



Parliamentary oversight of governments' response to the COVID-19 pandemic: Literature review

STUDY



EPRS | European Parliamentary Research Service

Ex-Post Evaluation Unit
PE 740.217 – January 2023

EN

Parliamentary oversight of governments' response to the COVID-19 pandemic: Literature review

Study

Conducted at the request of the European Parliament's Special Committee on the COVID-19 pandemic, this literature review examines the patterns in, consequences of and correlation between national approaches to parliamentary oversight of governments' responses to the COVID-19 pandemic in the EU27 and four other countries (Canada, Switzerland, the United Kingdom and the United States).

The review begins by assessing parliaments' involvement during the early stages of the health crisis, when many countries were operating under emergency regimes or statutory frameworks that provided for rapid action. It then maps the parliaments' law-making and oversight role during the pandemic, demonstrating that they were not necessarily side-lined. The study goes on to assess successes and failures and, on that basis, factors in the resilience of parliamentary oversight.

Mapping the widespread use of sunset and review clauses in emergency legislation, the study reflects on parliaments' cooperation with supreme audit institutions and independent fiscal institutions, which enhanced their budgetary oversight role during the pandemic. The literature review also identifies best practice regarding oversight during the COVID-19 pandemic and reforms that parliaments could pursue to strengthen their preparedness for future crises.

AUTHOR

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LINGUISTIC VERSIONS

Original: EN

Manuscript completed in January 2023.

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PE: 740.217

ISBN: 978-92-848-0145-9

DOI: 10.2861/25071

CAT: QA-09-23-001-EN-N

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Executive summary

This literature review examines the patterns, correlates and consequences of national parliamentary oversight of governments' responses to the COVID-19 pandemic in the 27 European Union Member States and four other consolidated democracies (Canada, Switzerland, the United Kingdom and the United States), from the start of the pandemic until the first quarter of 2022. The study is based on a systematic analysis of the findings of almost 150 publications. These include peer-reviewed research articles in reputable political science and law journals, monographs and edited volumes, as well as relevant reports published since March 2020 by parliamentary research services, international organisations, international non-governmental organisations (NGOs) and think tanks. Taking stock of this academic work, the literature review assesses the parliaments' involvement in the emergency management modes initially adopted to contain the pandemic, their legislative role, the patterns and failures of parliamentary oversight, the use of sunset and review clauses, and the extent to which parliaments fulfilled their budgetary oversight function throughout the health crisis.

Following the outbreak of the pandemic, the selected parliaments were actively involved in their countries' activation or extension of constitutional states of emergency and statutory frameworks. The declaration or prolongation of the state of emergency required the assent of parliaments in all countries concerned except Estonia and, initially, Slovakia. In countries that refrained from declaring a constitutional state of emergency or a statutory emergency regime, such as Ireland, the Netherlands, Sweden and the UK, parliaments played a key role by amending health or civil protection laws or by adopting new laws tailored to the COVID-19 pandemic.

As governments had to respond quickly under new and evolving circumstances, delegation of legislative powers to the executive and emergency and fast-track legislative procedures were widely used among the countries in the sample. Nevertheless, the assumption that legislatures put their law-making activity on hold during the COVID-19 pandemic is not supported for many of the cases in the sample, including Czechia, Denmark, Germany and Hungary.

The literature reviewed indicates a high degree of variation in the extent of parliamentary scrutiny during the COVID-19 pandemic. Beyond the authorisation and prolongation of states of emergency, three oversight mechanisms are particularly salient. First, plenary debates following government statements were widespread during the COVID-19 emergency. 'Question time' and written parliamentary questions were also widely used for both control and information purposes. Reporting by ministers to parliaments' standing committees (mainly finance and healthcare committees) was supplemented in France, Latvia, Slovenia and the US with the creation of special parliamentary inquiry committees investigating the governments' measures to contain the spread of COVID-19 and fiscal measures to sustain the economy. In Denmark, a newly established permanent Epidemics Committee was mandated with the same role. Temporary investigative committees with a specific focus on COVID-19-related procurement irregularities were set up in Bulgaria, Romania and the UK. Furthermore, opposition parties in some of the selected parliaments initiated motions of no confidence against the cabinet or particular ministers during the crisis, especially once the peak of the first wave had passed.

Although a significant shift in favour of the executive is common in crisis situations and appeared broadly in some of the sample countries in the early months of the response to the COVID-19 outbreak, its magnitude varied greatly. In France, the Parliament created, *ad hoc* and *ex novo*, a state of health emergency that imposed a less-stringent deadline for parliamentary authorisation of its extension than under existing state of emergency rules and authorised the executive to issue ordinances in several policy areas not necessarily connected to the pandemic. In Italy, the strategies adopted by the executive to fight the pandemic substantially limited the opportunities for parliamentary scrutiny. During the first year of the pandemic, oversight also suffered somewhat from the decision of some parliaments to temporarily suspend plenary and committee sessions (e.g.

in Switzerland and Canada) and from legislatures agreeing to self-restrict their scrutiny of the government (e.g. in Bulgaria and Croatia). In Poland, the ruling coalition's fast-paced adoption of legislation to fight the pandemic was criticised for serving as a pretext to introduce controversial changes to the Electoral and Criminal Codes, without proper parliamentary debate. The weakening of parliamentary power was most prominent in Hungary, where authorisation acts adopted by the parliament enabled the executive to rule by decree, override any existing laws and enforce measures in policy areas seemingly unrelated to the COVID-19 pandemic.

Comparative academic and case study research has shown that parliaments were generally more resilient in fulfilling their oversight roles in consolidated democracies and where constitutional and legal frameworks created opportunities for scrutiny (e.g. incongruent bicameralism in Austria and Czechia). Another hypothesis which has received some corroboration refers to the detrimental role of a unified executive: in the absence of the checks and balances that are embedded in coalition governance, unified executives were quickly able to manage the COVID-19 response and impose their preferred solution, thereby curtailing the regular role of the parliament (e.g. Hungary and France). The literature also emphasises that oversight resilience was more limited in parliaments that were already in a weak position vis-à-vis the executive prior to the pandemic. Furthermore, how assertive parliaments were in their scrutiny role was also shaped by the opposition parties' cooperative or politicisation strategies, which evolved along with the pandemic.

In 13 of the countries included in the sample, the legislation adopted by parliaments in response to the pandemic contained sunset clauses, i.e. a fixed date of expiry unless extended by the parliament. These include Austria, Canada, Denmark, Finland, France, Germany, Ireland, Luxembourg, the Netherlands, Sweden, Switzerland, the UK and the US. Such clauses are highly relevant, not only when they apply to measures constraining fundamental rights, but also given that other legislation adopted in these circumstances might have not been sufficiently scrutinised or been subject to impact assessments. On the contrary, review clauses which impose a date by which there needs to be an assessment of how the adopted law or specific provisions in it are working seem to have been adopted in very few cases, the Danish and the UK parliaments standing out in this respect.

Budgetary oversight benefited from relatively widespread collaboration between legislatures and supreme audit institutions and independent fiscal institutions. In Czechia, Germany and the Netherlands, legislatures involved independent state auditors early on in assessing the costs and likely impact of the governments' proposed pandemic relief and stimulus packages. The National Audit Office in the UK and the French Court of Accounts produced audit reports on public spending during the COVID-19 pandemic at the request of committees in the House of Commons and National Assembly. In Canada, Finland, Ireland, Italy, Latvia and the US, independent fiscal institutions (IFIs) responded to requests from parliaments to supply rapid analysis and commentary on pandemic-related issues. The literature specifically emphasises the positive role played by parliamentary budget offices, which are IFIs operating within the structures of national parliaments.

While irregularities in pandemic-related procurement were identified in several of the countries studied here, only a handful of parliaments initiated inquiry committees to investigate such misconduct. Parliaments in Hungary and Poland enabled controversial changes by ratifying governmental laws that used the COVID-19 pandemic to rewrite fiscal rules, or to allocate pandemic relief in a partisan manner. A series of best practices regarding parliamentary oversight during the COVID-19 pandemic is identified in the literature, such as the decision of certain parliaments to prioritise oversight work over other functions, giving opposition members a prominent role in oversight committees, or setting up expert committees to investigate the executives' handling of the pandemic. However, the institutionalisation of new oversight tools, which might be of relevance for future crises, has remained extremely rare.

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List of abbreviations

EU	European Union
HHS	United States Department of Health and Human Services
IBP	International Budget Partnership
IFI	Independent Fiscal Institution
MP	Member of Parliament
NAO	United Kingdom National Audit Office
OECD	Organisation for Economic Co-operation and Development
PBO	Parliamentary budget office
PPE	Personal protective equipment
RIA	Regulatory Impact Assessment
SAI	Supreme audit institution
UKHSA	United Kingdom Health Security Agency

Country codes

AT	Austria
BE	Belgium
BG	Bulgaria
CA	Canada
CH	Switzerland
CY	Cyprus
CZ	Czechia
DE	Germany
DK	Denmark
EE	Estonia
EL	Greece
ES	Spain
FI	Finland
FR	France
HR	Croatia
HU	Hungary
IE	Ireland
IT	Italy
LT	Lithuania
LU	Luxembourg
LV	Latvia
MT	Malta
NL	Netherlands
PL	Poland
PT	Portugal
RO	Romania
SE	Sweden
SI	Slovenia
SK	Slovakia
UK	United Kingdom
US	United States of America

1. Introduction

This literature review, drawn up on request of the European Parliament's Special Committee on the COVID-19 pandemic,¹ takes stock of the academic literature and the scholarship published by experts, parliamentary research services, international organisations and think tanks since March 2020, to assess the variation, correlates, and best practices of parliamentary oversight during the COVID-19 pandemic in the 27 EU Member States and four other consolidated democracies: Canada, Switzerland, the UK and the US.

The study puts parliaments' oversight powers concerning governments' public health measures during the COVID-19 pandemic into a constitutional perspective, taking into account the substantial diversity of ways in which the selected parliaments combine legislative, budgetary and scrutiny powers. Moreover, this is done against the backdrop that parliaments were often side-lined in the enactment of emergency and fast-track legislation during the first phase of the pandemic.

Despite media attention to controversial cases, the extent to which the COVID-19 pandemic has led to a marginalisation of parliaments across many European and non-European democracies remains unclear. To explore this, the literature review examines the parliaments' involvement in the drafting, enactment and scrutiny of measures aimed to tackle the pandemic. These measures included, inter alia, restrictions imposed on citizens' rights and businesses, and state interventions in the economy.² The fact that governments had to act at great speed to contain the spread of the virus and to sustain the economy naturally led, in some countries, to a concentration of power in the hands of the executive.³ The literature review analyses the extent to which this power shift was only temporary and addresses the question of whether the vast delegation of legislative power to the executive, sometimes extending to areas unrelated to the pandemic, was a common pattern throughout the countries in the sample, or rather the exception.

The study reviews how the selected parliaments performed when they had very little time to properly scrutinise governmental draft legislation and to make informed decisions under fast-track procedures and when they found themselves under pressure to merely rubber stamp emergency legislation. Moreover, parliaments had limited time for scrutinising unprecedented levels of public spending. This has triggered concerns about the degradation of democratic standards.

The literature review also explores the extent to which the parliaments' ability to scrutinise governmental proposals introducing COVID-19-related legislation under ordinary legislative procedures was hindered by the absence of impact assessments and other relevant supporting evidence in the executives' legislative proposals (e.g. statistical data, scientific evidence, data modelling or information from stakeholder consultations), which could not be considered due to the urgency to act.

In doing so, the literature review concentrates on five main research questions:

- How did the COVID-19 pandemic affect national parliaments' ability to effectively oversee government action? Does the literature identify specific successes, failures or shortcomings in parliamentary oversight? Beyond oversight, did the declarations of states of emergency have an impact on parliaments' capacity to continue exercising their law-making function?

¹ The Special Committee on 'COVID-19 pandemic: lessons learned and recommendations for the future', was established on 10 March 2022 through a [decision of the European Parliament](#).

² Goetz, K. H. and Martinsen, D. S. (2021), 'COVID-19: A dual challenge to European liberal democracy', *West European Politics*, vol. 44(5-6), pp. 1003-1024.

³ Engler, S. et al. (2021), 'Democracy in times of the pandemic: Explaining the variation of COVID-19 policies across European democracies', *West European Politics*, vol. 44(5-6), pp. 1077-1102.

- › Which factors favoured national parliaments' resilience in maintaining oversight during the COVID-19 pandemic? Despite the common difficult circumstances they faced, some of the selected parliaments were more effective than others in scrutinising their governments, correcting some of their disproportionate measures and holding them accountable. Establishing the conditions that favoured such positive outcomes requires identifying which constitutional and institutional features benefited the oversight role, as well as the impact of contextual elements (e.g. the structure of the executive or the balance of power between political actors).
- › Is there any evidence that national parliaments made use of sunset or review clauses in COVID-19-related legislation to ensure that emergency and fast-track legislation would either expire by a certain date or be retrospectively reviewed? The high level of uncertainty under which governmental decisions were taken in the initial stages of the pandemic, the scarcity of supporting evidence and the limited scrutiny of governmental emergency measures all warranted the addition of clauses in this legislation that would result in their automatic expiry or their review by legislatures before renewal. Parliaments could also have opted to include evaluation clauses in legislation to ensure that the effectiveness, efficiency, proportionality and potential unintended effects of the governmental responses to the pandemic would be evaluated ex-post.
- › How did the pandemic affect parliaments' role as budgetary oversight bodies? Did national parliaments cooperate with supreme audit institutions (SAIs) and independent fiscal institutions (IFIs) in overseeing their governments' response to COVID-19? This dimension of oversight is highly salient in the context of the unprecedented levels of public spending required to contain the COVID-19 crisis: this raised concerns about the appropriateness and cost-effectiveness of the spending, fraud-prevention safeguards, as well as its consequences for the mounting levels of public debt.
- › Which best practices can be derived from the literature review and does the literature include suggestions for specific (new) oversight tools that could strengthen parliaments' oversight powers in future crises?

1.1. Methodology

This study examines the patterns of national parliaments' involvement in law-making and their oversight of executive responses to the COVID-19 pandemic in the 27 EU Member States and four other states (Canada, Switzerland, the UK and the US) since the start of the pandemic in early 2020 until the first quarter of 2022. While most of the literature covered by the review reflects developments in 2020 and 2021, further efforts were made to verify if and how the situation and outcomes described have evolved since then. The study relied on a systematic analysis of almost 150 publications which include peer-reviewed research articles published in reputable political science and law journals, monographs and edited volumes, as well as relevant reports by parliamentary research services, international organisations, international NGOs and think tanks. Where relevant these sources were complemented by additional desk research, such as surveying the websites of national parliaments for cross-checking purposes. While the study aims for broad coverage of both descriptive and analytical evidence regarding the selected cases, more weight was given to the findings of studies that provide transparent information about their underlying data collection and data analysis choices.

Given that the topic requires putting in a broader constitutional perspective the developments analysed as well as understanding how institutional factors, and decisions and strategies of political actors have contributed to the surveyed outcomes, the study adopts an interdisciplinary perspective. It therefore identifies, summarises and assesses insights from analyses by legal scholars as well as from comparative or case study research authored by political scientists. The review seeks to evaluate and categorise the existing scholarship not only based on its methodological

approaches, but also with respect to its main theoretical arguments regarding parliamentary oversight during the COVID-19 pandemic.

Moreover, the study discusses the methodological limitations of the reviewed research and the extent to which the coverage of the legislatures in the sample varies, so as to give the Members of the European Parliament's Special Committee on the COVID-19 pandemic a clear understanding of how solid the conclusions of the existing scholarship are and the extent to which they apply to all legislatures analysed.

Where valid and reliable information is available, the narrative review of the scholarship is complemented by graphics to illustrate the geographical and temporal differences between the cases, and by a table presenting disaggregated, national yearly scores of the key indicators discussed (notably the degree of oversight over the budgetary procedure). The latter aspect appears particularly relevant given the incremental approach to oversight that several of the selected legislatures seem to have adopted in response to the emergence of the COVID-19 pandemic and its subsequent waves.⁴

One of the methodological challenges of this review was identifying literature that has compiled and analysed comprehensive and comparable data on legislative involvement and oversight during the pandemic in all the 31 parliaments. Given the fine-grained nature of data required for such a task, it is unsurprising that parliamentary scholars have so far mostly focused on comparative analyses of whether parliaments remained or not opened and on the logistical and technical adaptations of parliaments that were necessary for keeping them functioning during the pandemic, such as remote (virtual) sittings and electronic voting.⁵ While continued operation of parliaments was vital for preventing the risk of democratic backsliding,⁶ these administrative adjustments are, however, not the focus of this literature review.

An additional challenge is that much of the published research on the topic appears to focus rather on the early stage of the pandemic, the spring and summer of 2020, with significantly fewer publications addressing parliamentary oversight in the context of the 2021 and 2022 pandemic waves. This is understandable given the academic interest in the initial emergency response to the pandemic triggered, and it is partly also due to the inherent delay in the peer-review publication cycle. At a methodological level, a recurrent limitation was that existing comparative research on parliamentary oversight in relation to COVID-19 often relies on simply illustrating trends with national examples rather than explicitly and systematically presenting the information for all – or at least a representative sample of – the legislatures analysed.

This introduction is followed by five substantive sections, addressing each of the main research questions listed above. The conclusion synthesises the main findings of the report, discusses the limitations of the scholarship reviewed here and points to further directions of research. It also includes a series of recommendations and reflections on the lessons that national parliaments could draw from the pandemic experience.

⁴ Griglio, E. (2020a), 'Parliamentary oversight under the Covid-19 emergency: striving against executive dominance', *The Theory and Practice of Legislation*, vol. 8(1-2), pp. 49-70.

⁵ Bar-Siman-Tov, I. et al. (2021), 'Measuring Legislative Activity during the Covid-19 Pandemic: Introducing the ParlAct and ParlTech Indexes', *International Journal of Parliamentary Studies*, vol. 1(1), pp. 109-126; Waismel-Manor, I. et al. (2022), '[Should I stay \(open\) or should I close? World legislatures during the first wave of Covid-19](#)', *Political Studies*, first published online 12 May 2022; Díaz Crego, M. and Mańko, R. (2020), '[Parliaments in emergency mode: How Member States' parliaments are continuing with business during the pandemic](#)', EPRS, European Parliament; Díaz Crego, M. and Mańko, R. (2022), '[Parliaments in emergency mode: Lessons learnt after two years of pandemic](#)', EPRS, European Parliament.

⁶ Ibidem.

2. Parliamentary oversight during the COVID-19 pandemic: mechanisms, patterns, successes and shortcomings

The first part of this chapter examines the legal frameworks and emergency regimes used in the selected countries and the degree of oversight parliaments exercised over them. The latter includes parliaments' involvement in the activation or extension of constitutional states of emergency and statutory frameworks and the parliaments' roles when containment measures were adopted via special legislative powers delegated to the executive or via ordinary legislation. The subsection also briefly reviews the extent to which such emergency measures had been used before the pandemic as well as the legal measures that were used beyond the first wave of the pandemic.

