

The EU's Vaccine Diplomacy in the WHO

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COVID-19 has posed a serious challenge for the European Union (EU) since 2020. The EU has adopted vaccine diplomacy, among other measures, to tackle this global pandemic. The EU also applied the Advance Purchase Agreements (APA) and export control for the COVID-19 vaccine in 2021, and did not fully support a waiver for vaccine and medicine Intellectual Property (IP) in the 2022 WTO negotiation. This paper focuses primarily on the following core issues and questions: What is the concept of vaccine diplomacy? What are the theories, policy decisions, jurisprudence and practices of the EU's vaccine diplomacy? What is the strategy of the EU for cooperating with the WHO and the Access to Covid-19 Tools (ACT) Accelerator (COVAX)? What is the significance, and implications of EU vaccine diplomacy? The EU firmly supports WHO multilateralism and the COVAX framework for vaccine distribution and health cooperation. The EU also actively participates in WHO negotiations for a new health treaty, to respond effectively to future pandemics. This paper also suggests some ways to resolve the problem about how the EU can become a contracting party to the new WHO health treaty. Despite the fact that some policies such as the APA, vaccine export control and IP waiver were criticized by some other countries, the EU's vaccine diplomacy in the WHO is largely a great success. The EU vaccine diplomacy is expected to increase the EU's soft power and normative influence in the WHO, and contribute greatly to the health of European citizens, other human beings and a new emerging international health order.

Keywords: APA, COVAX, COVID-19, export control, EU, International Pandemic Treaty, vaccine diplomacy, WHO, WTO waiver

1 INTRODUCTION

On 11 March 2020, the World Health Organization (WHO) declared COVID-19 as a pandemic, constituting a Public Health Emergency of International Concern (PHEIC). By 2 August 2023, 769 million people worldwide had been infected and more than 6.9 million people had died.¹ COVID-19 posed a major threat to economic activities and foreign relations around the world, and a severe challenge to people's health, safety, and life. In the absence of effective therapeutic drugs

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¹ World Health Organization [hereinafter WHO], *WHO Coronavirus (COVID-19) Dashboard* (9 Aug. 2023), <https://covid19.who.int/> (accessed 9 Aug. 2023).

against COVID-19, safe and effective vaccines became a primary consideration and strategy for countries to fight against the pandemic and resume normal economic activities and social life.²

The WHO states that safe and effective vaccines can help ensure that COVID-19 does not result in severe disease and death. Therefore, during the pandemic, vaccination is an essential part of public health and basic medical treatment in many countries. It is also crucial for the prevention and control of infectious diseases and pandemics, and has become an important basis for national and global health security.³ In 2021, vaccines produced in Europe were mostly purchased by the European Union (EU) and the United States (US) through the 'Advance Purchase Agreements' (APA).⁴ The EU and the US also imposed restrictive measures on vaccine export and any surplus vaccines were to be donated and distributed to other countries. In fact, at that time, most countries did not have enough technology to develop and produce new coronavirus vaccines. In addition, many developing countries were short of funds to buy large quantities of vaccines. All this led to an imbalance in global vaccine supply in 2021, a serious shortage of vaccines in many countries, and a global public health crisis.

Vaccine diplomacy is one of the types of medical diplomacy, which also known as public health diplomacy.⁵ Medical diplomacy entails helping other countries to improve their medical infrastructure, strengthen their public health capacity, and improve their people's healthcare quality by providing medical expertise and equipment, drugs and vaccines as well as building hospitals and medical schools, etc. During the Cold War, the heyday of vaccine diplomacy, both the US and the former Soviet Union actively promoted medical and vaccine diplomacy to win the recognition and support of allies. For example, the US-assisted Sabin vaccine for eradicating polio was praised by the world.⁶

² WHO, *Strategy to Achieve Global COVID-19 Vaccination by Mid-2022* (2021); International Monetary Fund [hereinafter IMF], *Joint statement by the Heads of the World Bank Group, International Monetary Fund, World Health Organization, and World Trade Organization on the First Meeting of the Task Force on COVID-19 Vaccines, Therapeutics and Diagnostics for Developing Countries*, Press Release No. 21/201 (30 Jun. 2021).

³ WHO, *COVID-19 Advice for the Public: Getting Vaccinated* (4 Aug. 2023), <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/covid-19-vaccines/advice> (accessed 16 Aug. 2023); and US CDC, *Benefits of Getting A COVID-19 Vaccine* (11 May 2023), <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/vaccine-benefits.html> (accessed 16 Aug. 2023).

⁴ The EU's APA is based on Commission Decision approving the agreement with Member States on procuring Covid-19 vaccines on behalf of the Member States and related procedures, C (2020) 4192 final (18 Jun. 2020). Comments on the APA, see E. R. Berndt & J. A. Hurvitz, *Vaccine Advance Purchase Agreements for Low-Income Countries: Practical Issues*, 24(3) Health Aff. 653–654 (2005), doi: 10.1377/hlthaff.24.3.653.

⁵ P. G. Bourne, *Partnership for International Health Care*, 93(2) Pub. Health Reports 121(1978).

⁶ P. J. Hotez, *Vaccine Diplomacy: Historical Perspective and Future Directions*, 8(6) PLoS Neglected Tropical Diseases e2808 (2014), doi: 10.1371/journal.pntd.0002808.

Humanitarian aid of medicine and vaccine is one of the best ways to win the hearts of the people in the recipient countries, and forms an important element of national diplomatic strategy.⁷

The WHO also regards health diplomacy as 'a Bridge to Peace'.⁸ Therefore, as the COVID-19 pandemic occurred, vaccine diplomacy has been highly valued by the EU, the US, China and other major countries, to show their strength in medical science and technology, R&D and innovation, public health, humanitarianism, and emergency response to health crises. Vaccine diplomacy helps donor countries to promote foreign cooperation, improve their international image and enhance their influence in the international community.⁹

The EU proposed a Strategy for COVID-19 vaccines on 17 June 2020.¹⁰ The specific objectives of the EU vaccine strategy mainly include: (1) providing EUR 2.7 billion as an Emergency Support Instrument (ESI) in 2020, to subsidize and accelerate vaccine research and development, and ensure the quality, safety and effectiveness of vaccines; (2) producing sufficient quantities of vaccines to ensure timely access to vaccines for EU Member States and their populations, while leading global cooperation to fight the pandemic; and (3) ensuring the fairness, price rationality and timeliness of vaccine distribution, etc. Since 2020, vaccine diplomacy has been a priority goal within the foreign policies of the EU, and this development has a high strategic significance.

The COVID-19 pandemic reveals the systemic vulnerabilities of the global health system, and the importance of a new WHO pandemic treaty for future health crisis response. Under the theme of EU vaccine diplomacy in the WHO, this paper will discuss the EU's vaccine strategy and its diplomacy in the WHO. This study provides insight into the policy initiatives, negotiation positions, cooperation strategies, and related implications of the EU in the WHO, and in the Access to Covid-19 Tools (ACT) Accelerator (COVAX). These issues have great significance on international health cooperation to combat the COVID-19 and also future pandemic.

⁷ P. J. Hotez, *Peace Through Vaccine Diplomacy*, 327(5971) Sci. 1301 (2010), doi: 10.1126/science.1189028.

⁸ WHO, *Health as a Bridge for Peace- Humanitarian Cease-Fires Project (HCFP)* (2014).

⁹ S. T. Lee, *Vaccine Diplomacy: Nation Branding and China's COVID-19 Soft Power Play*, 19(1) Place Branding & Pub. Dipl. 64 (2021), doi: 10.1057%2Fs41254-021-00224-4; UN Assembly, *Oslo Ministerial Declaration: Global Health—A Pressing Foreign Policy Issue of Our Time*, A/63/59 Annex, 2 (5 Dec. 2008).

¹⁰ European Commission, *Communication on EU Strategy for COVID-19 Vaccines*, COM (2020) 245 final (17 Jun. 2020).

2 THE FOUNDATIONS OF EU VACCINE DIPLOMACY

2.1 POLITICAL RESOLUTION

On 28 January 2020, the EU decided to launch the integrated political crisis response mechanism (IPCR) in response to COVID-19, using the information sharing mode as a comprehensive crisis response to COVID-19.¹¹ IPCR is jointly organized by the European Commission and the European External Action Service (EEAS) to provide regular development and analysis reports through the special web platform, share information with Member States and implement comprehensive crisis response measures. IPCR is the highest-level political crisis response mechanism in the EU.¹² The EU activated IPCR in full mode for a comprehensive crisis response on 2 March 2020, this mode is not only for information sharing, but includes the adoption of various response policies.¹³

On 11 December 2020, the European Council reiterated that the EU would be committed to providing safe and effective vaccines to countries all over the world, including through the COVAX mechanism. The EU also stressed that vaccination should be regarded as a kind of ‘global public goods’ and distributed fairly.¹⁴ On 25 May 2021, the EU promised to donate more than 100 million doses of vaccine by the end of 2021 to the world beyond the EU, as a contribution to the global response to the COVID-19 pandemic. The EU mobilized EUR forty-six billion for the global response to COVID-19. By February 2022, the EU and Member States had donated more than EUR three billion to the COVAX. The EU and Member States have sent 1.4 billion COVID-19 vaccine doses to more than 150 countries since February 2021, including more than 700 million doses of vaccines donated to ninety-two low and mid-income countries by mid-2022, making the EU the leading donor of COVID-19 vaccines in the world.¹⁵

On 26 February 2021, the EU decided to initiate an international treaty under the WHO framework, on the prevention and control of COVID-19 and other

¹¹ European Council, *Croatian Presidency Activates EU's Integrated Crisis Response in Relation to Corona Virus*, Press Release (28 Jan. 2020).

¹² A. De Ruijter, *EU Health Law & Policy. The Expansion of EU Power in Public Health and Health Care* 77 (Oxford University Press 2019); *Decisions on the EU Integrated Political Crisis Response Arrangements*, OJ L 32, 28 (2018).

¹³ European Council, *COVID-19 Outbreak: The Presidency Steps Up EU Response by Triggering Full Activation Mode of IPCR*, Press Release (2 Mar. 2020).

¹⁴ European Council, *European Council meeting (10 and 11 December 2020) Conclusions*, EUCO 22/20 (11 Dec. 2020).

