20 recommendations, both documents are respectively available at: <<https://www.hcsp.fr/explore.cgi/avisrapportsdomaine?clefr=455>> and <http://social-sante.gouv.fr/IMG/pdf/rapport_sur_la_politique_vaccinale_janvier_2016_.pdf> accessed 15 January 2021.

⁵¹ *Loi de financement de la sécurité sociale pour 2018*, No 2017-1836 (30 December 2017), art 49.

- measles;
- mumps;
- rubella.⁵²

In addition, vaccination against yellow fever is mandatory for all persons older than one year old residing or staying in French Guiana.

(b) Mandatory vaccinations for certain occupations

Numerous professions necessitate compulsory immunizations. These obligations are updated regularly in accordance with the evolution of risks.⁵³

The 2020 vaccination calendar and Code of public health provide that:

- embalmers and persons training to become embalmers are required to be vaccinated against hepatitis B,⁵⁴ and
- staff working in private and public institutions for elderly care, whose professional activity exposes them and the persons they care for to contamination risks are required to be immunized against hepatitis B, diphtheria, tetanus, poliomyelitis and influenza.⁵⁵ The same mandatory vaccinations are requested from students enrolled in an establishment preparing them for health or medical professions, and who accomplish a portion of their studies in a private or public health or prevention institution.⁵⁶

Institutions and establishments employing these professionals, or in which students are enrolled, bear the costs of these vaccinations.⁵⁷

Military personnel are subject to several mandatory vaccinations because of the risks presented by communal living and operations outside of France.⁵⁸ The French Defense Health Service (*Service de santé des armées* (SSA)) is responsible for the elaboration of a special regulatory vaccination calendar for the army.

⁵² Public Health Code, art L. 3111-2.

⁵³ For instance, staff of medical biology laboratories were required to be immunized against typhoid fever under art L. 3111-4, but a decree in 2020 lifted this obligation (*Décret relatif à l'obligation vaccinale contre la fièvre typhoïde des personnes exerçant une activité professionnelle dans un laboratoire de biologie médicale* [14 January 2020] No 2020-28).

⁵⁴ Public Health Code, art L. 3111-3. The obligation to vaccinate against hepatitis B does not apply to persons that are infected or have been infected by this virus (Public Health Code, art R. 3111-4-2).

⁵⁵ Public Health Code, art L. 3111-4 para 1.

⁵⁶ *Ibid*, para 4.

⁵⁷ *Ibid*, para 5.

⁵⁸ The Army's vaccination calendar for the year 2019 is available at: Ministère des armées, *Calendrier vaccinal dans les armées 2019* (Ministère des armées, 2019) <<https://professionnels.vaccination-info-service.fr/Media/Files/Calendrier-vaccinal-des-armees-2019>> Accessed 19 January 2021.

(ii) Recommended vaccinations

The vaccination calendar published yearly by the Ministry of Health makes recommendations concerning different voluntary vaccinations following certain circumstances, such as increased risks of complications, exposition (including professional exposition) or transmission. The vaccine against influenza is recommended, for instance, for persons older than 65 years of age, persons that are at risk of complications, and certain professionals, like travel guides.⁵⁹ Another example is vaccination against the human papillomavirus infection recommended for young girls and boys aged between 11 and 14 years old.⁶⁰

Finally, the Ministry of Foreign Affairs makes vaccination recommendations available for travellers on its website.⁶¹

2. If the vaccination is mandatory:

a) Which public authorities are competent to deal with vaccination issues?

The Ministry of Health establishes the vaccination policy and publishes the vaccination calendar.⁶²

To accomplish this task, the Ministry of Health is assisted by the *Haute Autorité de santé* (HAS), who issues opinions and recommendations on vaccination, like the inclusion of a specific vaccine in the calendar.⁶³ A technical commission on vaccination (*la Commission technique des vaccinations*) was created within the HAS to undertake all the missions relating to vaccination.⁶⁴

Santé publique France, the national public health agency is responsible for epidemiological monitoring, the surveillance of the population's health, the prevention and promotion of health.⁶⁵ The agency monitors diseases for which vaccines exist, assesses the vaccination coverage, and informs the public and health professional on vaccinations.

⁵⁹ Ministère des solidarités et de la santé, (n 43), 18-19.

⁶⁰ Ibid, 34.

⁶¹ Ministère de l'Europe et des affaires étrangères, *Conseils par pays/destination* <<https://www.diplomatie.gouv.fr/fr/conseils-aux-voyageurs/conseils-par-pays-destination/>> Accessed 19 January 2021.

⁶² Public Health Code, art L. 3111-1.

⁶³ Social Security Code, art L. 161-37, 12.

⁶⁴ Loi ratifiant l'ordonnance No 2016-966 du 15 juillet 2016 portant simplification de procédures mises en œuvre par l'Agence nationale de sécurité du médicament et des produits de santé et comportant diverses dispositions relatives aux produits de santé [23 February 2017] No 2017-220. art 4.

⁶⁵ Public Health Code, art R. 1413-1.

The *Agence nationale de sécurité du médicament et des produits de santé* (ANSM), a public administrative body, evaluates the benefits and risks born by the use of health products including vaccines.⁶⁶ The ANSM notably collects data on adverse reactions and the efficiency of vaccines and warrants the security of vaccines. The ANSM also handles the authorization procedures for the placing of vaccines on the market and their batch release. It finally oversees advertisements relating to vaccination.⁶⁷

The *Assurance maladie*, the health insurance body, reimburses vaccinations and promotes vaccination campaigns. In France, sixteen vaccines may be taken in charge by the *Assurance maladie*: the eleven mandatory vaccinations listed by article L. 3111-2 of the Public Health Code and vaccinations recommended against influenza, hepatitis A, tuberculosis, chickenpox and human papillomavirus infection.⁶⁸ The reimbursement procedure distinguishes between the vaccine and its injection. The *Assurance maladie* reimburses 65 per cent of the cost of the vaccines, and the rest may be borne by the patient's complementary health insurance. The injection is taken in charge by the *Assurance maladie* and the complementary health insurances in the conditions of a regular medical act.

A special regime exists for the vaccination against influenza. The vaccine is free for persons for whom it is recommended in the vaccination calendar (e.g. persons older than 65 years of age). The *Assurance maladie* sends a voucher to these persons so that they can retrieve the vaccine in pharmacies. The *Assurance maladie* reimburses its injection entirely (100%).⁶⁹

MMR vaccine (measles, mumps and rubella) is also totally reimbursed (100%) by the *Assurance maladie* for children between 12 months and 17 years of age.⁷⁰ The injection is reimbursed in the usual conditions.

The *Assurance maladie* does not reimburse vaccinations recommended for trips abroad, but they may be covered by complementary health insurance.

b) Which instruments (law, regulation, decree) are used to deal with vaccination?

Only law can render a vaccination mandatory because it infringes upon individual liberties.⁷¹ A decree may suspend obligatory vaccines for all or part of the population following the epidemiological evolution and situation.⁷²

⁶⁶ Ibid art L. 5311-1.

⁶⁷ Ibid art L. 5122-9.

⁶⁸ Arrêté relatif à la liste des vaccinations prises en charge par l'assurance maladie [16 September 2004] art 1.

⁶⁹ Arrêté relatif à la dispensation de certains vaccins contre la grippe saisonnière [21 November 2020], art 2.

⁷⁰ *L'Assurance Maladie, La vaccination ROR (rougeole, oreillons, rubéole)* (L'Assurance Maladie, 3 January 2021) <https://www.ameli.fr/assure/sante/assurance-maladie/campagnes-vaccination/vaccination-ror-rougeole-oreillons-rubeole#text_9476> Accessed 19 January 2021.

⁷¹ Case No 172806, Conseil d'État [15 November 1996] <<https://www.legifrance.gouv.fr/ceta/id/CETATEXT000007896956/>> Accessed 19 January 2021; Case No 102334, Conseil d'État [29 July 1994] <<https://www.legifrance.gouv.fr/ceta/id/CETATEXT000007849723/>> Accessed 19 January 2021; Didier Truchet, *Droit de la santé publique* (Dalloz 2017) 102.

⁷² Public Health Code, art L. 3111-1 para 2; for an example see (n 12).

- c) Which are the consequences in case of non-compliance? Is a penalty system provided for? Which penalties are established (financial penalties, educational penalties, *i.e.* interdiction for the non-vaccinated child to go to school, loss of parental rights?

Before 2018, the non-compliance with vaccination obligations of a person, or the persons, holding parental authority could lead to 6 months of imprisonment and a fine of 3750 €. ⁷³

As of 2018, the person, or the persons, holding parental authority are personally responsible for respecting the eleven mandatory vaccinations. ⁷⁴ A child not vaccinated may not attend childcare, school, holiday camps or any community of children. ⁷⁵ Vaccinations are declared on a health notebook (*carnet de santé*). ⁷⁶ Admittance to any collective establishment for children requires the production of this notebook. ⁷⁷

Although non-compliance with vaccination obligations is no longer an infraction since 2018, failure to comply with mandatory vaccinations may still be prosecuted under general law as endangering a minor's life. ⁷⁸

In the case of mandatory vaccines in connection with a professional occupation, non-compliance may be used as a ground to terminate an employee's work contract. ⁷⁹

- d) At your knowledge, was the State/government ever considered liable in the past concerning any vaccination issue? Can you refer to any relevant cases?

