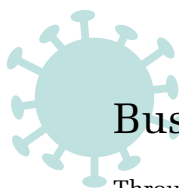


When the party closed down

What COVID19 is teaching us about doing business
in a time of crisis

Brief

3



Business at stake

Throughout Europe, the spring of 2020 was affected by the corona virus. As spring temperatures increased, so did the infection rate. Conversely, commercial activity declined across the continent. Aside from the almost ritual hoarding of toilet paper and disinfectants in supermarkets, everyone from hairdressers and concert venues to clothing stores missed their customers.

Many countries chose to completely close all bars, cafés, and restaurants. The French were deprived of their art de vivre, and the English had to do without the social glue of the pub. The Swedes, on the other hand, appeared to be less concerned about the corona virus, and it was practically business as usual. But not entirely, as they were also strongly affected by the crisis.

In Denmark, the debate about business conditions in the corona era has been rather dramatic. Not least in connection with the second wave. Only a year ago, no one would have been able to imagine the scenes that have unfolded politically, health-wise, or professionally in these past months.

Closed stores, disbanded businesses, and bankrupt restaurants have become a media fixture, as is the debate about which restrictions are the right ones and the most effective. And not least whether the consequences of the restrictions are reasonable and commensurate with the extent of the corona problem.

The crisis continues to rage—now in the second wave of the corona pandemic. Vaccines are approved and on their way into arms around the world, but if there is one thing that the time since March 11 has taught us, it is that much can still happen. Nevertheless—or perhaps for this very reason—there is a need to evaluate what we now know and what we can learn from what has already happened.

In the third brief prepared by Djøf's Corona Task Force, we focus on the business community based on the provisions in the Universal Declaration of Human Rights on the right to own property and to conduct business without interruption. The emphasis is on the first wave and the impact in the beginning of the second wave.

We look at how European countries dealt with the right of the business community to go about commercial activity during the first wave of the corona crisis. We also examine where Denmark placed itself in the European field, and we zoom in on a part of the business community that was (and still is) particularly hard hit, namely restaurants. Here, we look at how Sweden, Germany, the Netherlands, and the United Kingdom (UK) have handled the right of restaurants to go about their business in both the first wave and the beginning of the second.

Overall, we can conclude that, compared to a number of other European countries, the Danish lockdown was less restrictive and that Denmark has made a significant effort to ensure the conditions of the business community and thus the right to engage in commercial activity. But we also see a need to fortify the rights of the business community in a number of areas in the future. This is necessary if we are to avoid essential parts of the business community again falling victim to crisis legislation and acute restrictions.

While this brief is being written, the first vaccines are distributed around Europe, and we all hope that 2021 will be a “year of normalization,” where we can once again enjoy our everyday lives with travel, cultural activities, and restaurants. Here, it is particularly important to maintain that the crisis measures to which we have become accustomed in the course of 2020 must not become part of the new normal.

Happy reading!

Kristian Cedervall Lautu, Lykke Friis, Jens Elo Rytter, Mikael Sjöberg

Djøf's Corona Task Force

The legal basis: The right to do business

The rule of law and democracy are the common thread. We rely on the article on property rights, including the right to conduct business. It is possible to intervene if there is a valid reason, legal authority, and proportionality.

- > The European Convention on Human Rights. Protocol 1, Article 1 on the protection of property: Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
- > -The Constitutional Act of Denmark, Section 74. Any restraint of the free and equal access to trade which is not based on the public weal shall be abolished by the statute.



Learnings from shutting down commercial activity during the corona crisis

Djøf's Corona Task Force evaluation of how Denmark has handled the rights of the business community in a time of crisis has led to the following observations:

Denmark has kept the business community more open than other countries

Throughout Europe, restaurants, cultural activities, sports activities, hairdressers, masseurs, stores, shopping malls, and more largely had to remain closed for most of the spring of 2020. Denmark chose a more moderate line, where more businesses were allowed to remain open and the lockdown was shorter. This could also be seen on the bottom line. In the first wave, the restaurant industry in Denmark performed better financially than it did in comparable countries. The trend of a moderate Danish approach has generally continued in the second wave. Thus, the Danish interference with the right to conduct business has generally been less than in other countries in Europe.

Unclear basis for restrictions and short warnings cast doubts regarding proportionality

Denmark has learned from the first wave: Instead of “painting with a wide brush,” more targeted, local initiatives have been used to stop the virus over the summer and in the beginning of the second wave. For consumers and businesses alike, however, the link between the available knowledge about the spread of infection and new restrictions has at times been unclear. The restaurant industry is also finding that new restrictions often come with just a few hours' notice. These short deadlines are an additional inconvenience on top of the other concrete restrictions. Overall, the short deadlines and a vague basis for the restrictions sow doubts as to whether the interventions are commensurate with the extent of the problem. In other words, doubts arise as to whether the interference with the right to engage in business is proportionate.

Compensation for intervention is central - even in small amounts

Compensation for encroaching on property rights has become an important discussion. Denmark has secured partial compensation for the business community through aid packages, but at the same time decoupled this aid from the compensatory logic that previously characterized the epidemic laws—and which we would normally take for granted in connection with such measures. Legal proceedings may result if the restrictions are extensive or intrusive enough to be considered expropriation or merely as interference with the right to do business. A number of the measures taken throughout Europe can thus be verified in accordance with the Human Rights Convention TP1-1 regarding the protection of private property, and it is far from certain that Denmark will go free in that context, even though we fare relatively well in this area.

At the same time, one can argue that a state shutdown of commercial activity has the advantage that those affected can better formulate demands for compensation or support schemes. The alternative, which would be to issue government recommendations to citizens regarding prudent behavior, can thus potentially have the consequence—as seen in Sweden—that the business community loses customers and revenue without basis for a claim to compensation.

Recommendations

Based on the preliminary experiences from the first wave and the beginning of the second, Djøf's Corona Task Force recommends that state decision-makers consider the following to protect the rights of the business community in the best possible way in a time of crisis:



1. A more fine-meshed net can secure the right to conduct business

In line with the increased knowledge about the nature of the crisis, the state should correspondingly target rules and guidelines for the business community. In the case of corona, in line with the increased knowledge about how the virus spreads, one might consider differentiated rules, such that restaurants with plenty of space, ventilation, and a “quiet” environment could be subject to milder restrictions than those that are more like bars and nightclubs, where the risk of infection is more significant. Such a categorization could contribute to a higher degree of proportionality and reduce the extent of the interference in the right to engage in commercial activity—for the benefit of the business community and consumers alike.