The second part of the chapter examines the law-making role of the parliaments during the health crisis, drawing on data and literature which examined comparatively the volume of legislation adopted, the functioning in practice of fast-track procedures and delegated legislative powers, and the conversion by parliament of executive ordinances and decrees into ordinary laws.

The third part of the chapter assesses whether the pandemic has limited the opportunities for parliaments, committees and members of parliament to make use of their classical parliamentary scrutiny tools, such as the right to request information and explanations from executives via parliamentary questions and interpellations or question time; tabling motions for resolutions; holding hearings; drawing up own-initiative reports; or inviting government representatives to committee meetings and plenary sessions. It also identifies which parliaments initiated dedicated COVID-19-related committees – inquiry committees and others –, oral evidence sessions and fact-finding missions. Where the literature reviewed did not offer information on these aspects, the study gathers information from media reports and websites of the parliaments concerned. The subsection also evaluates the extent to which this type of control activity decreased, stayed the same or even increased compared to the pre-pandemic period, as suggested for some EU Member States.⁷

Finally, the section discusses failures and shortcomings in parliamentary oversight identified in the literature for the selected sample of parliaments. These failures and shortcomings are very diverse and range from cases like the one in Hungary in which the 'Bill on Protection against the COVID-19 pandemic' adopted on 30 March 2020 extended *sine die* the executive's ability to rule by decree without parliamentary scrutiny,⁸ to more nuanced criticisms regarding the almost complete absence of legislative votes following plenary debates on government statements in some EU national parliaments.⁹

2.1. Legal frameworks and the parliaments' involvement in COVID-19 states of emergency

In order to understand the context in which parliaments had to operate in the early stages of the pandemic and later on, it makes sense to first shed light on the legal frameworks used by the governments in the selected countries for the main containment measures adopted at national level

⁷ Pedersen, H. H. and Borghetto, E. (2021), '[Fighting COVID-19 on Democratic Terms: Parliamentary Functioning in Italy and Denmark during the Pandemic](#)', *Representation*, vol. 57(4), pp. 401-418; Siefken, S. T. (2022), '[The Bundestag in the Pandemic Year 2020/21 – Continuity and Challenges in the Covid-19 Crisis](#)', *German Politics*. First View.

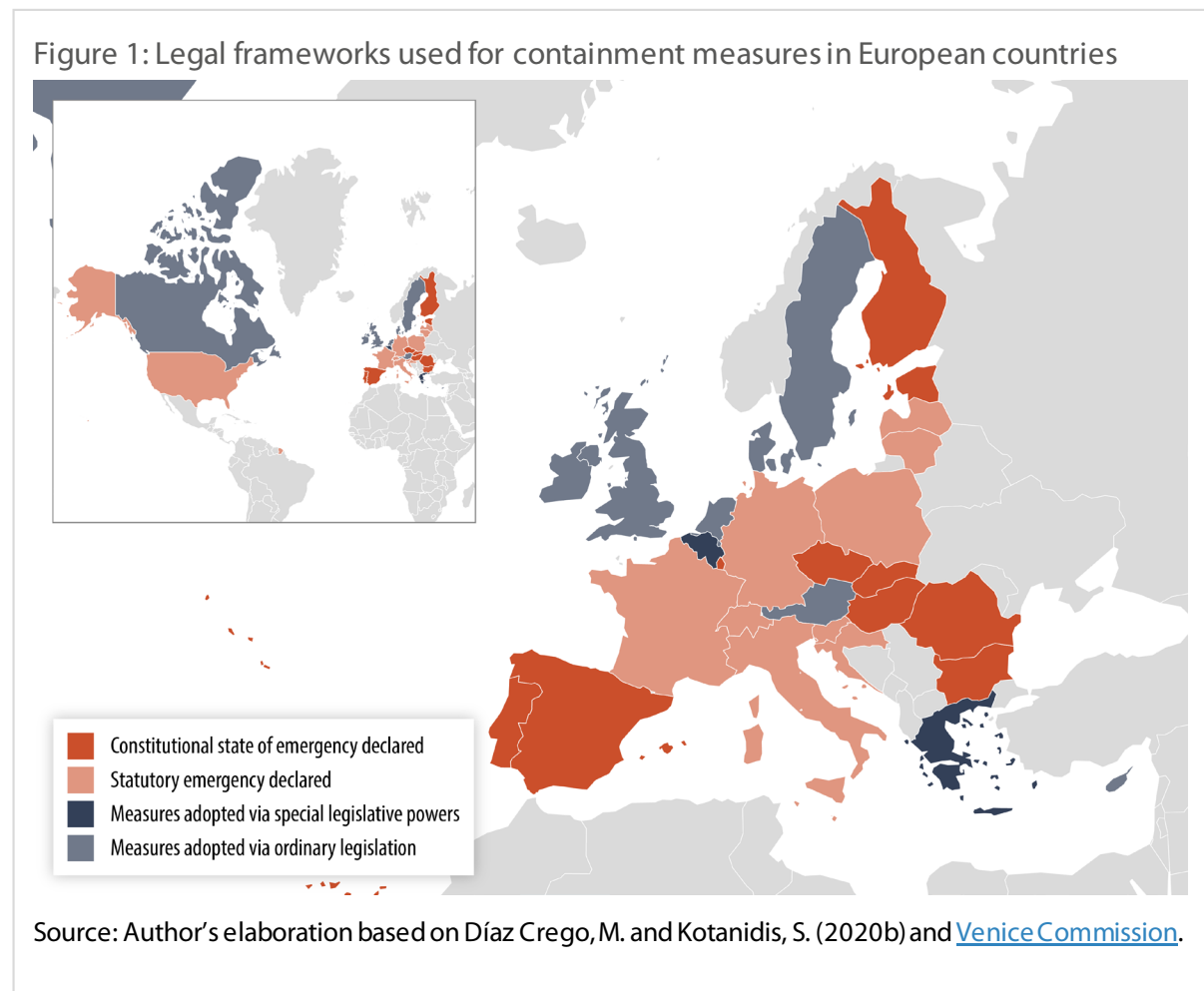
⁸ Szente, Z. and Gárdos-Orosz, F. (2022), 'Using Emergency Powers in Hungary: Against the Pandemic and/or Democracy?' in Kettemann, M. and Lachmayer, K. (eds.), [Pandemocracy in Europe: Power, Parliaments and People in Times of COVID](#), Hart Publishing, pp. 155-178; Maciel, G. G. (2021), [Legislative best practices during times of emergency](#), Transparency International Anti-Corruption Helpdesk.

⁹ Griglio, E. (2020a).

at the beginning of the pandemic. The frameworks used in the sampled countries can be categorised as follows:¹⁰

- › declaration of a state of emergency provided for in the national Constitution;
- › declaration of statutory emergency regimes (provided by a statute rather than the national Constitution);
- › use of special legislative powers by the executive under urgent or exceptional circumstances;
- › measures based on ordinary legislation that had already been in force, was amended for the purpose of the pandemic or was expressly adopted for the COVID-19 pandemic.

Figure 1 maps the situation in the 31 countries examined in this study.¹¹ While many countries used a combination of measures which are discussed later in the section, the Figure maps the most stringent tool used in each country in the first wave of the pandemic.



¹⁰ This categorisation draws on Díaz Crego, M. and Kotanidis, S. (2020b), 'Emergency Measures in Response to the Coronavirus Crisis and Parliamentary Oversight in the EU Member States', *European Journal of Law Reform*, vol. 22(4), pp. 417-421.

¹¹ To be noted, the duration of states of emergency varied greatly from one country to another, from a few weeks (e.g. Portugal) to over a year (e.g. US and Czechia), depending on countries' constitutional framework and how badly individual countries were affected by the pandemic.

2.1.1. Declaration of a constitutional state of emergency

As shown in Figure 1, in the first wave of the pandemic constitutional states of emergency were effectively declared in 10 EU Member States: Bulgaria, Czechia, Estonia, Finland, Hungary, Luxembourg, Portugal, Romania, Slovakia and Spain. Seven other Member States have an emergency clause in their constitutions that might have been suitable for a pandemic response, but chose not to activate it: this is the case for Croatia, Germany, Lithuania, Malta, the Netherlands, Poland and Slovenia,¹² but also for Canada¹³.

The declaration or prolongation of the state of emergency required the assent of parliaments in all cases but Estonia and – initially – in Slovakia.¹⁴ In Slovakia, this soon changed, as exceeding the 90-day restriction of the state of emergency required an amendment of the constitutional law governing the state of emergency. Parliament endorsed this amendment on 29 December 2020, under the condition that each extension would be approved ex-post by the parliament.¹⁵

Some states combined the state of emergency with measures taken under statutory regimes (Bulgaria, Hungary, Portugal, Romania and Slovakia). Typically, these were not used at the same time, but successively, depending on the health situation: when it was critical, a state of emergency was declared, and when the situation improved, the state of emergency was lifted and more lenient measures were adopted under a statutory regime. It is to be noted that in Romania the two categories, state of emergency and the declaration of statutory regime ('state of alert'), were also supplemented by special legislative powers granted to the executive under a special provision.¹⁶ Thus, the government issued emergency ordinances, using Article 115 of the Constitution, which were then converted into law by the parliament.¹⁷ In Spain, the state of emergency was combined with measures taken using special legislative powers granted to the executive under Article 86 of the Constitution.¹⁸

After the first constitutional states of emergency were lifted between May and June 2020, the EU Member States concerned opted for different solutions to address the pandemic: some adopted ad hoc legislation, while others made use of their public health or civil protection legislation. Finally, five Member States re-declared a constitutional state of emergency in the second wave of the pandemic in autumn 2020: Czechia, Hungary, Slovakia, Portugal and Spain.¹⁹

In Czechia, the Parliament's approval for extending the state of emergency was given three times in spring 2020, but despite the government wanting a further extension, 'from mid-May 2020 there was no longer a majority for it'.²⁰ Another state of emergency was declared on 5 October 2020 for

¹² Díaz Crego, M. and Kotanidis, S. (2020a), [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](#), EPRS, European Parliament.

¹³ Srikanth Reddy, K., Kumar Chattu, V. and Wilson, K. (2021), 'Canada's legal preparedness against the COVID-19 Pandemic: A scoping review of federal laws and regulations', *Canadian public administration/Administration publique du Canada*, vol. 64(3), p. 469.

¹⁴ Ibidem.

¹⁵ Díaz Crego, M. (2021), ['Uso \(y abuso?\) del Derecho de excepción en los Estados miembros de la Unión Europea durante la pandemia'](#), *Teoría y Realidad Constitucional*, vol. 48, p. 414.

¹⁶ Díaz Crego, M. and Kotanidis, S. (2020b), pp. 417-421.

¹⁷ Iancu, B. et al. (2021), ['Romania: Legal Response to Covid-19'](#) in King, J. and Ferraz, O. L.M. et al. (eds), *The Oxford Compendium of National Legal Responses to Covid-19*, Oxford University Press. For a discussion of the use and abuse of emergency ordinances in post-communist Romania see: Gherghina, S. and Chiru, M. (2018), 'Romania: An ambivalent parliamentary opposition' in De Giorgi, E. and Ilonszki, G. (eds.), *Opposition Parties in European Legislatures*, Routledge, pp. 191-209.

¹⁸ Díaz Crego, M. and Kotanidis, S. (2020a), p. 41.

¹⁹ Díaz Crego, M. (2021).

²⁰ Siefken, S. T. et al. (2022), ['Parlamente in der Pandemie: Erste Erkenntnisse aus einem international vergleichenden Forschungsvorhaben'](#), *Zeitschrift für Parlamentsfragen*, vol. 52(4), p. 889.

30 days, which was then extended by the Parliament five times until February 2021²¹, when the minority cabinet headed by Andrej Babiš failed to receive the approval of the parliament, dominated by opposition forces.²²

Some parliaments used their required assent for the extension of the state of emergency as an opportunity to impose stricter control on the actions of the executive. This is the case for the Romanian Parliament, which in mid-April 2020 approved the prolongation of the state of emergency but also imposed a series of obligations on the government, such as to present a report to the Parliament with the measures taken every seven days during this period, to introduce restrictions to rights and liberties only through normative acts equivalent to laws and to do so exclusively for the fight against the pandemic and with a good justification.²³ Similarly, in Spain, the Prime Minister agreed in late October 2020 to appear before the Congress 'every two months to explain his government's handling of the coronavirus crisis' in exchange for the Congress approving a six-month extension to the state of emergency.²⁴

In Bulgaria, the state of emergency was prolonged only once – with the approval of the Parliament.²⁵ The same was true for Luxembourg, but there the extension was for a much longer period: three months.²⁶ In Portugal, the Parliament twice approved the extension of the state of emergency, which lasted only 15 days.²⁷

2.1.2. Statutory emergency regimes and other legal frameworks

In Croatia, France, Germany, Latvia, Lithuania, Malta, Poland, Slovenia, Switzerland and the US statutory regimes were declared, while some measures were adopted via ordinary legislation, usually to amend health or civil protection laws or to adopt completely new laws tailored to the COVID-19 pandemic.²⁸

In Belgium and Greece, COVID-19 containment measures were adopted via special legislative powers granted to the executive under urgent circumstances.²⁹ These were also used in Italy but in combination with the declaration of a statutory regime.

In Austria, Canada, Cyprus, Denmark, Ireland, the Netherlands, Sweden and the UK authorities have not declared a state of emergency or a statutory regime, nor made they use of special legislative powers to contain the spread of COVID-19. Instead, measures to contain the COVID-19 pandemic during the first wave were adopted exclusively under ordinary legislation.³⁰ For instance, in the Netherlands, measures were adopted under the Safety Regions Act and the Public Health Act³¹,

²¹ Czech Government (2022), [Measures adopted by the Czech Government against the coronavirus](#), 9 February 2022. See also: Jágr, D. (2021), '[Das tschechische Parlament in der Pandemie: Zum Krisenmanagement einer Minderheitsregierung](#)', *Zeitschrift für Parlamentsfragen*, vol. 52(4), p. 876.

²² Zachová, A. and Plevák, O. (2021), [Czech parliament puts end to state of emergency](#), Euractiv, 12 February 2021.

²³ Tănăsescu, E.-S. and Dima, B. (2020), 'The Role of the Romanian Parliament during the COVID-19 Sanitary Crisis: A diminishment of the executive decision-making power', in Cartier, E., Ridard, B. and Toulemonde, G. (eds.), [The impact of the health crisis on the functioning of Parliaments in Europe](#), Robert Schuman Foundation, p. 102.

²⁴ Casqueiro, J. and Cué, C. E. (2021), [Spain's PM agrees to more congressional oversight during state of alarm](#), El País, 28 October 2020.

²⁵ Venice Commission (2020b), [Observatory on emergency situations - Bulgaria](#).

²⁶ Stoppioni, E. (2020).

²⁷ Venice Commission (2020c), [Observatory on emergency situations - Portugal](#).

²⁸ Díaz Crego, M. and Kotanidis, S. (2020b), pp. 417-421; Venice Commission (2020a), [Observatory on emergency situations - Switzerland](#).

²⁹ Díaz Crego, M. and Kotanidis, S. (2020a), p. 26.

³⁰ Díaz Crego, M. and Kotanidis, S. (2020b), pp. 417-421; King, J. and Byrom, N. (2021), '[United Kingdom: Legal Response to Covid-19](#)' in King, J. and Ferraz, O.L.M. et al. (eds), *The Oxford Compendium of National Legal Responses to Covid-19*, Oxford University Press.

³¹ Díaz Crego, M. and Kotanidis, S. (2020b).

which has been used in the past to deal with other infectious diseases.³² In Cyprus, the role of the parliament was more limited, as measures were taken by the executive based on the 1932 Quarantine Law, a colonial legacy, although the parliament could have amended this law.³³

2.1.3. Countries' past use of emergency powers

It is reasonable to assume that the extent to which the state of emergency, statutory regimes or other similar measures were used in past crises also influenced the reaction of parliaments and their ability to properly scrutinise executive decisions and actions taken in response to the COVID-19 pandemic. In nine EU countries such powers and measures had been used in the recent past.

For example, special powers under the article 105 of the Constitution were used in Belgium in 2009 for the N1H1 sanitary emergency.³⁴ In Czechia the state of emergency has been declared at regional level three times due to floods between 2002 and 2013 and once because of a hurricane in 2007.³⁵ In Greece, Article 44(1) of the Constitution, which allows the president to issue 'acts of legislative content' to deal with unrest and other emergency situations, had been used before the COVID-19 pandemic during the financial and economic crisis.³⁶

In Hungary the state of emergency (called 'state of danger') has been declared three times following environmental disasters in 2001 and 2009 and flooding in 2013.³⁷ In Italy, the state of emergency under the Civil Protection Code has been declared several times in the 2010s following flooding, environmental disasters and earthquakes, but this was mostly limited to a regional level.³⁸ In Latvia the emergency situation, a statutory regime, has been declared in the past, but only regionally, in relation to the African swine fever outbreak in 2014 and 2017 and to deal with floods in 2017.³⁹ In Luxembourg the state of emergency, called state of crisis and regulated by Article 32(4) of the Constitution, was used during the 2008 financial crisis to save Dexia bank.⁴⁰

In Slovakia, the extraordinary situation, a statutory regime based on Act No. 42/1994 on civil protection, has been declared frequently to deal with environmental and meteorological disasters.⁴¹ In Spain the state of alarm has been declared once before the COVID-19 pandemic, in December 2010, when a strike by civilian air traffic controllers led to the closure of the country's airspace.⁴²

2.2. The pandemic's impact on parliaments' law-making function

The assumption that legislatures put their law-making activity on hold during the pandemic is not supported for many of the cases in the sample although the degree of parliament's legislative activity varied greatly.

³² Suijkerbuijk, A. W. et al. (2018), 'Ebola in the Netherlands, 2014–2015: costs of preparedness and response', *The European Journal of Health Economics*, vol. 19(7), pp. 935–943.

³³ Alexandre, Z. et al. (2020), [States of emergency in response to the coronavirus crisis: Situation in certain Member States IV](#), EPRS, European Parliament, p. 3.

³⁴ Binder, K. et al. (2020), [States of emergency in response to the coronavirus crisis: Situation in certain Member States](#), EPRS, European Parliament.

³⁵ Alexandre, Z. et al. (2020), p. 4.

³⁶ Ibidem.

³⁷ Binder, K. et al. (2020).

³⁸ Italian Civil Protection Department (2022), webpage [State of Emergency](#).

³⁹ Atanassov, N. et al. (2020), [States of emergency in response to the coronavirus crisis: Situation in certain Member States II](#), EPRS, European Parliament.

⁴⁰ Stoppioni, E. (2020), [The Protection of Health Must Take Precedence: Testing the Constitutional State of Crisis in Luxembourg](#), VerfBlog, 29 April 2020.

⁴¹ Alexandre, Z. et al. (2020), p. 10.

⁴² Binder, K. et al. (2020).