In France, *l'Office national d'indemnisation des accidents médicaux, des affections iatrogènes et des infections nosocomiales* (ONIAM), a public body created in 2002, compensates all injuries resulting from mandatory vaccination. ⁸⁰ Concerning voluntary vaccines, the regime of liability is fault-based. The claimant is required to prove that the State has committed a fault. ⁸¹

3. If vaccination is made voluntarily:

⁷³ Public Health Code, art L. 3116-4 in its version before the adoption of the *Loi de financement de la sécurité sociale*.

⁷⁴ Public Health Code, art L. 3116-4.

⁷⁵ *ibid* art L. 3111-2 II.

⁷⁶ *ibid* art. D. 3111-6

⁷⁷ *ibid* art R. 3111-8

⁷⁸ Criminal Code, art. 227-17.

⁷⁹ Appeal No 10-27.888, Cour de Cassation - Chambre Sociale [11 July 2012] <<https://www.legifrance.gouv.fr/juri/id/JURITEXT000026183079/>> Accessed 19 January 2021..

⁸⁰ Public Health Code, art L. 3111-9, for a detailed presentation of the reparation of injuries resulting from vaccinations see Anne Laude *et al.* (eds), *Lamy droit de la santé*, online resource (July 2019) para 107-45 ff and for an overview of caselaw relating to the vaccine against hepatitis B see Claudine Bergoignan-Esper and Pierre Sargos, *Les grands arrêts du droit de la santé* (Dalloz 2014) 460-465.

⁸¹ Case No 06014, Conseil d'État [4 May 1979] <<https://www.legifrance.gouv.fr/ceta/id/CETATEXT000007686238>> Accessed 19 January 2021.

a) Which entities (public or private) may impose an obligation to carry out a vaccine?

In France, only the law can impose a mandatory vaccination. Private entities may not impose additional obligations.⁸²

b) Which policy instruments are used to incentive (pro) vaccination behaviour (vaccination campaigns, parental initiative, information tools, other behavioural tools)?

In regard of the public's sensitivity to the topic of vaccination and the need to foster trust and transparency, the 2016 action plan to renovate France's vaccination policy provided for a citizens consultation, which entailed two opinion surveys, two juries (one composed of citizens and the other of professionals), and a participatory online space to collect opinions on vaccination.⁸³

In 2019, the government launched the first national promotion campaign on vaccination with posters, a television spot, and, at the regional level, information and prevention booths during the European Immunization Week (EIW).⁸⁴

An important information tool is the 'vaccination info service' website designed under the supervision of *Santé publique France*.⁸⁵ This institutional website brings together information on vaccination for the general public and health professionals.

Santé publique France has also developed different prevention tools on vaccination, such as pamphlets, posters, and a simplified postcard of the vaccination calendar.⁸⁶

Another crucial tool is the reimbursement of vaccinations carried out by the French *Assurance maladie*.

As to Covid-19 vaccination, to ensure the transparency and the general acceptance of the COVID vaccination campaign, the French government has implemented two tools of participation. The first tool is a group of 35 citizens selected randomly in January 2021 to make recommendations and offer

⁸² See (n 27).

⁸³ The website of the citizens consultation is available at: Concertation Citoyenne sur la Vaccination, *Site Officiel de la Concertation Citoyenne Sur La Vaccination* <<http://concertation-vaccination.fr/>> Accessed 19 January 2021.

⁸⁴ Santé publique France, *Vaccination: dossier thématique* (Santé publique France 24 November 2020) <<https://www.santepubliquefrance.fr/determinants-de-sante/vaccination/notre-action>> Accessed 19 January 2021.

⁸⁵ The institutional website, Vaccination Info Service, *Vaccination Info Service* <<https://vaccination-info-service.fr/>> Accessed 19 January 2021

⁸⁶ The tools are available at: Santé publique France, *Vaccination: dossier thématique* (Santé publique France 24 November 2020) <<https://www.santepubliquefrance.fr/determinants-de-sante/vaccination/notre-action>> Accessed 19 January 2021.

observations on COVID-19 vaccination policies.⁸⁷ The second tool is an online consultation platform for the public, which was launched on 15 January 2021.⁸⁸

4. Which is the intention of the country as to the Covid-19 vaccination?

a) Will the vaccination be made mandatory or voluntary?

For the time being, Covid-19 vaccination is voluntary and free.

b) Which groups of the population, and with which hierarchy will be concerned by vaccination?

The HAS made several recommendations regarding the national vaccination strategy against Covid-19.⁸⁹ In addition, *l'Office parlementaire d'évaluation des choix scientifiques et technologiques* (OPECST), responsible for informing the Parliament of the consequences of choices with scientific or technological character, performed a study on the strategy.⁹⁰ The Ministry of Health revealed France's vaccination strategy on 3 December 2020. Since supply is insufficient, the strategy identifies different phases to ensure a progressive rollout of vaccines to reach first the persons that are at risks of developing a severe form of Covid-19.⁹¹ In the first phase (January-February 2021), persons living and working in nursing homes or assisted living, people older than 75 years of age living at home, firefighters, health and home care professionals older than 50 years of age or suffering from comorbidities are prioritized. This population is estimated to reach one million persons. The second

⁸⁷ Conseil Economique, Social et Environmental, 'Vaccination, première reunion du collectif citoyen' (*lecese*, 18 January 2021) <<https://www.lecese.fr/content/vaccination-premiere-reunion-du-collectif-citoyen>> Accessed 20 January 2021.

⁸⁸ Conseil Economique, Social et Environmental, 'Vaccination Covid-19: La plateforme de consultation es ten ligne!' (*lecese*, 15 January 2021) <<https://www.lecese.fr/content/vaccination-covid-19-la-plateforme-de-consultation-est-en-ligne>>. Accessed 20 January 2021.

⁸⁹ HAS, *Stratégie de vaccination contre le Sars-Cov-2 - Recommandations préliminaires sur la stratégie de priorisation des populations à vacciner*, 27 November 2020, available at: <https://www.has-sante.fr/jcms/p_3221338/fr/strategie-de-vaccination-contre-le-sars-cov-2-recommandations-preliminaires-sur-la-strategie-de-priorisation-des-populations-a-vacciner>; Haute Autorité de Santé, *Stratégie de vaccination contre le Sars-Cov-2 - Recommandations préliminaires sur la stratégie de priorisation des populations à vacciner* (HAS, 27 November 2020) <https://www.has-sante.fr/jcms/p_3221338/fr/strategie-de-vaccination-contre-le-sars-cov-2-recommandations-preliminaires-sur-la-strategie-de-priorisation-des-populations-a-vacciner> Accessed 19 January 2021; Haute Autorité de Santé, *Stratégie de vaccination contre la Covid-19 – Place du Vaccin Moderna Covid-19 mRNA (nucleoside modified) dans la stratégie*, (HAS, 7 January 2021) <https://www.has-sante.fr/jcms/p_3230287/fr/strategie-de-vaccination-contre-la-covid-19-place-du-vaccin-moderna-covid-19-mrna-nucleoside-modified-dans-la-strategie> Accessed 19 January 2021.

⁹⁰ L'Office Parlementaire d'Evaluation des Choix Scientifiques et Technologiques, *Rapport sur la stratégie vaccinale contre la Covid-19* (OPECST 15 December 2020) <<https://www2.assemblee-nationale.fr/15/les-delegations-comite-et-office-parlementaire/office-parlementaire-d-evaluation-des-choix-scientifiques-et-technologiques/secretariat/a-la-une/premieres-recommandations-sur-la-strategie-vaccinale-face-a-l-epidemie-de-covid-19>> Accessed 19 January 2021.

⁹¹ For the conditions for the distribution of the vaccines see Décret modifiant les décrets No 2020-1262 du 16 octobre 2020 et n° 2020-1310 du 29 octobre 2020 prescrivant les mesures générales nécessaires pour faire face à l'épidémie de covid-19 dans le cadre de l'état d'urgence sanitaire [25 December 2020] No 2020-1691.

phase starting in March 2021, concerns persons that are affected by a risk factor (aged between 65 and 74 years old, suffering from a chronic illness) and health professionals. The third phase opens the vaccination to the rest of the population.

c) Where will the vaccination be executed (hospitals, vaccination centres, etc....?)

The vaccination takes place in a vaccination centre. Appointments for vaccination may be booked using three preexisting private services for booking medical appointments, or a public phone line and an online directory set up by the government.⁹²

d) If voluntary, are other means of indirect obligation envisaged, for example, the creation of vaccination passport? In which cases and by which entities (public or private) could these indirect means be applied?

A bill introduced in December 2020 on creating a permanent regime for the management of sanitary emergencies,⁹³ sparked discussions on a vaccination/immunity passport provoking a public backlash.⁹⁴ As a consequence, the bill was postponed.

e) Will restrictive measures (mask, social distancing, eventual lockdown, etc.) be relaxed for vaccinated people or not? If yes, after the first injection or subject to the second?

In its recommendations concerning the vaccination strategy, the HAS has advised that, in consideration of current data on transmission, vaccinated people should continue to respect social distancing measures.⁹⁵

⁹² The online directory is available at: < <https://www.sante.fr/centres-vaccination-covid.html>> accessed 15 January 2021.

⁹³ Projet de loi No 3714 instituant un régime pérenne de gestion des urgences sanitaires [21 December 2020].

⁹⁴ For an example of the press coverage of this controversy see Franck Johannès and Julie Carriat, 'L'opposition réagit vivement au projet de loi sur les urgences sanitaires' *Le Monde* (Paris, 23 December 2020).

⁹⁵ HAS, *Stratégie de vaccination contre le Sars-Cov-2 - Recommandations préliminaires sur la stratégie de priorisation des populations à vacciner* (n 89) 49.