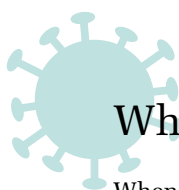
2. Longer implementation deadlines can mitigate the encroachment on the right to conduct business

The short deadlines for implementing new restrictions in the business community are a tightening of the individual interventions in the right to conduct business. For the business community and consumers alike, the shifting restrictions that can be introduced at a mere hours' notice create confusion and the risk of unnecessary fines. We therefore recommend giving the business community more time to implement new restrictions.



3. Reintroduce the provision on compensation in the Epidemic Act

The amendment to the Epidemic Act removed the provision on compensation for intervention resulting from an epidemic. Instead of being guaranteed a right to compensation, it is now up to a political majority to adopt financial support schemes if the right to do business is infringed. This has weakened the legal security of the business community. Reintroducing the right to compensation in the new Epidemic Act would strengthen the rights of the business community. This also relates to the fact that it has often taken a long time before the business community has benefitted from aid packages; for example, some of them have been postponed, as acceptance must be obtained in Brussels (cf. EU rules regarding state aid).



When Europe closed shop

When Prime Minister Mette Frederiksen shut down large parts of Denmark from the PM's Mirror Room in mid-March 2020, she was far from alone in making this difficult decision. Throughout Europe, state leaders found themselves in the same situation. They all had to decide who would be allowed to go to work and who should stay home—and if they were to be allowed to go out at all. They all had to develop a strategy for how to protect the healthcare system from collapse. And they all had to determine whether they would prevent hairdressers, shop owners, chefs, stand-up comedians, and more from being able to go about their business indefinitely, possibly even forcing them to give up their life's work.

Painted with a very broad brush, the European countries largely acted in unison in the first wave with respect to business and culture: Most of them shut down most activities in mid-March.

But there was a difference in how extensive the shutdown was and how quickly different states chose to reopen. Here, we have collected data for the closure of shops, shopping centers, liberal trades such as hairdressing, and cultural activities during the first wave of the crisis. See the illustrations on pages 8-11.

Our data show that even though large parts of Denmark were closed down during the first major corona wave in the spring, Danes and the business community were largely spared compared to the situation in many other European countries. Together with the relatively lenient restrictions on the freedom of movement, this meant that the vast majority of citizens in Denmark have had significantly greater freedoms and the opportunity to live a relatively “normal” life as compared to the citizens of many of the countries against which we have drawn the comparisons presented in this brief.

One can therefore conclude that, despite the waves running rather high in the public debate, the principle of proportionality has largely been respected, even though the individual businessperson hit by restrictions might experience them as rather draconian.

The legal basis: The Epidemic Act

The rules for the handling of the corona virus were introduced by amending the Epidemic Act on March 12, 2020. The Act was drafted as a framework law that allows the government, specifically the Minister of Health, to enact special rules in executive orders. These rules can take effect immediately.

The Act makes it possible to prohibit or restrict access to premises under the control of members of the business community (and other legal and physical persons), and where there is general public access. Such areas include ferry terminals, airports, and stations; and places where people gather, such as fitness centers, restaurants, concert halls, solariums.

According to Section 6 of the Prohibition Against Assembly Order, the following premises must be closed to the public:

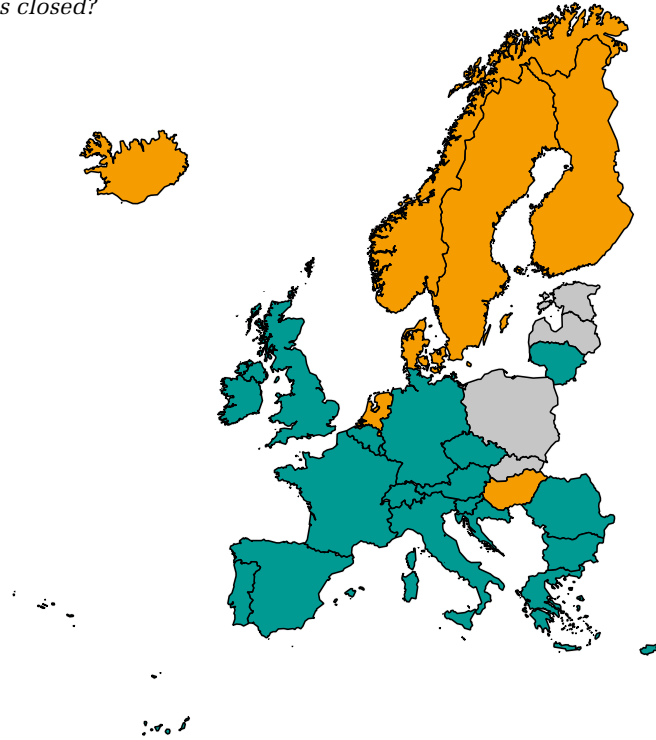
1. Places of service in which food, beverages, or tobacco are served for consumption at the point of sale; however, take-away food and beverages are permitted.
2. Shopping malls, department stores, arcades, and bazaars, as well as the shops located therein, unless there is direct access to the shop from the street (and access from the shop to the mall is blocked), with the exception of grocery stores, pharmacies, and specialty stores with medical equipment.
3. Places where sports and leisure activities are carried out, including arcades, play and bathing areas, swimming pools, fitness centers, theaters, and cinemas, with the exception of premises used for necessary rehabilitation.
4. Tattoo, piercing, spa, body care, beauty, and massage clinics, hairdressers, and other locales where services are provided, which by their nature involve close physical contact with customers, and tanning beds.

Restrictions on business by country and industry during the first wave of COVID-19