Some legislative studies scholars have even noted increased legislative activity of parliaments and individual members of parliament during the pandemic compared to the period before. Drawing on data from Czechia spanning June 2018 to April 2021, Hájek⁴³ concludes that 'the number of bill proposals and roll calls substantially increased during the pandemic compared to pre-pandemic times'. Moreover, this increase in activity can be directly attributed to the COVID-19 crisis as '[s]ince the start of the outbreak, a third of roll calls and a half of bill proposals concerned the pandemic'.⁴⁴

In Germany, the Bundestag increased its law-making activity by 17% in the first year of the COVID-19 pandemic compared to the previous year as shown by a comparison of the activity in the sessions taking place between 1 February 2020–31 January 2021 and 1 February 2019–31 January 2020, respectively.⁴⁵

Hungary is another case for which experts noted a higher level of legislative activity during the first wave of the pandemic than before,⁴⁶ but it is worth emphasising that this legislative activity has been mostly unrelated to the pandemic as the Parliament 'kept itself removed from the management of the health crisis caused by the coronavirus'.⁴⁷

In Denmark, the legislative activity of the Parliament was similar to pre-pandemic levels, even though the period considered (February to mid-June 2020) includes the peak of the first wave. Thus, 62 bills (25 related to COVID-19) were proposed and passed in the session taking place from February to mid-June 2020, compared to 63 bills adopted in the corresponding 2019 session.⁴⁸ The average number of amendments proposed and passed is also very similar across the two periods. All COVID-19-related bills were fast-tracked, and in general the legislation adopted in 2020 was somewhat less complex, as measured by the average number of words.

Conversely, in Italy, a comparison of the two parliamentary sessions during the same period as the one mentioned above for Denmark found that the legislative activity of the Parliament was significantly reduced: only three ordinary bills were debated and adopted from February to mid-June 2020, compared to 10 at the same time in 2019. The legislature was occupied with amending and converting into law the decree-laws of the cabinet and the success of the amendment rates on COVID-related and non-COVID-related was in line with that from 2019: 6% and 10%, compared to 9%.⁴⁹

Parliaments and the establishment of expert agencies to handle future crises

With one exception, parliaments appear not to have been involved in the establishment of new expert agencies to prevent and handle future emergencies and increase a state's preparedness for similar health threats. In the UK, the Parliament approved in spring 2021 a Government-proposed amendment to the Health and Care Bill that led to the creation of the UK Health Security Agency (UKHSA). The main responsibility of the UKHSA is to prepare, prevent and respond to external health threats such as infectious diseases pandemics. The Agency must submit an annual report of its activities to Parliament.

Source: UK Government (2021)

⁴³ Hájek, L. (2021), 'Legislative Behaviour of MPs in the Czech Republic in Times of Covid-19 Pandemic', *Parliamentary Affairs*, first published online 30 October 2021, p. 1.

⁴⁴ Ibidem.

⁴⁵ Siefken, S. T. (2022), p. 7.

⁴⁶ Siefken, S. T. et. al. (2022), p. 889.

⁴⁷ Szente, Z. and Gárdos-Orosz, F. (2022), pp. 160-161.

⁴⁸ Pedersen, H. H. and Borghetto (2021), p. 409.

⁴⁹ Idem, p. 411.

An analysis by the OECD found that during the first wave of the pandemic, many governments have taken a flexible approach to regulatory requirements.⁵⁰ This was done by exempting COVID-19-related regulations from regulatory impact assessment (RIA) while still requiring it for ordinary legislation (e.g. in Czechia and Italy); or by only requesting simplified, descriptive forms of RIA (e.g. in Canada, Italy, the Netherlands and the UK).⁵¹ As the authors noted, 'these exemptions appear to have been mainly limited to temporary measures'.⁵² In this context the OECD recommends 'to apply regular evidence-based tools to longer term measures following the emergency response'.⁵³

Figure 2 draws on data from the Pandemic Backsliding: Democracy During COVID-19 (PanDem) project coordinated by the Varieties of Democracy (V-Dem) Institute.⁵⁴ This project monitored state responses to the COVID-19 pandemic in 144 countries in order to map the varieties of emergency measures and their execution, and to understand how these decisions affected short- and long-term prospects for political regimes and democracy. The dataset contains information gathered from official government documents and websites, academic databases, trusted inter-governmental, state or independent organisations, and trusted media outlets. The questions that guided the data collection emphasised factual information to avoid subjective judgments, and the justification of each coding decision and the corresponding sources were made available online.

The figure maps the extent to which any of the emergency measures taken with reference to COVID-19 have limited the law-making role of legislatures⁵⁵ in 26 of the countries in our sample⁵⁶ from 11 March 2020 to 30 June 2021, i.e. the three last quarters of 2020 and the first two quarters of 2021.

⁵⁰ OECD (2020c), [Regulatory quality and COVID-19: The use of regulatory management tools in a time of crisis](#). (OECD Policy Responses to Coronavirus (COVID-19)).

⁵¹ Idem, pp. 9-10.

⁵² Idem, p. 2.

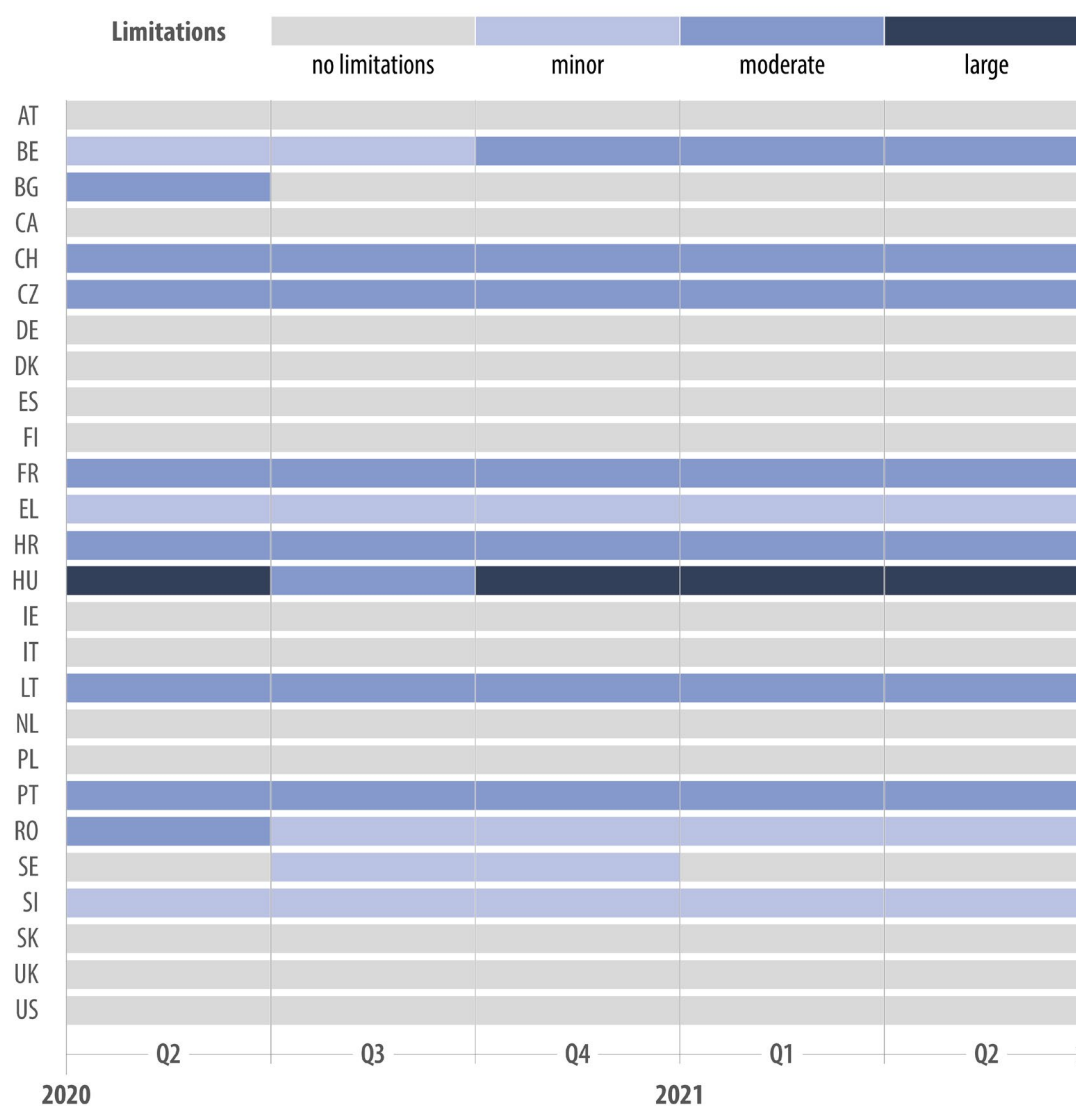
⁵³ Ibidem.

⁵⁴ Edgell, A. B. et al. (2021a), '[Pandemic backsliding: Violations of democratic standards during Covid-19](#)', *Social Science and Medicine*, 285, 114244; Edgell, A. B. et al. (2021b), *Pandemic Backsliding: Democracy During Covid-19 (PanDem)*, Version 6. Varieties of Democracy (V-Dem) Institute, <https://github.com/vdem/institute/pandem>.

⁵⁵ Coders were given the following clarification information: 'By national legislature, we mean the national body with powers to examine, pass, amend, or repeal laws. The lawmaking role of the national legislature includes power to introduce, scrutinize, and pass legislation. This question asks specifically how the emergency measures have affected the lawmaking powers of the legislature. "Rule by decree" enables the government to pass laws without the approval of the legislature, through what is commonly referred to as a decree, regulation, or ordinance, but can also be referred to by other terms. Note that an extended recess during which the legislature continues to exist and/or periods where the plenary is suspended but committees still meet do not count as suspension, dissolution, or equivalent. If the legislature was dissolved pending elections under what is considered "normal" procedure, this does not count as a suspension, dissolution, or equivalent with reference to Covid-19 unless the dissolution is extended past the normal time frame because elections are delayed due to Covid-19. In such cases, code as 4 starting from the date election postponement was announced until the legislature resumed sittings. If no legislature existed prior to Covid-19, code as 5. Code this item based on the most severe limitations observed during the quarter, even if those limitations have since been lifted.'

⁵⁶ The data collection did not include the following five EU Member States: Cyprus, Estonia, Latvia, Luxembourg and Malta.

Figure 2: COVID-19-related limitations imposed on the law-making role of legislatures



Source: Author's elaboration based on data from '[Pandemic Backsliding: Democracy During Covid-19](#)'.

'No limitations' implies that the law-making role of the national legislature was not affected at all. The 'minor' category implies that the legislature gave the executive branch the power to interpret COVID-19 related laws relatively widely, but not to rule by decree.

The 'moderate limitations' category implies that the executive branch had the right to rule by decree for several, narrowly defined COVID-19-related issues, such as deciding on physical distancing measures and measures to support the health system.

The 'large limitations' category was indicative of a case in which 'the executive branch has the right to rule by decree on many issues, which may exceed COVID-19 related issues due to vague formulation in emergency laws.'

The figure shows that in half of the countries covered, the law-making role of the national legislature was basically not affected at all. This is the case for Austria, Canada, Denmark, Finland, Germany, Ireland, Italy, the Netherlands, Poland, Spain, the UK and the US.

In Greece, Slovenia and Sweden, the limitations were minor. In Greece, the government used the special powers conferred by Article 44 of the Constitution to fast-track legislation in response to the COVID-19 pandemic.⁵⁷ Called 'acts of legislative content', these decisions were later converted into primary legislation by the Parliament.⁵⁸ In Slovenia, a statutory regime was declared during the first wave of the pandemic, which enabled the Health Minister and the Government to issue decrees with measures to contain the virus⁵⁹, while some measures such as expanding the power of the police⁶⁰, were adopted through ordinary legislative procedures.⁶¹ Sweden took a different approach compared to countries that declared a state of emergency or statutory regimes and relied mainly on executive measures. In Sweden, Parliament played a key role in the country's response to COVID-19 by amending existing legislation (e.g. the Communicable Diseases Act) and by adopting new laws, such as the COVID-19 Act, while other measures were introduced through governmental decrees and soft law instruments (e.g. recommendations).⁶²

Moderate limitations were imposed in nine countries, namely Belgium, Bulgaria, Croatia, Czechia, France, Lithuania, Portugal, Romania and Switzerland. In six of these countries (Croatia, Czechia, France, Lithuania, Portugal and Switzerland) these limitations lasted for the entire period analysed. In Belgium they were only introduced in the last quarter of 2020 and stayed in place until mid-2021, while in Bulgaria and Romania the moderate limitations were confined to the second quarter of 2020. The code assigned to Belgium⁶³ is based on the argument that most restrictive measures adopted to fight the pandemic were taken by Ministerial Decrees⁶⁴, which 'are not subject to specific parliamentary scrutiny'⁶⁵, and they lacked a proper legal framework. The Parliament passed the 'Pandemic law' that serves as a legal basis for the COVID-19 pandemic restrictions and future pandemics only in July 2022.⁶⁶

Only in Hungary have the limitations imposed on the legislature been large for four of the five quarters analysed: there the executive branch had the right to rule by decree on many issues beyond COVID-19 containment efforts, due to the vague formulation of emergency laws. All these limitations are discussed in detail in Section 2.4.

Taken together, the correlation between the pre-pandemic quality of democracy in the countries analysed (proxied with the V-Dem liberal democracy index) and the limitations imposed on the legislature is overall rather weak (Pearson's $R=0.307^{***}$).⁶⁷

⁵⁷ Tsourdi, E. L. and Vavoula, N. (2021), '[Killing me softly? Scrutinising the role of Soft Law in Greece's Response to COVID-19](#)', *European Journal of Risk Regulation*, vol. 12(1), pp. 59-76.

⁵⁸ Karavokyris, G. (2021), '[Constitutionalism and COVID-19 in Greece: The Normality of Emergency](#)', *VerfBlog*, 25 February 2021.

⁵⁹ Kukavica, J. (2020), '[Rule of Law in the Time of Covid-19: Warnings from Slovenia](#)', *VerfBlog*, 25 March 2020.

⁶⁰ Fournier, T. and Meyer-Resende, M. (2020), '[Phase Two of Covid-19-Responses Across the EU-The Rule of Law Stress Test Continued](#)', *Democracy Reporting International*, p. 9.

⁶¹ Díaz Crego, M. and Kotanidis, S. (2020b), p. 420.

⁶² Mattsson, T. et al. (2021), '[Sweden: Legal Response to Covid-19](#)' in King, J. and Ferraz, O. L.M. et al. (eds), *The Oxford Compendium of National Legal Responses to Covid-19*, Oxford University Press.

⁶³ The full explanation can be found [here](#).

⁶⁴ De Ridder, M. (2021), '[Belgium's Accordion Response to COVID-19](#)', *VerfBlog*, 10 March 2021.

⁶⁵ Slautsky, E. et al. (2022), '[Belgium: Legal Response to Covid-19](#)' in King, J. and Ferraz, O. L.M. et al. (eds), *The Oxford Compendium of National Legal Responses to Covid-19*, Oxford University Press.

⁶⁶ Walker, L. (2021), '[End of a long road: Parliament approves Belgian pandemic law](#)', *The Brussels Times*, 16 July 2021.

⁶⁷ Moderate correlations would have a Pearson's R correlation coefficient between 0.3 and 0.6, while for strong correlations the coefficient would be larger than 0.6. A coefficient of 1 would imply perfect correlation, i.e., that the two aspects analysed are identical or that always appear together.

2.3. Oversight mechanisms and usage patterns

2.3.1. Classical oversight tools

Parliaments appear to have made ample use of their oversight powers. Comparing questions, interpellations and motions initiated in 2020-2021 with the pre-pandemic activity in the German Bundestag, Siefken finds a high degree of continuity.⁶⁸

Plenary debates following government statements have been a widespread oversight tool during the COVID-19 emergency in many of the parliaments in the sample.⁶⁹ In the Netherlands and Germany these debates have been followed by votes on motions or non-legislative resolutions.⁷⁰ In other countries, such as Portugal, the ex-post scrutiny role of such debates was even stronger given that they focused on the state of emergency reports produced by the executive.⁷¹ In the UK House of Commons, select committees have also fulfilled their scrutiny role by organising oral evidence sessions with ministers and other high-ranking officials in charge of the pandemic response.⁷²

In some of the selected parliaments, opposition parties increasingly initiated motions of no confidence against the cabinet or particular ministers during the crisis, especially after the peak of the first wave had passed. This is the case for the Austrian Parliament⁷³ but also the Finnish⁷⁴, Romanian and Spanish legislatures.⁷⁵ In Romania, no fewer than seven simple motions were adopted against individual ministers in 2020 – four by the Chamber of Deputies and three by the Senate – but the Constitution does not oblige the Prime Minister to dismiss the targeted cabinet members.⁷⁶ However, on 5 October 2021, the Parliament adopted a motion of no confidence that led to the dismissal of the Cițu cabinet, which had been invested after the December 2020 parliamentary elections. The no confidence motion made various references to the government's deficient handling of the pandemic in terms of the preparedness and financing of the healthcare and education systems, the lack of proper support for businesses or the financial burden imposed on local and county authorities by the fight against the pandemic.⁷⁷

⁶⁸ Siefken, S. T. (2022), pp. 6-8.

⁶⁹ Griglio, E. (2020a); Siefken, S. T. et al. (2022).

⁷⁰ Griglio, E. (2020a).

⁷¹ Violante, T. and Lanceiro, R. T. (2021), [The Response to the COVID-19 pandemic in Portugal: A success story gone wrong](#), VerfBlog, 4 March 2021.

⁷² Thomas, R. (2022), 'Virus Governance in the United Kingdom' in Kettemann, M. and Lachmayer, K. (eds.), [Pandemocracy in Europe: Power, Parliaments and People in Times of COVID](#), Hart Publishing, p. 83.

⁷³ Maurer, A. (2022), [Improving urgency procedures and crisis preparedness within the European Parliament and EU institutions](#), Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, p. 170.

⁷⁴ Niemikari, R. and Raunio, T. (2022), '[Centralized leadership, ministerial dominance, and improvised instruments: The governance of COVID in Finland](#)', *Nordisk Administrativt Tidsskrift*, vol. 99(2), p. 12.

⁷⁵ Díaz Crego, M. and Kotanidis, S. (2020a), p. 46.

⁷⁶ Tănăsescu, E.-S. and Dima, B. (2020), p. 107.

⁷⁷ Romanian Chamber of Deputies (2021a), [Motiune de cenzură "Stop sărăciei, scumpirilor și penalilor! Jos guvernul Cițu!"](#).

