1. REGULATORY TIMELINE

<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>March 10</td>
<td>Joint Crisis Committee of the Federal Ministries of Health and of the Interior recommends cancelling all major events</td>
</tr>
<tr>
<td>From March 13</td>
<td>Successive closures of all schools</td>
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<tr>
<td>March 18</td>
<td>First curfew on a local level (Mitterteich, Bavaria)</td>
</tr>
<tr>
<td>March 22</td>
<td>Federal and state governments agree on strict exit and contact restrictions (strict rules of social distancing, closure of public institutions, leisure facilities, restaurants, and shops (except those serving daily needs))</td>
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<tr>
<td>April 20</td>
<td>Exit and contact restrictions are being relaxed (e.g. re-opening of some shops; in some states, schools are gradually re-opened)</td>
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<tr>
<td>From April 22</td>
<td>Introduction of a duty to wear masks in public transportations, in some states also for shopping and on the train</td>
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<tr>
<td>April 30</td>
<td>Federal and state governments agree on easing of exit and contact restrictions further (e.g. permission of assemblies for religious purposes; re-opening of leisure facilities)</td>
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<tr>
<td>May 6</td>
<td>Further relaxation of restrictions (re-opening of all shops, permittance to meet non-household persons)</td>
</tr>
<tr>
<td>June 16</td>
<td>A Corona Warning App is launched</td>
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</tbody>
</table>

2. INTRODUCTION

The entry summarizes the measures and surveillance techniques adopted to control the spreading of the coronavirus in Germany. The German federal system rests on strong competencies on state and communal levels, particularly with regard to the law of emergency management and prevention. The German Infection Protection Act (Infektionsschutzgesetz, IfSG) entails provisions enabling the state governments and local authorities to take measures to combat the spread of a virus, including curfews, business closures and quarantine orders.
During the crisis, the IfSG has been updated to provide for more specific responses to the specific circumstances of Covid-19 (Klafki 2020). Regarding concrete enforcement and surveillance measures, decisions have mostly been made by state governments and local authorities. Responses on state levels have been to some extent been unified by suggestions and recommendations based on the assessment of a federal institute on medical risk assessment (Robert Koch Institute) and agreed upon between federal and state governments. However, there have been differences between various states regarding enforcement and surveillance techniques. While measures have been comparatively strict shortly after the outbreak of the virus, they have been loosened over the course of the following months. A major driver for fine-tuning restrictions have been decisions by the Federal Constitutional Court and constitutional and administrative courts on state level.