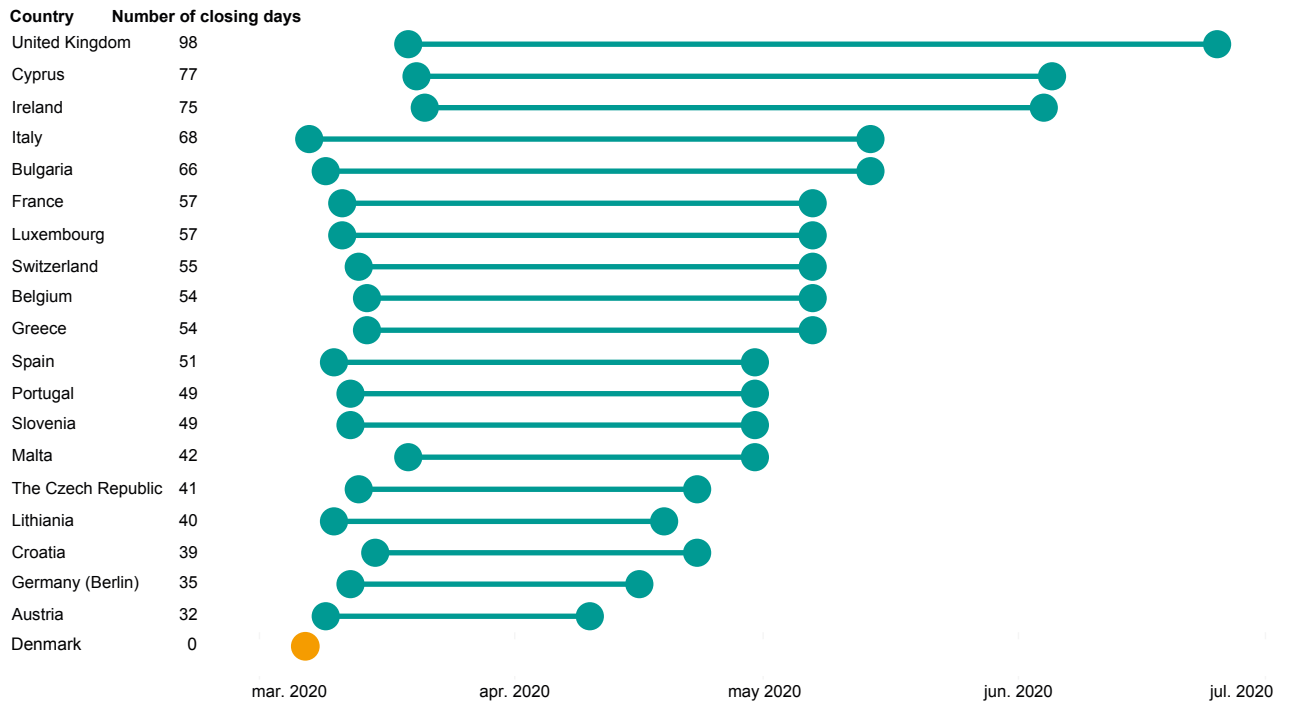
Shops

Were shops closed?

- Yes
- No
- Unknown



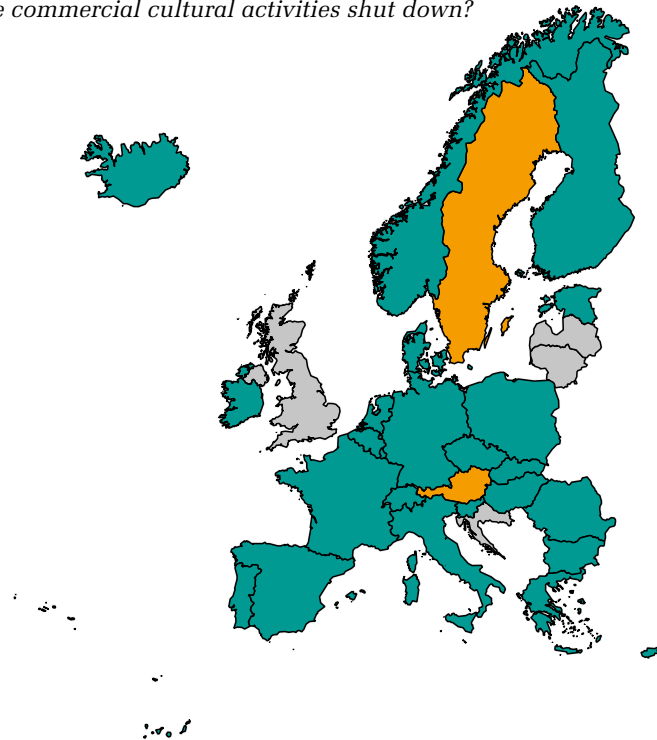
The closure of shops means that they were required to close for physical customers. In some countries, shops could remain open, while shopping malls had to close. See details about the countries on the interactive dashboard at djoef.dk/coronataskforce.



Commercial cultural activities

Were some commercial cultural activities shut down?

- Yes
- No
- Unknown



Shutting down some commercial cultural activities implies that parts of the commercial cultural life (e.g. sports and cultural institutions) were required to close for guests or spectators. In some countries, everything was closed, while others had varying rules for different aspects of cultural life or restrictions on, for example, the number of people who could gather.

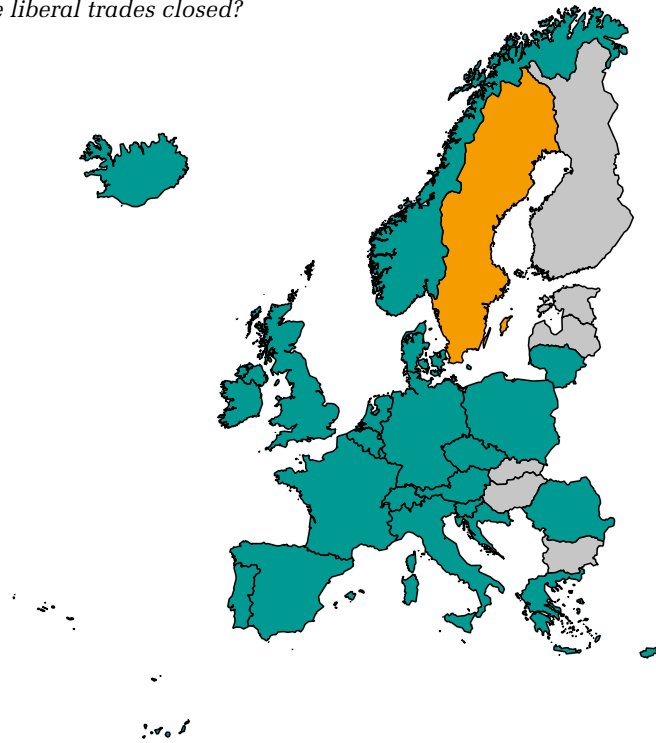
[See details about the countries on the interactive dashboard at \[djoef.dk/coronataskforce\]\(https://djoef.dk/coronataskforce\).](https://djoef.dk/coronataskforce)