C.3.2 Belgium

1. Is the vaccination regime mandatory, voluntary or hybrid?

The vaccination regime partly depends on the division of competences within the State as laid down under article 5 sect. 1, I, 8 of the *Loi spéciale des réformes institutionnelles du 8 août 1980*. According to that provision, Belgium's communities are responsible for health measures regarding prevention, which includes vaccination. The federal government remains responsible, under the same disposition, for '*national prophylactic measures*'. The *travaux préparatoire* of this *Loi spéciale*, the Conseil d'Etat and scholars concur in understanding that this provision only grants the federal government exclusive competence for mandatory vaccination.⁹⁶ This leaves a fragmented regime with several layers of decision-making: one vaccine is currently mandatory for the whole population on a federal level (i), and a few are for specific categories of workers (ii). The rest, namely whether voluntary or mandatory, differ from one community to another (iii). In this regard, it is important to note that the legislation section of the *Conseil d'Etat* stated in 2013 that even acute pandemic crises do not modify the allocation of competences⁹⁷. Besides, nothing in the March 27th 2020 law which authorises the executive branch to adopt extraordinary measures seem to have altered this allocation of competences⁹⁸.

Furthermore, though legislation authorises the King to adopt measures to '*fight against the spread of Covid-19 among the population, including the upholding of public health and order*',⁹⁹ it remains unlikely that the King would be allowed to decided mandatory vaccination without legislative authorisation.

(i) Mandatory vaccine at the federal level

The only vaccine that is mandatory by law in the whole of Belgium is the antipolyomelitis vaccine, as laid in the royal decree of 26th October 1966. Mandatory vaccination against smallpox is currently lifted until December 31st, 2026, following the announcement by the WHO that it had been eradicated.

⁹⁶ Conseil d'Etat, Legislation Section, *Advisory Opinion* (13 May 2013) 53.018/VR; M. DONY, B. BLERO, « La répartition des compétences en matière de politique de santé », Marianne Dony and Bernard Blero, 'La Répartition des Compétences en Matière de Politique de Santé' (1990) 35-36(1300-1301) *Courrier hebdomadaire du CRISP* 1; J. VAN NIEUWENHOVE, « Les nouvelles compétences communautaires en matière de soins de santé et d'aide aux personnes handicapées », Jeoren Van Nieuwenhove, 'Les Nouvelles Compétences Communautaires en Matière de Soins de Santé et d'aide aux Personnes Handicapées' (2015) 2 *Revue belge de sécurité sociale* 291.

⁹⁷ Conseil d'Etat, Legislation Section, *Advisory Opinion* (13 May 2013) 53.018/VR: '*La circonstance qu'il s'agit d' « événements pouvant constituer une urgence de santé publique de portée internationale », ne permet pas non plus de conclure à la compétence de l'autorité fédérale. Ce n'est pas parce que des mesures portent sur la lutte contre une crise touchant à la santé publique que l'autorité fédérale peut être réputée compétente. Au contraire, chaque autorité est responsable de la lutte contre une crise touchant à la santé publique dans les limites de ses propres compétences matérielles, ce qui n'exclut pas toutefois qu'un accord de coopération puisse être conclu à ce propos*'.

⁹⁸ Act enabling the King to Adopt Measures in the Fight against the Spreading of Covid-19 (II) [27 March 2020] 202004938, 22056.

⁹⁹ *Ibid*, Article 5 para 1.

In 1997, Belgium's Court of cassation held that mandatory vaccination against poliomyelitis complied with New-York's Convention on the Rights of Children,¹⁰⁰ Then, in 2013,¹⁰¹ the Court reaffirmed that mandatory vaccination was compliant with both article 12 of the International Covenant on Economic, Social and Cultural Rights,¹⁰² and article 8 of the ECHR. It held that mandatory vaccination was adopted in the pursuit of a legitimate goal, namely the protection of the population's health, founded on a legal basis and was proportionate to that end.

(ii) Mandatory vaccines for specific classes at the federal level

Some vaccines are mandatory for specific categories of workers who are susceptible to be exposed to infectious agents because of the sector they operate. Mandatory vaccinations include tetanus, tuberculosis and hepatitis B,¹⁰³ For instance, each health worker is submitted to mandatory hepatitis B vaccination, whilst workers such as farmers or veterinaries are to be vaccinated against tetanus. Tuberculosis is mainly aimed at workers of biological laboratories.

(iii) Vaccination at the regional level

For the time being, in the French community, the recommended vaccines are the following:¹⁰⁴

- for children: diphtheria, whooping cough, type b Haemophilus influenzae, hepatitis B, measles, rubella (German measles) and mumps;
- for pregnant women and people older than 65: influenza.

¹⁰⁰ Arrêt du 1 octobre 1997 req P.97.0506E, Cour de Cassation de Belgique (1 October 1997) ECLI:BE:CASS:1997:ARR.19971001.3.

¹⁰¹ Arrêt 5942 req P.13.0708.E, Cour de Cassation de Belgique (13 December 2013).

¹⁰² 1. *The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.*

2. *The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:*

(a) *The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;*

(b) *The improvement of all aspects of environmental and industrial hygiene;*

(c) *The prevention, treatment and control of epidemic, endemic, occupational and other diseases;*

(d) *The creation of conditions which would assure to all medical service and medical attention in the event of sickness'.*

¹⁰³ Section 2, articles VII.1-64 to VII.1.-74 of Belgium's Code du bien-être au travail, Livre VII – Agents biologiques [23 November 2020].

¹⁰⁴ See [Calendrier de vaccination](#).

In the Flemish Community, currently recommended vaccines are the same as in the French Community and include:¹⁰⁵

- for children: diphtheria, whooping cough, type b Haemophilus influenza, hepatitis B, measles, rubella (German measles) and mumps;
- for pregnant women and people aged over 65: influenza (but it does not come free of charge).

2. If the vaccination is mandatory:

a) Which public authorities are competent to deal with vaccination issues?

See answer point one above.

b) Which instruments (law, regulation, decree) are used to deal with vaccination?

Statute and statute-enabled decrees are used for federally mandatory vaccinations, whether for the general population or for specific categories (workers). The vaccination regime at the community level is organized through statute-enabled decrees.

c) Which are the consequences in case of non-compliance? Is a penalty system provided for? Which penalties are established (financial penalties, educational penalties, *i.e.* interdiction for the non-vaccinated child to go to school, loss of parental rights?)

Parents who fail to comply with mandatory vaccination against poliomyelitis are punishable by a fine, eight days to month imprisonment or only one of these sanctions. In case of several infractions within two years of the latest condemn, sanctions can be doubled.¹⁰⁶

Failure to comply with mandatory vaccinations for specific categories of workers are sanctioned by the inability to continue their work. Under article VII.1-55 of the Code of well-being at work (*Code du bien être au travail*), private employers are forbidden to put to work or maintain employees who cannot present valid proof of vaccination or immunity. The code reserves an exception for workers whose medical condition contraindicate vaccination.

¹⁰⁵ Kind & Gezin, [Vaccination scheme](#) (p. 2).

¹⁰⁶ Health Act [1 December 1945] 19450901, 6638, article 5.

- d) At your knowledge, was the State/government ever considered liable in the past concerning any vaccination issue? Can you refer to any relevant cases?

General liability regimes, criminal and civil, appear to be applicable to vaccines and could be implemented in case of health problems generated by the vaccination.¹⁰⁷ The special 1991 law establishing defective product liability¹⁰⁸ covers the liability of producers and of 'any person who, within its economic activities, imports into the European Community a product in order to sell it or transfer its use to a third party'.¹⁰⁹ The definition of defective products given by the special law is worth noting. It alleviates the scope of the liability by including reasonable expectations. A product will only be deemed 'defective' if it does not 'offer the level of safety that can reasonably be expected given the whole circumstances, especially the presentation of the product, the normal use or reasonably expected use of the product, time at which the product was commercialised'.¹¹⁰ The 2009 H1N1 pandemic illustrate how defective product liability can spill over on the State in case of a pandemic. Belgium had contractually agreed to endorse indirect liability for damages, which could be caused by the newly developed vaccines it had purchased in a similar way to what is known today regarding Covid-19 vaccines. The private nature of contracts had been maintained, so patients could sue the vaccine producer directly for defective product liability. The producer was however contractually enabled to claim full reimbursement to the Belgian State, for damages and legal fees alike and whether they arose out of a transaction with victims or a judicial decision. No maximum amount was defined in the contract. The contract only included exclusions in cases of late notification to the State, if the third party such as insurances had already covered the financial consequences of the producer's liability.¹¹¹ To the best of our knowledge, this mechanism was not (publicly at least) implemented.

Liability of the State regarding mandatory vaccination can also be implemented before administrative courts. In 1997, the Court of cassation held that it was rightful for the *Conseil d'Etat* to grant compensation based on equity to victims of health issues following mandatory vaccination even in the absence of negligence attributable to the State.¹¹² The Court held the *Conseil's* jurisdiction and decision were justified after the victims had not been able to obtain compensation on the basis of negligence, and because it took into consideration 'all circumstances of private and public interest' to conclude that this was an 'exceptional damage'.¹¹³

It is worth noting that such equity remedy may not be useful anymore. The Belgian legislator introduced in 2010 a special statute regarding compensation for healthcare damages (*Loi relative à l'indemnisation des dommages de santé*). This statute creates a liability without fault regime. Under

¹⁰⁷ National Committee for Bioethics, *Advisory Opinion 75 regarding Ethical Landmarks for the Vaccination of the Belgian Population against Covid-19* (11 December 2020) 31-32.