¹⁵ European Council, *European Council Meeting (24 and 25 May 2021) Conclusions*, EUCO 5/21 (25 May 2021); and *Council of the EU, Employment, Social Policy, Health and Consumer Affairs Council (Health)* (29 Mar. 2022), <https://www.consilium.europa.eu/en/meetings/epsco/2022/03/29/> (accessed 10 Nov. 2023).

epidemics.¹⁶ The treaty will be discussed at the World Health Assembly (WHA), where there will be negotiations about how to prevent and respond to future major international health emergencies, based on the experience and lessons of the current pandemic. The main objectives of such international treaty are to promote a comprehensive and multi-sectoral approach, and to strengthen national and international systems that prevent and respond to global pandemics. This treaty will also adopt the global health security concept of 'no one is safe before everyone is safe', to support the WHO's ideals and the universal principle of health for all.¹⁷

Accordingly, the European Council and the Council of health ministers have made important political decisions in response to COVID-19, decisions which have in turn become important guidelines for EU legislation and policies. In addition, the summits enabled partners to discuss together and resolve the major crisis of COVID-19 as encountered by the EU. The EU summits also improved overall efficiency, and ensured solidarity and cooperation among Member States. These decisions had political importance in forming and implementing of EU vaccine diplomacy.

2.2 JURISPRUDENCE OF EU VACCINE DIPLOMACY

2.2[a] *Right to Health*

The preamble of the 1948 WHO Constitution clearly points out that health is a universal human right: 'The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition' and defines health as 'a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity'.¹⁸ Article 25 (1) of the 1948 Universal Declaration of Human Rights (UDHR)¹⁹ stipulates that 'everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing, medical care and necessary social services'. These norms highlight the importance of health and its relevance to human rights.

Universal vaccination with safe and effective vaccines has become an important strategy for collective immunization and the safeguarding of people's collective

¹⁶ Council of the EU, *Statement of the Members of the European Council on COVID-19 and Health*, Press Release 1–2 (25 Feb. 2021).

¹⁷ WHO, *Global Leaders Unite in Urgent Call for International Pandemic Treaty* (30 Mar. 2021), <https://www.who.int/news/item/30-03-2021-global-leaders-unite-in-urgent-call-for-international-pandemic-treaty> (accessed 12 Nov. 2023); and Council of the EU, *EU Supports Start of WHO Process for Establishment of Pandemic Treaty: Council Decision*, Press Release (20 May 2021).

¹⁸ Constitution of the World Health Organization, resolutions WHA26.37, WHA29.38, WHA39.6 and WHA51.23 (Oct. 2006).

¹⁹ United Nations, *Universal Declaration of Human Rights, General Assembly Resolution 217A* (10 Dec. 1948).

right to health.²⁰ The EU believes that the right to health is a universal basic right. In addition to recognizing the first generation of individual health rights, the EU has also gradually emphasized the second generation of collective public health rights, including providing developing countries with drugs at reasonable prices, through WTO and World Intellectual Property Organization (WIPO), in order to control diseases and infections such as HIV/AIDS, malaria and tuberculosis.

Article 3(1) of the TEU²¹ stipulates that the EU's aim is to promote peace, its values and the well-being of its peoples. The respect for human rights is one of the EU values provided in Article 2 of the TEU. Article 3(5) states that in its relations with the wider world, the EU shall uphold and promote its values and interests, and contribute to the protection of its citizens. The EU shall also contribute to the preservation of peace and security, the protection of human rights, and to the strict observance and the development of international law, including respect for the principles of the United Nations Charter. Article 3(5) of the TEU regarding the strict observance of international law is upheld by the ruling of the Court of Justice of the European Union (CJEU) in the case *Air Transport Association of America*.²² WHO is a specialized agency of the UN; the EU should also respect the WHO Constitution.²³ Paragraph 3 of the Preamble of the WHO Constitution provides that the health of all peoples is fundamental to the attainment of peace and security, and is dependent upon the fullest cooperation of individuals and states. Article 1 of the WHO Constitution also indicates that the objective of the WHO shall be the attainment by all peoples of the highest possible level of health. All these WHO principles and constitutional provisions should be further developed, as a self-imposed duty or international responsibility, by the EU, to combat the global health crisis caused by the COVID-19 pandemic.²⁴

According to Article 47 of the TEU, the EU has legal personality. As a supranational organization, the EU is a subject of international law, and as such, is bound by any obligation incumbent upon it under the general rules of international law. This international obligation was confirmed by the International Court of Justice (ICJ) in its advisory opinion on the *Interpretation of the Agreement between the WHO and Egypt*.²⁵

²⁰ United Nations, *A UN Framework for the Immediate Socio-Economic Response to COVID-19* (United Nations 2020); P. Barrett, S. Chen & N. Li, *COVID's Long Shadow: Social Repercussions of Pandemics*, 23(2) IMF Research Perspectives 6 (2020), doi:10.5089/9781513564081.053.

²¹ Consolidated Versions of the Treaty on European Union, OJ C202, 13 (2016).

²² CJEU, Case C-366/10, *Air Transport Association of America*, C:2011:864 (21 Dec. 2011), para. 101.

²³ WHO, *Constitution of the World Health Organization*, in WHO, *Basic Documents* 1–19 (49th ed. 2020).

²⁴ A. Bosman, *The EU as a Crisis Manager: Ensuring Accountability under IHL*, 28(3) Eur. Foreign Aff. Rev. 247 (2023), doi:10.54648/eerr2023020.

²⁵ ICJ, *Interpretation of the Agreement of 25 March 1951 Between the WHO and Egypt* (1980), para. 37.

Health is a fundamental human right, and achieving equality of access to vaccines and medicines is crucial for combating cross-border pandemics and ensuring global public health. Articles 168 (1) and (3) of the TFEU²⁶ require that a high level of human health protection shall be ensured in the definition and implementation of all EU policies and activities, logically including those policies that improve public health and combat serious cross-border threats to health. Article 214 of the TFEU also provides the EU a specific legal basis for the funding of humanitarian aid. These TEU and TFEU provisions provide a legal foundation for the EU's vaccine diplomacy, particularly to combat the COVID-19 pandemic. It would involve a constitutional issue, or even a legitimacy problem if the EU did not take public health cooperation with third countries and the WHO into consideration in its foreign policy.

The COVID-19 virus knows no borders and international cooperation for access to vaccines is needed more than ever to combat this and other pandemics. In light of the lessons learnt during the COVID-19 pandemic, the EU adopted Regulation 2022/2371²⁷ to combat serious cross-border threats to health. Article 30 of the Regulation states that the EU shall establish a framework for enhanced cooperation with the WHO, in particular as regards reporting and reviewing activities. Paragraph 38 of the Preamble of the Regulation also states that cooperation with third countries and the WHO should be fostered. This reinforced cooperation is required in order to contribute to the EU's commitment to strengthening support to third country health systems, vaccination rates, preparedness and response capacity to combat pandemics. The EU could benefit from concluding international health cooperation agreements with third countries or the WHO. These agreements could also facilitate the donation of vaccines or medical counter-measures, in particular for the benefit of low- and middle-income countries.

In this context, the EU has legal requirements, under its constitutional Treaties, international agreements and related laws, to promote EU values in third countries including the protection of health rights. The EU's vaccine diplomacy could ensure the EU effectively combats cross-border pandemics and enhances global public health. Accordingly, a right to health, and to vaccines to effectively combat the COVID-19 pandemic, can be considered as a shared responsibility and collective obligation of every state and of the EU.²⁸

It should be noted that this international health obligation is a self-imposed obligation. The EU does not have an obligation to pay for health protect in third countries. Nor do third countries have positive rights or international claims rights

²⁶ Consolidated Version of the Treaty on the Functioning of the European Union, OJ C202, 47 (2016).

²⁷ Regulation 2022/2371 on Serious Cross-Border Threats to Health and Repealing Decision No 1082/2013/EU, OJ L 314, 26 (2022).

²⁸ J. Tobin, *The Right to Health in International Law* 326 (Oxford University Press 2012).

to ask the EU for health aid or for it to take other actions. Like the Generalized System of Preferences (GSP) in the WTO,²⁹ a self-imposed international health obligation only enables the EU to take autonomous actions for health protection in third countries, particularly developing countries. The EU may unilaterally determine which countries or international organizations, and which actions, are included in its health diplomacy.

2.2[b] *Humanitarian Assistance*

UN General Assembly resolution 46/182³⁰ states that, in principle, humanitarian assistance should be appealed for or applied for by countries in need, and should be provided in accordance with the ‘principles of humanity, neutrality and impartiality’. The goal of EU vaccine diplomacy is helping most of developing countries to meet the emergency need for vaccines, for the purpose of saving lives, maintaining people’s health, and jointly fighting and solving the COVID-19 pandemic crisis. Therefore, EU vaccine diplomacy is in line with the principles of UN humanitarian assistance.³¹

The office of the United Nations High Commissioner for human rights (OHCHR) issued guidelines on ‘Human Rights and Access to COVID-19 Vaccines’ on 17 December 2020, pointing out that affordable and non-discriminatory vaccine accessibility is a fundamental human right. Ensuring vaccine accessibility is not only necessary, but also in the interests of all mankind.³²

A WHO report drew attention to four elements of the Vaccine Assistance Framework and emergency health assistance: (1) vaccine safety and effectiveness; (2) source of funding for the vaccine; access to and distribution of the vaccine; and cold chain equipment; (3) fair distribution through public intervention; and (4) popularizing vaccination, and post-vaccination monitoring and evaluation. For most developing countries, the above four elements are the key to combat the COVID-19 pandemic and solve the health crisis.³³

The EU, together with its twenty-seven Member States, has always been a major global donor of humanitarian aid. Humanitarian aid is one of the important policies and objectives of the EU’s foreign relations to provide emergency relief to

²⁹ WTO, *Development Legal Provisions: Main Legal Provisions*, https://www.wto.org/english/tratop_e/devel_e/d2legl_e.htm (accessed 12 Nov. 2023). See also C. VanGrasstek, *The History and Future of the World Trade Organization*, 474–475 (WTO 2013).

