Emergency Measures in Response to the Coronavirus Crisis and Parliamentary Oversight in the EU Member States

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Abstract

The Covid-19 pandemic has become a true stress test for the legal systems of the worst hit countries. Faced with a health crisis situation, many national governments have become the protagonists in the adoption of difficult measures severely restricting their citizens fundamental rights to the detriment of the powers usually entrusted to the national parliaments. This article examines the normative response of the 27 European Union Member States during the "first wave" of the Covid-19 pandemic, a period that runs from the declaration of a pandemic (March 2020) to mid-June 2020. The intention of the authors was to describe the legal and constitutional mechanisms activated in order to contain the pandemic, focusing on the role of national parliaments in the management of the crisis. This article explores also the degree to which national parliaments have been involved and could exercise parliamentary oversight over the normative measures used by the executive to contain the pandemic in the EU-27.

Keywords: states of emergency, parliamentary oversight, health crisis, Covid-19, European Union Member States.

A Introduction

Member states of the European Union (MS) have adopted a wide range of emergency measures in response to the public health crises generated by the Covid-19 pandemic. Although the procedures and requirements concerning adoption of those measures differ widely depending on the national constitutional and legal frameworks, a common feature of the legal response was

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the transfer of additional powers from the legislature to the executive branch.[1] This comes as no surprise since executives are traditionally believed to be better suited than legislatures to dealing with emergencies owing to their hierarchical structure, ability to respond more speedily and flexibly to immediate challenges and easier access to expertise.[2]

Schmittian accounts of government's role during crises emphasize the pre-eminence of the executive branch, with little or no constraints from other branches of government.[3] However, some other scholars affirm that an adequate framework for emergency situations should be sought to sufficiently empower the executive while also providing effective checks and balances from the judiciary and the legislature.[4] In this vein, several international bodies have recognized that states may resort to emergency powers if some formal and substantive safeguards are respected, such as limiting their use to overcome the exceptional situation, proportionality, limitation in time and being subject to effective judicial and parliamentary control.[5] The European Parliament has embraced a similar approach during the Covid-19 pandemic, emphasizing that all measures adopted by EU MS must be "strictly proportionate to the exigencies of the situation, clearly related to the ongoing health crisis, limited in time and subjected to regular scrutiny".[6]

If judicial oversight is considered crucial to ensuring the legality, necessity and proportionality of the measures adopted,[7] the legislatures' pluralistic compositions and the deliberative and public nature of parliamentary procedures make parliaments an exceptional arena to discuss ways to address a crisis and make the relevant information available to the public, thus adding legitimacy to the solutions finally taken.[8] In this vein, this article focuses on MS' normative reactions during the first phase of the COVID-19 pandemic (until mid-June 2020) and on the role of national parliaments in the management of the

1 Tom Ginsburg & Mila Versteeg, "The Bound Executive: Emergency Powers During the Pandemic", *Virginia Public Law and Legal Theory Research Paper* N. 52, 2020; Elena Griglio, "Parliamentary Oversight Under the COVID-19 Emergency: Striving Against Executive Dominance", *The Theory and Practice of Legislation*, July 2020. European Parliamentary Research Service, European Parliament, States of emergency in response to the coronavirus crisis - Normative response and parliamentary oversight in EU Member States during the first wave of the pandemic, December 2020.

2 Jan Petrov, "The COVID-19 Emergency in the Age of Executive Aggrandizement: What Role for Legislative and Judicial Checks?", *The Theory and Practice of Legislation*, June 2020, p. 5.

3 Carl Schmitt, *Die Diktatur*, 1922.

4 Ginsburg & Versteeg, 2020, pp. 10-21.

5 Venice Commission, Respect for Democracy, Human Rights and the Rule of Law during States of Emergency, May 2020; European Court of Human Rights, Guide on Article 15 of the European Convention on Human Rights-Derogation in time of emergency, December 2019; United National Human Rights Committee, General comment no. 29, states of emergency (Art. 4), CCPR/C/21/Rev.1/Add.11, 31 August 2001.

6 European Parliament Resolution of 17 April 2020 on EU coordinated action to combat the COVID-19 pandemic and its consequences (2020/2616(RSP)), Para. 46.

7 Petrov, 2020, p. 10.

8 Jonathan Murphy, "Parliaments and Crisis: Challenges and Innovations", Parliamentary Primer No. 1, International Institute for Democracy and Electoral Assistance (IDEA), 2020, p. 16.

crisis, exploring whether parliaments were able to exercise effective and timely oversight over the measures adopted by governments.

B EU Member States' Responses to the COVID-19 Pandemic: A First Overview

The normative response of MS to the pandemic has been of various types. While in terms of content the containment measures adopted might be somehow similar across MS, the constitutional or legal framework in which such measures were adopted differ widely. This has also influenced parliaments' participation in those measures.

Analysis of the different tools used at the national level yields, as Table 1 shows, four main or most recurring categories of normative interventions among the EU-27: i) declaration of one of the states of emergency provided for in the national Constitution; ii) declaration of other statutory regimes, not provided in the national Constitution but by statute, that regulate the type of crises and determine the content of powers attributed to the authorities concerned; iii) use of special legislative powers by the executive under urgent/exceptional circumstances and iv) measures based on ordinary legislation that either pre-existed or were issued expressly for the current pandemic. In the latter case, parliaments might have used ordinary legislative powers, albeit occasionally with some compelling rapidity based on informal agreements among the actors concerned or on the basis of a fast-track legislative procedure provided for under the national legal system. Such ordinary legislation might also be the legal basis of statutory special regimes.

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Table 1 *Constitutional/Legislative Framework of the Main Containment Measures adopted at the National (Not Regional) Level during the first wave of the pandemic*

Country	States of emergency provided in the Constitution effectively declared	Statutory regimes effectively declared	Measures adopted making use of special legislative powers (granted to the executive under urgent/ special circumstances)	Measures adopted almost exclusively under ordinary legislation[a]
Austria	–[b]	No	No	Yes (legislative package of March 2020 providing containment measures also of an administrative and economic nature)
Belgium	–	No	Yes (two enabling laws adopted under Art. 105 Constitution)	No (although some containment measures were adopted on the basis of the 1963 Act concerning Civilian Protection, the 1992 Police Service Act and the 2007 Act concerning Civilian Safety)
Bulgaria	Yes (state of emergency)	Yes (emergency epidemiological situation)	No	No (although the State of Emergency Measures and Actions Act was adopted)
Croatia	No	Yes (epidemic of infectious disease)	No	Yes (the Civil Protection System Act and the Infectious Diseases Protection Act were amended)
Cyprus	–	No	No	Yes (measures were adopted on the basis of the Quarantine Law)
Czechia	Yes (state of emergency)	No	No	No (although several ordinary laws have been amended in response to the COVID-19 crisis, for instance the Public Procurement Act (Law No. 134/2016 Coll.), and new laws have been adopted, for instance the Law No. 262/2920 Coll. on the compensation bonus related to the emergency anti-COVID-19 measures)