¹⁰⁸ [Act establishing liability for defective Products](#), [25 February 1991] 1991009354, 5884.

¹⁰⁹ *Ibid*, article 4 para 1.

¹¹⁰ *Ibid*, article 5.

¹¹¹ For a detailed analysis of that issue, see : François Thoreau, Cédric Cheneviere and Nicholas Rossignol, 'Action Publique et Responsabilité Gouvernementale: la Gestion de la Grippe A(H1N1)' (2012) 13-14 (2138-2139) *Courrier hebdomadaire du CRISP* 1.

¹¹² Arrêt du 28 novembre 1997 req [C.96.0339.E](#), Cour de Cassation de Belgique (28 November 1997) ECLI:BE:CASS:1997:ARR.19971128.6.

¹¹³ *Ibid*.

Articles 4 and 5, only severe damages can be compensated, namely if patients endure a permanent 25% disability, temporary inability to work for at least 6 consecutive months, particularly severe troubles in the patient's life, including economic-wise, or death. Compensation is granted by a dedicated national Fund, the *Fonds des accidents médicaux*, and is not exclusive of other remedies. Provided the damage resulting from the execution of vaccination meet the above criteria, it seems the side effects of Covid-19 vaccines could be compensated under this statute.

3. If vaccination is made voluntarily:

a) Which entities (public or private) may impose an obligation to carry out a vaccine?

Regional Communities and their governments may impose obligations by requiring prior vaccination for access to public services. Vaccination can only be made mandatory through an act of Parliament. Private employers cannot refuse or discriminate workers who have refused to submit to vaccinations, which are not legally mandatory.¹¹⁴ As an example, in Wallonia, under article 31 of the French Community's February 23rd 2003 executive order, any child to be taken care of within the services of the Office for Birth and Childhood (*Office de la Naissance et de l'Enfance*) is to vaccinate against diphtheria, whooping cough, type b Haemophilus influenza, hepatitis B, measles, rubella (German measles) and mumps. In contrast, under article 7 para. 1, 3 of the Flemish Community's executive order creating the Childhood and Family Agency (*Kind en Gezin*), the government is only responsible for the '*promotion, administration and monitoring of vaccinations*' for young children to be cared for and no vaccine is made mandatory.

b) Which policy instruments are used to incentive (pro) vaccination behaviour (vaccination campaigns, parental initiative, information tools, other behavioural tools)?

Vaccination calendars are adopted and implemented by Belgium's main communities. They are publicly available on their respective websites.¹¹⁵ The Flemish Community, despite having opted for voluntary vaccination, reimburses several vaccines, such as tetanus, or flu for older people.¹¹⁶

At work, employers are legally required to offer vaccination if workers are exposed or can be exposed to biological agents.¹¹⁷ They are also required to inform the employees at the recruiting stage of the availability of an effective vaccine, of advantages and disadvantages of vaccination and absence of vaccination.¹¹⁸

¹¹⁴ Margo Cornette and Julien Verbeke, 'Coronavirus: Que peut imposer un Employeur en Matière de Vaccine ou de Tests à ses Travailleurs?' *Chambre de Commerce & Union des Entreprises de Bruxelles* (Brussels, 27 November 2020).

¹¹⁵ See for the [French Community](#) and the [Flemish Community](#)

¹¹⁶ *Ibid.*

¹¹⁷ Code du bien-être au travail, Livre VII – Agents biologiques [23 November 2020], Article VII.1-51.

¹¹⁸ *Ibid.*, Article VII.1.-52.

4. Which is the intention of the country as to the Covid-19 vaccination?

a) Will the vaccination be made mandatory or voluntary?

The Interministerial Conference, which includes both federal and regional governments, decided on the 19th of November 2020 that vaccination would be voluntary.¹¹⁹

The National Comity for Bioethics called the government to consider turning to mandatory vaccination should the initial vaccination strategy fail to achieve herd immunity,¹²⁰ but so far the government has rejected this idea.¹²¹

b) Which groups of the population, and with which hierarchy will be concerned by vaccination?

Belgium's vaccination strategy is divided into three stages, which correspond to three categories of people and the projected availability of vaccine doses:

- Phase I a): residents and staff of elderly residences and healthcare professionals;
- Phase I b): people aged 65 or above, 45-65 patients with comorbidities, professionals who perform '*economic and social essential functions*';
- Phase II: other risk groups and eventually rest of the adult population.

c) Where will the vaccination be executed (hospitals, vaccination centres, etc....?)

Following the three-stages approach, the vaccine will be executed in different places:

- Phase I a): elderly residences, healthcare institutions;
- Phase I b): local and larger vaccination centres;
- Phase II: locations under points a) and b) above are complemented with schools, businesses, etc.

¹¹⁹ [Press Release by the Interministerial Conference](https://www.absym-bvas.be/dossiers/covid-19-vaccination-en-belgique), (ABSYM, November 19th 2020) <<https://www.absym-bvas.be/dossiers/covid-19-vaccination-en-belgique>> Accessed 20 January 2021.

¹²⁰ Advisory Opinion 75 (n 107), *ibid*, p 13.

¹²¹ Anne Sophie Leurquin, 'Le Comité de Bioéthique veut relancer le débat sur la vaccination obligatoire' *LeSoir* (21 December 2020) <<https://plus.lesoir.be/344817/article/2020-12-21/le-comite-de-bioethique-veut-relancer-le-debat-sur-la-vaccination-obligatoire>> Accessed 20 January 2021.

Under Article 11 of the 2020 Act regarding antigenic tests and the recording and treatment of data related to Covid-19 vaccines, vaccines can only legally be administered by doctors or nurses.¹²² They can, however, be administered by other qualified persons under the supervision of doctors or nurses.

- d) If voluntary, are other means of indirect obligation envisaged, for example, the creation of vaccination passport? In which cases and by which entities (public or private) could these indirect means be applied?

Belgium's Federal Government publicly rejects means of mandatory indirect vaccination.

This choice has so far transpired in labour relations, for instance. On December 6th, 2020, the Covid-19 virus was added to the list of biological agents for which employers are required to *offer* vaccination to exposed workers if an effective vaccine is available.¹²³ Under this regime, workers are not required to accept vaccination. Employers are, however, required to inform workers of the risks before they are recruited, the availability of a vaccine and the advantages and disadvantages of vaccination.

However, several elements already signal a potential shift in policy in the future. For example, the government has announced that every citizen will have access to secure proof of vaccination online and that private entities such as airlines could require the presence of this proof.¹²⁴

- e) Will restrictive measures (mask, social distancing, eventual lockdown, etc.) be relaxed for vaccinated people or not? If yes, after the first injection or subject to the second?

So far, Belgian authorities have not announced any intention to relax restrictive measures for vaccinated people.

¹²² Loi portant diverses mesures relatives aux tests antigéniques rapides et concernant l'enregistrement et le traitement de données relatives aux vaccinations dans le cadre de la lutte contre la pandémie de COVID-19 [22 December 2020] 2020044633, 94389 <http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2020122201&table_name=loi> Accessed 20 January 2021.

¹²³ Royal Decree modifying the List of Biological Agents within the Code for Well-being at Work [23 November 2020] 204908.

¹²⁴ See announcements by C. Leys, spokeswoman for Belgium's Corona High Committee, Ludovic Jimenez, 'Un certificat de vaccination pour chaque Belge vacciné contre le Covid: "dans la sphère privée, il pourrait être obligatoire pour se déplacer ou pour des événements' [La Dernière Heure](https://www.dhnet.be/actu/belgique/un-certificat-digital-pour-chaque-belge-vaccine-contre-le-covid-dans-la-sphere-privee-il-pourrait-etre-obligatoire-pour-se-deplacer-ou-pour-des-evenements-5feb240bd8ad5844d10fd23a), (December 30th, 2020) <<https://www.dhnet.be/actu/belgique/un-certificat-digital-pour-chaque-belge-vaccine-contre-le-covid-dans-la-sphere-privee-il-pourrait-etre-obligatoire-pour-se-deplacer-ou-pour-des-evenements-5feb240bd8ad5844d10fd23a>> Accessed 20 January 2021.

C.3.3 Austria

1. Is the vaccination regime mandatory, voluntary or hybrid?

The vaccination regime in Austria is voluntary for the general population.¹²⁵ Nevertheless, according to the Austrian Epidemic Act,¹²⁶ workers in the health sector, or specific vulnerable persons in a specific region can be asked to take precautions, including vaccinations. The Act does not, however, include provisions to allow for immediate enforcement of these vaccinations. No penalties are provided for refusals of vaccination offers.

While the ministry of health and the chancellery organize the funding and acquisition of vaccines, the nine Austrian regions (*Bundesländer*) are competent to distribute them according to the federal vaccination plan.¹²⁷ The key legislative instrument regarding vaccinations is a regulation listing recommended vaccinations.¹²⁸

The Austrian Vaccination Damage Act 1973 allows for compensation claims in case of harm suffered because of vaccinations recommended in this regulation.¹²⁹

Very few cases of liability for vaccinations have reached the courts.¹³⁰ A case in the early 1960s confirmed the jurisdiction of the courts to hear compensation claims for vaccination-related damage under a previous law governing the vaccination regime for smallpox.¹³¹ A more recent case from 2007, in which the regional government of Styria was sued for compensation following a vaccination turned on the question whether a vaccine against measles-mumps-rubella for pupils had been administered in a private or public capacity.¹³²

2. If the vaccination is mandatory:

¹²⁵ See i.e. Bundesministerium Soziales, Gesundheit, Pflege und Konsumentenschutz, *Corona-Schutzimpfung - Häufig gestellte Fragen* (Vienna, 1 January 2021) <<https://www.sozialministerium.at/Corona-Schutzimpfung/Corona-Schutzimpfung---Haeufig-gestellte-Fragen.html>> Accessed 19 January 2021.