³⁰ UN General Assembly, *Strengthening of the Coordination of Humanitarian Emergency Assistance of the United Nations*, Resolution A/RES/46/182 (19 Dec. 1991).

³¹ U.N. Office for the Coordination of Humanitarian Affairs, *Global Humanitarian Response Plan COVID-19*, Final Progress Report (22 Feb. 2021).

³² United Nations, *Human Rights and Access to COVID-19 Vaccines*, OHCHR 1 (17 Dec. 2020).

³³ WHO, *Vaccination in Acute Humanitarian Emergencies: A Framework for Decision Making* (2017).

the recipient countries, play an important role in avoiding humanitarian crises, and maintain peace and stability. The total amount of foreign aid from the EU and its twenty-seven Member States in 2020 and 2021 were EUR 34.47 billion and EUR 32.76 billion respectively, in which the EU accounted for EUR 15.12 billion and EUR 14.08 billion respectively.³⁴ The EU is a major global exporter of COVID-19 vaccines and one of the largest donors to COVAX. In the meanwhile, the EU is committed to promoting humanitarian assistance in the form of vaccines, and also to international cooperation in international forums, such as the group of 20 (G20), G7 and the WHO, in order to jointly combat the COVID-19 pandemic.³⁵

The WHO pointed out that in order to end the COVID-19 pandemic, vaccination rates in every country should reach more than 40% of the population by the end of 2021, and this figure should be raised to 70% by the end of June 2022.³⁶ Therefore, the EU has promoted actively vaccine equality to popularize vaccination and achieve global community immunity during the pandemic.

2.2[c] *Global Public Goods*

To face the COVID-19 crisis, global health governance requires mutual tolerance among countries, and active cooperation in and sharing of global anti-epidemic resources, vaccines and drugs. In this context, the UN Security Council decided in February 2021 that vaccines should be regarded as a global public good to avoid, inhibit and prevent the spread of novel coronavirus and the development of mutant virus strains.³⁷ In addition, the WHO proposed the concept of 'vaccine equity'. At that time, a large number of vaccine resources were developed, produced and controlled by the USA and a few European countries, resulting in vaccine shortage in many countries. The fair distribution of the vaccine can improve the health and safety of people in developing countries and avoid the global failure of vaccination caused by unfair vaccine distribution.³⁸

The COVID-19 epidemic has seriously affected the whole world. The WHO believes that 'unless everyone is safe, none of us is safe', and no individual or country can fight the epidemic independently. Therefore, the COVID-19 vaccine,

³⁴ European Council, *Global Solidarity during the COVID-19 Pandemic* (2023), <https://www.consilium.europa.eu/en/policies/coronavirus/global-solidarity/> (accessed 12 Nov. 2023).

³⁵ United Nations, *supra* n. 32, at 1.

³⁶ WHO, *Strategy to Achieve Global COVID-19 Vaccination by Mid-2022* 3–13 (2021); WHO, *Vaccine Equity* (2021), <https://www.who.int/campaigns/vaccine-equity> (accessed 12 Oct. 2021).

³⁷ United Nations, *Resolution 2565 (2021) Adopted by the Security Council on 26 February 2021*, S/RES/2656.

³⁸ I. Kaul & M. Faust, *Global Public Goods and Health: Taking the Agenda Forward*, 79(9) Bull. W. Health Org. 869–870 (2021).

as the most effective epidemic control method at present, should be regarded as a global public good.³⁹

WHO adopted the WHA resolution on 19 May 2020 which called for COVID-19 vaccines to be treated as global public goods in order to prevent, contain and stop transmission, and end the pandemic. UNESCO made a similar statement or proposition on 24 February 2021.⁴⁰

President of the European Commission, Ursula von der Leyen also stressed that vaccines are a ‘universal, common good’ on 24 April 2020, and called for global collaboration to confront COVID-19.⁴¹ ACP-EU Joint Parliamentary Assembly also adopted a resolution to support the WHA resolution mentioned above, and called on the European Commission and EU Member States to commit to considering vaccines and treatments as global public goods.⁴²

To sum up, the right to health, humanitarian assistance, and global public goods are the important elements and policy bases of EU vaccine diplomacy. The UN, WHO, EU and other countries recognize that international solidarity and cooperation are key factors in combating and solving COVID-19 and other pandemics.⁴³ Moreover, the EU also recognizes global solidarity and international cooperation as strategies for its vaccine diplomacy at the WHO.

3 PRACTICES OF EU VACCINE DIPLOMACY

3.1 THE EU’S GLOBAL RESPONSE TO COVID-19

Article 21(1) of the TEU provides that the EU shall seek to develop relations with third countries and international organizations, and promote multilateral solutions to common problems. The COVID-19 pandemic indicates that the EU health and

³⁹ WHO, *A Global Pandemic Requires a World Effort to End It – None of Us Will Be Safe Until Everyone Is Safe* (2020), <https://www.who.int/news-room/commentaries/detail/a-global-pandemic-requires-a-world-effort-to-end-it-none-of-us-will-be-safe-until-everyone-is-safe> (accessed 10 Feb. 2022); and K. K. Mantilla & C. C. Barona, *COVID-19 Vaccines as Global Public Goods: Between Life and Profit*, South Centre, Research Paper No. 154, 2 (2022).

⁴⁰ WHO, *Seventy-Third World Health Assembly – COVID-19 Response*, WHA73.1 (19 May 2020), https://apps.who.int/gb/ebwha/pdf_files/WHA73/A73_R1-en.pdf (accessed 3 Nov. 2023); and UNESCO, *UNESCO Calls for COVID-19 Vaccines to Be Considered a Global Public Good* (24 Feb. 2021), <https://www.unesco.org/en/articles/unesco-calls-covid-19-vaccines-be-considered-global-public-good> (accessed 12 Nov. 2023).

⁴¹ European Commission, *Von der Leyen Announces Global Response and Calls for United World Front Against Coronavirus* (24 Apr. 2020), https://ec.europa.eu/commission/presscorner/detail/en/ac_20_749 (accessed 12 Nov. 2023).

⁴² *ACP-EU Joint Parliamentary Assembly Resolution*, ACP-EU/102.988/20/fin. (11 Mar. 2021), https://www.europarl.europa.eu/cmsdata/230993/Resolution_AP102.988_prov_EN.pdf (accessed 12 Nov. 2023).

⁴³ G. Brown & D. Susskind, *International Cooperation During the COVID-19 Pandemic*, 36 *Oxford Rev. Econ. Pol’y* S64–S69 (2020), doi: 10.1093/oxrep/graa025; I. Kickbusch & M. Ivanova, *The History and Evolution of Global Health Diplomacy*, in *Global Health Diplomacy: Concepts, Issues, Actors, Instruments, Fora and Cases*, 97 (I. Kickbusch, G. Lister, M. Told & N. Dräger eds, Spring 2012).

safety framework still needs to be improved to prepare for health threats. On 11 November 2020, the European Commission proposed a communication document which set out a plan to build a 'European Health Union', in order to enhance European health and safety and strengthen the EU's ability to combat cross-border health threats.⁴⁴

The EU coordinated with third countries to provide more than EUR thirty-six billion of emergency medical assistance, and long-term health and socio-economic recovery support. Moreover, the EU has established the EU Humanitarian Air Bridge to maintain the air transport pipeline for humanitarian and emergency response health personnel and materials.⁴⁵

In terms of international health cooperation, the EU promotes: (1) strengthening cooperation with the WHO and relevant international organizations; (2) providing substantive support and assistance to Member States and third countries when needed. The ECDC will establish international networks with major national authorities such as the Centres for Disease Control and Prevention (CDC) to strengthen and lead international cooperation.⁴⁶

3.2 INTERNATIONAL HEALTH COOPERATION

On 8 April 2020, the EU pointed out that COVID-19 virus spreads rapidly across borders regardless of racial/ethnic and national boundaries, forming a global public health emergency. Therefore, the EU and all countries must coordinate and implement global response measures to protect all human health, save lives, revive economic and social activities, and enable people to resume normal life and work.⁴⁷ The EU supports a 'Team Europe Approach' to establish an action framework to lead partners to deal with the COVID-19 crisis. The Team Europe strategy includes the following combined strategy of four pillars⁴⁸:

- (1) As priorities (a) emergency response and assistance to health and humanitarian crises; (b) strengthening the capacity and infrastructure construction of partners in sanitation, drinking water and research; and (c) addressing serious economic and social consequences and providing emergency response measures.

⁴⁴ European Commission, *Communication on Building a European Health Union: Reinforcing the EU's Resilience for Cross-Border Health Threats*, COM (2020) 724 final (11 Nov. 2020).

⁴⁵ *Ibid.*, at 18.

⁴⁶ *Ibid.*, at 19.

⁴⁷ European Commission, *Joint Communication on the Global EU Response to COVID-19*, JOIN (2020) 11 final (8 Apr. 2020).

⁴⁸ *Ibid.*, at 1–3.

- (2) The Team Europe Approach package plan integrates the resources of the EU, Member States, the European Investment Bank (EIB), the European Bank for Reconstruction and Development (EBRD), other European financial institutions, foreign aid institutions of Member States, international financial institutions and charities, to establish a collaborative financial scheme to provide third countries and partner countries with assistance for their response to COVID-19.
- (3) For the global preparedness programme of the Team Europe Approach, the EU supports the operation of the Global Preparedness Monitoring board, through pledges and the goal of the European Commission to use EUR 7.5 billion as global preparatory funds;
- (4) Promoting global cooperation and supporting multilateralism through the Team Europe Approach. The EU and its Member States act as the main participants and donors in the global combat against the COVID-19 crisis, to promote global cooperation and take response measures. In particular, under the framework of the G7, G20, the WHO and the UN, the EU put forward initiatives to support multilateralism led by the UN and the WHO, to improve the status and influence of the EU.