Liberal trades

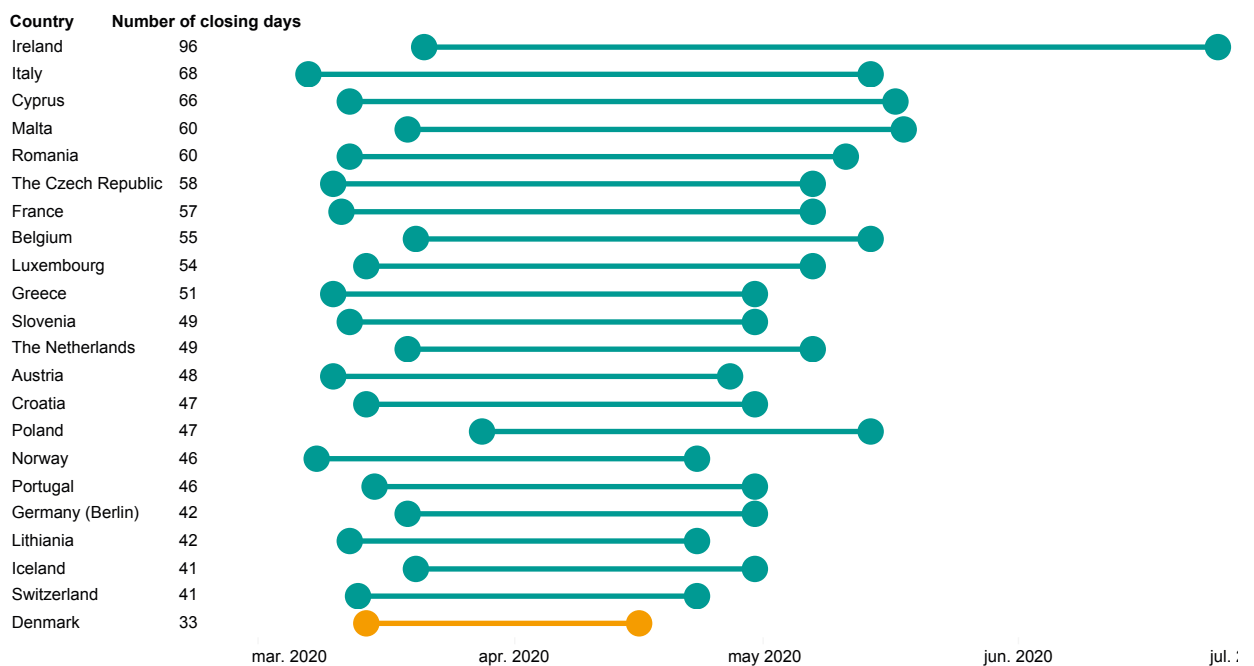
Were some liberal trades closed?

- Yes
- No
- Unknown



The shutting down of some liberal trades implies that some of the liberal trades in a given country were required to close. The hairdressing trade in particular was affected in the countries marked by closures.

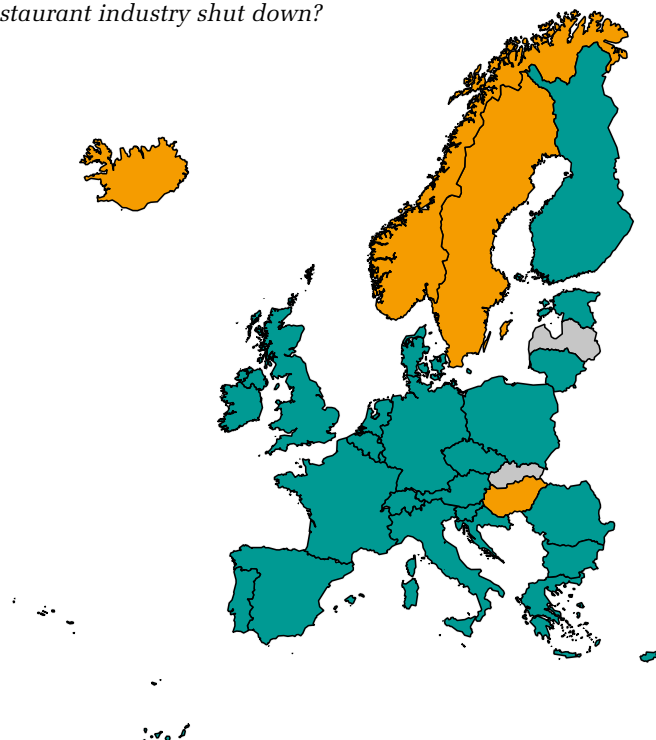
See details about the countries on the interactive dashboard at djoef.dk/coronataskforce.



Restaurants

Was the restaurant industry shut down?

- Yes
- No
- Unknown



The closure of the restaurant industry implies that restaurants were required to close for visiting guests. It is not known for all countries whether take-away sales were allowed. See details about the countries on the interactive dashboard at djoef.dk/coronataskforce.





Denmark: a 'soft' lockdown

In the first wave, most European countries chose to distinguish between essential (incl. supermarkets) and non-essential shops, where most countries closed the latter. Shopping centers were also largely shut down. Thirty European countries chose to close both shopping malls and shops. The exceptions were Finland, Iceland, the Netherlands, Norway, Sweden and Hungary, which allowed both shops and shopping malls to remain open throughout the first wave.

In Denmark, the shopping malls were closed in the first wave, while all other stores were allowed to remain open. In this sense, Denmark placed itself among a small group of only 5-6 countries, which allowed this part of the business community to remain open for business. Moreover, the seven-week closure of shopping malls positioned Denmark as one of the countries with the shortest shutdown in the first wave. Even though the shops were allowed to remain open, they were still subject to the general restrictions that, among other things, were linked to the ban on assembly. This meant significantly fewer customers in shops at a time and the prospect of long lines stretching out onto the street, while at the same time the general encouragement to remain home put a significant damper on shopping activity.

During the first wave, one of the issues to attract much attention and debate was the closure of the so-called liberal trades. There is no exact definition, but we are talking about hairdressers, chiropractors, tattooists, and dentists—all trades and professions with close customer contact. A memorandum from Statens Serum Institut (the National Institute for Health Data and Disease Control) estimated in the spring that the liberal trades and professions in Denmark include around 27,000 people.

Across Europe, the approach to the liberal trades was generally stricter than toward retail stores. Of the 25 European countries from which we have been able to obtain data, Sweden was the only country to refrain from closing some of their liberal trades for a period during the first wave. Once again, Denmark distinguished itself at the lenient end of the scale. With the four-week closure of the liberal trades, Denmark was the country in Europe to shut down such businesses for the shortest time. The other countries were all between 6 weeks to 12 weeks (Ireland).

Cultural activities, such as museums, theaters, cinemas, concert venues, and sports activities, were also shut down in almost the whole of Europe during the first wave. Here, the clear general tendency was to keep the museums closed for 8-10 weeks, while sports events generally had to wait a few weeks longer. Festivals and other very large events have not yet been resumed anywhere in Europe.

Overall, in comparison with the other European countries, Denmark is thus an exponent of a soft closure strategy in the first wave as far as business is concerned in the form of shops and the liberal trades. The shutdown period was relatively short, and the shops were exempted.



Restaurants in the eye of the pandemic

Restaurants, cafés, and bars all form an essential part of the European business community. When the first wave struck in the spring of 2020, restaurants and their guests across Europe felt the corona virus. The vast majority of countries closed restaurants altogether, the few notable exceptions being Norway and Sweden; Norway was not hit as hard as most by the virus, whereas Sweden, despite high infection rates, chose a different strategy than the other European countries.