2.3.2. Dedicated parliamentary COVID-19 committees

Special parliamentary inquiry committees investigating government policies and actions regarding the COVID-19 crisis were created in France,⁷⁸ the US,⁷⁹ Latvia⁸⁰ and Slovenia.⁸¹ In Slovenia, two inquiry committees were established by the Parliament, the first in July 2020, tasked with investigating the provision of protective equipment and the other measures taken by the executive to contain the spread of the COVID-19 virus while the second, created in October 2020, concentrated on political accountability in handling the pandemic, i.e. a focus on financially inadequate measures and suspected unjustified restrictions of rights. In the French National Assembly the investigation started as a fact-finding mission but changed its focus to an inquiry committee in June 2020.⁸² In Sweden, the Government's handling of the COVID-19 crisis was examined by a standing committee, the Committee on the Constitution⁸³, in accordance with the ordinary legislative and scrutiny procedure.⁸⁴ Inquiry or other dedicated committees with a focus on COVID-19-related procurement irregularities were set up in Bulgaria, Romania and the UK.

In several of these cases (e.g. Latvia, Romania and Slovenia) the driving force behind the initiation of the inquiry committee was the opposition, confirming the assumption in the literature that effective oversight is often dependent on the extent to which parliamentary rules of procedure enable the parliamentary minority parties to scrutinise the government.⁸⁵

In Latvia, the report of the parliamentary inquiry committee investigating the government's handling of the COVID-19 pandemic recommended the creation of a permanent unit for civilian crisis management under the direct authority of the Prime Minister, but this recommendation does not appear to have been followed.⁸⁶ In France, the Senate inquiry committee published a report in December 2020 that emphasised 'failings in the government's pandemic preparedness, strategy, and communications' and called for structural reform in the responsiveness and functioning of public health.⁸⁷ This was echoed by the conclusions of the reports published by the National Assembly inquiry committee in 2020.

Not all these inquiry committees have fulfilled their designated mandates. Some were dissolved by the vote of parliamentary majority, e.g. the French National Assembly's inquiry committee was dissolved in January 2021,⁸⁸ while others have not (yet) issued the reports they were supposed to deliver, e.g. the Romanian inquiry committee (see section 5.3).

⁷⁸ In both the National Assembly and the Senate.

⁷⁹ Akirav, O. et al. (2021), *Parliaments in the Pandemic, Working Paper I*, IPSA Research Committee of Legislative Specialists, p. 21.

⁸⁰ Olsena, S. et al. (2022). '[Latvia: Legal Response to Covid-19](#)' in King, J. and Ferraz, O. L.M. et al. (eds), *The Oxford Compendium of National Legal Responses to Covid-19*, Oxford University Press; Saeima Press Service (2022), *Latvian Saeima* (2022), Saeima examines parliamentary inquiry committee's final report on government's response to COVID-19 pandemic, [press release](#), 25 February 2022.

⁸¹ Slovenia Times (2022), [Parliamentary inquiry into Covid response adopts interim report](#), 24 February 2022.

⁸² Brunet, S. (2022), 'The Hyper-Executive State of Emergency in France' in Kettemann, M. and Lachmayer, K. (eds.), *Pandemocracy in Europe: Power, Parliaments and People in Times of COVID*, Hart Publishing, pp. 201-223.

⁸³ Jonason, P. and Larue, T. (2020), 'Sweden - How to make use of a flexible constitutional framework' in Cartier, E., Ridard, B. and Toulemonde, G. (eds.), *The impact of the health crisis on the functioning of Parliaments in Europe*, Robert Schuman Foundation, p. 128.

⁸⁴ The Swedish government has also established an [inquiry committee](#) to evaluate the governmental and administrative response to the COVID-19 pandemic.

⁸⁵ Griglio, E. (2020c), *Parliamentary Oversight of the Executives: Tools and Procedures in Europe*, Hart Publishing.

⁸⁶ Latvian Saeima (2022).

⁸⁷ Casassus, B. (2022), '[Covid-19: Charging French former health minister with endangering lives was "very unjust," says former prime minister](#)', *BMJ*, 379 (Published 7 November 2022).

⁸⁸ Brunet, S. (2022), p. 214.

In Austria, the opposition called for an inquiry committee into the government's handling of the pandemic, but this could not be established because the rules of procedure only allow one such committee to operate at a given time, and the committee investigating the 'Ibiza scandal' was still active.⁸⁹ Similarly, in Spain the opposition's initiative to create an inquiry committee failed as majority members were not willing to support it.⁹⁰ Instead, an ad hoc committee was created with the goal of generating proposals for Spain's social and economic reconstruction after the crisis. This committee met for two months, organised hearings with government members and other officials, and its conclusions were then endorsed by the plenary.⁹¹

In Belgium, a dedicated special committee was established in the federal parliament to scrutinise how the laws giving special powers to the executive had been implemented.⁹² This special committee was set up at the end of June 2020 and was endowed with the right to organise hearings under oath, subpoena witnesses and demand evidence.⁹³ While the Vlams Belang, PVDA and the Groen-Ecolo opposition parties initially asked for an inquiry committee, the parliamentary majority opted for a special committee.⁹⁴ However, the mandate given to the special committee also included a clause enabling the establishment of an inquiry committee if the special committee should encounter difficulties in its work. The special committee was assisted by a team of experts and met approximately 50 times between 2 July 2020 and 7 September 2021. It produced a report with recommendations for the government regarding the prevention and management of pandemics that was subsequently adopted by the plenary. In Portugal, the Parliament initiated an 'ad hoc Commission for monitoring the implementation of COVID-19 response measures and the economic and social recovery'⁹⁵ in 2020, but calls for the establishment of an inquiry committee have not been met.⁹⁶ In Ireland, the Parliament established a 'Special Committee on COVID-19 response', which held 67 public sessions over 30 days of hearings between 6 May 2020 and October 2020 when it published its report.⁹⁷ This committee was active at a time when all the other parliamentary committees work was suspended (see Section 2.4).

In Denmark, the scrutiny activity of the Parliament was similar to pre-pandemic levels, even though the period considered (February to mid-June 2020) includes the peak of the first wave. While only one public hearing was organised for one of the 25 COVID-19-related bills adopted in this period, 97% of the bills in 2019 had hearings.⁹⁸ To compensate for the lack of time and information on the fast-tracked pandemic legislation, 'committees asked even more questions regarding COVID-19 bills compared to the average number of questions on bills in 2019 and 2020 generally'.⁹⁹ Moreover, the Parliament's Standing Orders Committee commissioned a report on the government's handling of the early stages of the Coronavirus pandemic from an independent investigation commission composed of five academics with expertise in virology and immunology, health law and public law,

⁸⁹ Lachmayer, K. (2020), '[Legitimacy Deficits of Austrian Legal COVID-19 Measures: From Emergency Action to Economic Crisis Governance](#)', *Law and Economics Yearly Review*, vol. 9, part 1, p. 158.

⁹⁰ Siefken, S. T. et al. (2022).

⁹¹ Simonelli, M. A. (2022), "To Watch and Control the Government": "Rediscovering" Parliaments' Oversight Function' in Castellà Andreu, J.M. and Simonelli, M.A. (eds), *Populism and Contemporary Democracy in Europe*, Palgrave Macmillan, Cham, pp. 291-311.

⁹² Griglio, E. (2020a), p. 61.

⁹³ Hope, A. (2020), '[Belgium approves special committee to look into the country's handling of pandemic](#)', *The Brussels Times*, 28 June 2020.

⁹⁴ Ibidem.

⁹⁵ Loureiro, J. C. (2020), 'Portugal - During the Covid-19 pandemic the Parliament did not 'revolutionize' its functioning' in Cartier, E., Ridard, B. and Toulemonde, G. (eds.), [The impact of the health crisis on the functioning of Parliaments in Europe](#), Robert Schuman Foundation, Annex.

⁹⁶ Violante, T. and Lanceiro, R. T. (2021).

⁹⁷ Houses of the Oireachtas. (2020), [Final Report](#). Special Committee on Covid-19 Response.

⁹⁸ Pedersen, H. H. and Borghetto, E. (2021), p. 409.

⁹⁹ Idem, p. 410.

health economics, public administration and political science. The five professors had six months to conduct the investigation and were granted access to government documents under an agreement between the Chairman of the Parliament and the Prime Minister, but could not interview ministers or civil servants involved in the management of the crisis.¹⁰⁰ The report was delivered in January 2021. Another Danish innovation was the creation, at the initiative of the parliamentary parties, of an extraordinary committee composed of all members who were health policy spokespersons for their respective parties. The committee members were charged with following the evolution of the virus and getting involved in all government initiatives to tackle it, which meant being informed by and participating in negotiations with the government.¹⁰¹

In February 2021, the Danish Parliament also established a new permanent investigation committee, the Epidemics Committee, which is tasked with scrutinising the application of the provisions in the Epidemics Act. Moreover, the Scrutiny Committee, a new permanent sub-committee to the Standing Orders Committee, was established on 14 April 2021. Its first investigation concerned the implementation of the decision in autumn 2020 that all mink in Denmark should be culled as part of the effort to combat COVID-19.

In Canada, a Special Committee on the COVID-19 pandemic was active from April to June 2020. This included all members of parliament and met 25 times. In the UK, the COVID-19 Committee, a select committee, was established in the House of Lords and it has conducted four inquiries until the publication of this literature review. Finally, in the US, a select investigative subcommittees on the Coronavirus crisis was established in the House of Representatives in April 2020 and published its final report on 9 December 2022. At the same time, a bicameral, bipartisan COVID-19 Congressional Oversight Commission was set up in March 2020 to oversee the impact and the effectiveness of aid relief and public spending under the CARES Act (see Section 5.4).

2.4. Oversight limitations

In Hungary, the extraordinary delegation of powers from the legislature to the executive in late March 2020 meant that the National Assembly 'gave its prior consent to any emergency decree beyond the scope of measures specified in the Disaster Management Act', while also waiving its ex-post control of all emergency decrees.¹⁰² As the Authorisation Act did not specify what emergency measures could be taken beyond those in the Disaster Management Act and did not impose jurisdictional restrictions, it created the opportunity for the executive to rule by decree, override any existing laws and enforce measures whose relevance to the pandemic crisis was widely questioned.¹⁰³ These measures included the creation of special economic zones¹⁰⁴ that diverted tax revenues from local authorities to county authorities, even though the latter did not have competencies in organising the pandemic response; postponing procedures for disclosing public data; and suspending the start of all asylum applications.¹⁰⁵ As mentioned above, the delegation of power did not include an end date, and this special legal order was only terminated after an individual decision of the Prime Minister on 18 June 2020.

¹⁰⁰ Folketinget (2021), [Managing the Covid-19-Crisis: The Early Danish Experience. Report delivered to the Standing Orders Committee of the Danish Parliament](#), p. 9.

¹⁰¹ Pedersen, H. H. and Borghetto, E. (2021), p. 413.

¹⁰² Sente, Z. and Gárdos-Orosz, F. (2022), pp. 160-161.

¹⁰³ Gyóry, C. and Weinberg, N. (2020), 'Emergency powers in a hybrid regime: The case of Hungary', *The Theory and Practice of Legislation*, vol. 8(3), pp. 329-353; Halmi, G., Mészáros, G. and Scheppelle, K. L. (2020), [From Emergency to Disaster: How Hungary's Second Pandemic Emergency will Further Destroy the Rule of Law](#), Verfblog, 30 May 2020.

¹⁰⁴ Bohle, D. et al. (2022), [Riding the Covid waves: authoritarian socio-economic responses of east central Europe's antiliberal governments](#), *East European Politics*, vol. 38(4), p. 671.

¹⁰⁵ Guasti, P. and Bustikova, L. (2022), 'Pandemic power grab', *East European Politics*, First View; Sente, Z. and Gárdos-Orosz, F. (2022).

The side-lining of the Parliament did not stop, as the declared state of health crisis implied the Government could continue to limit fundamental rights and to override by decree acts of Parliament, while the National Assembly was not involved in controlling the emergency measures or in prolonging the health crisis situation.¹⁰⁶ In November 2020, after the state of danger was reinstated, the Hungarian Parliament adopted a second Authorisation Act, which meant approving without scrutiny governmental emergency decrees adopted since the re-imposition of the state of danger and a blanket endorsement for future decrees the government would consider necessary in the next three months.¹⁰⁷ While the Parliament again empowered the Cabinet to rule by decree almost unconstrained, the second Authorisation Act, unlike the first one, had a 90-day limit.¹⁰⁸ This lost its force on 8 February 2021 and on the same day the cabinet terminated the second state of danger and ordered a third one.¹⁰⁹ A third Authorisation Act was adopted by the Hungarian Parliament on 22 February 2021, with the same 90-day expiry clause, but the legislature extended it on three occasions until 31 May 2022.¹¹⁰ This was allowed to expire, but a new state of danger was declared by the Hungarian Government on 25 May 2022 with the reference to war in Ukraine, which was then followed by the adoption on 8 June 2022 by the Hungarian Parliament of a fourth Authorisation Act, which similarly removed parliamentary oversight of individual emergency decrees¹¹¹ and gave another blanket endorsement to future decrees, eliminating the constitutional restriction that such emergency decrees should be approved after 15 days by the Parliament in order to remain in force.¹¹² Moreover, it prolonged the validity of 37 emergency decrees adopted under the states of danger during the pandemic, including the one enabling delays in responses to freedom of information requests.¹¹³

In Italy, the executive has substantially limited the legislative scrutiny of its response to the pandemic, by relying on 'decree-laws frequently accompanied by maxi-amendments linked to confidence votes and delegated legislation', in the form of decrees of the President of the Council of Ministers (DPCMs)¹¹⁴. Maxi-amendments replace the entire text of a bill examined in parliament, usually at a late stage in the legislative process. Parliament was also marginalised by the executive issuing overlapping decree-laws and DPCMs, which resulted in 'the melting of entire legislative sections whose scrutiny was still pending and the repealing of provisions that still needed to be converted [into law by the parliament]'.¹¹⁵ Given that many of its pandemic decree-laws were heavily amended by members of parliament at the stage of their conversion, the executive decided to allow substantive scrutiny only in one of the chambers, while the other chamber had only a few days to adopt the final version.¹¹⁶

¹⁰⁶ Szente, Z. and Gárdos-Orosz, F. (2022).

¹⁰⁷ Kovács, K. (2022), 'The COVID-19 Pandemic: A Pretext for Expanding Power in Hungary' in Grogan, J. and Donald, A. (eds.), *Routledge Handbook of Law and the COVID-19 Pandemic*, pp. 259-270.

¹⁰⁸ Szente, Z. and Gárdos-Orosz, F. (2022).

¹⁰⁹ Hungarian Helsinki Committee (2022a), [Overview of Hungary's emergency regimes introduced due to the COVID-19 pandemic](#), update 1 January 2022.

¹¹⁰ Ibidem.

¹¹¹ Hungarian Helsinki Committee (2022b), [New "authorization act" removes parliamentary oversight over emergency government decrees](#), 10 June 2022.

¹¹² Hungarian Helsinki Committee (2022c), [Hungary's Fourth Authorization Act: Completing the Efforts to Grant the Government Excessive Regulatory Powers Once Again](#), 9 June 2022.

¹¹³ Ibidem.

¹¹⁴ Pedersen, H. H. and Borghetto, E. (2021), p. 415.

¹¹⁵ Griglio, E. (2020b), 'Governments as Covid-19 Lawmakers in France, Italy and Spain: Continuity or Discontinuity', *European Journal of Law Reform*, vol. 22(4), p. 410.

¹¹⁶ Ibidem.

In France, the Parliament was side-lined during the early stages of the COVID-19 pandemic in two distinct ways.¹¹⁷ First, it approved the creation of the state of health emergency, which provides for considerably more limited parliamentary oversight than under the 'normal' state of emergency, regulated by the Law 55-385 of 3 April 1955, also known as the State of Emergency Act 1955.¹¹⁸ Thus, while the Parliament must authorise the extension of the state of emergency beyond 12 days for the 'normal state of emergency' (Art. 2, Law 55-385/1955), parliamentary approval is required only for the extension of the state of health emergency beyond one month.¹¹⁹ Moreover, the state of health emergency does not include a caducity clause for acts of parliament extending the health emergency in case of governmental resignation or the dissolution of the National Assembly, unlike Article 4 of the 1955 Act which established that the state of emergency automatically terminates 15 days after the occurrence of one of these events.¹²⁰ Similarly, the normal state of emergency imposed an obligation for the administrative authorities to submit copies to the Senate and National Assembly of all acts adopted when applying the emergency state (Art. 4.1, Law 55-385/1955) which is not present for the state of health emergency.¹²¹ Second, the Parliament passed two laws in March and June 2020 that authorised the executive to legislate by issuing ordinances in several policy areas not necessarily connected to the pandemic: 'the delegation of regulatory powers set by the two authorizing laws [...] was extremely vast and open, both in the number of authorizations to legislate through ordinances and in the margins of manoeuvre allotted to the executive'.¹²² The two chambers of the Parliament attempted to exercise some oversight and they did manage to reduce the very long deadlines proposed by the government for approving the ordinances and passing the ratifying laws. The Parliament also amended and minimised the most questionable authorisations and attempted to reduce the discretion of the executive by listing restrictions that could be adopted and by establishing some conditions for their implementation.¹²³ Nevertheless, the careful list of restrictions was also accompanied by a provision in the March 2020 law that gave the executive a 'quasi carte blanche', enabling it to 'take by decree any other regulatory measure limiting the freedom of undertaking, for the sole purpose of ending the health disaster'.¹²⁴ Legal scholars have also criticised the fact that between the lifting of the first state of health emergency on 10 July 2020 and the declaration of the second one in October 2020, the Prime Minister still had additional extensive powers granted by Statute n° 2020-856 until 30 October 2020. This obscured the difference between the normal running of the State and the exception, and 'led to a reduced power of scrutiny by the Parliament'.¹²⁵

The practice of disguising governmental legislation as parliamentary initiatives in order to fast-track its adoption¹²⁶ was observed during the pandemic period in Belgium and in Austria. In Belgium, standard regulatory requirements were circumvented by labelling a government draft law a parliamentary initiative (i.e. a Private Member's Bill).¹²⁷ This was done in order to speed up the adoption process by avoiding consultation with the Council of State, which is the supreme

¹¹⁷ Platon, S. (2020), 'Reinventing the wheel... and rolling over fundamental freedoms? The Covid-19 epidemic in France and the "State of Health Emergency"', *The Theory and Practice of Legislation*, vol. 8(3), p. 309; Brunet, S. (2022).

¹¹⁸ Ibidem.

¹¹⁹ Platon, S. (2020), p. 303.

¹²⁰ Ibidem.

¹²¹ Ibidem.

¹²² Griglio, E. (2020b), p. 407.

¹²³ Ibidem.

¹²⁴ Platon, S. (2020), p. 300.

¹²⁵ Chambas, E. and Perroud, T. (2021), 'France: Legal Response to Covid-19' in King, J. and Ferraz, O. L.M. et al. (eds), *The Oxford Compendium of National Legal Responses to Covid-19*, Oxford University Press.

¹²⁶ Däubler, T. (2011), 'Bills from the floor: Why governing party groups initiate their own legislation', *The Journal of Legislative Studies*, vol. 17(4), pp. 435-457.