In order to achieve the strategic objectives of the above four pillars, the EU committed to provide financial support of at least EUR 15.6 billion on 8 April 2020. This payment was to enable the EU to implement emergency response measures in a timelier fashion, and make the EU global COVID-19 response strategy more operable.⁴⁹

G7 and G20 are important international forums to fight the COVID-19 crisis, especially in identifying global issues, adopting response policies, joint cooperation methods, strategies and paths, seeking consensus, and issuing political instructions. As the being rotating presidency of the G20, the EU and Italy jointly hosted the 'Global Health Summit' in Rome on 21 May 2021 when 'Rome Declaration' was adopted. The Rome Declaration recognizes that universal vaccination with a COVID-19 vaccine is a 'global public good' and supports the WHO goal of vaccinating 70% of the global population. The Rome Declaration also pointed out that for the WHO and other countries to fight against the current and future pandemics, the effort must be based on the principles of scientific investigation, fairness, multilateralism, solidarity, sustainability, transparency, cooperation and cross sectoral/cross domain solutions. The Declaration adopted the 'One Health' strategy, and supports ACT-A and COVAX as the core pillars of global public health solidarity and cooperation.⁵⁰

⁴⁹ *Ibid.*, at 2, 3.

⁵⁰ G20, *The Rome Declaration*, Global Health Summit 4, 5 (21 May 2021).

3.3 ADVANCE PURCHASE AGREEMENTS (APA)

The COVID-19 pandemic has caused significant economic losses for the EU and its citizens as well as loss of life. The Eurozone experienced a 6.8% economic recession in 2020.⁵¹ Safe and effective vaccines are considered to be the fundamental solution for the COVID-19 pandemic. However, only a limited number of eligible vaccine manufacturers have large enough research and production capabilities to fulfil demand. Therefore, in 2020, the EU signed the APA with some well-known European and American vaccine manufacturers, for doses in the tens of millions and even billions. In 2021, the EU pre-purchased approximately two billion doses, and according to the APA, vaccine manufacturers have to supply the EU as a priority.⁵²

Within the framework of the EU's vaccine strategy, the EU allocated EUR 2.7 billion for the 2020 ESI fund, to ensure an adequate supply of vaccines through production within the EU and imports. Under the ESI, the EU, representing its twenty-seven Member States, signed the APA with top international vaccine manufacturers, such as AstraZeneca, specifying the quantity of vaccines to be purchased over a certain period, along with options to purchase additional quantities, with manufacturers prioritizing the EU for supply. The legal basis for the EU's ESI is Article 122 of the Treaty on the Functioning of the EU (TFEU). Recognizing the severity of the COVID-19 crisis, the EU enacted Regulation 2020/521 on 14 April 2020 as an emergency measure, retro-actively effective from 1 February 2020, to cover necessary expenses related to the COVID-19 pandemic.⁵³ Article 1 of that Regulation 2020/521 outlines the scope of the EU's emergency financial support for COVID-19 measures, covering the period from 1 February 2020 to 31 January 2022. Article 4 of Regulation 2020/521 specifies the types of emergency support interventions to be taken/which may be taken, including agreements between the European Commission and Member States to unify COVID-19 related procurement, storage, distribution, transportation, re-sale and donations, among other actions. The APA between the EU and vaccine manufacturers, in line with the provisions of Regulation 2020/521, aimed to enhance flexibility, effectiveness, and efficiency in the EU's response to the

⁵¹ Eurostat, *GDP Down by 0.7% in the Euro Area and by 0.5% in the EU* (2021), https://ec.europa.eu/eurostat/documents/portlet_file_entry/2995521/2-02022021-AP-EN.pdf/0e84de9c-0462-6868-df3e-dbacad9f49f (accessed 9 Nov. 2023).

⁵² European Commission, *Advance Purchase Agreement ('APA') for the Development, Production, Priority-Purchasing Options and Supply of a Successful COVID-19 Vaccines for EU Member States*, SANTE/2020/C3/042-SI2.834667 (16 Sep. 2020); European Commission, *Advance Purchase Agreement (APA) for the Production, Purchase and Supply of a COVID-19 Vaccine in the European Union*, Ref. Ares 4440071-26/08/2020, 36 (2020); and A. Irwin, *What It Will Take to Vaccinate the World Against COVID-19*, 592 *Nature* 176–178 (2021), doi: 10.1038/d41586-021-00727-3.

⁵³ *Regulation 2020/521 Activating the Emergency Support under Regulation 2016/369, and Amending its Provisions Taking into Account the COVID-19 Outbreak*, OJ L 117, 3 (2020).

COVID-19 crisis, while considering equity and humanitarian needs, and ensuring solidarity among EU Member States.

The APA can be seen as a success internally in the EU, given the EU's high vaccination rates of 70% of the EU adults population in August 2021.⁵⁴ However, the APA still create some negative impacts. During the pandemic, particularly in 2021 and 2022, vaccine supply was monopolized by developed countries like the EU and the US, prioritizing their domestic vaccination needs. Additionally, the amounts of advance payments and purchase prices in the APA were often undisclosed and therefore lacked transparency.⁵⁵ This may have led to more favourable prices for the manufacturer-located countries, resulting in differential pricing for other countries, in order to maximize the profit for vaccine manufacturers. Excess pre-purchased quantities were sometimes used for re-sale or donation to other countries, becoming a tool for humanitarian aid or health diplomacy, to strengthen public health relationships or gain favour with other countries. This, however, distorted global vaccine trade, leading to severe shortages in many countries, and creating a public health crisis, even a global health crisis.⁵⁶

4 RELATIONSHIP BETWEEN THE EU AND THE WHO

4.1 BACKGROUND FOR COOPERATION

Since the 1970s, the EU and the WHO have carried out technical cooperation in the field of public health. The EU points out that itself shares the same health and hygiene concepts, objectives and principles with the WHO, in particular the EU recognizes that everyone should enjoy the highest quality of health. Based on the mutual trust, the EU has strengthened cooperation with the WHO to take joint action to improve European and global human health and health security. The EU signed an exchange of letter with the WHO in 1982 and began to participate in WHO activities and promote cooperation with the WHO.⁵⁷

⁵⁴ European Commission, *Coronavirus: 70% of the EU Adult Population Fully Vaccinated* (2021), https://ec.europa.eu/commission/presscorner/detail/en/ip_21_4362 (assessed 9 Nov. 2021).

⁵⁵ P. Boulet, E. Hoen, K. Perehudoff, K. Mara & E. Tan, *Advanced Purchase Agreements for COVID-19 Vaccines Analysis and Comments* 42 (The Left in the European Parliament 2021).

⁵⁶ WHO, *WHO Director-General's Opening Remarks at 148th Session of the Executive Board* (2021), <https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-148th-session-of-the-executive-board> (accessed 8 Aug. 2021); S. J. Evenett, *Export Controls on COVID-19 Vaccines: Has the EU Opened Pandora's Box?*, 55(3) J. World Trade 404–405 (2021), doi: 10.54648/TRAD2021016; and A. V. Aaken & J. Kurtz, *Beyond Rational Choice: International Trade Law and the Behavioral Political Economy of Protectionism*, 32(4) J. Int'l Econ. L. 601 (2019), doi: 10.1093/jiel/jgz034.

⁵⁷ *Exchange of Letters Between the European Communities and the World Health Organization (WHO) Laying Down the Procedure for Cooperation Between the Two Organizations—Memorandum Defining the Arrangements for Cooperation Between the World Health Organization and European Communities*, OJ L 300, 20 (1982).

On 14 December 2001, the EU and the WHO established a formal cooperation framework in the form of an exchange of letter, and made arrangements for cooperation objectives, key projects, procedures, activities and implementation.⁵⁸ In this exchange of letter, the key areas of cooperation include: (1) exchange and sharing of health information; (2) prevention and control of infectious diseases; (3) tobacco control; (4) environment and health; (5) sustainable and healthy development; and (6) health research. This exchange of letter is still valid, and the work plan and its implementation are evaluated every year.

The European Commission and the WHO made an exchange of letter on 4 January 2001, to promote unity and strengthen cooperative relations between the two parties.⁵⁹ The European Commission and the WHO signed a Memorandum of Understanding on 2 July 2004, to establish a 'strategic partnership' in the field of health and development, to continue the effective partnership between the EU and the UN in humanitarian assistance and development since 2001, and to support the multilateralism of the UN.⁶⁰

On 10 September 2012, the EU reaffirmed that the EU and the WHO have established a solid partnership on health and public health while sharing the same values and principles. The EU and the WHO adopted joint strategic cooperation in six key areas, including health and safety, health innovation, health systems, addressing health inequality, health information exchange, and cooperation with third countries. There were a plan of collaborative road map, especially for health and safety, to jointly fight HIV/AIDS and drug resistance, develop vaccines as well as adopt emergency preparedness and other mechanisms.⁶¹

The EU and the WHO adopted the 'Moscow Declaration' on 9 September 2010 to strengthen policy dialogue and technical cooperation in public health and to further develop bilateral cooperation.⁶² This declaration was a response to the fact that the EU had acquired legal personality and strengthened its foreign relations under the framework of the Lisbon Treaty, which entered into force in 2009. In addition, Severe Acute Respiratory Syndrome (SARS) coronavirus that occurred in some Asian countries in April 2003 had spread quickly via the rapid and massive globalized flow of personnel and products, to form a regional or

⁵⁸ EU & WHO, *Exchange of Letters between the World Health Organization and the Commission of the European Communities Concerning the Consolidation and Intensification of Cooperation*, OJ C 1, 7 (2001).

⁵⁹ OJ C 1, 4 (2001).

⁶⁰ COM (2001) 231 final, COM (2003) 526; European Commission and WHO, *Memorandum of Understanding Concerning the Establishing of a Strategic Partnership Between the WHO and the Commission of the European Communities in the Field of Development* (2 Jul. 2004).

⁶¹ J. Dalli, *Commissioner Dalli Delivers Speech at the 62nd Session of the WHO Regional Committee for Europe: A Partnership for Joint Health Action in Europe and Beyond* (European Commission 10 Sep. 2012).

⁶² *Financial and Administrative Framework Agreement Between the European Union Represented by the European Commission and the United Nations* (2003).

international cross-border pandemic, with a significant impact on people's health, life, property and economic activities, and this possibility made international health cooperation more urgently needed.