3. ENFORCEMENT AND SURVEILLANCE

3.1 Enforcement

Three phases of enforcement measures in Germany can be distinguished: in a first, short phase from early to mid-March, the response to the first outbreaks of the Coronavirus in Germany mainly consisted of recommendations (social distancing and hygiene rules), closure of a growing number of public institutions (schools, universities) and leisure facilities and cancellation of major events. Curfews were only set in place in local communities with a particularly high number of cases (in the following: Phase 1) (Kagermeier 2020). The second phase is characterized by strict contact restrictions enacted in all states following an agreement between federal and state governments, starting from March 22 (see . While the terms of these restrictions differed between states, the main characteristics can be described as follows: strict rules of social distancing, closure of public institutions, leisure facilities, restaurants and shops (except those serving daily needs). In six states (Bavaria, Berlin, Brandenburg, Saarland, Saxony and Saxony-Anhalt), individuals were allowed to leave their households only for “legitimate reasons” including, however, commuting to work, consulting healthcare professionals, everyday shopping, and exercise in fresh air (in the following: Phase 2) (Schmitt 2020: 1626; Guckelberger 2020: 607). In the third phase, starting from the end of April, the restrictions were slowly relaxed. However, the reopening of public life was accompanied by strict rules regarding hygiene rules in institutions and businesses, contract tracing, and the duty to wear masks in public transportation, restaurants, and shops (in the following: Phase 3) (Haufe Online Redaktion 2020).
The strict exit restrictions in Phase 2 were preceded by a short phase of recommendations for social distancing (Fürstenau 2020). The duty to wear masks was enforced soon after a rather short period of recommendation and voluntary engagement (Gebauer et al. 2020). The Bavarian Minister President Söder referred to an alleged lack of compliance with the voluntary rules to justify the enforcement of strict exit restrictions (Lemkemeyer 2020). In a press conference on March 22, Chancellor Merkel reported that the overwhelming majority of the population had complied with the recommendations. To justify the new measures, she mainly referred to an alleged desire of the population for uniform rules (Merkel 2020). Vivid examples of voluntary engagement included the support and protection of particularly endangered individuals (Piltz 2020), the introduction of hygiene rules in private businesses (Hoffmeyer 2020) and many employers’ consent to their employees working from home (von Blazekovic 2020). In the society, concerns were raised against strict exit and contact restrictions regarding their consequences, e.g., for business owners, families, children and individuals with psychological problems (Entringer et al. 2020; Huang 2020; Huebener et al 2020; Müller et al. 2020). Starting from April a growing number of people demonstrated against the restrictions, with some demonstrations, however, being led by conspiracy theorists and right-wing ideologists (Corona-Demonstrationen: Positionen und Protagonisten, 2020). The overall number of reported violations of restrictions were low, with a number of minor violations of social distancing rules particularly in cities (Frigelj 2020). Mandatory measures were accompanied by public statements of leading policymakers on federal and state levels, referring mainly to the need to protect the most vulnerable groups of society and to prevent an overburdening of the healthcare system. In addition, there were media conferences informing on all developments on a regular, at times daily, basis (Fäßler 2020).

[3] According to the German Law on Combatting Infectious Diseases, violations of mandatory measures can be punished as criminal or administrative offenses, depending on the degree of the respective violation (Kunst 2020b). Fees have been imposed mainly upon individuals violating the restrictions by illegally opening restaurants or leisure facilities or meeting up in groups (Schmidt 2020). In a small number of cases, individuals were arrested for continued violation of restrictions (Litschko 2020).

3.2 Surveillance

[1] Contract tracing is carried out mainly in two ways: Firstly, under the German Law of Combatting Infectious Diseases, public health authorities (Gesundheitsämter) are entitled to question individuals who were infected or had contact to infected persons. When questioned, individuals are obliged to report on their contact persons. The health authorities may also require medical examinations of contact persons (Kunst 2020a). Secondly, with exit
restrictions being relaxed, owners of restaurants and leisure facilities were obliged to keep lists of individuals visiting their premises and to make those lists available upon request by state authorities (Härtig 2020). Symptom monitoring was mainly carried out in test stations (Gensing & Grill 2020). However, the use of telemedicine was encouraged in order to help individuals distinguish Corona symptoms from other illnesses. In particular, employees were temporarily allowed to rely on medical certificates on illness issued via telemedicine. Quarantine controls are carried out by public health authorities mainly via telephone control (Wiring & Schüngel 2020). The extent of testing was continuously increased throughout the crisis with allocation criteria being modified over time (Gensing & Grill 2020; Kühling & Schildbach 2020). A couple of months later, in June, a tracing app was launched. Following public debate on privacy rights (see Hamann 2020), the use of the app has only been introduced on a voluntary basis (Rzepka 2020).

[2] Contract tracing and quarantine control have been carried out by public health authorities. In order to deal with the large number of cases, the personnel capacities of those authorities have been enlarged through secondments of officers from other authorities (Baars et al. 2020) and by hiring students as short-term assistants (Becker et al. 2020). The testing stations have been run or supervised by healthcare professionals and health authorities. In some cases, private parties have been engaged in organising the tests and guaranteeing security of the test stations (Töngi 2020). Private companies have been involved in the process of developing the voluntary tracing app (Klöckner 2020).