¹²⁷ Popelier, P. (2020), 'COVID-19 legislation in Belgium at the crossroads of a political and a health crisis', *The Theory and Practice of Legislation*, vol. 8(1-2), p. 149.

administrative court in Belgium, charged with verifying the conformity of governmental regulations and decisions with the Constitution, statute law and international treaties and conventions. The solution was chosen with the assent of the leaders of the 10 political parties, which assumed a monitoring role of the government through weekly meetings.¹²⁸ These meetings ensured 'the government would abstain from actions that could find no support in Parliament'.¹²⁹ A similar practice has been reported from Austria. There, beyond the introduction of COVID-19-related bills drafted by ministerial officials as Private Member Bills, in some cases to accelerate the process even more, the members introduced 'a bill with minimum contents ('carrier rocket') which was profoundly amended in the competent parliamentary committee'.¹³⁰ Both aspects were heavily criticised by the opposition for their detrimental impact on meaningful public consultation.¹³¹

Similarly to Belgium, the leaders of the political groups in the Canadian Parliament played a key role in expediting the adoption of legislation in response to the pandemic in its first phase, but this was done 'at the expense of transparency and backbencher power'.¹³² The decision to allow party leaders to vote or decide in the name of all the members in their caucus, which was a feature present in many parliaments that restricted the physical presence of members to avoid infection and that could not meet online for constitutional or other reasons, raises a question with respect to the role of individual representation in such moments of crisis and highlights the importance of intra-party accountability mechanisms.

In Spain, the COVID-19-related law-making has been dominated by the Government, which issued 22 decree-laws between March and August 2020. During the same period, Parliament did not pass any new law, organic or ordinary.¹³³ Some provisions in the decrees referred to aspects unrelated to the pandemic, and which also did not appear urgent.¹³⁴ The parliamentary debate on these decree-laws has been extremely limited, 'following rather formalistic procedure', and has not allowed the legislature to properly scrutinise individual measures.¹³⁵ Moreover, the oversight role was affected at the beginning of the pandemic, as the Parliament did not organise any plenary sessions of questions with the Cabinet from late February to mid-April 2020.¹³⁶ The state of alarm was first declared on 14 March 2020 and the Spanish Congress did not play any role in its establishment, being only informed of the decision.¹³⁷ The declaration is valid only for 15 days and when the Congress first extended the state of alarm (25 March 2020) it imposed an obligation on the Government to report weekly to the Parliament on the anti-pandemic measures adopted¹³⁸ (i.e. the Minister of Health appearing in front of the Health Committee of the Chamber of Deputies¹³⁹).

¹²⁸ Ibidem. These were the same ten parties that supported the Special Powers Act which enabled the cabinet to act to contain the spread of the virus and to alleviate its social and economic consequences. Only two parliamentary parties did not support the Act and were not represented in the weekly meetings with party leaders.

¹²⁹ Idem, p. 150.

¹³⁰ Stöger, K. (2021), '[Austria: Legal Response to Covid-19](#)', in King, J. and Ferraz, O. L.M. et al. (eds), *The Oxford Compendium of National Legal Responses to Covid-19*, Oxford University Press.

¹³¹ Ibidem.

¹³² Malloy, J. (2020), 'The adaptation of Parliament's multiple roles to COVID-19', *Canadian Journal of Political Science/Revue canadienne de science politique*, vol. 53(2), p. 307.

¹³³ Griglio, E. (2020b).

¹³⁴ Gutierrez, A. T. (2020), 'Spain - A deep revision of Congress and Senate Standing Orders is needed' in Cartier, E., Ridard, B. and Toulemonde, G. (eds.), [The impact of the health crisis on the functioning of Parliaments in Europe](#), Robert Schuman Foundation, p. 115.

¹³⁵ Griglio, E. (2020b), pp. 404-405.

¹³⁶ Gutierrez, A. T. (2020), p. 117.

¹³⁷ Díaz Crego, M. and Kotanidis, S. (2020a), pp. 35-36.

¹³⁸ Idem, p. 38.

¹³⁹ Simonelli, M. A. (2022).

In Ireland, the standing committees of the Oireachtas did not meet from the start of the pandemic until October 2020, following legal advice that remote sittings of the plenary and committees would be unconstitutional.¹⁴⁰ The plenary was convened at Dublin's Convention Centre to allow socially-distanced debate and voting. The absence of meetings of ordinary committees for such a long period¹⁴¹ meant that '[m]ost of the crucial pandemic measures, therefore, were adopted at a time when the usual means of parliamentary scrutiny were lacking or absent'.¹⁴² Although a 'Special Committee on COVID-19 Response' was established with an oversight mandate and it did publish a report in October 2020 before its dissolution, 'its remit was vast and it could not scrutinise all relevant measures, let alone do so in detail'.¹⁴³ The minimal oversight of the legislature over the delegated powers to the executive, judged to be the most extensive in the history of the Irish state, appeared even more problematic given the further de facto delegation of some of this authority by the executive to unaccountable, technocratic public health advisors.¹⁴⁴

Some parliaments which continued to sit during the first wave of the pandemic adopted limitations on their own ability to control and scrutinise the government. This is the case for Bulgaria, where the parliamentary majority in the National Assembly decided to change the Rules of Procedures to self-restrict the control of the Government to the usage of written questions during the state of emergency, i.e. not allowing the regular oral questions or interpellations, or the initiation of votes of no confidence.¹⁴⁵ Before the declaration of the state of emergency¹⁴⁶ expired, the Parliament adopted amendments to the Health Act¹⁴⁷, which empowered the cabinet to take decisions on the duration and extension of the 'epidemic emergency situation' and the extent of restrictions imposed on citizens. This led to a de facto centralisation of power in the hands of the Prime Minister with limited oversight from the Parliament.¹⁴⁸

Similarly, in Croatia, the Parliament's Rules of Procedure were amended in April 2020 to introduce the possibility of shortening speaking times during debates and suspend the members' ability to reply during a pandemic.¹⁴⁹ This limited the opportunity for legislative oversight and the amendment was brought to the attention of the Croatian Constitutional Court by an opposition party, and the Court repealed it in October 2020.¹⁵⁰ In Finland, for an interpellation to be addressed to the government or an individual Minister it requires the signatures of at least 20 members of parliament. In late March 2020, the radical right opposition party, The Finns Party, decided due to

¹⁴⁰ Murphy, M. (2020), [Ireland's new Parliament: Political and physical change coincide amid Covid-19 crisis](#), Hansard Society, Blog 9 July 2020.

¹⁴¹ Carolan, E. and O'Neill, A. (2021), '[Ireland: Legal Response to Covid-19](#)' in King, J. and Ferraz, O. L.M. et al. (eds), *The Oxford Compendium of National Legal Responses to Covid-19*, Oxford University Press.

¹⁴² Casey, C. and Kenny, D. (2021), 'Ireland-COVID-19 response raises rule of law concerns', *Public Law*, vol. 3, p. 645.

¹⁴³ Ibidem.

¹⁴⁴ Idem, p. 646.

¹⁴⁵ Belov, M. and Tsekov, A. (2020), 'In Bulgaria, a self-restricting control of power' in Cartier, E., Ridard, B. and Toulemonde, G. (eds.), [The impact of the health crisis on the functioning of Parliaments in Europe](#), Robert Schuman Foundation, pp. 22-30. The authors also emphasise that the delegation of legislative power to the executive was contested by the country's President, but the Constitutional Court did not find it unconstitutional.

¹⁴⁶ In Bulgaria the state of emergency has been declared on 13 March 2020 for a month by the [Parliament](#) which voted unanimously a motion introduced by the government.

¹⁴⁷ Belov, M. and Tsekov, A. (2020), p. 24.

¹⁴⁸ Loblova, O., Rone, J. and Borbath, E. (2021), 'COVID-19 in Central and Eastern Europe Focus on Czechia, Hungary, and Bulgaria', in Greer, S. et al. (eds.), *Coronavirus Politics: The Comparative Politics and Policy of COVID-19*, University of Michigan Press, pp. 413-435; Primatarova, A. (2021), 'Bulgaria: Containment measures with elections in the air', in Russack S. (ed.), [The effect of Covid on EU democracies](#), European Policy Institutes Network (EPIN) Report, p. 7.

¹⁴⁹ Kotarski, K. et al. (2021), [Country Report Croatia, Sustainable Governance in the Context of the COVID-19- Crisis](#), Bertelsmann Stiftung.

¹⁵⁰ Ibidem.

the COVID-19 situation to withdraw their interpellation on the cabinet's migration policy.¹⁵¹ No interpellation regarding the government response to the COVID-19 pandemic has been submitted so far.¹⁵²

In Poland, the fast-paced adoption of legislation to fight the pandemic was criticised by legal scholars on the grounds of it being used by the ruling coalition as a pretext to introduce momentous and controversial changes to the Electoral and Criminal Codes.¹⁵³ These amendments were introduced by the governmental parties at the last minute, in legislation which was part of the coalition's 'Anti-Crisis Shield' and in other bills dealing with the financial response to the pandemic, and they violated not only procedural law-making standards and norms, but also 'prohibitions stemming from the jurisprudence of the Constitutional Tribunal'.¹⁵⁴ The former included 'the inadmissibility of submitting amendments concerning cases that were not covered by the original draft', while an example of the latter is the prohibition on significantly changing the electoral law six months before an election.¹⁵⁵ The lack of time for proper parliamentary scrutiny or parliamentary debate over these amendments reduced the Sejm to a 'rubber-stamping' role.¹⁵⁶

In Romania, after the declaration of the state of emergency the Parliament was bypassed by the minority cabinet, which instituted, contrary to the accepted procedure, new criminal offences (e.g. being in breach of the lockdown regulations) through governmental emergency ordinances.¹⁵⁷ These emergency ordinances and others establishing harsh fines for breaking quarantine rules were declared unconstitutional by the Constitutional Court.¹⁵⁸ President Klaus Iohannis and Prime Minister Ludovic Orban accused the Parliament and the Constitutional Court of forcing the executive to endanger the life and health of Romanians.¹⁵⁹

In Switzerland, the pandemic response enabled a self-empowerment of the federal government, the Federal Council, at the expense of the cantons and the federal legislature.¹⁶⁰ The latter, called the Federal Assembly, adopted and amended the COVID-19 Act that provided the legal basis for the Federal Council's emergency measures. However, the rewriting of the bill was marginal, with the Swiss Parliament accepting discretionary clauses and 'delegation norms in favour of the executive' and a merely consultative role.¹⁶¹ Thus, the Federal Assembly acquiesced to not being able to veto, review or approve emergency measures, a suboptimal outcome given that judicial review of

¹⁵¹ Kotkas, T. et al. (2021), '[Finland: Legal Response to Covid-19](#)' in King, J. and Ferraz, O. L.M. et al. (eds), *The Oxford Compendium of National Legal Responses to Covid-19*, Oxford University Press.

¹⁵² Ibidem; see also the official [webpage](#) displaying the government's responses to submitted interpellations during the current term.

¹⁵³ Serowaniec, M. and Witkowski, Z. (2020), 'Can legislative standards be subject to 'quarantine'? The functioning of the Tablet Sejm in Poland in the COVID-19 era', *The Theory and Practice of Legislation*, vol. 8(1-2), pp. 155-170; Kucharczyk, J. (2021), 'The pandemic as catalyst for populist authoritarianism in Poland' in Russack S. (ed.), [The effect of Covid on EU democracies](#), European Policy Institutes Network (EPIN) Report, pp. 27-28.

¹⁵⁴ Serowaniec, M. and Witkowski (2020), p. 163.

¹⁵⁵ Idem, pp. 163-164.

¹⁵⁶ Domaradzki, S. (2020), 'Poland - Instrumentalizing the pandemic so as to strengthen the ruling party's grasp on power' in Cartier, E., Ridard, B. and Toulemonde, G. (eds.), [The impact of the health crisis on the functioning of Parliaments in Europe](#), Robert Schuman Foundation, p. 88.

¹⁵⁷ Anghel, V. and Jones, E. (2022), '[Riders on the storm: the politics of disruption in European member states during the COVID-19 pandemic](#)', *East European Politics*, vol. 38(4), p. 563.

¹⁵⁸ Iancu, B. et al. (2021).

¹⁵⁹ Anghel, V. and Jones, E. (2022), p. 563.

¹⁶⁰ Armingeon, K., Sager, F. and Zohlnhöfer, R. (2021), [Country Report Switzerland: Sustainable Governance in the Context of the COVID-19 Crisis](#), Bertelsmann Stiftung, p. 51; Hinterleitner, M., Honegger, C. and Sageret, F. (2023), [Blame avoidance in hard times: complex governance structures and the COVID-19 pandemic](#), *West European Politics*, vol. 46(2), pp.324-346.

¹⁶¹ Ammann, O. and Uhlmann, F. (2022), 'Switzerland: The (Missing) Role of Parliament in Times of Crisis', in Kettemann, M. and Lachmayer, K. (eds.), [Pandemocracy in Europe: Power, Parliaments and People in Times of COVID](#), Hart Publishing, p. 185.

executive measures is limited in Switzerland.¹⁶² After the Parliament reconvened from its suspended session, a suspension which lasted from 15 March to 4 May, the online meetings of parliamentary committees were based on ad hoc regulations. Moreover, the committees were prohibited from discussing confidential matters, thus further limiting the oversight capacity of the legislature.¹⁶³

In Luxembourg, during the three months of state of emergency, the cabinet governed by issuing grand ducal orders, which do not require a vote in Parliament.¹⁶⁴ After the end of the state of emergency, in late June 2020, the Chamber of Deputies adapted its working so as to pass fast bills required to respond to the changing pandemic conditions 'with legislative processes averaging three to four days from the preparation and submission of the bill'.¹⁶⁵ As in other cases of fast-tracking legislation this could have had a detrimental impact on the ability of the Parliament to properly scrutinise the legislation, consult stakeholders or assess the likely impact of the bills. Nevertheless, it could be argued that given the urgency of the situation the alternative would have been to leave the management of the pandemic completely in the hands of the government.

Last but not least, the case of the US Congress is also telling with respect to oversight patterns during the COVID-19 pandemic. While several state legislatures tried to override the decisions of governors and health officials by various means, including court challenges, the Congress refrained during the pandemic from trying to limit the authority of the Health and Human Services (HHS) Secretary, the US equivalent of a health minister, or of the Director of the Centers for Disease Control and Prevention.¹⁶⁶ Part of this is explained by the nature of the delegation of the emergency powers by Congress under the relevant statutory act, i.e. the Public Health Service Act – a point this literature review returns to in Section 4.1.

¹⁶² Idem. p. 186.

¹⁶³ Idem. p. 195.

¹⁶⁴ OECD (2022a), [Evaluation of Luxembourg's COVID-19 Response: Learning from the Crisis to Increase Resilience](#), p. 156.

¹⁶⁵ Ibidem.

¹⁶⁶ Wiley, L. F., Yearby, R. and Hammond, A. (2021), '[United States: Legal Response to Covid-19](#)' in King, J. and Ferraz, O. L.M. et al. (eds), *The Oxford Compendium of National Legal Responses to Covid-19*, Oxford University Press.

3. Factors favouring national parliaments' resilience in maintaining oversight during the COVID-19 pandemic

The literature assessing the correlates and causes of the resilience of parliamentary oversight during the COVID-19 pandemic is still rather scarce: there is a small number of comparative studies based on systematic data collection exercises and several more detailed case studies. Nevertheless, four factors have been consistently highlighted:

- › the quality of democracy;
- › the constitutional and legal opportunities for parliamentary oversight;
- › the structure of the executive;
- › and the general, pre-pandemic balance of power between the legislature and the executive.

3.1. The quality of democracy

Several scholars have argued that the COVID-19 pandemic presented globally an opportunity for executive aggrandisement which was not to be missed by incumbents who had been previously attempting to self-entrench in power¹⁶⁷ and by those espousing majoritarian and illiberal visions of democracy.¹⁶⁸ The empirical evidence suggests that both in Europe and globally, despite substantial variation, more violations of democratic standards happened in states in which the pre-existing quality of democracy was lower.¹⁶⁹ Even when focusing on countries like Canada, New Zealand, Australia and the UK, which are all consolidated democracies, scholars have been able to discern continuities in terms of democratic accountability patterns: 'countries that demonstrated a strong performance before the pandemic maintained relatively high accountability standards during the crisis; already weak accountability mechanisms showed less resistance to the expanding power of the executive'.¹⁷⁰

A series of comparative analyses focusing specifically on the marginalisation of parliaments during the pandemic have presented evidence indicating that legislatures were side-lined most, and that there was a higher degree of power concentration in the hands of the executive in those European states which exhibit lower levels of the quality of democracy, although there were also exceptions, such as Switzerland.¹⁷¹ Engler and her colleagues analysed the degree of power concentration, capturing various aspects of the transfer of power from the legislature to the executive in the first wave of the pandemic in 34 European countries,¹⁷² and found convincing evidence that this took place to a larger extent in non-consolidated democracies. One dimension of the quality of democracy seems to be driving this finding: the authors found a statistically significant and substantively strong effect of the quality of the rule of law on the likelihood of power

¹⁶⁷ Müller, J.-W. (2020), [How populists will leverage the coronavirus pandemic](#), *World Politics Review*, 7 April 2020; Petrov, J. (2020), 'The COVID-19 emergency in the age of executive aggrandizement: What role for legislative and judicial checks?', *The Theory and Practice of Legislation*, vol. 8(1-2), pp. 71-92. Kouroutakis, A. E. (2022), 'Abuse of Power and Self-Entrenchment as a State Response to the COVID-19 Outbreak: The Role of Parliaments, Courts and the People' in Kettemann, M. C. and Lachmayer, K. (eds.), [Pandemocracy in Europe: Power, Parliaments and People in Times of COVID-19](#), Hart Publishing, pp. 33-45.

¹⁶⁸ Greer, S., King, E. and Fonseca, E. (2021), 'Introduction: Explaining Pandemic Response' in Greer, S. et al. (eds.), *Coronavirus Politics: The Comparative Politics and Policy of COVID-19*, University of Michigan Press, pp. 3-33.

¹⁶⁹ Edgell, A. B. et al. (2021a), p. 4; Guasti, P. and Bustikova, L. (2022).

¹⁷⁰ Lozano, M., Atkinson, M. and Mou, H. (2021), 'Democratic accountability in times of crisis: Executive power, fiscal policy and COVID-19', *Government and Opposition*, First View, p. 18.

¹⁷¹ Engler, S. et al. (2021).

¹⁷² Their sample included 24 of the European countries that are also in the sample of the literature review.

concentration.¹⁷³ The quality of the rule of law was measured with data from the Democracy Barometer¹⁷⁴ which captures *de jure* and *de facto* indicators regarding equality before the law (i.e. constitutional provisions for impartial courts, effective independence of the judiciary, effective impartiality of the legal system) and the quality of the legal system (i.e. constitutional provisions for impartial courts, effective independence of the judiciary, effective impartiality of the legal system).