The Moscow Declaration was updated after both the outbreak of the Zika virus infection in Brazil in early 2015, and the outbreak of COVID-19 in 2020. The aim was to deepen the partnership between the EU and the WHO in the European region, taking a results orientation as the guide for cooperation, to increase efforts to cope with the COVID-19 pandemic, and to pay attention to the fair distribution of vaccines to solve the problem of health inequality. The 2020 Declaration also integrates the EU's Green Deal, climate-neutral and other policies with health policies and external relations, in order to simultaneously address the COVID-19 pandemic and pursue compliance with the 2030 sustainable development agenda and goals of the UN.⁶³

The EU has always been a staunch supporter of the WHO's multilateralism. The Framework Convention on Tobacco Control (FCTC), which was adopted by the WHO in 2003 and entered into force on 27 February 2005, was adopted by the EU in Council decision 2004/513.⁶⁴ On 30 December 2013, The EU signed and ratified the FCTC's Protocol to Eliminate Illicit Trade in Tobacco Products and the WHO's FCTC.⁶⁵

The strong support of the EU and its Member States (except for the United Kingdom, Denmark and Ireland) played an important role in the smooth adoption of the FCTC and its Protocol, which is conducive to the overall reduction of tobacco related diseases and deaths in the world and Europe, especially the reduction of adolescent smoking. The Protocol can crack down on tobacco smuggling and illegal trade. It can also control the flow of counterfeit or low-quality tobacco into the market, and combat the tax evasion of illegal transactions, in order to maintain public health, tax revenue and the normal operation of tobacco trade in the EU's internal market. The EU's signing and ratification of the FCTC and the Protocol is an example of a firm, effective, appropriate and comprehensive response to the global problem of illegal trade in tobacco, as well as an example of the cooperative relationship with the WHO.⁶⁶

⁶³ *The Objectives, Principles and Modalities for Continued Cooperation between the European Commission and the WHO Regional Office for Europe* (2015); *Joint Statement of the European Commission and the WHO Regional Office for Europe* (2020).

⁶⁴ *Council Decision Concerning the Conclusion of the WHO Framework Convention on Tobacco Control*, OJ L 213, 8 (2004).

⁶⁵ Signing: *Council Decision 2013/744*, O.J. 2013, L333/73; *Council Decision 2013/745*, O.J. 2013, L333/75. Ratification: *Council Decision 2016/1750*, O.J. 2016, L268/6.

⁶⁶ *Directive 2014/40 on the Approximation of the Laws, Regulations and Administrative Provisions of the Member States Concerning the Manufacture, Presentation and Sale of Tobacco and Related Products and Repealing Directive 2001/37/EC Text With EEA Relevance*, OJ L 127, 1 (2014); *Report on the Application of Directive 2014/EU*, COM(2021) 249 Final (20 May 2021); European Commission, *World No Tobacco*

4.2 COVID-19 PARTNERSHIP

4.2[a] EU Cooperation in the WHO and COVAX

In terms of international vaccine cooperation, the EU proposed the 'EU COVID-19 Vaccine Strategy' on 17 June 2020. One of the main objectives of the strategy is to strengthen cooperation with the WHO, especially through the COVAX mechanism. COVAX is the global access mechanism for COVID-19 vaccines, led by the WHO. Its goal is to raise sufficient funds to accelerate the R&D and production of COVID-19 vaccines and ensure that every country in the world has fair and reasonable access to the vaccines. The WHO pointed out that to solve the pandemic, more than 70% of the population in each country needs to be vaccinated. The WHO global vaccine strategy aims to achieve this goal by the end of June 2022, but it requires at least eleven billion doses of vaccine.⁶⁷

By 13 January 2022, people around the world had been vaccinated with eight billion doses of vaccine. Early around October 2021, global production of vaccine were about 1.5 billion doses every month that already sufficient to meet the strategic objectives of vaccinating more than 70% of population per country. However, the real challenge of the WHO global vaccine strategy that time was the uneven distribution of vaccines. Developed countries such as Europe, America and Japan already reached a vaccination rate of 80% with the COVID-19 vaccine, but the vaccination rate of eighty other countries were less than 40%; thirty-six countries were less than 10%. Some of the least-developed countries even received only 0.6% of the vaccine. By 7 April 2022, the vaccination rate with the first dose in EU and European Economic Area (EEA) countries had reached 83.3%, while that of the second dose reached 63.7%.⁶⁸

COVAX is a global vaccine cooperation mechanism to accelerate vaccine development, and the production and equitable distribution of COVID-19 testing agents, vaccines, treatments and other medical products. By the end of 2022, COVAX had delivered around 1.9 billion doses to 146 countries and regions.⁶⁹ This is the largest and fastest global vaccine procurement and supply plan in

Day 2012: *EU-Wide Survey Shows That a Majority of EU Citizens Supports Stronger Tobacco Control Measures*, Press Release, IP/12/511 (30 May 2012).

⁶⁷ WHO, *Achieving 70% COVID-19 Immunization Coverage by Mid-2022: Statement of the Independent Allocation of Vaccines Group (IAVG) of COVAX* (23 Dec. 2021), <https://www.who.int/news/item/23-12-2021-achieving-70-covid-19-immunization-coverage-by-mid-2022> (accessed 18 Jan. 2022).

⁶⁸ European Centre for Disease Prevention and Control [hereinafter ECDC], *Country Overview Report: Week 13 2022*, EU (7 Apr. 2022), <https://covid19-country-overviews.ecdc.europa.eu/> (accessed 20 May 2022); and WHO, *supra* n. 2 at 2.

⁶⁹ United Nations International Children's Emergency Fund [hereinafter UNICEF], *COVID-19 Market Dashboard*, <https://www.unicef.org/supply/covid-19-market-dashboard> (accessed 16 Aug. 2023).

history, as well as an important milestone in global public health cooperation. To a certain extent, it has promoted the equitable distribution of global vaccines.⁷⁰

The EU played an important role in COVAX. For the purpose of global cooperation on vaccines, the EU joined the COVAX mechanism on 18 September 2020, and committed to promoting universal, fair and affordable access to vaccines among participating countries, especially developing countries. On 12 November 2020, in addition to the EUR 400 million donation promised previously, the EU provided a further EUR 100 million to support the purchase and supply of COVAX vaccines and improve the future availability of COVID-19 vaccines in the least-developed countries.⁷¹

For many participating countries, COVAX is the accelerator and guarantor mechanism for them to access vaccines. The EU's contribution to COVAX reached EUR 500 million in 2020, making it one of the main donors to COVAX. The EU also purchased a certain amount of vaccine in advance through the COVAX mechanism, to provide vaccination in developing countries and deal with the global COVID-19 pandemic crisis. The EU is only safe if the rest of the world is safe. According to the resolution of the WHA on 19 May 2020.⁷²

Team Europe, composed of the EU and 27 Member States, had contributed around EUR 3.5 billion to COVAX by May 2022.⁷³ By May 2022, the EU had in fact donated 319 million doses, which made a part of their commitment of donating 700 million doses of vaccine by the middle of 2022, to support the WHO's strategic goal of promoting vaccination for more than 70% of the world's population.⁷⁴

4.2[b] *Initiative a new WHO Pandemic Prevention, Preparedness and Response Agreement*

COVID-19 posed significant challenge globally and the EU strongly urged the WHO Member States to consider adopting an international instrument under WHO Constitution to prevent and prepare to respond to the future pandemic.

The WHA held a special session on 1 December 2021, which is only the second special session since the establishment of the WHO in 1948. The 2021

⁷⁰ United Nation, *UN-Backed COVAX Mechanism Delivers Its 1 Billionth COVID-19 Vaccine Dose* (16 Jan. 2022), <https://news.un.org/en/story/2022/01/1109852> (accessed 20 May 2022).

⁷¹ European Commission, *EU Increases Its Contribution to COVAX to €500 Million to Secure COVID-19 Vaccines for Low and Middle-Income Countries* (12 Nov. 2020), https://international-partnerships.ec.europa.eu/news-and-events/news/eu-increases-its-contribution-covax-eu500-million-secure-covid-19-vaccines-low-and-middle-income-2020-11-12_en (accessed 10 Aug. 2023).

⁷² World Health Assembly Resolution 73.1, at 3, 6 (19 May 2020).

⁷³ European Council, *Infographic – COVID-19: the EU's Contribution to Global Vaccine Solidarity*, <https://www.consilium.europa.eu/en/infographics/covid-covax-global-vaccine-solidarity/> (accessed 9 Aug. 2023).

⁷⁴ European Commission, *EU Aid Explorer – Donors*, https://euaidexplorer.ec.europa.eu/explore/donors_en (accessed 25 Feb. 2022); and *ibid.*

special session was held to address the COVID-19 pandemic, and to prevent and respond to future pandemics. This important special session adopted a decision entitled 'The World Together'. The WHA decided to establish an Intergovernmental Negotiating Body (INB) to draft and negotiate the international instrument.⁷⁵ The WHO has previously negotiated and adopted the WHO FCTC which is an example of a successful similar case. The meeting of the WHA INB will be convened and chaired by the Director General of the WHO, and, within the scope of his mandate, the Director General of the WHO will invite other agencies of the UN system, the EU, non-state actors and other institutional stakeholders to participate in the treaty negotiation process.

The WHO established a working group to analyse the potentially important issues and main contents that may be involved in the treaty. The working group submitted draft report to the WHA special meeting on 1 December 2021.⁷⁶ The INB held its first meeting on 24 February 2022 and reached the agreement on the working methods and timetable. The second meeting was held on 18 July 2022 to discuss the draft Pandemic Preparedness Treaty and the progress of negotiations. By August 2023, the INB has held six meetings, and the progress report was delivered by the INB at the seventy-sixth WHA meeting on 5 May 2023. The final draft will be submitted to the seventy-seventh WHA meeting in May 2024 for deliberation and voting.⁷⁷

The WHO adopted the draft text of the WHO Convention, Agreement or Other International Instrument on pandemic prevention, preparedness and responses (WHO CA+) on 2 June 2023.⁷⁸ WHO CA+ contains forty-one articles, covering the following main issues: general principles and approaches (Article 3), pandemic prevention and public health surveillance (Article 4), One Health approach (Article 5), preparedness, readiness and resilience (Article 6), efficient preparedness monitoring and review of functioning (Article 8), liability and risk management (Article 10), co-development and transfer of technology and know-how (Article 11), access and benefit-sharing (Article 12), supply chain and logistics

⁷⁵ WHO, *World Health Assembly Agrees to Launch Process to Develop Historic Global Accord on Pandemic Prevention, Preparedness and Response* (1 Dec. 2021), <https://www.who.int/news/item/01-12-2021-world-health-assembly-agrees-to-launch-process-to-develop-historic-global-accord-on-pandemic-prevention-preparedness-and-response> (accessed 12 Nov. 2023).