Table 1 (continued)

Country	States of emergency provided in the Constitution effectively declared	Statutory regimes effectively declared	Measures adopted making use of special legislative powers (granted to the executive under urgent/ special circumstances)	Measures adopted almost exclusively under ordinary legislation[a]
Denmark	–	No	No	Yes (Act on Measures against Infectious and Other Communicable Diseases was amended)
Estonia	Yes (emergency situation)	No	No	No (although parliament approved a supplementary budget; and the act relating to the implementation of the emergency situation amended 33 other acts)
Finland	Yes (state of emergency)	No	No	No (although some measures were adopted under the Communicable Diseases Act)
France	–	Yes (public health emergency)	No	Yes (Health National Code was amended)
Germany	No	Yes (epidemic situation of national importance)	No	Yes (Infection Protection Act, revised as a part of a massive legislative 'corona crisis package')
Greece	–	No	Yes (several acts of legislative content adopted under Art. 44 of the Constitution)	No
Hungary	Yes (state of danger)	Yes (state of epidemiological preparedness)	No	No (although the Act on Transitional Rules was adopted in June 2020)
Ireland	–	No	No	Yes (measures adopted under the Health Act and the Emergency Act)

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Table 1 (continued)

Country	States of emergency provided in the Constitution effectively declared	Statutory regimes effectively declared	Measures adopted making use of special legislative powers (granted to the executive under urgent/ special circumstances)	Measures adopted almost exclusively under ordinary legislation[a]
Italy	–	Yes (state of emergency)	Yes (Decree-Laws under Art. 77 of the Constitution)	No (although some measures were adopted under the Civil Protection Code)
Latvia	–	Yes (emergency situation)	No	Yes (measures adopted under the 2013 Law on Emergency Situation and State of Exception and the Epidemiological Safety Law)
Lithuania	No	Yes (state of extreme situation)	No	Yes (measures adopted on the basis of Law on Civil Protection and Law on the Prevention and Control of Contagious Diseases in Humans)
Luxembourg	Yes (state of crisis)	No	No	No (although some measures were adopted under the Act of 25 March 1885, concerning the measures to be taken to prevent the spread of contagious diseases, and more recently on the basis of two COVID-19 laws)
Malta	No	Yes (public health emergency)	No	Yes (measures adopted under the Public Health Act, that was amended)
Netherlands	No	No	No	Yes (measures adopted under Public Health Act and Safety Regions Act)

Table 1 (continued)

Country	States of emergency provided in the Constitution effectively declared	Statutory regimes effectively declared	Measures adopted making use of special legislative powers (granted to the executive under urgent/ special circumstances)	Measures adopted almost exclusively under ordinary legislation[a]
Poland	No	Yes (state of epidemic risk, state of epidemic)	No	Yes (measures adopted under Act of 5 December 2008 on the prevention and combat of contagions and contagious diseases in humans. In addition, Act of 2 March 2020 on special solutions connected with preventing, countering and combating Covid-19 was passed)
Portugal	Yes (state of emergency)	Yes (state of calamity/ state of contingency/ state of alert)	No	No (although several measures were adopted under the Civil Protection Act)
Romania	Yes (state of emergency)	Yes (state of alert)	Yes (emergency ordinances adopted under Art. 115 of the Romanian Constitution)	No
Slovenia	–	Yes (Covid-19 epidemic)	No	Yes (Communicable Diseases Act was modified, as well as some other ordinary laws through several packages of acts)
Slovakia	Yes (emergency state)	Yes (extraordinary situation based on law 42/1994 on civil protection)	No	No (although the COVID-19 emergency omnibus legislation introduced many different amendments, including, for example, to the Electronic Communications Act)
Spain	Yes (state of alarm)	No	Yes (Decree-Laws under Art. 86 Constitution)	No

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Table 1 (continued)

Country	States of emergency provided in the Constitution effectively declared	Statutory regimes effectively declared	Measures adopted making use of special legislative powers (granted to the executive under urgent/ special circumstances)	Measures adopted almost exclusively under ordinary legislation[a]
Sweden	–	No	No	Yes (Communicable Diseases Act was amended, other acts e.g. Act (2020: 526) on temporary infection control measures in restaurants, Public Order Act)

[a] This column indicates with a 'Yes' those MS that resorted almost exclusively to ordinary laws for the adoption of containment measures or for enabling the executive or other state authorities to adopt such measures. Where MS adopted containment measures also on the basis of emergency powers awarded by the Constitution (e.g. constitutional emergency state), they were assigned a 'No' for the purpose of this table. Conversely, where an MS has introduced a statutory regime provided for exclusively in ordinary legislation, this MS will be indicated with a 'Yes' in this column.
[b] Dashes are introduced when the question does not apply to the MS either because the national Constitution does not provide for a state of emergency at all or because the state of emergency is unsuitable for a health emergency (see Table 2).

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As Table 1 shows, all the 27 MS adopted the normative solutions described either alone or in a most varied combination. For example, Portugal has availed itself of one of the states of emergency provided in the Constitution but has also resorted to several statutory regimes. Additionally, it made use of ordinary legislation adopted either by the government under its constitutional legislative powers[9] or by the national parliament. On the other side of the spectrum, Sweden and Ireland have relied uniquely on measures adopted under ordinary legislation to contain the pandemic. In the middle, different combinations of normative measures can be observed, such as the situation where MS declared a state of emergency and implemented a special statutory regime too (e.g. Bulgaria, Hungary, Portugal, Romania, Slovakia), where a constitutional state of emergency could not be declared and the executive made use of special legislative powers (e.g. Italy) or situations where regardless of the declaration of a state of emergency, containment measures were issued on the basis of enabling laws of an ordinary character that either pre-existed or were created *ad hoc* for the pandemic (e.g. Germany, the Netherlands, Slovenia).

Overall, however, the great majority of MS (19) enacted a form of emergency scheme such as either a constitutional state of emergency (10), or a statutory emergency regime (14) that offered a set of often pre-established (sometimes adapted) rules providing for decision-making mechanisms able to function under crisis situations, or both (5). Such emergency schemes also provided safeguards and allowed governments to react swiftly and efficiently. A number of MS (10) enabled governments to adopt measures that were deemed necessary almost exclusively through either the use of special legislative powers[10] or the introduction of ordinary legislation[11] empowering the executive to adopt a certain range of containment measures. In some cases, however, the statutory emergency regime may not be mistaken for the source of the governmental powers to introduce the 'classical' containment measures. In Italy, for example, it was the exercise of government's special legislative powers (Decree-Law), and not the statutory arrangements (*stato di necessità*) declared under the Code of Civil Protection, that empowered the president of the council of ministers to introduce with Decrees (DPCM) the type of containment measure as predefined in the enabling Decree-Law.