Siefken and his colleagues¹⁷⁵ have drawn a similar conclusion based on the analysis of data from an expert survey that assessed the law-making, scrutiny and communication activities of a sample of 27 legislatures during the first wave of the pandemic. They argued that 'parliaments in established democracies were better able to adapt to the new situation, were also able to exercise government control more successfully and overall contributed to institutional trust'.¹⁷⁶

3.2. Opportunities for oversight enabled by constitutional and legal frameworks

Other analyses have highlighted the role of constitutional and legal frameworks and the possibilities they offered for parliamentary oversight.¹⁷⁷ In those countries where the constitutional framework did not mandate the involvement of the parliament in the declaration of the state of emergency, the potential for oversight was significantly limited, as in Italy, or was restricted to informal contacts between the prime minister and the leaders of the parliamentary party groups, as in Luxembourg.¹⁷⁸ Nevertheless, for the latter case it is important to note that the Constitution of Luxembourg limits the 'state of crisis'¹⁷⁹ to 10 days unless it is prolonged by the Parliament through law.

However, the existence of a constitutional state of emergency that was suitable for the pandemic did not automatically lead to its activation and a prominent role for the parliament therein: only in 10 of the 17 EU Member States that had such a provision was the state of emergency declared, and only in Estonia and initially in Slovakia did the parliament not adopt the declaration or approve its extension.¹⁸⁰ Similarly, although in most EU Member States that decided to deal with the crisis not through a state of emergency but via statutory regimes, the legal framework did not require the parliament to declare or approve this regime. However, parliaments were not fully bypassed as most of the time these regimes were based on statutes previously adopted by parliaments.¹⁸¹

In their comparative analysis, Deveaux and his colleagues argued that parliaments managed to adapt best to the emergency and proved more resilient in terms of their oversight and law-making functions when they operated under 'a solid and foreseeable legal framework comprised of a constitution and parliamentary rules of procedure that guarantee the rights of the opposition and minority MPs, while bringing operational clarity to the parliamentary process'.¹⁸² In Finland, the Parliament's Constitutional Law Committee exercises ex-ante control of the constitutionality of bills

¹⁷³ Engler, S. et al. (2021), p. 1092.

¹⁷⁴ Engler, S. et al. (2020), [Democracy Barometer, Version 7](#), Zentrum für Demokratie, University of Zurich.

¹⁷⁵ Siefken, S. T. et al. (2022). This data collection included national legislatures from 11 countries that are also covered by the literature review: Croatia, Czechia, Finland, France, Germany, Hungary, Italy, Slovenia, Spain, the UK and the US.

¹⁷⁶ Idem, p. 893.

¹⁷⁷ Díaz Crego, M. and Kotanidis, S. (2020a), p. 30; Griglio (2020a); Pedersen, H. H. and Borghetto, E. (2021).

¹⁷⁸ Griglio (2020a), p. 58.

¹⁷⁹ Formally the Constitution does not provide for a 'state of emergency' and the term used in the article 32.4 is 'state of crisis'. See: Bentzen, N. et al. (2020), [States of emergency in response to the coronavirus crisis: Situation in certain Member States III](#), EPRS, European Parliament, p. 6.

¹⁸⁰ Díaz Crego, M. and Kotanidis, S. (2020a).

¹⁸¹ Idem, p. 40.

¹⁸² Deveaux, K., Švecová, N. and Baker, T. (2021), [Parliaments responding to a pandemic: Lessons Learned for Emergency Planning](#). Report from the House Democracy Partnership and The Swiss Agency for Development and Cooperation, p. 11.

before they enter into force – a role exercised in other Member States by constitutional courts, but only upon request by various significant political actors or the Ombudsman.¹⁸³ In March 2021 this committee declared a Government bill which would have extensively restrained freedom of movement to be unconstitutional.¹⁸⁴ The Committee members considered that the legitimate aim of the bill could have been achieved through other means and that exceptions to the bill were poorly defined.¹⁸⁵ As a result, the Finnish Government withdrew the proposal.

Incongruent bicameralism, i.e. the existence of an upper parliamentary chamber elected in a different way to lower chamber,¹⁸⁶ has also proved useful for the oversight of COVID-19 governmental measures in several of the selected countries. In Austria, the Federal Council (Bundesrat) used its suspensive veto several times, when it 'feared infringements of fundamental rights and a reduction of parliamentary scrutiny due to the hasty legislative process'.¹⁸⁷

The government coalition of the Austrian People's Party and The Greens did not have a majority in the Federal Council, which was dominated by the opposition parties, the Social Democratic Party (SPÖ) and Freedom Party (FPÖ). The delay provided by the suspensive veto of the Federal Council allowed for corrections to the original legislation. This is the case for the suspensive veto on the amendments introduced by the lower chamber in late April 2020 to the Epidemic Disease Act that would have imposed further limitations on public gatherings, potentially including discrimination against citizens who had not installed tracking applications on their mobile phone.¹⁸⁸ Similarly the threat of a suspensive veto in the Federal Council led the Government to abandon a legislative proposal in January 2021.¹⁸⁹

Both the Czech Senate and the Polish Senate are elected using different electoral systems than their respective lower chambers and were controlled by opposition parties at the start of the pandemic. According to Guasti and Bustikova, both upper chambers played the role of effective constraints against attempts by the governments to instrumentalise the pandemic.¹⁹⁰ In Poland, following a procedural obstruction in the Senate, the government agreed to abandon its idea of hastily organising the presidential elections via postal ballot despite the restrictions and the impossibility of opposition candidates campaigning, and decided to postpone the presidential elections from May to late June 2020.¹⁹¹

While incongruent bicameralism is often associated with federalism,¹⁹² comparative analyses of federal regimes' responses to the COVID-19 pandemic indicate a large variation in the extent to which federal legislatures were marginalised or proved resilient in their scrutiny and oversight

¹⁸³ Finland, like a minority of other EU Member States (e.g. Greece, Denmark or Sweden), does not have a Constitutional Court.

¹⁸⁴ Niemikari, R. and Raunio, T. (2022), p. 8.

¹⁸⁵ Dahlberg, M. (2021), 'Finland-ex ante constitutionality review of laws relating to the COVID-19 pandemic', *Public Law*, vol. 4, pp. 819-822.

¹⁸⁶ Incongruence refers to whether the two chambers are elected in the same manner or not. A separate analytical dimension is whether the two chambers are symmetrical in their powers, which leads to four different types of bicameralism: congruent symmetrical, congruent asymmetrical, incongruent symmetrical and incongruent asymmetrical. See: Lijphart, A. (1999), *Patterns of democracy: Government forms and performance in thirty-six countries*, Yale University Press.

¹⁸⁷ Kössler, K. (2021), 'Managing the Covid-19 Pandemic in Austria: From national unity to a de facto unitary state?', in Steytler, N. (ed.), *Comparative Federalism and Covid-19: Combating the Pandemic*, Routledge, p. 77.

¹⁸⁸ Butković, H. (2021), 'The Impacts of Executive Responses on Democracy During the Coronavirus Crisis in Croatia, Slovenia and Austria', *Czech Journal of International Relations*, vol. 56(2), p. 23.

¹⁸⁹ Maurer, A. (2022), p. 170.

¹⁹⁰ Guasti, P. and Bustikova, L. (2022), p. 10.

¹⁹¹ Domaradzki, S. (2020), p. 87.

¹⁹² Lijphart, A. (1999).

functions.¹⁹³ This heterogeneity of outcomes was connected to differences between federal states in how public health competencies are divided between units but also to pre-existing authoritarian tendencies.¹⁹⁴ Nevertheless, such a variation suggests federalism itself is not a key explanatory factor.

3.3. The structure of the executive

Other analyses focusing specifically on the formal weakening of parliaments' role in law-making in the first year of the pandemic have shown that this development is better explained by the structure of the executive (i.e. unified or single party cabinets vs. coalition cabinets) than by the (populist) ideological orientation of the executive.¹⁹⁵ In their study, Bolleyer and Salát compared the legal strategies of executives in France, Germany, Italy, Hungary, Switzerland and the UK for dealing with the COVID-19 pandemic from January 2020 to spring 2021 in order to understand the extent to which these executives used the pandemic to enhance their power and weaken the formal constraining role of parliaments and their law-making capacity.¹⁹⁶

Their main theoretical argument is that 'governments controlled by a single party that are ideologically unified create a situation in which a small number of decision-makers can settle quickly on both a narrow and strongly held consensus on how to define and address an emergency, thereby discouraging internal dissent'.¹⁹⁷ Because of the absence of intra-coalition ideological heterogeneity and of the checks and balances that are usually embedded in coalition governance,¹⁹⁸ unified executives would not accept opposition to their chosen path to fight the pandemic and would be willing to curtail the formal role of the parliament in order to enforce their solution.

The authors illustrate how the three unified executives in their sample (France, Hungary and the UK) opted strategically for legal frameworks for their COVID-19 crisis solutions that magnified their room for autonomous action,¹⁹⁹ albeit to varying degrees. In practice, this meant reforms reducing parliamentary constraints on executive action.²⁰⁰ Moreover, these executives 'amended legislative frameworks to enhance the regulatory scope for executive rule making, while – at best – maintaining parliaments' power to reject executive measures'.²⁰¹ Such developments did not happen, for example, in Italy or Switzerland, which were governed by ideologically heterogeneous coalitions. Similar tendencies, although less pronounced than in the case of the unified executives, were observed in Germany, which was then governed by the least internally diverse coalition compared to those in Italy and Switzerland at the time, but in Germany these 'reforms engaged in power-concentration through centralisation rather than dismantling parliamentary control'.²⁰²

¹⁹³ Steytler, N. (2021), 'Federalism under pressure. Federal "health" factors and "co-morbidities"', in Steytler, N. (ed.), *Comparative Federalism and Covid-19: Combating the Pandemic*, Routledge, pp. 396-422; Chattopadhyay, R. and Knüpling, F. (2021), Comparative summary, in Chattopadhyay, R. et al. (eds.), *Federalism and the Response to COVID-19*, Routledge, pp. 277-307.

¹⁹⁴ Steytler, N. (2021), p. 399.

¹⁹⁵ Other studies have also noted that populist radical right parties in power have taken different strategies to tackle the COVID-19 pandemic and further power grab has happened only in a minority of cases. See: Kaltwasser, C. R. and Taggart, P. (2022), 'The Populist Radical Right and the Pandemic', *Government and Opposition*, first published online 16 November 2022.

¹⁹⁶ Bolleyer, N. and Salát, O. (2021), '[Parliaments in times of crisis: COVID-19, populism and executive dominance](#)', *West European Politics*, vol. 44(5-6), pp. 1103-1128.

¹⁹⁷ Idem, p. 1106.

¹⁹⁸ Chiru, M. and De Winter, L. (2023), '[The allocation of committee chairs and the oversight of coalition cabinets in Belgium](#)', *Government and Opposition*, vol. 58(1), pp. 129-144.

¹⁹⁹ Bolleyer, N. and Salát, O. (2021), p. 1121.

²⁰⁰ Idem, p. 1113.

²⁰¹ Idem, p. 1121.

²⁰² Ibidem.

The positive role, in this context, of coalition cabinets can be compared to that of incongruent bicameralism discussed above, as both instances conform to the expectations of scholars adopting veto-player theory.²⁰³ Coalition cabinets can be considered a classic case of partisan veto players, while second chambers elected differently than first chambers are institutional veto players²⁰⁴ which often act in a competitive manner,²⁰⁵ increasing the likelihood of deadlock. As predicted by the veto-player theory, when the veto players are numerous, internally cohesive and have distinct policy preferences the likelihood of the status quo changing decreases significantly. In the context of the COVID-19 pandemic there seems to be evidence of veto players located either in the parliament (e.g. incongruent bicameralism), government (e.g. heterogeneous coalition cabinets) or at the level of constitutional courts,²⁰⁶ which facilitated the resilience of parliamentary oversight of government responses to the pandemic or limited the possibility of executive aggrandisement at the expense of the legislature. While such a unifying approach derived from veto-player theory was not explicitly adopted by the studies covered here, there are other examples of such intuitions being helpful in explaining outcomes of pandemic politics, such as how stringent restrictions were during the first wave lockdowns.²⁰⁷

Other authors have maintained that, on the contrary, coalition cabinets contributed to the sidelining of parliaments. Drawing on the case of Spain, which had its first coalition cabinet since the transition to democracy managing the pandemic crisis, Griglio²⁰⁸ argues that intra-coalition divergence in preferences might explain the Sanchez I cabinet's over-reliance on decree-laws from March to August 2020, beyond the unprecedented nature of the COVID-19 crisis. Her counterfactual argument is that the cabinet would not have needed to marginalise the parliament to the extent it did if it had been supported by a unified, single party parliamentary majority.

3.4. Pre-pandemic strength of parliaments and government-opposition dynamics

Another strand of scholarship has examined the extent to which the resilience of parliamentary oversight during the pandemic was shaped by the pre-pandemic strength of the parliament vis-à-vis

²⁰³ Tsebelis, G. (1995), 'Decision making in political systems: Veto players in presidentialism, parliamentarism, multicameralism and multipartyism', *British Journal of Political Science*, vol. 25(3), pp. 289-325.

²⁰⁴ Institutional veto players are usually mentioned in or created by the Constitution, whereas partisan veto players are actors who have the power to block a change in the status quo, but their identity depends on how the political game is played (e.g. a coalition of parties in parliament or the composition of a governing coalition – which both depend on election results).

²⁰⁵ The scholarship has also distinguished between collective and competitive veto players, with the latter occurring 'when different political actors operate through separate institutions with mutual veto powers, such as federalism, strong bicameralism, and presidential government'. On the contrary, collective veto players 'emerge from institutions where the different political actors operate in the same body' and they are believed to generate compromise, negotiation, and goal-oriented policymaking whereas competitive ones are associated policy immobilism and deadlock. For more details see: Birchfield, V. and Crepaz, M. M. (1998), '[The impact of constitutional structures and collective and competitive veto points on income inequality in industrialized democracies](#)', *European Journal of Political Research*, vol. 34(2), pp. 181-182.

²⁰⁶ Anghel, V. and Jones, E. (2022).

²⁰⁷ A study analysing the factors that explain the stringency of lockdown restrictions in the first wave of the pandemic in 35 advanced industrial democracies (EU and OECD members) found out that political systems with numerous veto players that were also ideologically distant in their positions, witnessed less stringent second lockdowns, even after accounting for the magnitude of COVID-19 infections, state capacity, state of emergency and other potential confounders. For more details see: Jahn, D. (2022), '[Politics and corona lockdown regulations in 35 highly advanced democracies: The first wave](#)', *International Political Science Review*, first published online 22 April 2022.

²⁰⁸ Griglio, E. (2020b).

the executive and by government-opposition dynamics.²⁰⁹ Both factors appeared to have mattered greatly and there also seems to be an interaction between them.

3.4.1. Executive-legislature relations and pandemic continuities

The strength of a parliament in relation to the executive can be thought to depend mainly on two factors: the ability of parliamentarians to control policy, and the ability of the parliamentary opposition to present alternatives to the governmental programmes.²¹⁰ The policy control power is itself dependent on the strength of the parliamentary committee system (e.g. its ability to gather information and amend legislation) and the extent to which the executive dominates the legislative agenda (e.g. speedy procedures for governmental bills, restriction of private member bills etc.). The opposition's capacity to present alternatives depends, in turn, on the institutionalisation of opportunities to discuss in detail its own policy plans and different choices (e.g. through question time or regular plenary debates in which spontaneous questions are accepted, etc.). The existence of question time, in which prime ministers or federal chancellors respond directly to questions from opposition leaders and also from backbenchers, has provided an additional opportunity for scrutinising executive measures taken during the pandemic. For instance, the comparative analysis of Siefken et al. concluded that 'Question time, where available, was also used intensively to deal with coronavirus issues'.²¹¹ Indeed, question time was a major oversight mechanism during the pandemic not only in the UK Parliament but also in Canada,²¹² Germany,²¹³ the Netherlands²¹⁴ and Finland.²¹⁵ Sessions of oral questions and interpellations with members of the government were also organised in Finland and Spain.²¹⁶

Parliaments which were already in a weak position vis-à-vis the executives were marginalised to a larger extent, as shown by the cases of Switzerland, Hungary and France. In Switzerland, the Federal Assembly is a semi-professional legislature²¹⁷ that meets for only 12 weeks a year for four ordinary sessions. To be noted, however, committee work continues throughout the year. During the first year of the pandemic, the Swiss Parliament accepted a merely consultative role with respect to the emergency measures of the Federal Council and did not adopt a legal framework for remote plenary meetings while the committees met online but based on ad hoc regulations, further limiting the possibility of scrutinising the executive.²¹⁸ Even the decision to suspend its plenary and committee meetings at the height of the first pandemic wave was taken by the administrative and not the political leadership of the Parliament.²¹⁹

²⁰⁹ Pedersen, H. H. and Borghetto, E. (2021); Siefken, S. T. et al. (2022); Louwse, T. et al. (2021), 'Opposition in times of crisis: COVID-19 in parliamentary debates', *West European Politics*, vol. 44(5-6), pp. 1025-1051.

²¹⁰ Garritzmann, J. L. (2017), 'How much power do oppositions have? Comparing the opportunity structures of parliamentary oppositions in 21 democracies', *The Journal of Legislative Studies*, vol. 23(1), pp. 1-30.

²¹¹ Siefken, S. T. et al. (2022), p. 890.

²¹² C-Span (2020), [Canadian Prime Minister Question Time on Coronavirus](#), 10 March 2020.

²¹³ German Federal Government (2021), [Federal Chancellor: government question time in the Bundestag: The pandemic as a historical turning point](#), 23 June 2021.

²¹⁴ Massart, T. et al. (2021), '[The Resilience of Democracy in the Midst of the COVID-19 Pandemic](#)', *Politics of the Low Countries*, vol. 3(2), p. 123.

²¹⁵ Akirav, O. et al. (2021), p. 19.

²¹⁶ Ibidem; Utrilla, D., García-Muñoz, M. and Pareja Sánchez, T. (2021), '[Spain: Legal Response to Covid-19](#)' in King, J. and Ferraz, O. L.M. et al. (eds), *The Oxford Compendium of National Legal Responses to Covid-19*, Oxford University Press.

²¹⁷ This means that most members of parliament are not professional politicians and exercise another professional activity.

²¹⁸ Ammann, O. and Uhlmann, F. (2022).

²¹⁹ Uhlmann, F. and Scheifele, E. (2020), 'Legislative Response to Coronavirus (Switzerland)', *The Theory and Practice of Legislation*, vol. 8(1-2), pp. 115-130.

An analysis of the Hungarian Parliament's formal powers as well as its informal practices regarding law-making and scrutiny powers between 2006 and 2020 concluded that the legislature has been significantly disempowered since 2010 by the ruling party, Fidesz.²²⁰ Thus, the marginalisation of the legislature has been unfolding since well before the COVID-19 pandemic through a variety of means, including 'formal, institutional and legal reforms affecting parliamentary functions', 'intensive use of emergency legislation or private members' bills [by the government] to accelerate the legislative process' or reliance on 'omnibus legislation and disciplinary measures such as financial fines for [opposition] MPs who disrupt the work of parliament'.²²¹ Given this background, it is unsurprising that the National Assembly relinquished its scrutiny over emergency decrees during the COVID-19 pandemic and acquiesced to the most extensive delegation of power to the executive of all the legislatures analysed.