⁷⁶ WHO, *Draft Report of the Member States Working Group on Strengthening WHO Preparedness and Response to Health Emergencies to the Special Session of the World Health Assembly*, A/WGPR/5/2 (12 Nov. 2021).

⁷⁷ WHO, *Third Meeting of the Intergovernmental Negotiating Body (INB) for a WHO Instrument on Pandemic Prevention, Preparedness and Response* (5–7 Dec. 2022), [https://www.who.int/news-room/events/detail/2022/12/05/default-calendar/third-meeting-of-the-intergovernmental-negotiating-body-\(inb\)-for-a-who-instrument-on-pandemic-prevention-preparedness-and-response](https://www.who.int/news-room/events/detail/2022/12/05/default-calendar/third-meeting-of-the-intergovernmental-negotiating-body-(inb)-for-a-who-instrument-on-pandemic-prevention-preparedness-and-response) (accessed 12 Nov. 2023); and WHO, *Intergovernmental Negotiating Body*, <https://inb.who.int/> (accessed 9 Aug. 2023).

⁷⁸ WHO, *Bureau's Text of the WHO Convention, Agreement or Other International Instrument on Pandemic Prevention, Preparedness and Response (WHO CA+)*, A/INB/5/6 (2 Jun. 2023).

(Article 13), recovery strengthening and resilient capacities building (Article 14), international cooperation (Article 15), financing mechanism (Article 19), and institutional arrangements (Articles 20 to 41). As a whole, the treaty will establish a more strong and resilient international health framework for future global pandemic response.

Article 2 states that the objective of the WHO CA+ is to prevent pandemics, save lives, reduce disease burden and protect livelihoods, through strengthening the world's capacities for preventing, preparing for and responding to pandemics. To achieve the objective, Article 3 provides that the WHO CA+ will be guided by the following principles and approaches: (1) respect for human rights; (2) respect for sovereignty; (3) equity; (4) solidarity; (5) transparency; and (6) accountability. Equity shall be the centre of pandemic prevention, preparedness, response and recovery, both at national and international levels. Equity includes the unhindered, fair, equitable and timely access to safe, effective, equal and affordable pandemic-related products, services, information and social support, etc.

According to Article 168(3) of the TFEU, the EU and Member States should foster cooperation with international organizations and third countries in the field of public health. At present, the EU is only an informal observer at the WHO. The EU's negotiating position on the treaty at the WHO intergovernmental meeting will be expressed by the EU Member States that are also WHO Member States. EU Member States should also cooperate and adopt a consistent position, in accordance with the principles of solidarity in Article 3(3) and sincere cooperation in Article 4(3) of the Treaty on European Union (TEU). The EU will strive to attend the WHO meeting together with its Member States and participate in the negotiating and drafting of the contents of the treaty. In particular, it will strive to become a party to the pandemic treaty as a 'Regional Economic Integration Organization'.⁷⁹ Once the international instrument be adopted and agreed by all Member States, it is expected to have legal binding force.⁸⁰

The EU actively participates in negotiation of a pandemic treaty under the WHO framework, which may have the following important implications and contributions to the WHO and global public health: (1) symbolizing the political determination of the EU and WHO members to jointly fight COVID-19 and future pandemics; (2) providing the EU Member States with a clear strategic path, political guidance, legal norms and practical operations for pandemic prevention and response, while helping coordinate national policies and improving overall

⁷⁹ Council Decision 2021/1101 on the Position to be Taken on Behalf of the European Union in the Seventy-Fourth Session of the World Health Assembly, OJ L 238, 79 (2021).

⁸⁰ European Council, *Infographic – The Global Agreement on Pandemics in a Nutshell* (9 Jun. 2023), <https://www.consilium.europa.eu/en/infographics/towards-an-international-treaty-on-pandemics/> (accessed 16 Aug. 2023).

effectiveness; (3) enhancing the commitment and confidence of countries to support the WHO and international cooperation and to jointly fight against pandemics; (4) sharing medical and vaccine data, samples, medical technologies and products, and establishing a permanent mechanism to strengthen the global public health system; and (5) integrating different departments, forums, partners and resources, such as, public health, environment, and human and animal health, in order to promote integrated health and sustainable development. The EU actively participates in multilateral cooperation within the WHA meeting, to play the role of leader and policy advocate, exporting EU health concepts and rules while expanding the EU's influence.

4.3 SIGNIFICANCE AND IMPLICATIONS

4.3[a] *The Significance of EU Vaccine Diplomacy*

4.3[a][i] The EU Response to Global Health Crises

The EU and its Member States recognize COVID-19 as one of the biggest challenges for the EU since its establishment in 1952. The European Economic Area (EEA) has a total population of about 447 million; by 16 September 2022, which is also the last day that European Centre for Disease Prevention and Control (ECDC) reporting the cases and deaths of COVID-19 in the EEA, there were 167.82 million confirmed cases and about 1.16 million deaths in the EEA.⁸¹

The WHO pointed out that the COVAX mechanism faces five major challenges: (1) It is unable to independently develop vaccines while European and American countries adopted export controls in 2020. The WHO is constrained by finance and could not purchase a large number of vaccines in 2021 in time to provide full vaccination in developing countries; (2) Most developing countries do not have access to vaccines and closely rely on COVAX; (3) COVAX needs sufficient funds to purchase and distribute vaccines, at the meanwhile, it heavily depends on the vaccine donations of major countries such as the EU, the US and Japan; (4) Global vaccine distribution is unfair while European and American countries bought and reserved too many vaccines; and (5) False news and vaccine hesitancy affect people's trust in vaccines and mass vaccination programmes.⁸²

⁸¹ WHO, *supra* n. 1; and Eurostat, *Population Change – Demographic Balance and Crude Rates at National Level*, https://ec.europa.eu/eurostat/databrowser/view/demo_gind/default/table?lang=en (accessed 14 Aug. 2023); ECDC, *Communicable Disease Threats Report- 11-17 September 2022, Week 37* (16 Sep. 2022), <https://www.ecdc.europa.eu/en/publications-data/communicable-disease-threats-report-11-17-september-2022-week-37> (accessed 15 Aug. 2023).

⁸² United Nations, *How Can We Vaccinate the World? Five Challenges Facing the UN-Backed COVAX Programme* (5 Apr. 2021), <https://news.un.org/en/story/2021/04/1088932> (accessed 20 May 2021).

In order to deal with the above five challenges, the EU firmly supports the WHO in combating the COVID-19 crisis. In particular, it provides huge funds, and makes major contributions to developing countries with vaccine exports; it combats false information, advocates universal vaccination in the WHO, and is negotiating a new international health treaty. Through COVAX, the EU pledged to donate 464 million doses of vaccine, France pledged 120 million doses, Germany 175 million doses and the US 857 million doses. By the end of 2022, COVAX delivered around 1.9 billion doses to 146 countries. The EU and its Member States are therefore one of the major donors of COVAX vaccine and supporters of WHO multilateralism.⁸³ The role of EU vaccine diplomacy and humanitarian assistance became more and more important in combating the threat of cross-border infection in Europe and the crises of global public health emergencies at that time with the increasing threat from infectious disease pandemics then.⁸⁴

4.3[a][ii] Promoting Global Health and Safety Cooperation through the WHO

COVID-19 has shown that during the pandemic, an infectious disease can seriously threaten global public health security, humans' living environment and lifestyle, and have a negative impact on national health systems and economic development. These observations highlight the importance of the WHO and global health cooperation. The EU supports the WHO's multilateralism and carries out global cooperation with it in order to combat the COVID-19 crisis.

In accordance with the functions and powers provided in article of the WHO Constitution, the WHO plays a core role in global public health. In particular, the WHO can formulate or modify international health regulations, conventions or guidelines in response to change in the international health environment, to strengthen world and national health standards and institutional capacity. The WHO system of health conventions, regulations and standards can reduce legal evasion or regulatory arbitrage among countries, and thereby reduce health disputes. The WHO can also encourage countries to abide by the WHO conventions and regulations, engage in capacity-building and health cooperation, report infectious and emerging diseases, improve national vigilance for prevention and response, and thus greatly reduce the possibility of sudden and major international health problems.

Under the WHO framework, Member States can also use peer review/control to check and achieve balance on abiding WHO regulations, which can

⁸³ US Congressional Research Service, *The U.S. Government's Role in Domestic and Global COVID-19 Vaccine Supply and Distribution: Frequently Asked Questions* (10 Jan. 2022).

⁸⁴ M. Kornprobst & S. Strobl, *Global Health: An Order Struggling to Keep Up With Globalization*, 97(5) Int'l Aff. 1541–1542 (2021), doi: 10.1093/ia/iab092; UNICEF, *supra* n. 69.

reduce unilateralism and the concealment of an epidemic situation through failure to report. Through long-term practice, the WHO meetings, response measures and databases can shape 'institutional memory', construct public health best practices as well as reinforce health standards, preventive responses and models for international cooperation, thus provide an 'institutional protection' via prevention and early warnings of global and national health security issues. The EU's participation in health cooperation through WHO can also help to enhance WHO's functioning. The EU's leading position in the WHO can also improve the EU's normative power and influence in global public health, contribute to the EU's soft leadership in the WHO and comply with the EU goal of pursuing a stronger Europe and making the EU a responsible global leader in its external relations.⁸⁵

4.3[a][iii] The New EU Global Health Strategy

COVID-19 pandemic revealed the weakness within the EU health policy and its insufficiency to fight effectively against cross-border pandemic. But on the other hand, the pandemic also has shown the leading role of EU within global health forums and approved the EU can make great contribution on the global health objectives.⁸⁶

On 30 November 2022, in order to enhance the EU's leadership and deliver more contribution for global society, European Commission adopted a new global health strategy called *Better health for all in a changing world*.⁸⁷ The Strategy comprises three key policy pillars: (1) Better health throughout life; (2) Strengthened health systems and universal health coverage; and action to prevent; and (3) Combat health threats. These three pillars are aligning with WHO's Triple Billion Targets which defined in WHO's Thirteenth General Programme of Work (GPW 13) to ensure One billion more people are benefiting from universal health coverage, are better protected from health emergencies, and are enjoying better health and well-being by 2023.⁸⁸

The Strategy also states that it is necessary to reinforce multi-level cooperation to implement the 'health in all policies' approach and calls the EU to enhance

⁸⁵ European Commission, *A Union that Strives for More. My Agenda for Europe. Political Guidelines for the Next European Commission 2019–2024*, 17 (2019).