Restaurants are interesting to focus on in an evaluation like this, because the restrictions that apply to them have lasted a long time, have changed repeatedly, and because it is possible to gather more comprehensive, comparative data about their activity across Europe. It can thus provide a comparable picture of how the right to conduct business is handled across some of the countries with which we normally compare ourselves. In this case, we have chosen to focus on Sweden, Germany, the UK, the Netherlands, and Norway.

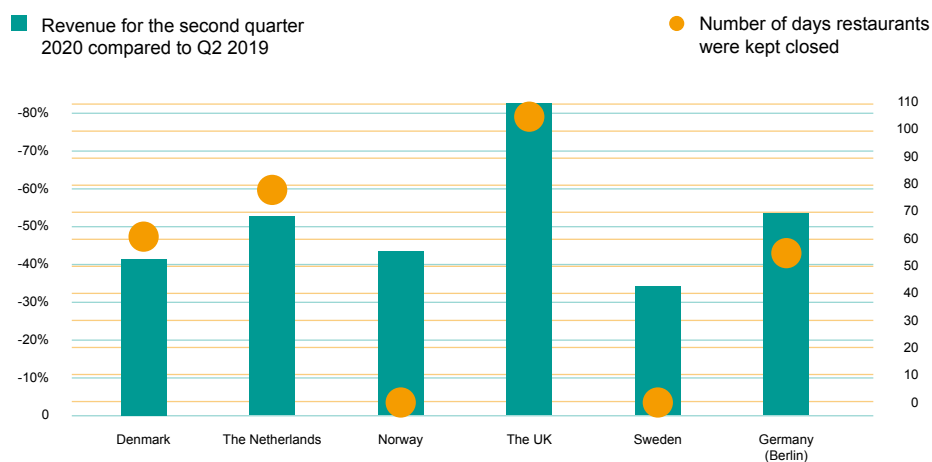
Shutdown casting long shadows

The announcement of the general lockdown of Danish society in March 2020 also included restaurants, which were closed for two months (March 18 May 18). Data from HORESTA, the organization for the restaurant, hotel, and tourism industry in Denmark, shows that turnover among Danish restaurants fell in April by 52%. The fact that this revenue was “only” cut in half is due to the fact that many restaurants were still able to offer take-away service.

In the second quarter (i.e., during and on the edge of the first wave), Danish restaurant revenue fell by a total of 41%. The figure covers significant fluctuations.

Restaurant revenue fell drastically during the first wave

The diagram below illustrates the percentage change (fall) in restaurant turnover during the first wave of COVID-19 compared to the same period the previous year.



While some types of restaurants were hit very hard, others have been able to take advantage of the take-away opportunity to generate increased revenue. For example, the Letz Sushi chain increased its turnover by 20% during the lockdown compared to the previous year by focusing on take-away service.

Unlike the rest of Europe, Swedish restaurants were exempt during the first wave from any actual closure. Nevertheless, the industry has been largely as exposed to the many negative economic consequences of the crisis as other countries. According to HORESTA's figures, Swedish restaurants lost almost 34% of their Q2 2020 revenue compared to the same period in 2019. At the same time, 50,000 people have been laid off or received notice, despite the fact that Swedish restaurants and hotels are the industry in Sweden that has received the most financial support from the government. Swedish restaurants have not been closed down, however, and they have therefore not had grounds for claims for compensation.

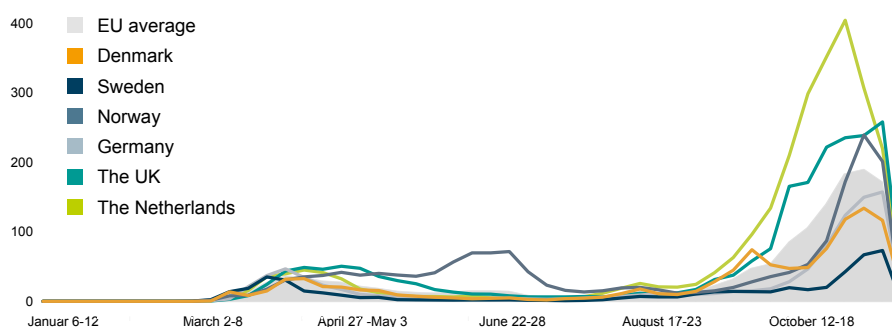
In Germany, the restaurants were closed a few days later than in Denmark. Here, too, the consequences were significant: a 53% loss of Q2 2020 revenue. In Norway, restaurant revenue fell by around 43%, and in the Netherlands by around 52% during Q2 compared to 2019. Koninklijke Horeca Nederland (KHN), the organization representing food services and hotels in the Netherlands, documented in September that only 5.6% of cases of infection could be traced back to restaurants, and they have since battled to ease the restrictions on restaurants with reference to these low infection rates. Of the countries from which we have collected data, the UK has been hit hardest; in Q2 2020, British restaurants lost 82% of their revenue in relation to 2019.

Across Europe, the corona virus thus cast long shadows over the restaurant industry—shadows that the industry associations already predicted in the beginning of the first wave would stretch all the way into 2021. Compared to the other countries from which we have collected data, the restaurants in Denmark and the other Scandinavian countries seem to have fared relatively better through the first wave. With a 41% fall in revenue, Denmark stands in contrast to countries like Germany and the Netherlands, which experienced a 50% loss of revenue—and in the overwhelmingly challenged end of the scale, the UK, where restaurants had lost more than 80% of their income.

The infection curve

In Q2 2020, the infection curves were almost identical in the countries under investigation here.

Number of new COVID19 cases per 100,000 inhabitants



The right to conduct business was challenged—proportionally

The financial consequences of the lockdown for the restaurant industry are beyond doubt. When examining the closure from a rights perspective, one can at the same time conclude that the spring shutdown of the restaurants constitutes a de facto encroachment on the right to do business. One can also conclude, however, that the state provided a number of initiatives aimed at mitigating the consequences of these closures.

Food delivery and take-away were still allowed, and a number of aid packages have been adopted throughout the first and second waves, which have been aimed at mitigating the consequences of the restrictions on commercial activity.

Proportionality

Djøf's Corona Task Force assesses the handling of business conditions during the corona crisis from a human rights perspective, including the principle of proportionality.

When the state interferes with basic individual freedoms, the intervention should always be commensurate with the problem. The balance depends on the importance of the right and the intensity of the intervention versus the importance of the purpose—together with the importance of the intervention for the fulfillment of the purpose.

In early summer 2020, an expert group on aid packages in the Ministry of Finance published a comparison of the aid packages in Denmark, Sweden, Norway and Germany. This review showed that the support schemes in Denmark and Norway were comparable, whereas the Swedish support was generally lower. The German schemes are more loan-based, especially for larger companies.