As part of a 'semi-presidential regime', the French Parliament is less powerful than many others in Western Europe, being dominated by the executive when it comes to agenda control and policy making²²² and regarding the capacity of the opposition to present alternatives to governmental policies.²²³ These features contributed to the limited success of the Parliament in its oversight of the Government during the COVID-19 pandemic and its inability to oppose a multiplication of emergency regimes that that did not appear to be necessary for managing the health crisis, but were rather motivated by political rationales.²²⁴ Beyond these three cases, Griglio has also argued that there is continuity both in the magnitude and the means used in the Italian executive's bypassing of parliamentary oversight during the first year of the pandemic, and that the developments represented only an 'acceleration and intensification of trends that were already under way'.²²⁵

3.4.2. Government-opposition dynamics

It can be argued that the assertiveness of the parliaments vis-à-vis the executives' management of the pandemic also depended on the strategy adopted by the opposition parties, i.e. whether these parties chose to politicise the pandemic and how cooperative their parliamentary behaviour was.²²⁶

The differences in the levels of politicisation varied even in countries with generally similar institutional structures and parliament strength, such as the Nordic countries. A study of Denmark, Iceland, Finland, Norway and Sweden has shown that after an initial period of 'rally around the flag' cooperative behaviour, in three of the countries (Sweden, Denmark and Finland) right-wing opposition parties started contesting the usage of strict regulatory instruments, sometimes even from within the governing coalition.²²⁷

²²⁰ Ilonszki, G. and Vajda, A. (2021), 'How far can populist governments go? The impact of the populist government on the Hungarian Parliament', *Parliamentary Affairs*, vol. 74(4), pp. 770-785.

²²¹ Idem, p. 772.

²²² Costa, O. and Kerrouche, E. (2009), 'MPs under the Fifth Republic: Professionalisation within a Weak Institution', *West European Politics*, vol. 32(2), pp. 327-344; Poyet, C. (2021), 'Personalised Representation in a Weak and Party-Controlled Legislature: Policy Responsiveness in the French Parliament', *Political Studies Review*, vol. 19(3), pp. 393-409.

²²³ Garritzmann, J. L. (2017).

²²⁴ Platon, S. (2020); Brunet, S. (2022).

²²⁵ Griglio, E. (2020b), p. 410.

²²⁶ Louwerse et al. (2021); Christensen, T. et al. (2022), '[The Nordic governments' responses to the Covid-19 pandemic: A comparative study of variation in governance arrangements and regulatory instruments](#)', *Regulation & Governance*, first published online 2 October 2022.

²²⁷ Christensen, T. et al. (2022), p. 16.

The Swedish case

Sweden chose a different approach to most other countries examined in this literature review to contain the spread of the COVID-19. The Swedish constitutional framework and the autonomous position of agencies played a key role in the country's response to the COVID-19 pandemic. Consequently, the corresponding lessons learned following the crisis do not focus on the impact of executive aggrandisement and rule of law issues but rather on the role played by parliament in the management of the crisis and whether it should have advocated for stricter measures to tackle the COVID-19 health threats. The Swedish constitutional and legal framework do not allow the introduction of a state of emergency due to a pandemic. Parliament played a key role in the country's response to COVID-19 by amending existing legislation and by introducing new laws. Thus, the danger of concentration and abuse of power by the executive following state of emergency or statutory regime declarations were not present in Sweden. While the formal responsibility for the development of policy responses to COVID-19 lay with the Swedish government, any change to the legislation had to be adopted by the parliament. However, in addition to legislation, Sweden also used executive rule making and soft law instruments. The Swedish response to COVID-19 relied to a larger extent than in many other European countries on the individual responsibility for the collective good.

Sources: Mattsson, T. et al. (2021); Saunes, I. S. et al. (2022).

In Sweden, in the first stage of the pandemic 'the parliamentary opposition kept a rather low profile and did not challenge the government's decisions' but this changed in 2021 when it started asking for parliamentary hearings with the Minister of Social Welfare and other cabinet members.²²⁸ The particularities of the Swedish case are discussed in the adjacent text box.

Similarly, a study of parliamentary debates in Germany, Israel, the Netherlands and the United Kingdom during the first half of 2020 emphasised a 'rally around the flag' effect early on, which was then replaced by fierce contestation, especially from opposition parties lacking governmental experience.²²⁹ The substance of these parties' criticism and questioning of governmental action in the parliamentary debates unsurprisingly followed their ideological priorities: 'social-democratic parties highlighted social and ethnic inequality, the SNP [Scottish National Party] emphasised regional autonomy and the Green parties stressed the importance of ecological reform in the design of economic recovery programs addressing the crisis'.²³⁰

A case study of parliamentary opposition behaviour during the pandemic in Belgium, focusing on voting behaviour and plenary debates in the Federal Parliament, found a similar pattern of rallying around the flag

and providing governmental support for mainstream opposition parties, while challenger opposition parties from the radical right and the radical left maintained a critical, non-supportive strategy.²³¹ The authors explain these differing strategies by the office and policy-seeking motivations of the mainstream opposition parties, which in some cases were in government at the regional level, but also aspired to be part of the new federal cabinet. Neither of these constraints or opportunities applied to the challenger parties, the Flemish Interest and the Workers' Party, which concentrated their parliamentary efforts on appealing to voters dissatisfied with the government's handling of the COVID-19 pandemic.²³²

Two other salient factors related to government-opposition dynamics that mattered for parliaments' willingness to control their executives during the pandemic are the presence or absence of a parliamentary majority for the governments overseeing the pandemic, and whether or

²²⁸ Idem, p. 13.

²²⁹ Louwerse et al. (2021).

²³⁰ Idem, pp. 1046-1047.

²³¹ Vande Walle, B., Wolfs, W. and Van Hecke, S. (2021), 'Opposition in Times of COVID-19—To Support or Not to Support?', *Politics of the Low Countries*, vol. 3(2), p. 152.

²³² Idem, p. 153.

not the minority cabinets had entered pacts with opposition parties in the parliament – what is usually known as 'contract parliamentarism'.²³³ The comparative analysis of Akirav and her colleagues concluded that plenary debates and special committees were used more intensely as oversight mechanisms against the minority cabinets in their sample (Croatia, Slovenia and Spain) than in parliaments that faced majority coalition cabinets.²³⁴

Moreover, non-supported minority cabinets, i.e. those which did not have an agreement with an opposition party for support on crucial votes,²³⁵ saw key pandemic-related legislation or emergency measures amended in the legislature. This is the case for the Second Orban cabinet in Romania,²³⁶ a minority coalition cabinet which remained in place from the start of the pandemic until the December 2020 parliamentary elections.

²³³ These are pacts between the minority cabinet and one or more opposition parties that agree to support the government on no confidence votes and other salient parliamentary votes, usually in exchange for policy concessions.

²³⁴ Akirav, O. et al. (2021), p. 37.

²³⁵ Bale, T. and Bergman, T. (2006), 'Captives No Longer, but Servants Still? Contract Parliamentarism and the New Minority Governance in Sweden and New Zealand', *Government and Opposition*, vol. 41(3), pp. 422-449.

²³⁶ See section 2.1 above but also: Iancu, B. et al. (2021).

4. Parliaments' use of sunset and review clauses in COVID-19-related legislation

This section maps the selected legislatures' use of sunset and review clauses in pandemic-related legislation. A sunset clause contains a date on which a law expires unless extended by the parliament, whereas a review clause specifies a date on which the executive would assess how the adopted law or specific provisions in it are working. Inherent to review clauses are reporting duties, requiring the executive to submit a report to parliament. Both help ensure that the exceptional measures taken to fight the pandemic remain temporary and proportional to the challenges the authorities face as the situation evolves.

The study was able to identify 13 countries (Austria, Canada, Denmark, Finland, France, Germany, Ireland, Luxembourg, the Netherlands, Sweden, Switzerland, the UK and the US) in which the legislation adopted or amended by the parliaments to respond to the COVID-19 pandemic included sunset clauses. In three of these cases, Austria, France and Ireland, there is evidence that sunset clauses were added at the request of the parliament, but this could also have been true for some of the other instances given the absence of detailed information on initial governmental drafts and informal exchanges between the cabinet and the legislature. Beyond this, all EU Member States that declared a state of emergency in response to the COVID-19 pandemic included a sunset clause in the declaration, with the exception of Hungary in the first wave of the pandemic. Moreover, statutory regime declarations also had sunset clauses in eight countries: Bulgaria, France, Germany, Hungary, Italy, Latvia, Portugal and Romania (see details below). The chapter also reviews those cases in which sunset clauses were introduced in newly created statutory regimes, like that of France.²³⁷ In contrast, the review indicates that only in the UK and Denmark were review clauses introduced in pandemic-related legislation, and that happened at the request of parliamentary actors.

According to international instruments that regulate the limitation of fundamental rights during times of crisis, such as the United Nations' 'International Covenant on Civil and Political Rights' or the 'Siracusa Principles on the Limitation and Derogation Provisions', sunset or review clauses are necessary safeguards to ensure the 'return to ordinary laws as soon as the emergency situation is over'.²³⁸ Similarly, a report of the Venice Commission of the Council of Europe, adopted in June 2020 and reflecting on the states of emergency declared in response to the COVID-19 pandemic, argued that the 'power of the executive to issue legislative acts in times of emergency should be limited both in terms of content and of time: such acts should only relate to issues related to the exceptional situation and they should not remain in force beyond the state of emergency (unless confirmed and prolonged by the legislative). Appropriate 'sunset clauses' should also include clear time limits on the duration of these exceptional measures'.²³⁹

Beyond the measures constraining citizens' fundamental rights, the review and renewal clauses provided 'an extra layer of parliamentary oversight', allowing legislatures to assess whether other measures taken at the peak of pandemic waves were still beneficial and appropriate, or on the contrary whether they needed to be modified or abolished.²⁴⁰ One salient argument for analysing

²³⁷ An important distinction needs to be made between the creation of a statutory emergency regime that may potentially apply not only to COVID-19 pandemic, but to other emergencies, and that may be introduced in the legal framework of a country as a long-lasting measure, and the actual application of that regime, that in principle should be strictly limited and linked to the existence of an emergency situation (hence, the emphasis on sunset clauses in statutory regime declarations).

²³⁸ Maciel, G. G. (2021), p. 7.

²³⁹ Venice Commission (2020d), [Report - Respect for democracy, human rights and the rule of law during states of emergency: reflections](#), p. 14.

²⁴⁰ Díaz Crego, M. and Kotanidis, S. (2020a), p. 45.

sunset and review provisions in COVID-19 legislation together is that 'sunset clauses can only provide effective safeguards for legal certainty and democracy if they are well drafted and accompanied by substantive review processes'.²⁴¹

Some parliaments in the sample, such as the Danish parliament, made use of sunset clauses for a number of COVID-19-related bills to ensure that the measures lapse automatically unless renewed by the parliament.²⁴² The section provides insights into the factors that explain the ability of certain parliaments to convince executives to accept sunset clauses in COVID-19 legislation. Moreover, the section summarises the variation in the types of sunset clauses used and the extent to which they followed best practices highlighted by experts.²⁴³

4.1. Sunset clauses in emergency declarations and in COVID-19 legislation

While this section concentrates on the sunset and review clauses introduced by parliaments in newly adopted legislation aimed at fighting the COVID-19 pandemic, it is worth acknowledging that there are also sunset clauses in existing emergency legislation that was used during the pandemic in several of the countries covered here, or in their declarations of state of emergency or of statutory regimes.

4.1.1. Sunset clauses in state of emergency declarations

The state of emergency declarations adopted in the first wave of the pandemic had a sunset clause in all EU Member States concerned but Hungary (see Section 2.1).²⁴⁴

In Finland, the first declaration of the state of emergency²⁴⁵ issued jointly by the Finnish Government and the President on 16 March 2020 did not refer at all to the duration of the emergency situation,²⁴⁶ while the second declaration, issued on 1 March 2021 stated that 'the government decision declaring the state of emergency will enter into force immediately and will remain in force until it is repealed'.²⁴⁷ Nevertheless, the Emergency Powers Act that enables the Finnish executive to issue emergency decrees, which are then reviewed and can be rejected by Parliament, also requires that these decrees are temporary (i.e. remain in force for a maximum of six months) and 'lapse automatically if not renewed by the Cabinet and reviewed anew by Parliament'.²⁴⁸ The other route for emergency legislation to be introduced is via ordinary legislative procedure, under Section 23 of the Finnish Constitution, which regulates exceptions to fundamental rights during situations of emergency. The government used this provision to pass a bill through Parliament amending the 'Act on Accommodation and Food Service Activities' on 30 March 2020 that closed the premises of all restaurants, bars and other catering businesses and that had 31 May 2020 as a sunset clause date.²⁴⁹ During the second state of emergency the same measure was taken, although with a more

²⁴¹ Molloy, S., Mousmouti, M. and De Vrieze, F. (2022), [Sunset Clauses and Post-Legislative Scrutiny: Bridging the Gap between Potential and Reality](#), Westminster Foundation for Democracy, p. 6.

²⁴² Pedersen, H. H. and Borghetto, E. (2021).

²⁴³ Molloy, S., Mousmouti, M. and De Vrieze (2022).

²⁴⁴ Díaz Crego, M. and Kotanidis, S. (2020b); Utrilla, D., García-Muñoz, M. and Pareja Sánchez, T. (2021).

²⁴⁵ Finnish Government (2020), Government, in cooperation with the President of the Republic, declares a state of emergency in Finland over coronavirus outbreak, [press release](#), 16 March 2020.

²⁴⁶ It did refer to the temporary nature of any emergency decrees adopted under the Emergency Powers Act – on this see the next paragraph.

²⁴⁷ Finnish Government (2021), Finland declares a state of emergency, [press release](#), 1 March 2021.

²⁴⁸ Scheinin, M. (2020), [The COVID-19 Emergency in Finland: Best Practice and Problems](#), Verfblog, 16 April 2020.

²⁴⁹ Kotkas, T. et al. (2021), paragraph 92; Finlex (2020), [Act \(153/2020\) on a Temporary Amendment to the Act on Accommodation and Food Service Activities](#), s3a.

limited geographical scope. The amendment, adopted on 30 March 2021, was set to expire on 31 May 2021, but in practice the closure lasted only until 18 April 2021.²⁵⁰

4.1.2. Sunset clauses in statutory regime declarations and COVID-19 laws

Statutory regime declarations had a sunset clause in Bulgaria²⁵¹, France²⁵², Germany²⁵³, Hungary²⁵⁴, Italy²⁵⁵, Latvia²⁵⁶, Portugal²⁵⁷ and Romania²⁵⁸. In Lithuania, while the statutory regime (the 'state of extreme situation') was declared without specifying its duration, the quarantine imposed by the authorities had a three-month sunset clause.²⁵⁹ Similarly, in Croatia the 11 March 2020 statutory regime declaration had no sunset clause, but the protection measures imposed eight days later by the Civil Protection Authority had a sunset clause of 30 days.²⁶⁰ The same situation – no sunset clause for the statutory regime declaration but containment measures limited temporarily – was also seen in Malta²⁶¹, Poland²⁶² and Slovakia.²⁶³

In Slovenia, the declaration of the statutory regime did not include a termination date²⁶⁴, but the governmental decrees issued to introduce a temporary ban on the supply and sale of goods and services²⁶⁵ and on border control measures²⁶⁶ included clauses specifying that the government would evaluate the validity of the measures every seven days and decide whether to change or abolish them.

The rapporteur of the French Senate committee that reviewed the bill which created the state of health emergency, Law number 2020-290 of 23 March 2020, introduced a sunset clause of 1 April 2021²⁶⁷ on the application of the measures from the Code of Public Health which enable the

²⁵⁰ Ibidem.

²⁵¹ Venice Commission (2020b).

²⁵² Binder, K. et al. (2020).

²⁵³ Ibidem.

²⁵⁴ The state of health crisis introduced after the PM terminated the state of danger on 18 June 2020, had a six-month sunset clause, see: Hungarian Helsinki Committee (2022a).

²⁵⁵ Binder, K. et al. (2020).

²⁵⁶ Atanassov, N. et al. (2020).

²⁵⁷ Diário da República (2020), [Declaração de situação de alerta em todo o território nacional](#), Despacho n. 3298-B/2020, Vol. 52, suppl. 1, series II, pp. 3 – 4, 13 March 2020.

²⁵⁸ Iancu, B. et al. (2021).

²⁵⁹ Venice Commission (2020d), [Observatory on emergency situation – Lithuania](#).

²⁶⁰ Bentzen, N. et al. (2020).

²⁶¹ Government Gazette of Malta (2020), [Declaration of a Public Health Emergency Order](#), No. 20, 380; Atanassov, N. et al. (2020).

²⁶² Binder, K. et al. (2020).

²⁶³ Government of the Slovak Republic (2020), [Resolution No 111/2020 on extraordinary situations](#), 11 March 2020; Alexandre, Z. et al. (2020), pp. 9-10.

²⁶⁴ Official Gazette of the Republic of Slovenia (2020a), [Order on the declaration of the COVID-19 epidemic in the territory of the Republic of Slovenia](#), no. 19/20 and 68/20.

²⁶⁵ Official Gazette of the Republic of Slovenia (2020b), [Ordinance on the provisional prohibition on the offering and sale of goods and services to consumers in the Republic of Slovenia](#), no. 25/20, 29/20, 32/20, 37/20, 42/20, 44/20, 47/20, 53/20, 58/20, 59/20 and 67/20.