⁸⁶ European Parliament, *New EU Global Health Strategy – A Recalibrated Agenda*, PE 739.306, 1–2 (Jan. 2023); and European Commission, *Communication on EU Global Health Strategy Better Health for All in a Changing World*, COM (2022) 675 final, 1–4 (30 Nov. 2022).

⁸⁷ European Commission, *supra* n. 85.

⁸⁸ European Parliament, *supra* n. 86 at 6–7; and WHO, *Thirteenth General Programme of Work 2019–2023*, <https://www.who.int/about/what-we-do/thirteenth-general-programme-of-work-2019–2023> (accessed 16 Aug. 2023).

interaction and cooperation with major global health stakeholder and play stronger role in international organization such the WHO.⁸⁹

The strategy recognizes global health as a critical geopolitical sector, an essential pillar of EU external policy and a key element of the EU's health security and its strategic autonomy. For effective implementation of this strategy, the EU must take particular account of sufficient financing, monitoring mechanisms, equitable access, the integration of health into all policies, etc. The EU and its Member States will need to maintain the strategy's momentum through sustained political determination, and also to support the EU in speaking with one voice in the WHO CA+ negotiation. In this context, the EU will exercise its leadership in global health and reshape a new global health order based on a stronger WHO multilateralism.⁹⁰

4.3[b] *Implications for the WHO and Beyond*

4.3[b][i] The EU Status in the WHO

During the COVID-19 pandemic, the EU actively participated in the WHO's activities, provided huge financial assistance to COVAX, and put forward many initiatives such as the fair distribution of vaccines and the future reform of the WHO. The EU also proposed to negotiate a pandemic prevention, preparedness and response treaty in the WHO, in order to combat future cross-border pandemics or global public health emergencies. The EU also committed that it would participate in the negotiation and signing of the new treaty,⁹¹ within its capacity as a regional economic integration organization. However, even after the pandemic is over, the EU is still only an observer of the WHO at present. It can only participate in the relevant meetings of the WHO, but still does not have the right to vote. It remains to be seen whether this is enough to exert substantive influence. Since the EU's participation in negotiation and promotion of key reforms of the WHO would form a major challenge for the cooperation between the EU and the WHO, the EU reaffirmed on 19 April 2023 that it should 'have a seat at the table in the form of a formal observer status at the WHO'.⁹²

⁸⁹ European Parliament, *supra* n. 86, at 7–9.

⁹⁰ N. Viberg, R. Wanyenze, H. Nordenstedt, G. Gitahi & S. S. Peterson, *EU Global Health Strategy: What Are the Challenges?*, 33(4) Eur. J. Pub. Health 553 (2023), doi: 10.1093/eurpub/ckad081.

⁹¹ Council Decision 2022/451 of 3 March 22, *Authorising the Opening of Negotiations on Behalf of the European Union for an International Agreement on Pandemic Prevention, Preparedness and Response, as Well as Complementary Amendments to the International Health Regulations (2005)*, OJ L 92, 1(2022).

⁹² European Commission, *Opening Remarks by Commissioner Stella Kyriakides at the Plenary Debate on The Global Health Strategy* (19 Apr. 2023), https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_23_2369 (accessed 15 Aug. 2023).

Article 2(1)(2) of the WHO's Constitution stipulates that the functions and powers of the WHO include establishing and maintaining effective cooperation with the governments of Member States and other appropriate organizations. In addition, Article 18(8) provides that the WHO may invite international organizations to participate in the WHA conference or its meetings and Commission meetings. According to the TFEU, the EU has shared functions and powers with Member States in the field of health. Considering that the EU has legal personality and play as an actor in international relations, it might be possible for the WHO to adopt a resolution to include regional economic integration organizations in the negotiations, by referring to FCTC and the 2005 IHR negotiations.⁹³ Therefore, the EU's participation in the WHO treaty negotiation and reform conference should not be a big problem in legal theory. The EU should attend and negotiate along with the other twenty-seven EU Member States in the WHO, in order to improve efficiency and make greater contributions.

There is great uncertainty on: whether the EU can become a signatory of a WHO treaty, and especially about whether the EU can become a member of the WHO, and if it can, how this can be done. Article 6 of Constitution of the World Health Organization states that WHO members can apply for membership only as states, and with the consent of more than half of the existing WHO Member States. If the EU wants to become a formal member of the WHO, it will involve the amendment of the terms of the WHO Constitution, or the incorporation of a non-state member clause in the new treaty, to enable the EU or other regional organizations to acquire membership.

Taking WTO membership as an example, Article 12 of the WTO establishment agreement stipulates that a separate customs territory can apply for accession and become a full member of the WTO. In fact, the EU participated in the Uruguay round of multilateral trade negotiations of the GATT, signed the agreement on the establishment of the WTO, and other relevant agreements, and became a member of the WTO, which is a remarkable example of a regional economic and trade organization becoming a member of an international organization, especially a specialized agency of the UN. In addition, the Food and Agriculture Organization (FAO) of the UN even revised its constitution to admit non-state members, so that the EU officially became a member of the FAO in 1991.⁹⁴

The WHO can also refer to the previous example of the FCTC, to show that regional economic integration organizations can become parties to the proposed

⁹³ WHO, *International Health Regulations (IHR)* (2005); WHO, *COVID-19 Response*, A73/CONF./1 Rev.1 (18 May 2020).

⁹⁴ H. G. Schermers & N. M. Blokker, *International Institutional Law* 56–57 (The Hague 1995).

international treaty on pandemic prevention and response. Article 1(b) and Article 35(1) of the FCTC stipulate that regional economic integration organizations can become parties to the FCTC, which can be said to have created a pragmatic way for the EU to become a signatory with full membership. In view of the EU's significant contribution to the WHO and COVAX, and its important role in combating the global health crisis, the WHO should seriously consider amending its constituent treaty, or adopting a formal resolution to accommodate the accession of regional organizations or health entities to become full members, in accordance with the principle of circumstances change (*rebus sic stantibus*) and to fit with objective needs. This would comply with the universality of the UN and the WHO, prevent anyone from falling behind in health protection, conform to the WHO's preamble and ensure that everyone enjoys the highest standard of health.⁹⁵

COVID-19 has seriously damaged human health and changed people's lifestyle. Coupled with the shortage and imbalance of vaccine supply, it has formed an international health crisis and threatened international peace and human security. In the face of this COVID-19 pandemic, the importance of humanitarian and international cooperation has been highlighted. The spirit of the founding purpose of the UN Charter 1945 is still fresh, which is a point worthy of being reflected upon by all countries.⁹⁶

The EU is attaching importance to international cooperation, and it firmly supports WHO multilateralism and the COVAX vaccine sharing mechanism to fairly distribute vaccines to developing countries especially during the pandemic. In addition to financial assistance to COVAX, the EU actively participates in WHO activities, puts forward various initiatives, exports EU health concepts, and exerts great influence. The construction of global public health security is a kind of collective action and common responsibility.⁹⁷ Therefore, the EU will promote the negotiation of a pandemic prevention and response treaty under the WHO, and proposes to in the future become a signatory of the treaty, as a regional economic organization, which is quite innovative and ingenious.⁹⁸

⁹⁵ H. Nikogosian & I. Kickbusch, *The Case for An International Pandemic Treaty*, 372 BMJ 1–2 (2021), doi: 10.1136/bmj.n527.

⁹⁶ P. Danchin, J. Farrall, S. Rana & I. Saunders, *The Pandemic Paradox in International Law*, 114(4) ASIL 598–599 (2020), doi: 10.1017/ajil.2020.69.

⁹⁷ United Nations, *Resolution 2532 Adopted by the Security Council on Cessation of Hostilities in the Context of the Coronavirus Disease (COVID-19) Pandemic* (1 Jul. 2020); United Nations, *Resolution 2565 Adopted by the Security Council on International Cooperation to Facilitate Equitable and Affordable Access to COVID-19 Vaccines in Conflict Areas* (26 Feb. 2021).

⁹⁸ A. Petti, *EU COVID-19 Purchase and Export Mechanism: A Framework for EU Operational Autonomy*, 59(5) Com. Mkt. L. Rev. 1335, 1361, 1367 (2022), doi: 10.54648/cola2022094.

4.3[b][ii] EU Vaccine Export Control

Article 21(3) of the TEU provides that the EU shall ensure consistency of different policies in its external relations. Therefore, the EU vaccine diplomacy has an interaction with the EU trade policy. On 30 January 2021, the EU adopted Regulation 2021/111,⁹⁹ which implemented export controls on the COVID-19 vaccines and the active substances used in vaccine production. Exporting these items to third countries required prior authorization from the EU's Member States. Subsequently, the application of these measures was extended to 31 December 2021, in accordance with Regulations 2021/442, 2021/1071 and 2021/1728.¹⁰⁰

Article 1 of Regulation 2021/111 specifies that the export controls apply to vaccines and substances related to the SARS-COV species, including the master cells used in vaccine production and working cell banks. Vaccines produced within the EU and exported to other countries required prior export authorization from the Member State where they were produced. The reason for implementing export controls on vaccines produced in the EU was the severity of the COVID-19 pandemic within the EU during the first quarter of 2021, as well as the building-up stage of vaccine production and delivery. The manufacturer of the AstraZeneca vaccine indicated the possibility of not fulfilling its contractual commitments to the EU, which posed a risk of delays and shortages in vaccine supply, thereby disrupting and delaying the EU's vaccination plans. Additionally, there was a risk of exporting vaccines produced in the EU to countries with non-vulnerable public health systems, such as the UK. The export controls on vaccines were considered a temporary and emergency measure taken by the EU to ensure that vaccines produced in the EU were prioritized for supply within the EU, while enhancing transparency about vaccine exports.¹⁰¹

The EU vaccine export controls led to significant concerns as they appeared to monopolize the vaccine supply in the EU and interfere with the global vaccine trade, violating the principles of non-discrimination and non-export control outlined in Articles 13 and 20 of GATT. As the EU was one of the major sources of the COVID-19 vaccines for COVAX and other countries, its export

⁹⁹ Commission Implementing Regulation 2021/111 Making the Exportation of Certain Products Subject to the Production of an Export Authorisation, OJ L 31, 1 (2021).