Table 1 also shows that the most recurrent normative tool used to face the pandemic in EU-27 was ordinary legislation, as fourteen MS based their legal response on measures adopted on the basis of/through ordinary laws. Finally, in five MS, the government used special legislative powers to contain the pandemic or address its consequences.

9 *Decreto-leis*, adopted under Art. 198 of the Portuguese Constitution. Among many others, see Decreto-Lei n.º 10-A/2020, 13 March, adopting exceptional and temporary measures in response to the coronavirus epidemic.

10 Belgium, Greece, Italy, Romania and Spain.

11 Although Table 1 indicates that overall 14 MS have made use of ordinary legislation, the research shows that 5 of them made an almost exclusive use of ordinary legislation in the containment of the pandemic (Austria, Denmark, Ireland, the Netherlands and Sweden)

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C Constitutional States of Emergency in the EU-27 and Parliamentary Oversight

The possibility for the state to face unexpected threats by allowing state functions to be exercised in accordance with special (non-ordinary) methods is the very essence of why constitutional states of emergency exist. With their application, the state is able to protect the country and react to threats of an unexpected nature that may represent a danger, harm the community or, even in a broader sense, affect the unity of the state. This explains why these special arrangements aimed at tackling diverse emergencies are provided in the Constitutions of the great majority of the 27 EU MS.[12] Indeed, only few MS do not provide for an emergency state clause (see Table 2), although they provide for alternative ways to react if parliament is unable to convene or to function by allowing the exceptional transfer of legislative powers to the monarch, i.e. the executive (Belgium and Denmark) or to the federal president (Austria).

Table 2 Constitutional Emergency State Clauses in the EU-27

Country	Does the Constitution provide for the possible declaration of an (or several) emergency state(s)?	Does any of the emergency states in the Constitution apply to a health emergency?
Austria	No[a]	–[b]
Belgium	No[c]	–
Bulgaria	Yes (state of war or state of emergency)	Yes (state of emergency)
Croatia	Yes (state of war, immediate threat to independence and unity of the state, severe natural disasters)	Yes
Cyprus	Yes (state of emergency in case of war or other event that endangers the life of the Republic)	No
Czechia	Yes (state of war/threat/emergency and danger)	Yes (state of emergency)
Denmark	No[d]	–
Estonia	Yes (state of emergency and emergency situation)	Yes (emergency situation)
Finland	Yes (situation of emergency)	Yes
France	Yes (state of siege and exceptional powers to the president in Art. 16 of the Constitution)	No
Germany	Yes (state of tension, state of defence and internal emergency states)	Yes (internal emergency)[e]
Greece	Yes (state of siege)	No

12 The situation is similar outside the EU, *see*: Christian Bjørnskov & Stefan Voigt, "The Architecture of Emergency Constitutions", *International Journal of Constitutional Law*, vol. 16, 1, 2018, pp. 101-127.

Table 2 (continued)

Country	Does the Constitution provide for the possible declaration of an (or several) emergency state(s)?	Does any of the emergency states in the Constitution apply to a health emergency?
Hungary	Yes (state of national crisis, state of emergency, state of preventive defence, state of terrorist threat, unexpected attacks and state of danger)	Yes (state of extreme danger)
Ireland	Yes (state of emergency in times of war or armed rebellion)	No
Italy	Yes (state of war)	No
Latvia	Yes (state of exception)	No
Lithuania	Yes (threat to constitutional system or social peace)	Yes[f]
Luxembourg	Yes (state of crisis)	Yes
Malta	Yes (war, subversion and public emergency)	Yes (state of public emergency)[g]
Netherlands	Yes (external and/internal security)	Yes
Poland	Yes (martial law, state of exception and state of natural disaster)	Yes (state of natural disaster)
Portugal	Yes (state of emergency and state of siege)	Yes (state of emergency)
Romania	Yes (state of siege or a state of emergency)	Yes (state of emergency)
Slovenia	Yes (state of emergency)	Yes[h]
Slovakia	Yes (state of emergency)	Yes
Spain	Yes (states of alarm, emergency, siege)	Yes (state of alarm)
Sweden	Yes (war, danger of war and exceptional conditions as a result of war or the danger of war)	No

[a] Although, according to Art. 18 of the Constitution, if Parliament is unable to convene in times of distress, the legislative power shall be transferred from Parliament to the federal president.
[b] Dashes are introduced when the question does not apply to the member state because no emergency states are provided for by the national Constitution.
[c] However, according to Art. 105 of the Constitution, the King (i.e. the government) may be attributed powers other than those formally attributed to him by the Constitution by specific laws passed by virtue of the Constitution itself.
[d] However, according to Section 23 of the Constitution, in an emergency the King (i.e. the government) may, when the Folketing cannot assemble, issue provisional laws, provided that they shall not be at variance with the Constitutional Act and that they shall always, immediately on the assembling of the Folketing, be submitted to it for approval or rejection.
[e] Arts. 35(2) and 35(3) of the Basic Law of the Federal Republic of Germany could be invoked if the COVID-19 pandemic worsened drastically, according to scholars. In the unlikely event that the pandemic became a threat to the free democratic order or the existence of the federation, Art. 91 of the Basic Law could also be invoked according to some scholars.
[f] Although the assessment of the conditions for the declaration remains with the Lithuanian parliament, the Lithuanian parliament's legal service clarified that declaration of a state of

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emergency is not precluded in principle by a health emergency but could be declared if, together with the health emergency, there is unrest, violence or crimes.

[g] Although the state of public emergency provided for under Art. 47(2)(b) of the Maltese Constitution seems, in principle, applicable to a pandemic situation, some authors have affirmed that its application would require a situation 'directed more against territorial or political integrity rather than mere issues of health'.

[h] Art. 92 of the Slovenian Constitution would allow a state of emergency to be declared if a serious natural disaster or an epidemic posed such a 'great danger that the existence of the state could be endangered'. Scholars argue that we should understand such a critical situation when, given the exceptional number of patients and victims and the consequent inability of the state to function owing to a complete quarantine, it would make sense to focus the state's operations on a handful of people. However, scholars understand that the conditions for declaring the state of emergency were not met during the current pandemic.

As Table 2 shows, of the 24 MS that possess a constitutional state of emergency clause, only seventeen have chosen requirements that could, in principle, apply to a pandemic situation. Even so, for some of those MS (Malta,[13] Slovenia,[14] Germany,[15] Lithuania[16]) the issue is not clear cut. The fact that the triggering factors of a state of emergency do not always cover a health emergency explains why some MS resorted to alternative legal tools to contain the current pandemic. However, the inadequacy of emergency clauses in some MS was not the only reason why, ultimately, a constitutional state of emergency was not declared in certain cases.