¹²⁶ Section 17 (3)(4) Epidemiegesetz 1950.

¹²⁷ ORF, 'Bundesländer entscheiden über Wo und Wie' (Vienna, 8 January 2021) <<https://orf.at/stories/3196570/>> Accessed 19 January 2021.

Andrea Polzer and Viktoria Fink, 'Impfverweigerung als Grund zur Kündigung' *Die Presse* (Vienna, 11 January 2021) <<https://www.diepresse.com/5920902/impfverweigerung-als-grund-zur-kündigung>> Accessed 19 January 2021.

¹²⁸ Verordnung über empfohlene Impfungen [2006] BGBl. II Nr. 526/2006 idF BGBl. II Nr. 452/2020.

¹²⁹ Impfschadengesetz 1973, BGBl 371/1973.

¹³⁰ The official Austrian law database lists only 5 entries for the relevant term 'Impfschaden': RIS, Justiz-Abfrage, <<https://www.ris.bka.gv.at/Ergebnis.wxe?Abfrage=Justiz&Gericht=&Rechtssatznummer=&Rechtssatz=&Fundstelle=&AenderungenSeit=Undefined&SucheNachRechtssatz=True&SucheNachText=True&GZ=&VonDatum=&BisDatum=17.01.2021&Norm=&ImRisSeitVonDatum=&ImRisSeitBisDatum=&ImRisSeit=Undefined&ResultPageSize=100&Suchworte=impfschaden&Position=1&SkipToDocumentPage=true>> (last accessed 17 January 2021). Two out of these are relevant and specified in the following two footnotes.

¹³¹ Austrian Supreme Court – Docket Number 1 Ob 124/62,

¹³² Austrian Supreme Court – Docket Number 1 Ob 271/06v.

N/A.

3. If vaccination is made voluntarily:

a) Which entities (public or private) may impose an obligation to carry out a vaccine?

As described under point 1 above, the Austrian Epidemic Act allows for vaccination orders in certain cases by district administrations (*'Bezirksverwaltungsbehörden'*).

Employers are not entitled to impose vaccinations on employees. Should the employer no longer be able or willing to cover costs for precautionary measures, the work contract of the employee refusing vaccination can be terminated.¹³³ Given the employer's duties to protect his employees, employees will need to accurately report on their vaccination status if asked. However, given the delicate nature of health data, the respective works council may need to be involved.

b) Which policy instruments are used to incentive (pro) vaccination behaviour (vaccination campaigns, parental initiative, information tools, other behavioural tools)?

Austria is introducing a central digital register of vaccinations, for which – unlike the general database gathering digital health records – no opt-out is allowed.¹³⁴ This shall enable a reminder system, which allows to individually reach persons that are not or no longer immunised. Along with most other western countries, multi-channel information campaigns have been launched.¹³⁵ This includes, for instance, a dedicate hotline,¹³⁶ and an information homepage. At the heart of the federal campaign stands a small number of prominent medical experts that act as spokespersons of the vaccination campaign and, to this end, are giving press conferences, radio interviews, etc.¹³⁷ The federal campaign is complemented by the regional campaigns, which are also in charge of administering the vaccination centres or mobile teams.¹³⁸

¹³³ See i.e. Andrea Polzer and Viktoria Fink, 'Impfverweigerung als Grund zur Kündigung' *Die Presse* (Vienna, 11 January 2021) <<https://www.diepresse.com/5920902/impfverweigerung-als-grund-zur-kündigung>> Accessed 19 January 2021.

¹³⁴ Bundesministerium Soziales, Gesundheit, Pflege und Konsumentenschutz, 'Elektronischer Impfpass' (Vienna, 5 November 2020) <<https://www.sozialministerium.at/Themen/Gesundheit/eHealth/Elektronischer-Impfpass.html>> Accessed 19 January 2021; ELGA, 'Folder e-Impfpass' (ELGA, 2020) <https://www.elga.gv.at/fileadmin/user_upload/e-impfpass/Folder_e-impfpass_corona_V1.0.pdf> Accessed 19 January 2021.

¹³⁵ See i.e. the campaign 'Austria gets vaccinated' (*Initiative Österreich Impft* (Österreichisches Rotes Kreuz 2021) <<https://www.österreich-impft.at/>> Accessed 19 January 2021.

¹³⁶ Bundesministerium Soziales, Gesundheit, Pflege und Konsumentenschutz, 'Corona-Schutzimpfung' BMSGPK, (19 January 2021) <<https://www.sozialministerium.at/Corona-Schutzimpfung/Corona-Schutzimpfung.html>> accessed 18 January 2021.

¹³⁷ Österreichisches Rotes Kreuz (n 136).

¹³⁸ See. i.e. the Viennese campaign: Stadt Wien, 'impfservice.wien – einfach gut geschützt' (stadwien, 2021) <<https://impfservice.wien/>> Accessed 18 January 2021.

4. Which is the intention of the country as to the Covid-19 vaccination?

a) Will the vaccination be made mandatory or voluntary?

Reiterated press releases underscore the government's intention to carry out vaccinations on a voluntary basis only.¹³⁹

b) Which groups of the population, and with which hierarchy will be concerned by vaccination?

The current vaccination strategy envisages three stages of a vaccine deployment.¹⁴⁰ The first stage in January and February 2021 shall target high-risk patients as defined by a medical commission, over 80-year-olds, employees in the health sector and residents of different homes. The second stage will target senior citizens below the previous threshold of 80 and employees working in companies deemed to form part of critical infrastructure from February to April 2021. This includes retail food companies, public transportation, schools.¹⁴¹ Starting in the second quarter of 2021, the third stage targets the public ranked according to the recommendations of the national vaccination council. For further detail, please see the infographic below.¹⁴²

¹³⁹ See i.e. Bundesministerium Soziales, Gesundheit, Pflege und Konsumentenschutz, *Corona-Schutzimpfung - Häufig gestellte Fragen* (Vienna, 1 January 2021) <<https://www.sozialministerium.at/Corona-Schutzimpfung/Corona-Schutzimpfung--Haeufig-gestellte-Fragen.html>> Accessed 19 January 2021.

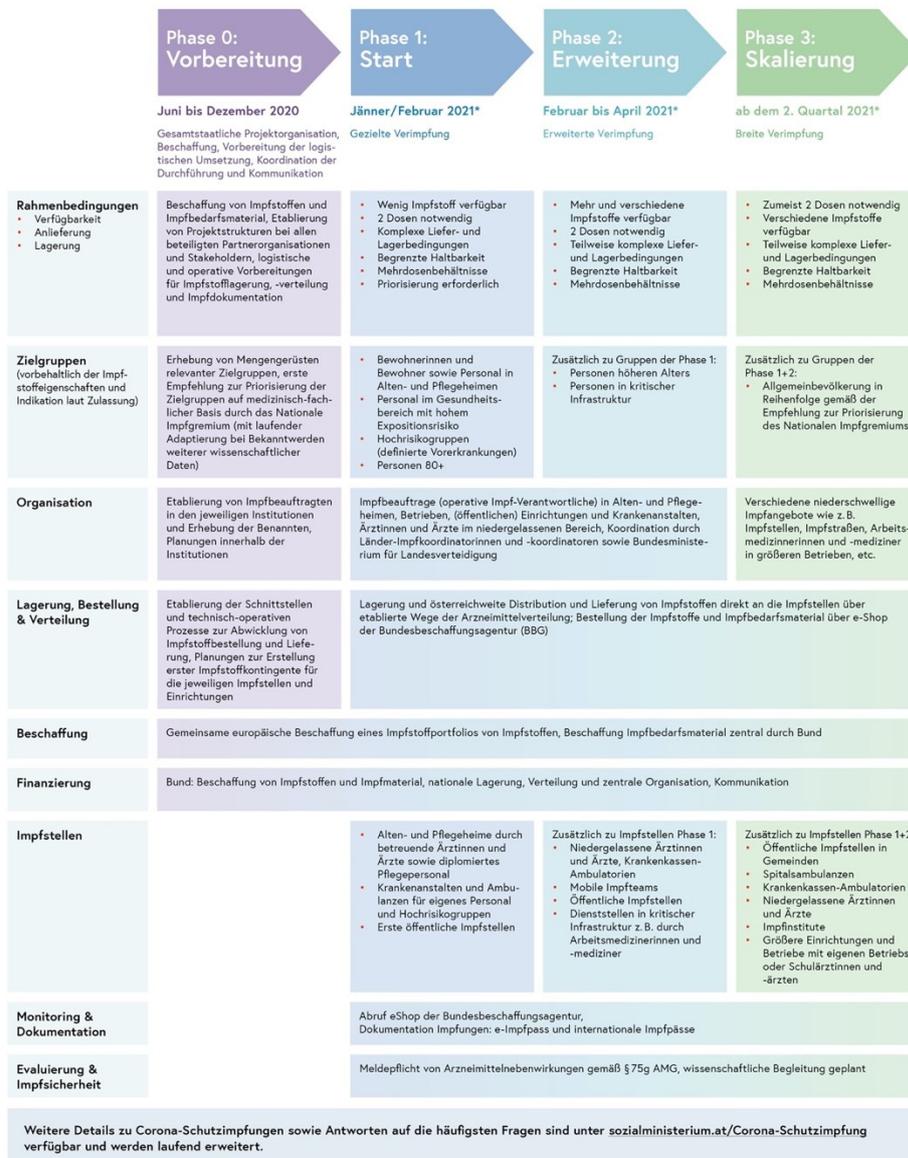
¹⁴⁰ Excluding stage zero as pictured in the graphic, which will not yet see any vaccines being administered.