¹⁰⁰ Commission Implementing Regulation 2021/442 Making the Exportation of Certain Products Subject to the Production of an Export Authorization, OJ L 85, 190 (2021); Commission Implementing Regulation 2021/1071 Amending Implementing Regulation 2021/442 and Implementing Regulation 2021/521 Related to the Mechanism Making Certain Products Subject to the Production of an Export Authorization, OJ L 230, 29 (2021); and Commission Implementing Regulation 2021/1728 amending Implementing Regulation 2021/442 and Implementing Regulation 2021/521 Related to the Mechanism Making Certain Products Subject to the Production of an Export Authorization, OJ L 345, 35 (2021).

¹⁰¹ H. Deters & F. Zardo, *The European Commission in Covid-19 Vaccine Cooperation: Leadership vs Coronationalism?* 30(6) J. Eur. Pub. Pol'y 1066–1067 (2023), doi: 10.1080/13501763.2022.2064900.

controls raised serious concerns and were believed to pose risks of vaccine nationalism or trade protectionism, exacerbating the situation in other countries and prolonging the global pandemic.¹⁰² The export restrictions adopted by both the EU was criticized, especially when excess vaccines were donated and distributed to other countries. If vaccine exports and donations came with conditions, there were concerns that vaccine trade could become politicized. The APA disrupted the global vaccine supply chain, distorted vaccine trade significantly and led to international health crises in 2021 and 2022, as well as tensions in other countries.¹⁰³

4.3[b][iii] The WTO Vaccine IP Waiver Negotiation

Due to the uneven distribution of the vaccines, and some difficulty even accessing them, on 2 October 2020 India and South Africa proposed, in the WTO's Council for Trade-Related Aspects of Intellectual Property Rights (TRIPS Council), to waive the intellectual property rights for covid vaccines. The proposal stated that the intellectual property rights of drugs and medical products might cause a health crisis in developing countries which lack the ability to produce COVID-19 related drugs. Therefore, the proposal requested 'a waiver from the implementation, application and enforcement of sections 1, 4, 5, and 7 of Part II of the TRIPS Agreement in relation to prevention, containment or treatment of COVID-19'.¹⁰⁴

On 23 November 2021, the EU had emphasized the importance of vaccine patent protection and had reiterated that enhancing the vaccines' production would be the best way for developing countries to access the COVID-19 vaccines, treatment and diagnosis. However, the EU also proposed a 'targeted waiver on compulsory licenses' to enhance the vaccines' production while keeping pharmaceutical companies willing to innovate and invest in their industry.¹⁰⁵

After that, the discussions of a vaccine waiver within the WTO were continued from 2021 to 2022 and finally achieved a Ministerial Decision on the TRIPS Agreement, that was formally announced on 22 June 2022. That

¹⁰² A. Todd & C. Bamba, *Learning from Past Mistakes? The Covid-19 Vaccine and the Inverse Equity Hypothesis*, 31(1) Eur. J. Pub. Health 2–3 (2021), doi: 10.1093/eurpub/ckaa243.

¹⁰³ T. J. Bollyky & C. P. Bown, *The Tragedy of Vaccine Nationalism: Only Cooperation Can End the Pandemic*, 99(5) Foreign Aff. 108–109 (2020).

¹⁰⁴ WTO, *Waiver from Certain Provisions of the Trips Agreement for the Prevention, Containment and Treatment of Covid-19*, IP/C/W/669 (2 Oct. 2020).

¹⁰⁵ European Commission, *European Parliament Plenary Session Statement by Executive Vice-President Valdis Dombrovskis on Multilateral Negotiations in View of the 12th WTO Ministerial Conference* (23 Nov. 2021), https://ec.europa.eu/commission/commissioners/2019-2024/dombrovskis/announcements/european-parliament-plenary-session-statement-executive-vice-president-valdis-dombrovskis_en (accessed 30 Nov. 2022).

Decision allowed eligible members to temporarily waive, for COVID-19 vaccine related products, the export limitation imposed by the TRIPS Agreement.¹⁰⁶

In the end, the EU has not agreed with the complete TRIPS waiver, and this led to the waiver regulation under the 2022 WTO Ministerial Decision on TRIPS only applying to COVID-19 vaccine related products. This result upsets many developing countries as the EU chose to stand with big pharmaceutical companies on the TRIPS waiver issue. Corporate Europe Observatory described the Decision as the 'EU betrayal of the global south on vaccine access', which might lead to harming the EU's leadership in the international health cooperation.¹⁰⁷

Health is basically a competence of the EU's Member States, based on the European Council's decisions, but the EU had expanded its power in public health to combat the COVID-19 pandemic. In the long run, the EU and its Member States should amend the EU Treaties to hand more health competence to the EU, to make its policies and its vaccine diplomacy more consistent and more effective in combating cross-border pandemics.¹⁰⁸ The EU's vaccine diplomacy interacts with other different EU policies, and therefore the EU should coordinate with different EU institutions and integrate with different EU policies in support of its vaccine diplomacy.

The EU is currently only an observer at the WHO; Member States of the EU should support the EU to speak in one voice on behalf of its twenty-seven Member States in the WHO and other international health fora. And the WHO should also adopt an open method to accept the EU as a contracting party to the new WHO Pandemic Treaty, and even further amend the WHO Constitution to allow the EU to be a health entity member of the WHO. The formal membership of the EU in the WHO will allow the EU to make a greater contribution to global health cooperation.

Despite the fact that some policies such as the APA, vaccine export control and IP waiver were criticized by some other countries, the EU's vaccine diplomacy in the WHO is largely a great success in terms of providing a big fund and vaccine donations to the COVAX and increasing the vaccination rate of the global population. The EU's vaccine diplomacy enshrines that health rights and access to vaccines are an essential part of the EU's public health and external relations. This vaccine diplomacy has permitted the EU to seize the initiative in global health cooperation to combat the COVID-19 pandemic. Under the Brussels effect, the EU's vaccine diplomacy will

¹⁰⁶ WTO, *Ministerial Decision on the Trips Agreement*, WT/MIN (22)/30 (22 Jun. 2022); and A. Santos Rutschman, *Ministerial Decision on the Trips Agreement (WTO)*, 62(2) Int'l Legal Materials, 289–294 (2023), doi: 10.1017/ilm.2022.47.

¹⁰⁷ Corporate Europe Observatory, *TRIPS 'Waiver Failure': EU Betrayal of Global South on Vaccine Access Obscured by Lack of Transparency* (8 Jul. 2022), <https://corporateeurope.org/en/2022/07/trips-waiver-failure-eu-betrayal-global-south-vaccine-access-obscured-lack-transparency> (accessed 12 Nov. 2023).

¹⁰⁸ Ø. Sevedsen, *The Politics of Competence in Global Health: European Commission's Global Response to the COVID-19 Pandemic*, 26(SI) Eur. Foreign Aff. Rev. 29 (2021), doi:10.54648/eerr2021024.

further confer prestige and soft power on the EU. The EU can then make a greater contribution to high-standard health protection for EU citizens and beyond.¹⁰⁹

5 CONCLUSIONS

The WHO announced COVID-19 as a PHEIC on 11 March 2020. After that, COVID-19 continued to pose a serious threat to the EU and global public health until the WHO declared the end to COVID-19 as a PHEIC on 5 May 2023. The EU responded quickly and successively undertook many response measures, including vaccine diplomacy, to promote international cooperation and jointly combat the global health crisis. COVID-19 presented the risk of cross-border infection and a global pandemic. It was necessary for the EU to adopt vaccine diplomacy because no one can be safe before everyone is safe. EU vaccine diplomacy involved the interaction between EU treaty law, EU health policy, medical technology, vaccine research and development, humanitarian assistance, and negotiations among the EU, COVAX and the WHO. Vaccine diplomacy is a critical issue with high legal complexity, political sensitivity and social importance. The vaccine diplomacy will also have a profound impact on the EU's health security and might change the geopolitics of the international health system.

The major features of EU vaccine diplomacy included: (1) Ensuring the right to health, providing a high standard of health protection for EU citizens, and complying with Article 1 of the WHO Constitution. (2) Providing vaccine assistance to developing countries to avoid humanitarian crises, as well as providing financial assistance to support these countries in dealing with urgent needs, such as medical care and the basic necessities of life, and to avoid social instability caused by an increase in the number of unemployed people. (3) Proposing that the COVID-19 vaccine should be seen as a global public good while firmly supporting WHO multilateralism, leading global health cooperation, and providing significant financial assistance to the WHO and COVAX to purchase vaccines and popularize vaccination. EU vaccine diplomacy highlights the worth and humanitarianism of the EU's values of the right to health and vaccines, and laid a solid foundation for global cooperation against the COVID-19 epidemic.

Overall, EU vaccine diplomacy has lofty ideals and aims to provide high standards of health protection for EU citizens. It is expected that adopting integrated strategies, and pursuing humanitarian assistance and international cooperation will be able to improve efficiency and help the EU exert greater influence. The EU firmly supports WHO multilateralism and the COVAX vaccine sharing

¹⁰⁹ A. Bradford, *The Brussels Effect. How the European Union Rules the World* 73 (Oxford University Press 2020).

mechanism, which were conducive to the equitable distribution of vaccines, and especially to improving the vaccine penetration rate in developing countries, and trying to achieve the WHO goal of vaccination of 70% of the global population by June 2022, so as to produce mass immunization and effectively solve the COVID-19 pandemic crisis. All this shows that the EU is able to utilize vaccine diplomacy as a strategy to form a model of global health cooperation, demonstrating the soft power of EU vaccine science and technology, promoting the EU concept of health with humanity, integrating EU foreign policies, and leading the WHO's international health cooperation and international health treaty negotiations. All these will contribute to the expansion of the EU's normative influence, and can eventually improve the health and well-being of EU citizens and all human beings.