However, governments in several countries have supplemented the aid packages with other types of support schemes. For a period of time until the summer of 2021, for example, the German government has chosen to reduce VAT from 7% to 5% on restaurants to encourage Germans to eat out. Similarly, the British government has tried to give the industry a boost via a VAT reduction and actual subsidies for citizens' restaurant visits.

The Ministry of Finance expert group also reviewed the impact of the Danish aid package on an average restaurant. Here, we see that a typical restaurant, even with the aid packages, will experience a significant fall in revenue, partly because the aid packages are merely a support scheme and not necessarily full compensation. For example, an application for salary compensation for salaried employees cannot exceed 75% of the employee's salary and max. DKK 30,000 (roughly €4,000) per month—and salary compensation can only be obtained if the company refrains from firing employees and pays their usual salary (i.e. 100%).

However, the review also shows that the aid packages have a very strong effect. The typical restaurant can thus come out with modest but black numbers on the bottom line, whereas the result without the aid packages would have been a significant deficit.

Expropriation: This is how an encroachment on property rights takes place

THE DANISH CONSTITUTION: Section 73. Subsection 1. Property rights are inviolable. No one can be compelled to relinquish his property without the common good requiring it. This can only be done according to the law and with the provision of full compensation.

According to Section 73, only the “expropriation” of property entitles citizens and companies to full compensation. The Folketing has considerable room to regulate property rights, including commercial activity, without compensation. Section 73 must basically protect against individual owners coming to bear extraordinary financial burdens without reasonable cause when something is implemented in the interest of society.

In cases involving doubt, a concrete assessment must be carried out as to whether an intervention constitutes expropriation. Here, the emphasis is partly on whether the intervention is general or specific, whether the justification for the intervention is to curb a harmful use of the property, and how intensive the intervention is for the individual owner. If an intervention is found to be expropriation and thus covered by Section 73, the owner must receive full compensation for their loss.

In particular, the second wave, including the case regarding the killing of mink and debate regarding the possible eradication of the mink-breeding industry entirely, has brought to the fore the discussion of the right to conduct business, encroachment on property rights, and the possible duty of the state to compensate businesspersons for losses.

In this connection, there have been many different interpretations of the provisions of the Danish Constitution on compensation and encroachment on property rights. The government has thus far opted for an approach whereby the rules for compensation have been decoupled from the compensation logic in the previous Epidemic Act.

Previously, there was a provision in the Epidemic Act that provided compensation to affected companies should the state interfere with their right to do business due to an epidemic. That provision was repealed when the new emergency legislation was passed in March. The reason for doing so was that the financial consequences of an “automatic” right to compensation were too difficult to assess. Instead, special compensation schemes and assistance packages would be devised to ensure reasonable compensation for the consequences of the interventions.

Here, as already seen in the mink-breeder case, discussions can arise as to whether an intervention comprises expropriation or a regulation that does not warrant compensation. In the case of expropriation, the business owner can demand full compensation instead of having to “settle” with assistance from the aid package that primarily covers part of the company’s expenses, but not lost revenue.

For business people, examples of interventions that can be considered expropriation include a ban on public access to their business. One could argue that a restaurant being prohibited from allowing guests onto their premises constitutes de facto expropriation. Therefore, there is a major difference between whether the opening hours will be limited or whether there will be a genuine closure.

Denmark has provided extensive compensation to companies for their corona-related losses; however, it is unclear what this calculation would have looked like had the Epidemic Act remained unchanged.

The business community has continuously drawn attention to various challenges resulting from the design of the aid packages throughout the first two waves of the crisis. For example, stores in shopping malls have been promised 100% compensation because they were forcibly closed. However, stores in shopping malls that are part of a chain with a single CVR number, which also has shops on e.g. pedestrian streets that were not forcibly closed during the first wave, have had problems receiving compensation.

In the light of the increasing infection rates in the spring of 2020 and in view of the initiatives taken to mitigate the impact of the restrictions, it can be concluded that the restrictions appear to be commensurate with the size of the problem.



Cases: A restaurant isn't just a restaurant

The interventions in both the first and second waves have demonstrated how extremely difficult it can be to apply a one-size-fits-all-model in relation to the restaurant industry. Where some restaurants have been able to convert to take-away very quickly, others have had a much harder time adjusting. Here are some examples of the different consequences that the government restrictions have had for Danish restaurants.

Employees sent home

Whereas many restaurants chose to close down completely in the spring, some were also able to remain partially open. In Randers the brothers Hace and Ilhan Cetin kept their Café, Cetini, open, even though turnover was already down by 60-70% the day after the closure. The salad bar was shut down, the number of seats in the café cut from 75 to 40, and all of the personnel were sent home. But the opening hours remained unchanged. However, the owners were critical of the assistance offered to companies, which consisted of an extension of the deadline for paying VAT and unemployment tax by four months to alleviate liquidity problems. They were of the opinion that this merely drew out the pain for companies at risk of going belly-up when the VAT and taxes were to be settled later.

Size became a disadvantage

Like the rest of the Danish restaurant industry, MASH, a restaurant chain with eight restaurants in Denmark and two in Germany, was hit hard by the lockdown. After being forced to shut down during the crisis, the chain sent its 300 employees home with full pay to make use of the state aid packages. The chain was nevertheless hit by a lack of liquidity, as they were left high and dry with already purchased ingredients and at the same time had employees and creditors who had to be paid. "The crisis is difficult for everyone, but when you're bigger, it hits harder. It has suddenly become a completely inverted world, where it isn't fun to be big anymore," as MASH Director Jesper Boelskifte commented to FINANS, a Danish business daily. He feared that the state would partially reopen. "We don't expect a normal influx of customers for a long time, and this will make it impossible for us to run profitable businesses after a period in which the coffers have already been drained," he stated.

Short notice led to fines

Restrictions on restaurant opening hours were introduced on Thursday, September 17, in Copenhagen and 16 surrounding municipalities. That same evening, Kokkeriet, a Copenhagen Michelin-starred restaurant, was visited by the police, who issued a DKK 20,000 (approx. € 2,700) fine for failing to close at 10 pm. The owner of the restaurant explained to several media that it was difficult for them to serve the 18 dishes that make up the restaurant's menu, because many of their guests were unable to arrive early enough to get through the menu in time. With the short notice given for the implementation of the new guidelines, it had not been possible for Kokkeriet to change their concept, and they were further hamstrung by an ill waiter that evening. This created a delay, meaning that two tables did not manage to receive their dessert before the required closing time.

Unequal handling of compensation

The crisis and subsequent consequences were also significant for Palæo, a chain with restaurants in Torvehallerne, Field's, Frederiksberg Centre and Illum; not only due to the pandemic, but also due to how the Danish Business Authority handled the company's applications for compensation. Five completely identical applications resulted in five different responses. The situation was made no less absurd by the fact that four of the cases involved the same caseworker.