¹⁴¹ Bundesministerium Soziales, Gesundheit, Pflege und Konsumentenschutz, *Covid-19-Impfung: Impfstrategie für Österreich – Umsetzung und Durchführung* 4 <https://www.sozialministerium.at/dam/jcr:5ba144fa-dd9b-4697-89af-3a51cc66776b/2020_11_25%20_Impfstrategie.pdf> accessed 5 January 2021.

¹⁴² Bundesministerium Soziales, Gesundheit, Pflege und Konsumentenschutz, *Corona-Schutzimpfung – Durchführung und Organisation* (Vienna, 14 January 2021) <<https://www.sozialministerium.at/Corona-Schutzimpfung/Corona-Schutzimpfung--Durchfuehrung-und-Organisation.html>> Accessed 19 January 2021.

Corona-Schutzimpfung: Durchführung & Organisation

Abbildung gemäß Stand der Planung von 11. Jänner 2021. Änderungen und Abweichungen auf Grund der Abhängigkeit von zahlreichen externen Parametern und der Komplexität des Prozesses jederzeit möglich.



* Alle Zeitangaben basieren auf Eigenangaben der Herstellerfirmen, vorbehaltlich des Zeitpunkts der Marktzulassung durch die europäische Arzneimittelbehörde EMA.

c) Where will the vaccination be executed (hospitals, vaccination centres, etc....?)

During the first stage of deployment, the vaccine will be administered close to the location of the receivers, *i.e.* directly in a home for its residents,¹⁴³ at the workplace for employees of hospitals and

¹⁴³ For further details regarding the administration of vaccines in care homes please see:

Bundesministerium Soziales, Gesundheit, Pflege und Konsumentenschutz, *Allgemeine Informationen zur Durchführung in Alten- und Pflegeheimen* (BMSGPK, Version 1.0 Stand 21. Dezember 2020) <https://www.sozialministerium.at/dam/jcr:15a7fb4a-d4cd-4790-915f>

medical institutions, etc. The second stage will then see an expansion to mobile vaccination teams,¹⁴⁴ vaccinations on-site at companies and institutions deemed to belong to critical infrastructure and individual doctor's offices. In the third and last stage, regional and local administrations shall establish vaccination points, and companies with a significant number of employees may administer vaccines to their staff.

- d) If voluntary, are other means of indirect obligation envisaged, for example, the creation of vaccination passport? In which cases and by which entities (public or private) could these indirect means be applied?

No plans regarding the creation of a vaccination/immunity passport have been reported so far. However, please also refer to the remarks concerning the digital register for vaccinations, which could eventually serve as the basis for a vaccination passport.

- e) Will restrictive measures (mask, social distancing, eventual lockdown, etc.) be relaxed for vaccinated people or not? If yes, after the first injection or subject to the second?

The latest reports in this regard indicate that measures will not be changed or relaxed for vaccinated people.

[c9be8c4fd957/201221_Covidimpfung_Manual_Allgemein_Barrierefrei.pdf](https://www.sozialministerium.at/dam/jcr:9eb5c605-abd5-468b-a591-e554e92328ba/201221_Covidimpfung_Manual_Allgemein_Barrierefrei.pdf)> Accessed 19 January 2021; Bundesministerium Soziales, Gesundheit, Pflege und Konsumentenschutz, *Information für Bewohnerinnen und Bewohner von Alten- und Pflegeheimen, Angehörige und gesetzliche Vertreterinnen und Vertreter* (BMSGPK, Version 1.0 Stand 21 December 2020) <https://www.sozialministerium.at/dam/jcr:9eb5c605-abd5-468b-a591-e554e92328ba/201221_Covidimpfung_Manual_%20Bewohnerinnen_und_Bewohner_Barrierefrei.pdf> Accessed 19 January 2021; Bundesministerium Soziales, Gesundheit, Pflege und Konsumentenschutz, *Information für Impfbeauftragte zur Durchführung in Alten- und Pflegeheimen* (BMSGPK, Version 1.0 Stand 21 December 2020) <https://www.sozialministerium.at/dam/jcr:3e6ab4b4-5ae9-4967-8702-50e4aad50f3c/201221_Covidimpfung_Manual_Impfbeauftragte_Barrierefrei.pdf> Accessed 19 January 2021.

¹⁴⁴ For further details regarding the administration of vaccines through mobile vaccination teams see: Bundesministerium Soziales, Gesundheit, Pflege und Konsumentenschutz, *Mobile Impfteams und Reihenimpfungen* (BMSGPK Version 1.0 Stand 21 December 2020) <https://www.sozialministerium.at/dam/jcr:cb7d8716-e297-4cf6-9de8-616b562d7b3a/201221_Covidimpfung_Umsetzung_Mobile_Impfteams_Barrierefrei.pdf> Accessed 19 January 2021.

C.3.4 Germany

1. Is the vaccination regime mandatory, voluntary or hybrid?

The vaccination regime is voluntary with the exception of the rubella vaccine, which was made mandatory in March 2020.

2. If the vaccination is mandatory:

a) Which public authorities are competent to deal with vaccination issues?

For the rubella vaccine, federal agencies are competent for the acquisition, transport and distribution to the respective regions, which are then in charge of organizing local vaccination centres and deploying the vaccine based on their own regulation.¹⁴⁵

b) Which instruments (law, regulation, decree) are used to deal with vaccination?

The government created a legal right to receive a vaccine against SARS-CoV-2 by means of regulation.¹⁴⁶ This right is subject to the availability of vaccine doses and extends to uninsured residents of Germany.¹⁴⁷ It also lays down the groups to enjoy priority vaccinations.¹⁴⁸ More in general, the central norm for claims arising out of vaccine-related damage is the German Infection Protection Act ('*Infektionsschutzgesetz*'), which provides for compensation if the vaccination was recommended or ordered.¹⁴⁹

¹⁴⁵ See i.e. Bundesministerium für Gesundheit, *Fragen und Antworten zur Covid-19-Impfung* (BG, 2020) <<https://www.bundesgesundheitsministerium.de/coronavirus/faq-covid-19-impfung.html>> Accessed 19 January 2021.

¹⁴⁶ Bundesministerium für Gesundheit, *Verordnung zum Anspruch auf Schutzimpfung gegen das Coronavirus SARS-CoV-2 (Coronavirus-Impfverordnung – CoronoImpfV)* (BG, 2020) <https://www.bundesgesundheitsministerium.de/fileadmin/Dateien/3_Downloads/C/Coronavirus/Verordnungen/CoronoImpfV - De_Buette.pdf> Accessed 19 January 2021.

¹⁴⁷ Section 1 Verordnung zum Anspruch auf Schutzimpfung gegen das Coronavirus SARS-CoV-2 (Coronavirus-Impfverordnung – CoronoImpfV) [2020].

¹⁴⁸ Ibid, Sections 2 – 4.

¹⁴⁹ See, in particular, Section 60 of the German Infection Protection Act (Infektionsschutzgesetz IfSG [2001 and 2020] (Fassung vom 17 Jänner 2021) ; See also the FAQs on compensation for employees : Bundesministerium für Gesundheit, *Ansprüche auf Ersatz des Verdienstausfalls für Arbeitnehmer und Selbstständige* (BG, 2020) <https://www.bundesgesundheitsministerium.de/fileadmin/Dateien/3_Downloads/C/Coronavirus/FAQs_zu_56_IfSG_BMG.pdf> Accessed 19 January 2021.

- c) Which are the consequences in case of non-compliance? Is a penalty system provided for? Which penalties are established (financial penalties, educational penalties, *i.e.* interdiction for the non-vaccinated child to go to school, loss of parental rights?)

The compulsory rubella vaccination regime requires children to prove that they are immunized when entering schools or Kindergarten.¹⁵⁰ A doctor's note about having passed an infection or a vaccination certificate can serve as proof. In the absence of such proof, children can be excluded from schooling, and their parents can be fined.

- d) At your knowledge, was the State/government ever considered liable in the past concerning any vaccination issue? Can you refer to any relevant cases?

A number of cases have been brought before German courts based on liability rooted in Section 60 of the German Infection Protection Act,¹⁵¹ for instance, a case of liability for vaccination-related damages that ultimately led to the exodus of the patient.¹⁵² Additionally, there are recent reports of out-of-court settlements for vaccination damages.¹⁵³

3. If vaccination is made voluntarily:

- a) Which entities (public or private) may impose an obligation to carry out a vaccine?

The German Infection Protection Act allows the federal ministry of health to order vaccination by regulation in case a transmissible disease with severe symptoms exists within the population, and an epidemic distribution is foreseeable. These criteria seem to be fulfilled for the case of the Covid-19 pandemic. Generally, this requires the consent of the federal chamber of the German parliament but can be issued without for a maximum duration of one year in urgent cases.¹⁵⁴

¹⁵⁰ Bundesministerium für Gesundheit, *Impfpflicht soll Kinder vor Masern schützen* (BG, 2020) <<https://www.bundesgesundheitsministerium.de/impfpflicht.html>> Accessed 19 January 2021.

¹⁵¹ See the list of an open-access case law database: DeJure.org, *Rechtsprechung zu § 60 IfSG* <<https://dejure.org/dienste/lex/IfSG/60/1.html>> Accessed 19 January 2021.