Of the seventeen MS that are equipped with some sort of constitutional state of emergency suitable for a pandemic, Table 1 shows that only ten chose to activate it during the first wave of the Covid-19 pandemic (Bulgaria, Czechia, Estonia, Finland, Hungary, Luxembourg, Portugal, Romania, Slovakia, Spain). Seven MS (Croatia, Germany, Lithuania, Malta, the Netherlands, Poland and Slovenia) who could in principle have declared a state of emergency chose not to do so. The reasons for this may be manifold. Apart from the legal uncertainty about whether a pandemic would be covered by the state of emergency clause in some cases, historical reasons that made emergency laws controversial may have played a certain role in some MS (e.g. Germany). In Poland, the consideration prevailed that suitable legislation already existed giving appropriate powers to the executive, although, more practically, the intention to carry out elections otherwise precluded during a state of emergency[17] could have been decisive. In other situations, either the extent of the level of infections was initially not so

13 Vincent A. De Gaetano, "COVID-19 – the Maltese Response: Slow at First but Steady and Effective", *Verfassungsblog*, 4 May 2020.

14 *See* Chapter on Slovenia, Coronavirus Pandemic in the EU – Fundamental Rights Implications, European Union Agency for Fundamental Rights, 4 May 2020.

15 In Germany some authors (Prof. Dr. U. M. Gassner, available on Legal Tribune Online of 27 February 2020) have argued that mass diseases qualify as natural disasters in the meaning of Arts. 35(2) and 35(3) of the *Grundgesetz* and therefore that the internal emergency could be invoked, while others (*see* P. Thielbörger & B. Behelert, "COVID-19 und das Grundgesetz", available on *Verfassungsblog* of 19 March 2020) argue that these provisions could be invoked where the collapse of the health system would endanger the existence of the federal government.

16 Eglė Dagilytė, "Lithuania's Response to COVID-19: Quarantine through the Prism of Human Rights and the Rule of Law", *Verfassungsblog*, 14 May 2020.

17 Emergency, but not a state of emergency, *Polandin*, 14 March 2020.

alarming as to require the activation of constitutional emergency powers (Croatia) or the pre-existing legislation was believed to guarantee an adequate response (the Netherlands). In some MS whose Constitutions do not envisage an emergency state for naturalistic causes but for destabilizing internal threats, a health emergency could still be a trigger, yet indirect, if the situation spirals into upheavals or riots becoming a danger for the democratic and peaceful life of the state.

The legal framework of almost all EU MS that resorted to constitutional states of emergency required some sort of parliamentary oversight either on declaration or on extension of the emergency state, thus making parliamentary oversight an important counterweight against the increased powers of the executive. Moreover, constitutional provisions in MS that declared a state of emergency normally prevent parliament from dissolving during a constitutional state of emergency[18] or require parliament to convene immediately if it is not in session when a state of emergency is declared.[19] These provisions safeguard against the risk that parliaments would be unable to fulfil their constitutional role of guidance and oversight of the executive's actions.

Table 3 *Parliamentary Oversight over the Declaration of the Constitutional States of Emergency During the First Wave of the Pandemic*

Country	Declaration made or authorized ex ante by parliament	Declaration authorized (or annulled) ex post by parliament
Bulgaria	Yes[a]	No
Czechia	No[b]	Yes (annulment possible at any time)
Estonia	No	No
Finland	Yes[c]	Yes
Hungary	No[d]	No
Luxembourg	No[e]	No
Portugal	Yes[f]	No
Romania	No	Yes[g]
Spain	No[h]	No
Slovakia	No	No

[a] Parliament authorizes ex ante also the extension of the state of emergency.

[b] The initial declaration of the state of emergency is made by the government for an initial period of 30 days and may be annulled by the Chamber of Deputies. Any extension requires the authorization of the Chamber (Arts. 5-6 of the Constitutional Law on the Security of the Czech Republic).

[c] The government may declare, in cooperation with the president of the republic, that the country is in a state of emergency. However, the decree indicating the extent of the emergency powers granted to the executive and its territorial scope shall be immediately submitted to parliament, which shall decide whether it should remain in force or be partially or totally repealed. After parliament's decision, the government may begin to use the emergency powers

18 *See* Art. 116 Spanish Constitution, Art. 32.4 Constitution of Luxembourg, Art. 172 Portuguese Constitution, Art. 89.3 Romanian Constitution.

19 *See* Art. 116 Spanish Constitution, Art. 100.5 of the Bulgarian Constitution, Art. 93.2 Romanian Constitution.

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(Section 6 Emergency Powers Act). In specific urgent situations, the decree may enter into force immediately, although parliament may exercise its powers ex post (Section 7 Emergency Powers Act).

[d] The government is competent to declare that the state of extreme danger and the governmental decrees adopted thereof remain effective only for 15 days, unless parliament authorizes the extension of the effects of those decrees (Art. 53 of the Hungarian Constitution). Parliament's authorization needs a two-thirds majority of the members present, as it should be given through a cardinal act (Arts. T and 54 (4) of the Hungarian Constitution).

[e] The Grand Duke may take regulatory measures that may derogate from existing laws in the specific cases defined by Art. 32(4) of the Luxembourg Constitution. However, the extension of that state of crisis for more than 10 days can be authorized only by a law of parliament and cannot go beyond 3 months.

[f] Parliament authorizes ex ante also the extension of the state of emergency.

[g] The declaration needs to be authorized within 5 days.

[h] The state of alarm shall be declared by the government for a maximum initial period of 15 days, and the Congress of Deputies must be immediately informed and convene a session for this purpose. The extension of the declaration shall be authorized by the Congress (Art. 116 of the Spanish Constitution).

Table 3 shows that parliamentary oversight over the constitutional states of emergency took either an *ex ante* or an *ex post* form, with only Slovakia and Estonia resorting not to specific but ordinary oversight procedures over the executive. In some MS, the *ex ante* parliamentary oversight meant that national parliaments were responsible for declaring the state of emergency (Art. 84 Bulgarian Constitution) or for authorizing its declaration (Art. 138 Portuguese Constitution, Art. 6 Finnish Emergency Powers Act). In these cases, possible extensions of the initial declaration followed the same legal path.

However, in some MS, the government was allowed to declare the emergency state, with some sort of parliamentary oversight following only *ex post* either because national parliaments authorized the declaration after its entry into force (Romania) or because they had *ex post* the power to annul it (Czechia). In some other cases it was the extension of the state of emergency that required parliaments' authorization (Hungary, Luxembourg, Spain). Since in this latter case governments could declare the state of emergency for a limited period (10 days for Luxembourg, 15 days for Spain and Hungary), requiring parliament's authorization for extending that period, the result of both models was largely comparable. In any case, parliamentary oversight was required within a more or less short time after the initial declaration, either to authorize it *ex post* or to extend it.