[3] During the time of strict exit-restrictions, in some states (Länder) individuals had to substantiate their “legitimate reasons” to leave their households in case of inspections carried out by police and local authorities. The adherence to social distancing rules and the closure of facilities was consequently monitored (Rebmann et al. 2020). Local authorities and police later began to inspect the observance of hygiene rules, such as distancing rules in restaurants and the duty to wear masks (Fahrun 2020).

[4] Owners of restaurants and other facilities can be held liable for hygiene rules being observed in their premises. They are therefore, to some extent, obliged to monitor the behaviour of their customers (Meier & Rosendorf 2020). Besides this, no involvement of private actors in the enforcement of rules has been reported.

[5]
Healthcare professionals and private security companies have been involved in running test stations (see above [2]). This is currently the only reported specific involvement of private actors involved in surveillance and enforcement.

[6]
There have been incidents of individuals reporting allegedly illegal behaviour to public authorities (Stutte 2020). There has also been public criticism of major companies not implementing hygiene concepts (Frese 2020). Besides this, there have not been specific informal social surveillance or enforcement measures.

[7]
After a scholarly debate on privacy concerns regarding a tracing app (Kühling & Schildbach 2020; Hamann 2020), a tracing app was implemented on a voluntary level (Rzepka 2020). These privacy concerns have also been voiced with regard to the duty of restaurant owners and other facilities to keep lists of customers. It became known that police authorities made use of those lists in order to investigate unrelated offenses (Sikora 2020). Privacy issues with regard to modern technology in Germany are mainly governed by the European General Data Protection Regulation and the Directive on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties and on the free movement of such data which has been implemented into German law. Both frameworks in general limit the use of personal data to the original purpose of the processing (Sikora 2020).

[8]
National and state governments have consulted with both the Robert Koch Institute and independent experts on strategies of combatting the pandemic (Deutscher Bundestag 2020). Also, measures have been challenged before administrative and constitutional courts. Some decisions led to major corrections of the restrictions. For example, the Federal Constitutional Court declared exit restrictions unconstitutional which contained a blanket ban on religious service (BVerfG Beschl. v. 29.4.2020 – 1 BvQ 44/20, COVuR 2020, 92). It further stated that authorities are obliged to assess the individual circumstances before intervening in the fundamental right of freedom of assembly (BVerfG, Beschl. v. 15.4.2020 – 1 BvR 828/20, NJW 2020, 1426). During the third phase, courts have paid close attention to ensure that the relaxed measures were implemented in a non-discriminatory manner and have declared unjustified differentiations, for example regarding different sorts or sizes of facilities, unconstitutional (VGH München Beschl. v. 27.4.2020 – 20 NE 20.793, BeckRS 2020, 6630; OVG Lüneburg Beschl. v. 14.5.2020 – 13 MN 165/20, BeckRS 2020, 8506; VGH München, Beschl. v. 19.06.2020 – 20 NE 20.1127).
4. CONCLUSION

Despite most citizens acting responsibly, exit restrictions as well as subsequent hygiene rules and tracing concepts were made compulsory after only short periods of recommendations. The exit restrictions were relaxed only cautiously, following growing protest by civilians and court decisions declaring some restrictions unconstitutional. Enforcement and surveillance were mainly executed by public authorities whose capacities have been temporarily increased. Privacy concerns with regard to contact tracing have been catered to by maintaining the tracing app on a voluntary basis. All in all, a large number of restrictions might be seen as justified under the German constitution given the speed of the dissemination of the coronavirus and the uncertainties at the time of the outbreak (Kämmerer & Jischkowski 2020: 352; Hase 2020: 701). A future challenge will lie in finding an appropriate balance between continuing to prevent the spread of the coronavirus and easing the most strict restrictions. Moreover, the fair distribution of the economic burdens resulting from the pandemic is subject to future discussions. A societal task will lie in not getting used to the leading role of the state in servicing general interest and deciding on individual lifestyle and risk assessment.
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