For example, Palæo was in the process of opening a new restaurant in Fisketorvet, a Copenhagen shopping mall, on April 4. But because the government closed both restaurants and malls in March, there was no compensation offered in this case, as the company had no turnover and was therefore unable to document any lost revenue. This does not mean, however, that there are no fixed expenses to be covered; "A natural part of our strategy is to grow and to create jobs, pay our taxes and thus contribute to the state. But suddenly, I have four rent payments for space that has not yet been developed together with significant expenses for both furnishings and staff. None of these costs are covered, and they amount to a significant loss for a relatively small company," as Palæo founder and director Peter Emil Nielsen explained.



The second wave is rolling—what have we learned?

The deadline for the collection of the data for this brief was November 15, 2020. Restrictions and changes to the aid packages made thereafter are not included.

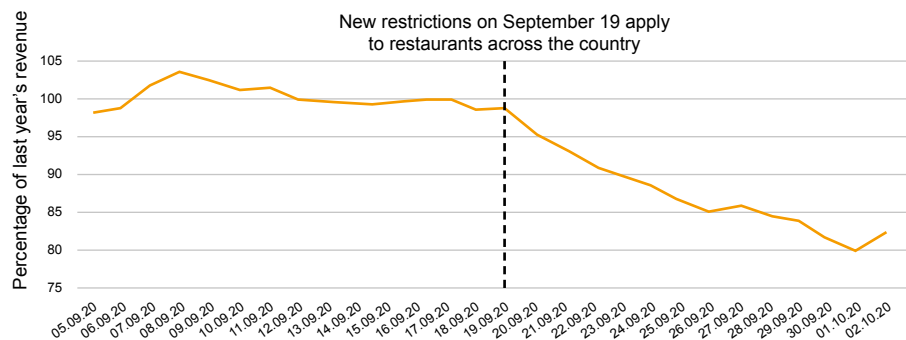
In the autumn of 2020, infection rates in Europe began rising again. In Denmark, a number of new restrictions on commercial activity were announced in September. These restrictions included reduced opening hours for restaurants, bars, cafés and the like. As of September 17, all such businesses were to be closed by 10 pm. In addition, requirements were introduced for masks or visors and a particularly sharpened focus on complying with the recommended 1-meter distance requirement.

After the reopening, restaurant revenue was approaching pre-corona levels, but the new restrictions placed the industry under tremendous pressure. According to HORESTA, the Danish use of credit cards in the restaurant industry in the 14-day period up to the new restrictions coming into effect was close to the previous year's level. In the 14 days that followed the new restrictions coming into effect in September, revenue fell by 16 percentage points, which is approx. DKK 125 million (almost €17 million) in lost turnover for the restaurant industry per week.

Even before the second wave, the lockdown had cast long shadows over the restaurant industry: In August, employment was around 30,000 persons below the usual level, and the industry expected many more to be laid off over the winter. In November, HORESTA announced that its members reported an expected turnover for Christmas parties of around 10% of the usual level. Nine out of ten Christmas parties had been cancelled, partly due to the stricter ban on assembly.

Danish consumption in restaurants

The figures in the graph show a 7-day moving average based on the consumption of customers in Danske Bank



Source: Danske Bank, Spending Monitor (provided by HORESTA)

Unlike the previous months, there was no help for wages for many companies at the beginning of the second wave, as wage compensation had expired at the end of August.

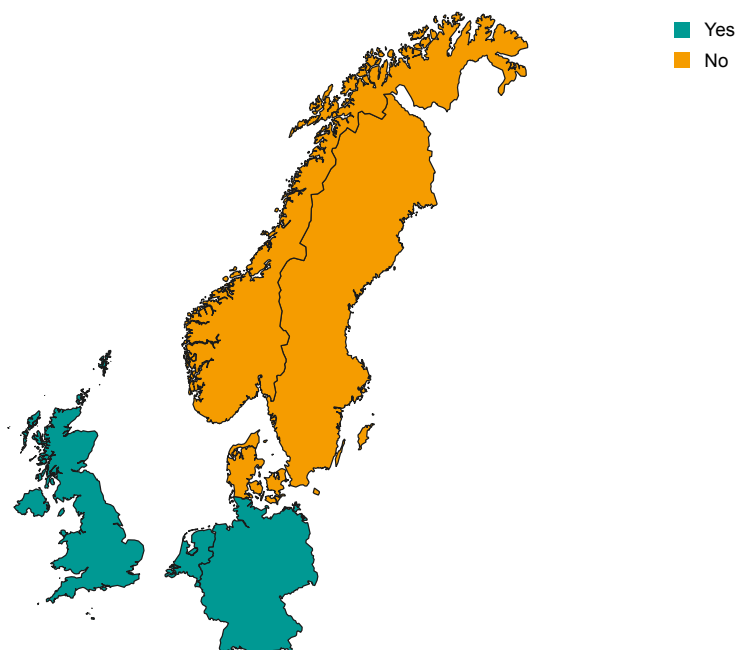
In the first week of December, the restrictions due to a sharp increase in the infection rate were further tightened for 38 Danish municipalities. All restaurants and bars were closed down in the same way as in the spring, with the prospect of being able to reopen after the New Year at the earliest. Once again, it was announced that aid packages would follow the restrictions, but also that the content of the packages would depend on political negotiations. The shutdown did not include liberal sectors (e.g., hairdressers), but much of the cultural life was also shut down

At the beginning of the second wave, the aid packages consisted of compensation for fixed costs for bars, cafés, restaurants, etc., which had their opening hours reduced and consequently suffered lost turnover of at least 35%. Compensation was also given to independent owners of bars, cafés, restaurants, etc. who suffered lost turnover of at least 30% due to the reduced opening hours. Finally, compensation was also extended to suppliers. Small companies could receive coverage for 90% of their expenses, and the agreement worked retroactively from August 19, 2020, when the first regional closure of bars, cafés, and restaurants took place. As part of the annual Budget, decision has also been made to set aside DKK 750 million (roughly €100 million) to stimulate the Danish experience economy. This brief has been prepared prior to the most recent lockdown of commercial activity on December 17, 2020, and thus does not describe any derived changes in the aid packages.

The second wave has also left a strong mark on the business communities in the other European countries. In Sweden, as a consequence of rising infection rates, discussion began regarding the closure of restaurants for a 4-week period, but started with a ban on the sale of alcohol after 10 pm. As there was no question of forced closure, at that time it was not possible to apply for aid packages. Since the preparation of this brief, Sweden has introduced further restrictions, which, however, have not led to restaurant closures, but restrictions on assembly and conduct.