In addition, extensions of the emergency states authorized by parliaments were usually limited in time (e.g. 3 months in Luxembourg; 15 days in the case of Spain or Portugal) in the idea that exceptional circumstances should not be used to introduce long-standing measures but only temporary ones.[20] Time-limited extensions of the states of emergency allowed national parliaments to assess how emergency powers were exercised on several occasions and in different phases of the crisis, thus strengthening parliamentary oversight. This was not the case, however, for Hungary, where Act XII of 2020 on the containment of coronavirus, adopted on 30 March 2020, initially authorized the extension of the state of

20 Bruce Ackerman, "The Emergency Constitution", *Yale Law Journal*, vol. 113, 2004, p. 1030.

extreme danger without any specific deadline. Even in that very specific case, in which the temporary nature of the measure was arguable,[21] the national parliament could put an end to the state of emergency by repealing the act authorizing the extension, as it indeed did on 16 June 2020, with the adoption of Act LVII of 2020.

Although the legal framework of MS that declared a constitutional state of emergency rarely empowered national parliaments to authorize or repeal individual measures adopted by the executive,[22] the parliamentary authorizations needed to declare or prolong the emergency states in some cases allowed parliaments to modify the scope of the state of emergency declaration, thus giving the legislatures a substantive chance to also modify the initial measures. This occurred in Finland, where, upon parliamentary debate (17-18 March 2020) of the scope of the state of emergency jointly declared by the government and the president of the republic (16 March 2020), parliament amended some provisions of the initial decree that were considered excessive.[23] Similarly, in Romania parliament imposed some relevant safeguards when authorizing the extension of the state of emergency through Decree 240/2020.[24] In Spain, on authorization of the first extension of the state of alarm (Resolution of 25 March 2020), the Congress imposed an obligation for the government to report weekly on the containment measures.

D Statutory Regimes in the EU-27 and Parliamentary Oversight

As indicated in Table 1, fourteen MS declared or introduced statutory regimes during the first wave of the pandemic (Bulgaria, Croatia, France, Germany, Hungary, Italy, Latvia, Lithuania, Malta, Poland, Portugal, Romania, Slovenia, Slovakia). Most often, the statutory regimes consist of arrangements provided by statute that allow a fast normative production, derogating from ordinary decision-making procedures and creating the legal basis for entrusting either the executive or a specific authority (e.g. Head of the Civil Protection) with the power to adopt orders or executive measures of a concrete and operational character. As said, statutory regimes may introduce particular decision-making procedures deviating from the usual ones. This is, for example, the case in Croatia, where the Infectious Diseases Protection Act was amended during the pandemic in order to allow decisions to be taken by the Ministry of Health on the basis of proposals of the Croatian Institute of Public Health. Statutory regimes may also, as in the case

21 Tímea Drinóczi, "COVID-19 in Hungary and Poland: Extraordinary Situation and Illiberal Constitutionalism", *The Theory and Practice of Legislation*, June 2020, Para. 3.1.2.

22 As an exception, the Finnish model requires that governmental and ministry decrees issued on the basis of emergency powers are immediately submitted to parliament and repealed if the parliament so decides (Section 10 Emergency Powers Act).

23 Murphy, 2020, pp. 33-34.

24 European Parliamentary Research Service, European Parliament, States of emergency in response to the coronavirus crisis: Situation in certain Member States II, May 2020, p. 10.

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of Germany, intervene in the allocation of competences concerning the adoption of containment measures between the regional and federal governments.

The relation between declaration of states of emergency and declaration of statutory regimes in the case of the first wave of the current pandemic was quite variegated. Some states decided to declare both a state of emergency and a statutory regime (Bulgaria, Hungary, Portugal, Romania and Slovakia). The continuity of these two arrangements served different purposes. For example, in Slovenia the declaration of an extraordinary situation on 11 March 2020 was driven by logistical or practical reasons, namely to ensure continuity in supplies of relevant medical equipment, while with the emergency declaration of 15 March more invasive measures such as travel ban, quarantine obligations, closure of shops and retail activities were introduced. In Portugal, a state of emergency was declared that lasted until 2 May, while with the subsequent states of calamity, contingency and alert the seriousness of measures was de-escalated.[25]

Some other MS, which could not declare a state of emergency because the one provided in the Constitution was unsuitable for a pandemic or because the conditions thereof were not fulfilled decided to activate a statutory emergency regime. Those MS (France, Italy, Latvia and Lithuania) thus activated the only comprehensive mechanism at their disposal, in addition to other legislative tools. For example, Italy declared the state of emergency on 31 January 2020, in accordance with the civil protection law, which effectively activated a statutory regime. This was, however, not the only measure adopted in order to contain the pandemic, as the Italian state of emergency under the Civil Protection Code alone is unable to entrust special powers that may limit the circulation of persons, introduce lockdowns or other 'classical' anti-pandemic measures.

France deserves special mention since it could not activate a constitutional state of emergency (state of siege) in the absence of a violent and armed threat, while presidential powers require a threat to the independence or the integrity of the state, *quod non*. Nevertheless, French primary law provides for a state of emergency (Law no. 55-385 of 1955), which, although formulated in such a way as to include social unrest or a public calamity, was argued to cover a pandemic too.[26] In spite of this, France decided not to activate that state of emergency, probably because of the negative connotation acquired by this arrangement after the Bataclan attacks in November 2015, when it was prolonged four times. Instead, it decided to introduce a state of public health emergency created ad hoc and *ex novo* in response to the Covid-19 pandemic by Law n. 2020-290 of 23 March 2020.[27]

Finally, some MS (Croatia, Germany, Malta, Poland and Slovenia) that could, in principle, have declared a constitutional state of emergency, because a

25 The state of calamity was declared by Resolution of the Council of Ministers no. 33-A/2020 and was in force from 3 May 2020. However, since 15 July 2020, the declaration of the state of calamity was not applicable in the whole national territory, and other areas of the national territory were under a state of contingency or alert (Resolution of the Council of Ministers no. 51-A/2020).

26 Emmanuelle Mignon, L'état d'urgence sanitaire: quand, pourquoi, comment?, 20 March 2020.

27 LOI no 2020-290 du 23 mars 2020 d'urgence pour faire face à l'épidémie de COVID-19.

pandemic could have fallen under that domestic notion, decided not to do so and opted, for various practical or political reasons, to declare a statutory regime instead.