¹⁵² Urteil vom 13.12.2005 [2005] Landessocialgericht für das Saarland L 5 VJ 1/02, *openJur* (2010) 1540' <<https://openjur.de/u/57369.print>> Accessed 19 January 2021. In this case, the widow of the deceased individual successfully claimed compensation for the damages suffered related to a flu shot. The legal basis for the decision was the predecessor norm to the current section 60 Infektionsschutzgesetz.

¹⁵³ See *i.e.* the following report of a lawyer dated 11 January 2021 : Anja Dornhoff, *PPS-Syndrom als Impfschaden nach Polio-Impfung im Jahr 2020 anerkannt* (Anwalt.de, 2021) <https://www.anwalt.de/rechtstipps/pps-syndrom-als-impfschaden-nach-polio-impfung-im-jahr-2020-anerkannt_184011.html> Accessed: 19 January 2021.

¹⁵⁴ Sections 20 (6) and 15 (2) German Infection Protection Act.

As long as there is no publicly imposed obligation, employers are not entitled to require vaccinations. Even the obligation for medical personnel in the health sector remains uncertain.¹⁵⁵ Employees are not required to answer requests for information on their vaccination status either.¹⁵⁶

- b) Which policy instruments are used to incentive (pro) vaccination behaviour (vaccination campaigns, parental initiative, information tools, other behavioural tools)?

A multi-channel (radio, internet, federal and regional newspapers, hotlines, tv-spots, etc.) information campaign is underway with information being distributed through federal and regional newspapers, radio, tv-spots, homepages and a hotline.¹⁵⁷ One of the slogans being "Germany is rolling up its sleeves".¹⁵⁸

4. Which is the intention of the country as to the Covid-19 vaccination?

- a) Will the vaccination be made mandatory or voluntary?

Reiterated press releases underscore the government's intention to carry out voluntary vaccination only.¹⁵⁹

- b) Which groups of the population, and with which hierarchy will be concerned by vaccination?

The German vaccination strategy envisages two phases, the first of which is subdivided into two substages. During the first phase, a centralized vaccination deployment targets vulnerable groups. The second phase will then entail a widespread decentralized routine vaccination targeting the general population.

¹⁵⁵ Alexandra Henkel, 'Darf der Chef eine Impfung verlangen?' *N-TV.de* (Cologne, 4 January 2021) <<https://www.n-tv.de/ratgeber/Darf-der-Chef-eine-Impfung-verlangen-article22268535.html>> Accessed 19 January 2021.

¹⁵⁶ Deutsche Gewerkschaftsbund, *Corona-Impfung und Beruf: Was Beschäftigte vor dem Impfstart wissen müssen* (DGB, 26 December 2020) <<https://www.dgb.de/themen/++co++f8a93440-4476-11eb-9b7e-001a4a160123>> Accessed 19 January 2021.

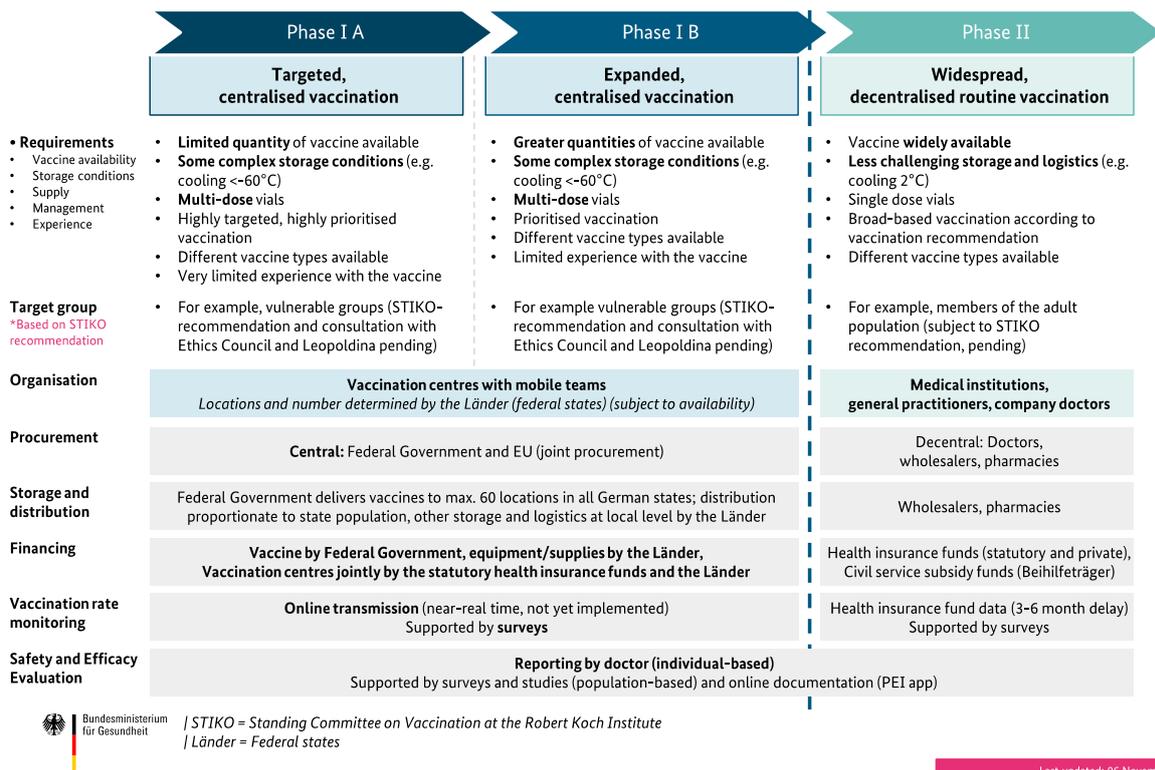
¹⁵⁷ Der Spiegel, 'Bundesregierung startet Werbekampagne für Corona-Impfungen' (22 December 2020) <<https://www.spiegel.de/politik/deutschland/corona-krise-bundesregierung-startet-werbekampagne-fuer-corona-impfungen-a-6568fac8-1e8d-489c-948a-6e85433c789c>> accessed 18 January 2021.

¹⁵⁸ Bundesregierung, *Deutschland krepelt die Ärmel hoch* (Bundesregierung, 28 December 2020) <<https://www.bundesregierung.de/breg-de/mediathek/impfung-corona-1832668>> Accessed 19 January 2021.

¹⁵⁹ Bundesministerium für Gesundheit, *Fragen und Antworten zur Covid-19-Impfung* (BG, 2020) <<https://www.bundesgesundheitsministerium.de/coronavirus/faq-covid-19-impfung.html>> Accessed 19 January 2021.

As indicated on the infographic below,¹⁶⁰ the first phase will see vaccinations of persons with top priority (stage A) followed by persons with high priority (stage B). However, please note that these terms do not exactly match the terms used in the definition of groups enjoying priority access to vaccines as laid down in the German Covid-19 vaccination regulation.¹⁶¹ Therein, three levels are defined: Top priority, high priority and increased priority: Over 80 year old's and healthcare workers being designated to the top priority bracket, police officers or the mentally disabled being designated to the high priority bracket and the clinically overweight or school teachers belonging to the increased priority level.

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c) Where will the vaccination be executed (hospitals, vaccination centres, etc....?)

The different phases have been designed taking account of the availability of vaccine doses, of the required handling of vaccines and the related logistics. The first phase is meant to cover the time during which vaccine availability is still very limited, and available stock will require more challenging handling related to low storage temperatures. Additionally, mRNA-based vaccines are expected to be

¹⁶⁰ Bundesministerium für Gesundheit, *German National Covid-19 Vaccination Strategy* (BG, 2020) <https://www.bundesgesundheitsministerium.de/fileadmin/Dateien/3_Downloads/C/Coronavirus/Impfstoff/German_National_Covid-19_Vaccination_Strategy_eng_Overview_061120.pdf> Accessed 19 January 2021.

¹⁶¹ Sections 2 – 4 Verordnung zum Anspruch auf Schutzimpfung gegen das Coronavirus SARS-CoV-2 (Coronavirus-Impfverordnung – CoronoImpfV) [2020].

delivered (in part) without needles and other required accessories. Throughout this phase, the distribution to specified points across the country is organized on a federal level, while storage and acquisition of accessories are organized by the states. The second phase is expected to see more quantity vaccines are available through wholesalers and pharmacies and are available to the general population. During the first deployment phase, vaccinations will be limited to vaccinations centres with mobile teams, the details of which are determined by the federal states. In the second phase, medical institutions, general practitioners (GP's) and company doctors will be administering vaccines as well.

- d) If voluntary, are other means of indirect obligation envisaged, for example, the creation of vaccination passport? In which cases and by which entities (public or private) could these indirect means be applied?

For the time being, no means of indirect obligation have been envisaged.

- e) Will restrictive measures (mask, social distancing, eventual lockdown, etc.) be relaxed for vaccinated people or not? If yes, after the first injection or subject to the second?

The government has maintained a clear stance of not lifting restrictive measures for vaccinated people. However, recent media reports indicate that drafts for future quarantine regulations may contain exceptions to Covid-19 test and quarantine requirements for vaccinated people.¹⁶²

¹⁶² Philipp Volkmann-Schluck, 'Freiheit für Geimpfte – eine Idee, die kaum aufzuhalten ist' *Welt* (Berlin, 13 January 2021) <<https://www.welt.de/politik/ausland/plus224255082/Immunitaets-Privilegien-Freiheit-fuer-Geimpfte-eine-Idee-die-kaum-aufzuhalten-ist.html?>> Accessed 19 January 2021; Gregor Waschinski, 'Bundesregierung bricht Versprechen der Gleichbehandlung von Geimpften und Nicht-Geimpften' *Handelsblatt* (Düsseldorf, 8 January 2021) <<https://www.handelsblatt.com/politik/deutschland/neue-quarantaeneregeln-im-reiseverkehr-bundesregierung-bricht-versprechen-der-gleichbehandlung-von-geimpften-und-nicht-geimpften-/26780676.html>> Accessed 19 January 2021.