November 15, 2020

Did restaurants close for guests?



At the beginning of the second wave, the countries that kept restaurants open had various restrictions on restaurant visits, such as rules regarding masks, closing times, distances, etc. In Denmark, the closing time was 10 pm, and there were distance requirements as well as requirements for masks for anyone over 13 years of age when they were not seated. Denmark has since closed down completely for eat-in guests.

In Germany, bars and restaurants were closed down in early November, with the possibility of aid packages. This created considerable frustration, as it occurred despite the fact that many had spent significant amounts on creating a framework capable of complying with the stricter hygiene requirements.

In the UK, the state introduced a regionally differentiated model with three steps based on infection levels. Step 1—the most relaxed—required that bars had their last serving no later than 10 pm. Step 2 only left bars open if they served substantial meals. And for bars and restaurants in a region on Step 3, there was a full shutdown, albeit with the opportunity to sell take-away.

In Norway, decision was made to keep restaurants open until midnight, but with a rule that no new guests may be admitted after 10 pm. In addition, alcohol was only allowed at the tables—not at the bar. And in the Netherlands, both restaurants and bars have been completely closed since October 14, together with a ban on the sale of alcohol after 10 pm in convenience stores and supermarkets.

There is, thus, no immediate sign that the second wave is hitting the industry with less force than the first wave.

Testing proportions

Where the first wave was characterized by extensive positivity and understanding of the restrictions, the new restrictions at the beginning of the second wave provoked criticism from much of the restaurant industry.

When the mask requirement was introduced, several restaurants reported dissatisfied customers and unpleasant episodes in which guests vented their frustrations regarding the government demands on the personnel in bars and restaurants. In the restaurant industry, many have indicated that such frustrations could have been partially avoided if the requirement had been announced with more notice, so that customers could get used to the new conditions more gradually.

The announcement of the new rules came at 2 pm on Friday, September 18, and they came into force at noon on Saturday, September 19. Many events were cancelled in the hours after the announcement, and restaurants reported a large drop in the number of reservations.

“We’re standing there with ingredients that have already been purchased, we have staff that must have salaries, we have rent, and a lot of fixed costs—so it has enormous consequences for us,” as Thomas Holme, who is the director of Nørre Vosborg Hotel & Gastronomi, explains to Danish regional television in September.

Finally, many have criticized that the decision to close at 10 pm includes all types of restaurants – whether a “quiet” restaurant or a more bar-like establishment. The argument from the restaurants has been that it makes more sense to let guests stay, sitting in a room at a distance, than to close the restaurant at the risk of guests trying to seek out private parties or gather on the street. Fleisch, a restaurant in the trendy Copenhagen meatpacking district, indicated in the media how they could not understand why they were hit by the same restrictions as bars, for example, because the authorities reported that it was especially among the very young that the infection spread, and that one should therefore distinguish between seated, eating guests as opposed to the behavior displayed by young people in nightclubs and bars.

Early in the second wave, there was a tendency to question whether the principle of proportionality was respected. In a way, the trend is in contrast to the fact that the new restrictions in the early autumn could largely be said to be more lenient by ensuring that restaurants could actually remain open (as opposed to the restrictions later in the second wave, after the preparation of this brief). This dissatisfaction may be due to fatigue over the length of the pandemic, but it may also be due to the addition of new knowledge, which makes the restrictions appear unnecessarily oversimplified.

Where the first wave across Europe was marked by the acute seriousness of the situation and a lack of factual knowledge about the nature of COVID-19, the subsequent period has naturally allowed for the collection of information. In addition to the intensive research that has formed the basis for several vaccines, numerous researchers have also dealt with uncovering how the infection actually spread in different contexts.

For example, a US study has shown that there is likely a risk of infection in restaurants, but that the risk is greatest if the guests mix with each other and if there is not enough space to comply with the recommended distance requirements. Other studies have suggested that regular ventilation and the use of masks can seriously reduce the risk of infection.

This is also creating a basis for more differentiated assessments of the requirements for restaurants, similar to the increasingly fine-grained regional travel guidelines. And thus also an increasing demand from the business community to use the new knowledge to create a better sense of proportionality in the restrictions. However, the 4-week shutdown of restaurants and bars - at first from 9. December 2020, then extended to mid-January (and then further extended) - put these differentiated requirements on standby.

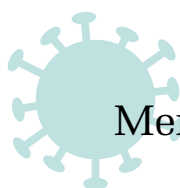
However, this does not rule out that a reopening can provide space for consideration of whether all bars and restaurants should be assessed together—or whether space can be made for more fine-grained considerations, where, for example, restaurants with low noise levels and good space are assessed differently than restaurants in which the guests are seated very closely to one another.

What we've done

Djøf's Corona Task Force has collected information on how selected European countries have handled the conditions for commercial activity during the corona pandemic. The data are collected from publicly available sources. In Brief 3, with respect to restaurants, we have focused on the European countries with which we typically compare ourselves. The countries selected here are Norway, Sweden, the Netherlands, Germany, and the United Kingdom.

The Djøf Corona Briefs can all be found at djoef.dk/coronataskforce

Here, you will also find our interactive map, where you can compare the extent of restrictions and limitations on human rights across Europe and find information about the corona initiatives in other EU countries.



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About the Djøf Corona Briefs

In connection with the corona crisis, Denmark has adopted historically intrusive laws affecting our human rights. Now, we have come so far with dealing with the actual crisis that we – as we go - can look at what we can learn from it—not only from a health perspective, but also from the perspective of human rights and democracy. As well as what we did in comparison with the rest of Europe.

Djøf's Corona Task Force has been commissioned to shine a spotlight on democracy, freedom, and rights during the corona crisis. Crisis legislation must not become routine. Restrictions on very basic freedoms must not become permanent. The long-term objective is to use the corona crisis to learn for the next time such an extensive crisis hits -or just until the next wave—whether it is a health crisis or a different kind of crisis.

Other publications in the Djøf Corona Brief series

- > Corona Brief 1: When we put freedom on hold: What the corona-crisis has taught us about human rights in a time of crisis (September 2020)
- > Corona Brief 2: When crisis politics sowed doubts about the tripartite separation of powers—what corona has taught us about the rule of law in a time of crisis (December 2020)
- > Corona Brief 4 on democracy and a summary of the work of the task force (expected March 2021)

Djøf has set up the task force and appointed its members with the aim of supporting a qualified debate on the future handling of similar extensive crises with consequences for democracy and human rights. The task force draws its own independent conclusions, but it has been established by Djøf, which is responsible for secretariat service. The work of the members is voluntary and unpaid.

Questions and inquiries regarding Djøf's Corona Task Force can be directed to Chief Policy Advisor Astrid Gufler agu@djof.dk