With regard to parliamentary oversight over statutory regimes, national parliaments did not play a decisive role in their declaration or extension (see Table 4), the only exceptions being Germany, France (*ex ante* oversight) and Latvia (*ex post* oversight). Parliamentary oversight was more intense in Germany and France, as in the first case, the Bundestag declared an epidemic situation of national importance on 25 March 2020, whereas in France, Law n. 2020-290 directly declared the public health emergency initially for two months (Art. 4).[28] That said, parliamentary oversight over the declaration of statutory regimes was not required in most MS, leading to a first conclusion that parliamentary oversight over these regimes was weak compared with that exercised on the constitutional states of emergency. This conclusion must be mitigated, however, by observing that in most MS those statutory regimes were derived by statutes adopted by the national parliaments, in some cases for the specific purpose of addressing the Covid-19 pandemic (see Section F), which points to parliamentary oversight having been exercised with the ordinary legislative powers inherent to all democratic parliaments.

Table 4 ***Parliamentary Oversight Over the Declaration of Statutory Regimes During the First Wave of the Pandemic***

Country	Declaration made or authorized ex ante by parliament	Declaration authorized (or repealed) ex post by parliament
Bulgaria (emergency epidemiological situation)	No	No
Croatia (epidemic of infectious disease)	No	No
France (public health emergency)	Yes[a]	No
Germany (epidemic situation of national importance)	Yes	No
Hungary (state of epidemiological preparedness)	No	No
Italy (state of emergency of national importance)	No	No
Latvia (emergency situation)	No	Yes
Lithuania (extreme situation)	No	No
Malta (public health emergency)	No	No
Poland (state of epidemic risk/state of epidemic)	No	No
Portugal (state of calamity)	No	No

28 The normal regime allows the council of ministers to declare the statutory regime for a maximum period of one month, after which extension must be authorized by law (Art. L3131-13 Health National Code).

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Table 4 (continued)

Country	Declaration made or authorized ex ante by parliament	Declaration authorized (or repealed) ex post by parliament
Romania (state of alert)	No	No[b]
Slovenia (Covid-19 epidemic)	No	No
Slovakia (extraordinary situation)	No	No

[a] Parliament authorizes ex ante also the extension of the statutory state.
[b] Art. 4 of Law 55/2020, 15 May, provided for ex post parliamentary oversight in relation to the declaration of the state of alert, but the relevant parts of the provision were declared null and void by Decision n. 457, 25 June 2020, of the Constitutional Court.

E Use of Special Legislative Powers by the Executive and Parliamentary Oversight

As Table 1 shows, only a handful of EU national governments resorted (5) to special legislative powers to face the first wave of the Covid-19 pandemic, that is to say, made use of the constitutional powers granted to the executive to adopt normative acts with the same legal standing as primary laws under urgent/exceptional circumstances and subject to some parliamentary oversight.

Belgium, Greece, Italy, Romania and Spain resorted to this constitutional tool either alone or in combination with other ones. For Greece, this was the only type of legislative means resorted to, whereas in Belgium containment measures were adopted, even before the entrustment of special legislative powers to the executive, on the basis of several ordinary laws.[29] In addition, the Belgian parliament continued with its legislative activity, adopting several laws aiming to tackle the pandemic and its consequences.[30] For Italy and Spain, special legislative powers were used together with, respectively, a statutory regime and a constitutional state of emergency, while in Romania, they were used together with the constitutional state of emergency and the statutory state of alert, both declared during the pandemic.

In all the five MS except Spain,[31] special legislative powers established enabling rules for the executive empowering government to introduce a number of predefined Covid-19-specific containment measures. In Belgium, two enabling laws were adopted to allow the King, i.e. the executive, to adopt measures to face the consequences of the pandemic for a period of three months (starting on

29 Art. 4 of the Civil Protection Act, Art. 11 of the Police Office Act, and Arts. 181, 182 and 187 of the Civil Security Act.

30 Patricia Popelier, "COVID-19 Legislation in Belgium at the Crossroads of a Political and a Health Crisis", *The Theory and Practice of Legislation*, May 2020.

31 In Spain, most containment measures were adopted on the basis of declaration of the state of alarm, while Decree-laws were used to address the socio-economic effects of the crisis.

30 March).[32] In Greece too, the adoption by the president of the republic of an act of a legislative content, of 25 February 2020, as Article 44 of the Constitution provides, empowered the government to adopt a range of measures to contain the pandemic (mandatory medical checks, pharmaceutical treatment, confinement, etc.). In Italy, Decree-Law 6 of 23 February 2020 empowered the prime minister to introduce by Decree a range of measures, including, inter alia, the prohibition to exit or enter an affected municipality, suspension of transport of goods and persons, and educational activity. In Romania, emergency ordinances (EGO), issued under Article 115 of the Constitution, modified the legal framework applicable to the constitutional state of emergency (EGO 34/2020) and to the state of alert (EGO 68/2020, sanctioned by the national parliament through Law 55/2020[33]).

As Table 5 shows, parliamentary oversight over these measures is largely similar in at least four of the five MS – i.e. Spain, Italy, Greece and Romania – whereby the executive adopts legislative measures in urgent situations and an *ex post* parliamentary oversight is exercised within a determined period.[34] However, the way in which parliamentary oversight is exercised differs. Article 77 of the Italian Constitution, in fact, requires the conversion of decree-laws into laws, allowing parliament to modify them on conversion. In Romania, emergency ordinances also have to be converted into laws, but Article 115.5 of the Romanian Constitution provides for the implicit approval of emergency ordinances if the Chambers of the national Parliament do not adopt an express decision on the norm within 30 days. The Greek Constitution requires Parliament to ratify the acts of legislative content adopted by the government in a period of three months, allowing parliament to amend the norm issued by the government during the process.[35] Finally, Article 86 of the Spanish Constitution allows Congress to repeal, ratify or decide to convert the decree-laws into laws, in the first two cases without introducing any amendment. During the pandemic, the national parliaments of these MS received numerous legislative acts adopted by the executive[36] that, in most cases, national parliaments validated or converted into law.[37] In Romania, however, the EGO 34/2020 amending the state of emergency was not converted into law by parliament and was declared unconstitutional by Decision of the Constitutional Court 152/2020, 6 May 2020.

32 Loi habilitant le Roi à prendre des mesures de lutte contre la propagation du coronavirus COVID-19 (I) (1) and Loi habilitant le Roi à prendre des mesures de lutte contre la propagation du coronavirus COVID-19 (II) (1), both adopted on 27 March 2020.

33 Lege nr. 55 din 15 mai 2020 privind unele măsuri pentru prevenirea și combaterea efectelor pandemiei de COVID19.

34 3 months in Greece – Art. 44 Constitution; 60 days in Italy – Art. 77 Constitution; and, 30 days in Spain – Art. 86 Constitution and Romania – Art. 115 Constitution.