C.3.5 Switzerland

1. Is the vaccination regime mandatory, voluntary or hybrid?

In Switzerland, there is no mandatory vaccination. Articles 20-24 *Loi fédérale sur la lutte contre les maladies transmissibles de l'homme* of 2012 deals precisely with the issue of vaccination. The general rule is the absence of obligation, replaced by a series of recommendations established at the federal level (Articles 20-21).

The law established a federal commission issuing recommendations in the so-called *Plan de vaccination suisse*, that is regularly updated (Article 20). The general rule is incitation, as per Article 21. Nevertheless, cantonal authorities can make vaccination mandatory for certain groups of particularly exposed people, if serious danger is established.

Article 22 Vaccinations obligatoires

Les cantons peuvent déclarer obligatoires des vaccinations pour les groupes à risques, pour les personnes particulièrement exposées et pour les personnes exerçant certaines activités, pour autant qu'un danger sérieux soit établi.

2. If the vaccination is mandatory:

N/A.

3. If vaccination is made voluntarily:

a) Which entities (public or private) may impose an obligation to carry out a vaccine?

The legal basis to answer the question is the *Loi fédérale sur la lutte contre les maladies transmissibles de l'homme* of 2012. Two provisions may allow the *Conseil fédéral* to decide extraordinary measures:

Article 6 (particular situations)¹⁶³ and Article 7 (extraordinary situations).¹⁶⁴ Article 6 clearly states that the *Conseil fédéral* may “declare compulsory vaccinations for endangered population groups, particularly exposed people and people carrying out certain activities”. Pursuant to Article 7, in case of an extraordinary situation, the *Conseil fédéral* can impose the necessary measures for the entire or a part of the country.

At the cantonal level, Article 22 of the law can allow making certain vaccinations mandatory under the same limitations and conditions. Under Article 22, the main conditions for cantonal authorities to impose vaccination is to establish a serious risk (*qu’un danger sérieux soit établi*) and that vaccination is limited to certain categories of the population.

If the vaccination is not mandatory, public authorities may adopt other measures. The aforementioned law foresees certain measures than cantonal authorities can impose on individuals. These measures are listed at Articles 33-38 and include mandatory medical consultation or treatments, quarantines or prohibition to exercise certain professional activities. Yet, Article 30 identifies these measures clearly as an *extrema ratio* and demands a strict proportionality with the situation at stake.

b) Which policy instruments are used to incentive (pro) vaccination behaviour (vaccination campaigns, parental initiative, information tools, other behavioural tools)?

Cantonal authorities may play a role of incitation to vaccination by informing the population about the national vaccination plan as well as by regularly checking the vaccination status of children during their mandatory schooling and of any person subject to a recommended vaccination. Their action is guided by Article 21 as follows:

Article 21 : Encouragement de la vaccination

¹⁶³ Article 6 Situation particulière :

(1) Il y a situation particulière dans les cas suivants:

a. les organes d’exécution ordinaires ne sont pas en mesure de prévenir et de combattre l’apparition et la propagation d’une maladie transmissible et qu’il existe l’un des risques suivants:

1. un risque élevé d’infection et de propagation,
2. un risque spécifique pour la santé publique,
3. un risque de graves répercussions sur l’économie ou sur d’autres secteurs vitaux;

b. l’Organisation mondiale de la santé (OMS) a constaté la présence d’une urgence sanitaire de portée internationale menaçant la santé de la population en Suisse.

(2) Le Conseil fédéral peut, après avoir consulté les cantons:

- a. ordonner des mesures visant des individus;
- b. ordonner des mesures visant la population;
- c. astreindre les médecins et d’autres professionnels de la santé à participer à la lutte contre les maladies transmissibles;
- d. déclarer obligatoires des vaccinations pour les groupes de population en danger, les personnes particulièrement exposées et les personnes exerçant certaines activités.

(3) Le Département fédéral de l’intérieur (DFI) coordonne les mesures de la Confédération.

¹⁶⁴ Article 7 Situation extraordinaire : Si une situation extraordinaire l’exige, le Conseil fédéral peut ordonner les mesures nécessaires pour tout ou partie du pays.

¹ *Les cantons encouragent la vaccination par les mesures suivantes:*

- a. informer les personnes concernées des recommandations figurant dans le plan national de vaccination;*
- b. contrôler régulièrement le statut vaccinal des enfants et des adolescents pendant la scolarité obligatoire;*
- c. veiller à ce que les personnes visées par les recommandations reçoivent une vaccination complète.*

² *Les cantons peuvent en particulier prendre les mesures suivantes:*

- a. proposer des vaccinations dans le cadre du service médical scolaire;*
- b. effectuer des vaccinations gratuites ou remettre des vaccins à un prix inférieur à celui du marché.*

What is more, the role of scientific expertise of the federal commission (*Commission fédéral pour les vaccinations*) issuing recommendations in the so-called *Plan de vaccination suisse* plays a major role in this regard.

4. Which is the intention of the country as to the Covid-19 vaccination?

- a) Will the vaccination be made mandatory or voluntary?

In Switzerland, the Minister of Health Alain Berset and the *Office fédéral de la santé publique* stated clearly the absence of obligation: no more than with any other disease, there will not be general compulsory vaccination against Covid-19.

- b) Which groups of the population, and with which hierarchy will be concerned by vaccination?

The *Office fédéral de la santé publique* established a 5-tier strategy :

Qui est prioritaire pour la vaccination?

1. personnes âgées ou vulnérables*

2. médecins, infirmiers, aides-soignants...

3. proches des personnes vulnérables

4. résidents de foyers pour personnes handicapées

5. tous les adultes volontaires

* A l'exception des femmes enceintes

Graphique: Heidi.news • Source: OFSP • Récupérer les données • Créé avec Datawrapper

The first group of vulnerable and elderly persons comprises people from 75 years old and people with a chronic disease involving the highest risks, regardless of their age. People between 65 and 74 years old and people under 65 with chronic illnesses who have not yet been vaccinated will follow. The second group includes doctors, nurses and health workers. In the third group are listed the close relatives of vulnerable people. In the fourth, we find the residents of centres for people with a handicap. In the fifth, all the remaining adults on a voluntary basis.

c) Where will the vaccination be executed (hospitals, vaccination centres, etc....?)

The army takes care of the vaccines when they arrive in Switzerland. It stores them in warehouses equipped with ultra-low temperature freezers, the locations of which are kept secret, and takes care of distribution to cantonal authorities. The latter then takes over to administer the vaccine to the population. Switzerland is in the process of opening *ad hoc* vaccination centres in independent sites (gyms, buildings of the *protection civile*, etc.) and in hospitals. The caregivers are called upon to perform the injections. Mobile teams are also set up, in particular, to vaccinate in nursing homes. In a second moment, pharmacies will be able to distribute the vaccine, once the available doses are higher.

d) If voluntary, are other means of indirect obligation envisaged, for example, the creation of vaccination passport? In which cases and by which entities (public or private) could these indirect means be applied?

At the level of federal policy, the *Office fédéral de la santé publique* (OFSP) encouraged doctors to strongly recommend vaccination in case of chronic disease involving high risks. Nevertheless, the OFSP did not exclude the possibility to use an application on mobile phones, with a digital code, to simplify the recognition of vaccinated individuals.¹⁶⁵

¹⁶⁵ Anouch Seydtaghia, 'Notre carnet de vaccination chez Apple? «Non merci», dit la Suisse' *Le Temps* (Lausanne, 4 January 2021) <<https://www.letemps.ch/economie/carnet-vaccination-chez-apple-non-merci-dit-suisse>> Accessed 19 January 2021.

The idea of a vaccination/immunity passport is still highly debated. The population appears skeptical at a level of 68%. In the parliament, political parties are very much divided: Céline Amaudruz (UDC/GE), member of the *Commission de la sécurité sociale et de la santé publique* (CSSS), and Philippe Nantermod (PLR/VS) stated clearly their support for this idea. More nuanced are Brigitte Crottaz (PS/VD) because of the absence of sufficient information and data on the point, and Isabelle Moret (PLR/VD) for whom the priority must be gathering a sufficient number of vaccines before thinking about encouraging the population. Léonore Porchet (Les Verts/VD) is strongly against the idea, recalling the traditional absence of vaccination obligation and the call for self-appreciation.¹⁶⁶

- e) Will restrictive measures (mask, social distancing, eventual lockdown, etc.) be relaxed for vaccinated people or not? If yes, after the first injection or subject to the second?

In Switzerland, the position of the OFSP for the moment goes against the relaxation of sanitary measures even for vaccinated people. Even if a vaccination protects against disease, it is not yet established whether it will also prevent the transmission of the coronavirus. Until further notice, the rules of hygiene and conduct remain essential measures to protect yourself and others from the coronavirus.

¹⁶⁶ Michel Guillaume, 'Le Passeport COVID, l'idée qui divise' *Le Temps* (Lausanne, 1 December 2020) <<https://www.letemps.ch/suisse/passeport-covid-lidee-divise>> Accessed 19 January 2021.

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