35 See G. Angelou, Lawspot, 3 December 2017.

36 For example, by 30 July 2020, the Spanish government had adopted 21 *Decretos-Ley* and the Italian one 16 *Decreti-Legge* to address the consequences of the pandemic.

37 For example, by the end of July 2020, the Spanish Congress had validated 19 of those decree-laws and decided to convert 14 of them into laws, whereas the Italian parliament had converted into law 8 of the adopted decree-laws, introducing small or more substantive modifications in all of them.

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Table 5 *Parliamentary Oversight on the Use of Special Legislative Powers by the Executives during the first wave of the pandemic*

Country	Ex ante oversight by parliament (measures were adopted by the executive and entered into force after a special delegation or some other type of prior parliamentary oversight)	Ex post oversight by parliament (measures were adopted by the executive and subject to parliamentary oversight after their entry into force)
Belgium	Yes	Yes
Greece	No	Yes
Italy	No	Yes
Spain	No	Yes
Romania	No	Yes

The case of Belgium further differs, as parliamentary oversight is exercised both *ex ante*, with the adoption of the legislative act(s) granting special powers to the executive, and *ex post*, as the decrees (*arrêtés*) adopted by the government on delegation of special powers must be scrutinized by parliament within a certain period if they touch on matters constitutionally reserved for parliament.[38] Therefore, the two acts granting special legislative powers adopted during the current pandemic not only defined the scope of the delegated powers (containment, economic and administrative nature), but also mandated that the ensuing decrees were confirmed by a law within one year from their entry into force. In that case, they acquire the legal standing of laws. In the absence of such confirmation, they would become void.[39]

F Ordinary Legislation to Cope With the Health Crisis in the EU-27 and Parliaments' Role

As indicated in Table 1, many MS adopted the relevant measures to contain the spread of the virus during the first wave of the pandemic based on ordinary legislation. Ordinary constitutional tools were therefore used, an interesting phenomenon that was identified in the context of other crises.[40] In some of these cases, parliamentary activity was decisive since parliaments were obliged in a very

38 Council of State, Legislative Section, Avis 47.062/1/V, 18 August 2009, point 2.4.1. On the Belgium model, *see*: Popelier, 2020, pp. 12-13; Toon Moonen & Jonas Riemslagh, "Fighting COVID 19 – Legal Powers and Risks: Belgium", *VerfBlog*, 25 March 2020.

39 Art. 5 of Loi habilitant le Roi à prendre des mesures de lutte contre la propagation du coronavirus COVID-19 (I) (1), and 7 of Loi habilitant le Roi à prendre des mesures de lutte contre la propagation du coronavirus COVID-19 (II) (1).

40 John Ferejohn & Pasquale Pasquino, "The Law of the Exception: A Typology of Emergency Powers", *International Journal of Constitutional Law*, vol. 2, Number 2, 2004, pp. 210-239.

short time frame to adopt brand new legislation or amend the existing one to tackle the situation.

Some MS had to amend existing legislation on public health or civil protection to adapt to the current situation and to contain the outbreak of the pandemic. That was the case of France (see Section D) and Germany that amended its Infection Protection Act on 25 March 2020 to allow the national authorities to declare an 'epidemic situation of national importance'.[41] Similarly, in Malta, the Public Health Act, the main legal basis for containment measures in the country, was amended on 25 March 2020.[42] In Ireland, the Health Act 2020[43] and the Emergency Measures Act 2020[44] were adopted in mid-March 2020, becoming the main legal basis for containment measures. Finally, in Croatia, the Civil Protection System Act and Infectious Diseases Protection Act, the main legal basis for most of the containment measures, were amended respectively in mid-March and mid-April, although with some criticism[45] for the late enactment of some of the amendments (one month after the adoption of some containment measures by the government). In some other cases, changes to the ordinary legal framework appeared to be necessary only later on, e.g. when the constitutional emergency state was lifted or about to be lifted and a suitable legal framework was needed to maintain specific containment measures (Hungary[46]) or to remedy the shortcomings of the initially used legal framework that became evident during the pandemic (e.g. Netherlands[47]).

In some MS, the ordinary laws adopted or amended during the pandemic did not contain specific sunset clauses, and, as a result, long-standing changes were introduced in the legal order of the MS concerned. That was the case, for example, with the amendments to the French Health National Code.[48] Although ordinary laws do normally introduce long-standing changes and are not usually accompanied by sunset clauses, commentators have warned against the introduction of non-temporary changes during emergencies.[49] In contrast, some ordinary laws adopted or amended during the pandemic contained specific sunset clauses, thus embracing a more careful approach and at the same time providing

41 European Parliamentary Research Service, European Parliament, States of emergency in response to the coronavirus crisis: Situation in certain Member States, June 2020, p. 5.

42 Act No. X of 2020, Public Health (Amendment) Act, 2020, 25 March 2020.

43 Health (Preservation and Protection and other emergency measures in the public interest) Act 2020, number 1 of 2020.

44 Emergency Measures in the Public Interest (COVID-19) Act 2020, number 2 of 2020.

45 Nika Bačić Selanec, "Croatia's Response to COVID-19: On Legal Form and Constitutional Safeguards in Times of Pandemic", *VerfBlog*, 9 May 2020.

46 *See* Act LVIII of 2020, 16 June 2020, providing for special transitional rules for the period after the expiration of the constitutional state of danger.

47 The Dutch parliament adopted a specific temporary law to address the pandemic: *Tijdelijke bepalingen in verband met maatregelen ter bestrijding van de epidemie van covid-19 voor de langere termijn (Tijdelijke wet maatregelen covid-19)*, on 13 October 2020.

48 LOI no 2020-290 du 23 mars 2020 d'urgence pour faire face à l'épidémie de COVID-19.

49 Ackerman, 2004, p. 1030; Ronan Cormacain, "Keeping COVID-19 Emergency Legislation Socially Distant from Ordinary Legislation: Principles for the Structure of Emergency Legislation", *The Theory and Practice of Legislation*, 2020, pp. 8-11.

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for an extra layer of parliamentary oversight since parliaments would review the decisions taken and decide whether to prolong, modify or let the measures in question lapse. For example, the Covid-19 Act adopted by the Austrian parliament at the beginning of the pandemic was set to expire on 31 December 2020, and all the special measures adopted were to become void (Art. 4). Also, the Irish 2020 Health Act and the Emergency Measures Act 2020 contained sunset clauses, although application of the Acts was later extended.[50] Finally, the Danish *Folketinget* also introduced important amendments in the national Act on Measures against Infectious and Other Communicable Diseases, accompanied by a sunset clause (1st March 2021).

G Ordinary Means of Parliamentary Oversight During the Pandemic

National parliaments of EU MS also resorted to ordinary oversight tools for being informed on and controlling governmental action during the first wave of the pandemic. Written and oral questions, interpellations, question time, governmental statements or special committees have all been used by parliaments during the crisis.[51]

In some countries, parliamentary oversight activities were among the few activities not to be suspended even when the first wave of the pandemic was at its peak.[52] For example, the French National Assembly considered the weekly question time with the government an essential activity to be maintained during the peak of the first wave of the pandemic subject to specific arrangements.[53] In some other cases, some activities of parliamentary oversight were suspended during the worst phases of the health crisis, to be resumed weeks later. In Spain, for example, all parliamentary activities of Congress were suspended for two weeks (as of 12 March), including the usual weekly question time with the government. During those few weeks, only essential activities directly connected with the pandemic were maintained.[54]

Apart from the usual question time and written parliamentary questions addressed to the government, parliamentary committees were used extensively by some parliaments to provide for an extra layer of parliamentary oversight over governmental measures and to receive first-hand information. Some national parliaments used already existing committees to control governmental activities

50 European Parliamentary Research Service, European Parliament, States of emergency in response to the coronavirus crisis: Situation in certain Member States IV, July 2020, p. 8.

51 *See* briefings cited in footnotes 24, 41 and 50.

52 European Parliamentary Research Service, European Parliament, "Parliaments in Emergency Mode. How Member States' Parliaments are Continuing with Business During the Pandemic", April 2020; European Parliament, "Adjustment of Parliamentary Activity to COVID-19 Outbreak and the Prospect of Remote Sessions and Voting", Spotlight on Parliaments in Europe, n. 27, March 2020.

53 Assemblée Nationale, Relevé de conclusions de la Conférence des présidents du mardi 17 mars 2020; Assemblée Nationale, Relevé de conclusions de la Conférence des présidents du mardi 24 mars 2020.

54 Congreso de los Diputados, Junta de Portavoces, Comunicado de Prensa, 12 March 2020.

and decisions. For example, the health committee of the Spanish Congress received a weekly report from the Spanish health minister during the state of alarm declared during the first wave of the pandemic. Other national parliaments created ad hoc parliamentary committees like the French National Assembly, which created a specific committee[55] initially with information tasks on government's activity and later evolved into an inquiry committee to evaluate the management of the crisis.[56] Similarly, the Danish *Folketinget* decided to create a special subcommittee to evaluate the government's management of the pandemic, and the Belgium Chamber of Representatives created a monitoring commission (the COVID-19 commission) to control the government's actions during the pandemic and the use of the special powers granted under Article 105 of the Constitution. The Belgium minority government was also closely monitored by the 10 parties that approved the special powers acts through weekly meetings, thus ensuring also parliamentary support for those same measures.[57]

H Conclusions

The scenario with which MS were confronted because of the first wave of the Covid-19 pandemic represented a true stress test for most EU legal systems. A closer look at MS's reactions, however, reveals an overall efficient normative response.

The majority of MS used emergency powers in the form of either constitutional states of emergency or statutory regimes or both. Notwithstanding the critical situation, however, the choice of whether to trigger constitutional states of emergency was not inevitable as some MS decided against it, even though in principle they could have used it. Thus, only ten MS adopted a constitutional state of emergency, even though in principle seventeen could have declared it. In lieu, most often a statutory regime in combination with ordinary legislation was adopted. That said, MS rarely used only one type of normative response, but preferred a combination of normative tools. The most recurrent one used in the current pandemic was ordinary legislation as fourteen MS based their containment measures exclusively on ordinary laws, a notion that includes civil protection or public health codes empowering specific authorities to take containment measures. The same number of MS adopted a statutory regime geared towards tackling a crisis or other extraordinary circumstances. In five MS the government used special legislative powers to contain the pandemic or address its consequences. Finally, enabling legislation also played a crucial role in the normative management of the pandemic. The majority of MS either relied on an arsenal of enabling laws pre-existing the current emergency or adapted pre-

55 Assemblée Nationale, Relevé de conclusions de la Conférence des présidents du mardi 17 mars 2020.

56 Assemblée Nationale, XVe législature, Session ordinaire de 2019-2020, Compte rendu intégral, Première séance du mardi 02 juin 2020, point 5.

57 Popelier, 2020, p. 19.

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existing enabling laws to the demands of the current situation. However, while very few MS were not preventively equipped with a set of rules enabling the government to adopt containment measures, these MS could also adopt in a very short time frame the necessary empowering legislative acts.

All EU national parliaments have played some role in the management of the first wave of the Covid-19 pandemic. In some cases, they participated in the decisions to declare or prolong the constitutional state of emergency or the statutory regime and/or supervised the use of government's special legislative powers. In some other cases, they adopted new legislation or amended the existing one to enable the executive to adopt the measures needed to face the pandemic and/or made use of ordinary oversight tools to obtain information and control governmental action.

However, parliament's involvement was not equally sharp or significant in all MS, showing substantive differences in relation to national constitutional and legal frameworks. Legal settings requiring parliaments to decide *ex ante* on the concrete powers to be granted to the executive and to do it at different moments in time (owing to a sunset clause or to the temporary nature of parliament's authorization) seem to have placed national parliaments in a better position to intervene substantially in the management of the crisis. These regimes may be problematic, however, if in urgent circumstances parliaments are unable to convene and take timely decisions. Yet this does not seem to have been the case during the present health crisis as several national parliaments have, instead, shown resilience in adopting relevant decisions in very short time frames (two or six days in, respectively, Finland and Belgium).

National parliaments not vested with decision-making powers, but only with information and oversight tools, or with one-off *ex post* decision-making powers, may have found their role significantly weakened during the crisis, with an increased risk of a power grab by the executive. Between the two opposite approaches stand normative frameworks requiring that parliamentary decision-making procedures be exercised *ex post* at different times during the pandemic. This may have provided parliaments with tools strong enough to steer the measures adopted by the government and reverse inadequate decisions, while also facilitating effective and speedy action by the executive.

Some other factors beyond the constitutional and legal framework may have affected parliament's role during the crisis. Although beyond the scope of this article, the vertical distribution of powers within the MS, the sanitary and organizational measures adopted by EU national parliaments to ensure continuity of parliamentary activities during the pandemic, the national political context and the majoritarian/minoritarian support of the government by the national parliament may have affected parliament's functioning. In this vein, further research could explore whether the upper chambers may have assumed a more relevant role during the crisis in decentralized MS; whether the decision of some EU parliaments to go digital or to significantly reduce the number of members physically present in the House premises may have affected parliaments' role in the management of the crisis; or whether minority governments, owing to increased parliamentary pressure, were forced to more

thoroughly negotiate containment measures compared with governments with wider parliamentary support.

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