²⁶⁶ Official Gazette of the Republic of Slovenia (2020c), [Ordinance amending the Ordinance on imposing and implementing measures related to prevent the spread of epidemic COVID-19 at the border crossing points at the external border and inspection posts within national borders of the Republic of Slovenia](#), no. 64/20

²⁶⁷ French Senate (2020), [Rapport fait au nom de la commission de lois constitutionnelle, de législation, du suffrage universel, du Règlement et d'administration générale par Philippe Bas](#), no. 381. 19 March 2020, p. 25; Griglio (2020b), p. 407.

authorities to place people in quarantine and isolation. This was extended twice by the Parliament, before being repealed on 30 July 2022.²⁶⁸

In Germany, the Infectious Diseases Protection Act (IDPA), the main federal statutory regime which has provided a framework for the efforts against the pandemic, included a sunset clause.²⁶⁹ It is important to mention for the German case that the amendments to IDPA adopted after the outbreak of COVID-19 that empowered the Federal Health Minister 'to provide exemptions from IDPA rules and delegated legislation passed on this basis at their discretion without the consent of the Bundesrat'²⁷⁰ were also subject to a sunset clause. Thus, the measures and delegated legislation adopted under this framework were supposed to expire when the pandemic was 'declared over, or at the latest on 21 March 2021'.²⁷¹ Eventually, the statutory emergency framework ended on 25 November 2021, shortly before the new German government headed by Olaf Scholz took office.²⁷²

Similarly, some of the statutory acts that were used to take emergency measures also included sunset clauses, as was the case of the Swiss Epidemics Act²⁷³ and the Public Health Service Act in the US. Under the latter, if the HHS Secretary determines that a public health emergency exists, they receive emergency powers which are delegated in advance by Congress and do not require the legislature's approval.²⁷⁴ The delegation of powers expires after 90 days, but the public health emergency determination can be renewed unilaterally by the HHS Secretary. Congress is notified of the health emergency determination and any renewals but it cannot override either, except by repealing the Public Health Service Act, an action which the President can veto.²⁷⁵

In Sweden, a sunset clause was introduced when the Parliament amended the Communicable Diseases Act. This amendment, which was not used in the end, allowed the executive to impose restrictions on restaurants, bars, shopping malls and transportation to limit the spread of the virus, but only until the end of June 2020.²⁷⁶ Similarly, the COVID-19 Act adopted by the Parliament in January 2021 to enable the government to limit the opening hours or number of people allowed in gyms, shops and other businesses if needed, had a sunset clause.²⁷⁷ It was supposed to expire on 30 September 2021, but was extended several times²⁷⁸ and then repealed by the Parliament on 23 March 2022.²⁷⁹

The Netherlands is another country in the sample in which the legislature has introduced sunset clauses in COVID-19-related legislation.²⁸⁰ One example is the Temporary Act for digital meetings

²⁶⁸ Légifrance.fr (2022), [Loi n° 2020-290 du 23 mars 2020 d'urgence pour faire face à l'épidémie de covid-19](#).

²⁶⁹ Lazarus, L. (2020), 'Introduction', in *A Preliminary Human Rights Assessment of Legislative and Regulatory Responses to the COVID-19 Pandemic across 11 Jurisdictions*, Bonavero Report No. 3/2020, Bonavero Institute of Human Rights, pp 3-21.

²⁷⁰ Theil, S. (2020), 'Germany' in *A Preliminary Human Rights Assessment of Legislative and Regulatory Responses to the COVID-19 Pandemic across 11 Jurisdictions*, Bonavero Report No. 3/2020, Bonavero Institute of Human Rights, p. 38.

²⁷¹ Ibidem.

²⁷² Goldenberg, R. (2021), [Germany set to end COVID state of emergency](#), Deutsche Welle, 27 October 2021.

²⁷³ Freiburghaus, R., Mueller, S. and Vatter, A. (2021), 'Switzerland: Overnight centralization in one of the world's most federal countries' in Chattopadhyay, R. et al. (eds.), *Federalism and the Response to COVID-19*, Routledge, p. 220.

²⁷⁴ Wiley, L.F., Yearby, R. and Hammond, A. (2021).

²⁷⁵ Ibidem.

²⁷⁶ Saunes, I. S. et al. (2022), 'Nordic responses to Covid-19: Governance and policy measures in the early phases of the pandemic', *Health Policy*, vol. 126(5), p. 421.

²⁷⁷ Mattsson et al. (2021).

²⁷⁸ TheLocal.se (2021), [Sweden extends pandemic law for four more months](#), 22 September 2021.

²⁷⁹ Swedish Parliament (2022), [Upphävande av covid-19-lagen och lagen om tillfälliga smittskyddsåtgärder på serveringsställen](#).

²⁸⁰ OECD (2020c), p. 12

for local and regional government tiers which introduced a system of digital debate and decision-making for municipal and provincial councils.²⁸¹

In Canada, members of parliament have delegated to ministers the right to change the social benefits legislation without Parliament's approval, in exchange for automatic expiry of these ministerial orders after a year.²⁸² Moreover, '[many] of the regulations and orders, or primary legislation that have been adopted since the crisis began in early March [2020] contain sunset clauses.'²⁸³

In Austria, the bicameral federal Parliament adopted in one day, 15 March 2020, the COVID-19 Measures Act, which imposed limitations on travel, allowed for the closure of businesses and made mask wearing mandatory.²⁸⁴ The opposition succeeded in including a sunset clause: the Act was supposed to expire at the end of 2020.²⁸⁵ Subsequently, the COVID-19 Measures Act has been renewed several times, with the last extension being approved in Parliament in late April 2022; this would mean the Act will remain in force until June 2023. Another sunset clause was introduced when the Austrian Parliament adopted an amendment to the COVID-19 Measures Act and the Epidemic Act in September 2020. This amendment further empowered the cabinet to impose other restrictions, such as curfews and driving restrictions, to combat the pandemic. The sunset clause established that these measures would expire at the end of June 2021, but the cabinet could prolong them once, until the end of 2021.²⁸⁶ The cabinet did not use this option, but the Federal Parliament itself extended the validity of the Act.²⁸⁷

In Ireland, following advice from legal scholars and efforts by members of parliament, the Government agreed to introduce a sunset clause, setting an expiry date of 9 November 2020 for the Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020.²⁸⁸ This was extended several times by the Parliament²⁸⁹ until it was allowed to expire on 31 March 2022.²⁹⁰

In Luxembourg, after the lifting of the state of emergency, Law 7622²⁹¹ from 17 July 2020 merged and clarified two previous laws that introduced a series of prevention and protection measures against the COVID-19 pandemic²⁹² and had a sunset clause: it was set to expire on 30 September

²⁸¹ Van Kalken, L. and Stamhuis, E. (2021), 'Digital Equals Public: Assembly Meetings Under a Lockdown Regime', *European Journal of Law Reform*, vol. 22(4), p. 384.

²⁸² OECD (2020a), [Legislative budget oversight of emergency responses: Experiences during the coronavirus \(COVID 19\) pandemic](#). (OECD Policy Responses to Coronavirus (COVID-19)), p. 13.

²⁸³ OECD (2020c), p. 11.

²⁸⁴ Kössler, K. (2021), p. 75.

²⁸⁵ *Idem*, p. 77.

²⁸⁶ Gstöttner, S. and Lachmayer, K. (2020), [No Benefit of Hindsight: Austria's Ongoing Legal Struggle in the Fight Against the Pandemic](#), *VerfBlog*, 3 December 2020.

²⁸⁷ Stöger, K. (2021).

²⁸⁸ Mollooy, S., Mousmouti, M. and De Vrieze (2022), p. 11.

²⁸⁹ Irish Senate (2021), [Health \(Preservation and Protection and other Emergency Measures in the Public Interest\) Act 2020: Motion](#), debate, 3 Nov 2021, Vol. 279 No. 11. Two other COVID-19 related acts had sunset clauses which were extended following the same debate: the Health (Amendment) Act 2020 and the Criminal Justice (Enforcement (Covid-19) Act 2020.

²⁹⁰ RTÉ (2022), [12,508 new infections, Covid legislation to expire tomorrow](#), Ireland's National Public Service Media, 30 March 2022.

²⁹¹ Luxembourgish Chamber of Deputies (2020a), [Loi du 17 juillet 2020 sur les mesures de lutte contre la pandémie Covid-19](#), Journal officiel du Grand-Duché de Luxembourg.

²⁹² Stoppioni, E. (2021), [The Remains of the Days of Crisis: The Second Wave of Legislative COVID-19 Measures in Luxembourg](#), *VerfBlog*, 3 March 2021.

2020. The law has been amended on several occasions by the Parliament²⁹³, most recently by Law 8077 on 22 October 2022, and the sunset clause has been extended until 31 March 2023.²⁹⁴

A notable but different case is that of the Latvian Parliament, which decided unanimously and at the initiative of the opposition parties to amend the Law on Emergency Situation and State of Exception to permanently remove the sunset clause which established that emergency situations could be declared for three months and extended for only one further three-month period.²⁹⁵ The amended law enables multiple but shorter extensions of the emergency situation, thus granting the parliament the opportunity to review the proportionality of the measures more often than before.²⁹⁶

In addition to the cases discussed above, sunset clauses were also introduced in legislation targeting social and economic relief. This is the case for the US Congress, which included sunset clauses in the Coronavirus Aid, Relief and Economic Securities (CARES) Act and in the Families First Coronavirus Response Act. Several of the provisions in the two Acts that had sunset clauses were reviewed and extended by the Congress: first until March 2021 through the adoption of the Consolidated Appropriations Act of 2021 and then until September 2021, with the enactment of the American Rescue Plan Act of 2021.²⁹⁷

4.2. The introduction of review clauses in COVID-19 legislation

Review clauses have been defined as 'statutory 'trigger' or reflection points that initiate post-legislative scrutiny as a means for evidence-based decision making'.²⁹⁸ By doing so they enable parliaments to assess 'the 'working' of legislation or specific provisions'²⁹⁹ as opposed to the most comprehensive appraisal of how the respective legislation achieves its policy goals enabled by evaluation clauses.

Some parliaments in the sample took more activist stances and introduced additional safeguards, even when the legislation initiated by the government to tackle the pandemic had a sunset clause. This is the case for the UK House of Commons, which convinced the government to add a six-month parliamentary review and renewal clause to the draft legislation of what was to become the Coronavirus Act. This meant that 'every 6 months, Parliament had a guaranteed opportunity to be able to terminate the Act'.³⁰⁰ Moreover, the Act created an obligation for the Secretary of State to publish a report every two months on the status of the Act's provisions and whether their enforcement was appropriate. This has been criticised, however, for not stating the criteria for this assessment.³⁰¹

²⁹³ Sunset clauses were also added to the law subsequently with respect to some of its articles, such as the article making the wearing of masks mandatory for public events taking place in closed spaces, see: Luxembourgish Chamber of Deputies (2020b), [Loi du 24 décembre 2020 modifiant la loi modifiée du 17 juillet 2020 sur les mesures de lutte contre la pandémie Covid-19](#), Journal officiel du Grand-Duché de Luxembourg.

²⁹⁴ Luxembourgish Chamber of Deputies (2022), [Loi du 26 octobre 2022 portant modification de la loi modifiée du 17 juillet 2020 sur les mesures de lutte contre la pandémie Covid-19](#), Journal officiel du Grand-Duché de Luxembourg.

²⁹⁵ Dimitrovs, A. (2020), [COVID-19 in Latvia: Precaution Above All](#), VerfBlog, 2 May 2020.

²⁹⁶ Monciunskaitė, B. (2021), [The COVID-19 Crisis in Latvia: A Way Out of Successive States of Emergency?](#), VerfBlog, 28 April 2021; Dimitrovs, A. (2020).

²⁹⁷ Scott, A. P. et al. (2021), [Pandemic-Related Provisions Expiring in the 117th Congress](#), Congressional Research Service Report R46704.

²⁹⁸ Molloy, S., Mousmouti, M. and De Vrieze, F. (2022), p. 6.

²⁹⁹ Idem, p. 9.

³⁰⁰ Cormacain, R. (2020), 'Keeping covid-19 emergency legislation socially distant from ordinary legislation: Principles for the structure of emergency legislation', *The Theory and Practice of Legislation*, vol. 8(3), p. 253.

³⁰¹ Molloy, S. (2021), 'Approach with Caution: Sunset Clauses as Safeguards of Democracy?', *European Journal of Law Reform*, vol. 23(2), p. 156.

Subsequently, the Coronavirus Act has been renewed twice through the vote of the House of Commons, on 30 September 2020 and 25 March 2021. Some legal scholars have criticised the oversight in these cases, arguing that not enough time had been assigned to these parliamentary debates before the renewal votes (i.e. only 90 minutes), and that instead of focusing on the Act itself and its consequences, the 'MPs seemed to focus broadly on the pandemic response, and particularly on Parliament's role therein'.³⁰² Eventually, the vast majority of the provisions of the Coronavirus Act expired in March 2022, the government deciding to extend only four provisions.³⁰³

In Denmark, the amendments made by the Parliament to the Act on Measures against Infectious and Other Communicable Diseases were set to expire on 1 March 2021.³⁰⁴ Beyond this sunset clause, opposition parties pressured the Government into accepting a shorter review period for this Act: the minority coalition cabinet depended on the support of one of these opposition parties, Red-Green Alliance.³⁰⁵ Moreover, 11 of the 25 COVID-19-related bills adopted by the Parliament between March and mid-June 2020 included sunset clauses.³⁰⁶

According to an OECD analysis, four other countries in the sample - Hungary, Ireland, Italy and Slovenia - had post-implementation review requirements in place, before the start of the COVID-19 pandemic, to ensure the effectiveness of the adopted legislation.³⁰⁷ It is unclear whether these have been triggered and whether the respective parliaments have played any role.

Last but not least, a comparative analysis³⁰⁸ of sustainable governance in 29 EU and OECD countries³⁰⁹ has concluded that in half of the 14 countries that 'lacked resilience with regard to their political-administrative capacity to act in the crisis'³¹⁰ this was accompanied by low resilience of parliaments, which were unable to hold their governments accountable, including by imposing sunset and review clauses on COVID-19-related legislation. Of the countries in the sample, Croatia Hungary, Italy and Poland were scored weaker than other parliaments studied in this analysis.

³⁰² De Londras, F. (2021), [Six-Monthly Votes on the Coronavirus Act 2020: A Meaningful Mode of Review?](#), UK Constitutional Law Blog, 25 March 2021.

³⁰³ Cowie, G. (2022), [Expiry of the Coronavirus Act's temporary provisions](#), House of Commons Library, UK Parliament.

³⁰⁴ Díaz Crego, M. and Kotanidis, S. (2020b), p. 435.

³⁰⁵ Pedersen, H. H. and Borghetto, E. (2021), p. 413.

³⁰⁶ Ibidem.

³⁰⁷ OECD (2020c), p. 12.

³⁰⁸ Schiller, C. et al. (2021), [Just how Resilient are OECD and EU Countries? Sustainable Governance in the Context of the Covid-19 Crisis](#), Bertelsmann Stiftung.

³⁰⁹ This included 22 of the countries in the sample of the literature review, the other seven being Chile, Israel, Japan, Mexico, New Zealand, South Korea and Turkey.

³¹⁰ Schiller, C. et al. (2021), p. 48.

5. Parliaments' budgetary oversight during the pandemic

This section assesses how the selected parliaments fulfilled their oversight of budgetary issues in the context of governments adopting bills amending the national budget via fast-track procedures, thereby limiting the debate time on bills with substantial budgetary implications, curbing the reporting on budgetary matters and seeking derogation from fiscal rules and other medium or long-term constraints. Special attention is given to identifying whether the parliaments in the sample had set up special committees for budgetary oversight, like in the US, or granted the finance or budget committees additional oversight powers, like in Canada. Related to this, the section discusses the role of parliaments and parliamentary committees in scrutinising irregular public procurement during the pandemic and other attempts of pandemic heist.

The section also analyses how much the selected legislatures collaborated with Supreme Audit Institutions (SAIs) and other Independent Fiscal Institutions (IFIs). The former are the national courts of accounts, while the latter comprise mainly fiscal councils and parliamentary budget offices. Most IFIs were established after the 2008 financial crisis. During the COVID-19 crisis, they helped parliaments to have a better understanding of the budgetary impact of the pandemic and to gain access to reliable fiscal forecasts and information about the cost of the emergency legislation proposed by the governments. The section also reviews the extent to which parliaments have been able to scrutinise the effectiveness and consequences of pandemic budgetary measures and to reinstate in 2021 and 2022 proper budgetary reporting and consultations with experts, stakeholders and citizens.³¹¹

5.1. Parliaments and crisis budgets

In the first wave of the pandemic, a supplementary budget bill was introduced and approved by the Swedish Parliament in two days, whereas the procedure would normally last several weeks.³¹² Similarly, in Czechia, a fast track procedure called 'summary consideration' that reduces the number of readings and restricts the debate in the plenary, was employed to adopt amendments to the State Budget Act which included authorising reallocation of spending and debt increase.³¹³

In Canada, a motion adopted by the House of Commons at the beginning of the pandemic created an obligation for the Minister of Finance to appear before the Finance Committee every two weeks to provide updates and answer members' questions.³¹⁴ Similarly, in Austria, the National Council adopted a provision that obliged the Federal Minister of Finance to report to the parliament on the processing of COVID-19-related state aid on a regular basis.³¹⁵

Some parliaments have also attempted to improve the transparency of the implementation of governmental off-budget measures. A pertinent example is that of the French Parliament, which has requested the creation of a committee that would monitor and report on the implementation of a bank loan guarantee scheme created to help businesses in the current crisis. The committee includes not only members of parliament, but also representatives of business associations, local governments, and the French Court of Accounts, the country's Supreme Audit Institution.³¹⁶

³¹¹ International Budget Partnership (2021a), [Managing COVID funds: The accountability gap](#).

³¹² OECD (2020a), p. 8.

³¹³ Ibidem.

³¹⁴ Deveaux, K., Švecová, N. and Baker (2021), p. 28.

³¹⁵ Stöger, K. (2021).

³¹⁶ Wendling, C. et al. (2020), [Keeping the receipts: Transparency, accountability, and legitimacy in emergency responses](#), IMF Special Series on Fiscal Policies to Respond to COVID-19, International Monetary Fund, Fiscal Affairs Department, p. 6.

5.2. Legislatures' collaboration with Supreme Audit Institutions

Supreme Audit Institutions (SAIs) are independent public bodies responsible for the oversight of public expenditure. They conduct financial audits to assess the reliability of public entities' accounting procedures and financial statements, as well as the accuracy of financial reporting,³¹⁷ and compliance audits, 'assessing whether activities, financial transactions and information comply, in all material respects, with the authorities which govern the audited entity'.³¹⁸ Beyond financial and compliance audits, SAIs increasingly also conduct performance audits to assess the extent to which government undertakings follow the principles of economy, efficiency and effectiveness. Their positive role during the pandemic was highlighted by the Open Budget Survey of the International Budget Partnership: 'SAIs conducting real-time audits of COVID-19 spending helped build the integrity of public financial management systems and protected the public interest in real-time'.³¹⁹

In Czechia, Germany and the Netherlands, legislatures involved State Auditors early on in assessing the costs and likely impact of the cabinets' proposed pandemic relief and stimulus packages.³²⁰ After publicly criticising the 'chaos in PPE procurement, [and the] price fluctuation'³²¹, the Czech State Audit Office announced it would change its audit schedule in order to perform an audit of personal protective equipment (PPE) procurement, and present the resulting report to the Chamber of Deputies' Budget Control Committee.³²² The German Federal Court of Auditors produced an 'initial analysis and assessment paper' in May 2020 for the Budget Committee of the Bundestag and committed to monitoring the Federal Government's economic recovery plans.³²³

In the Netherlands, 'acting as the parliament's institutional memory of previous government support programs for large enterprises', the Court of Audit 'published case studies and lessons from previous industry policy experiences and identified risks for government budgetary policy'.³²⁴ Other studies produced by the Dutch SAI offered an evaluation of the government's attempt to build up its test-and-trace capacity and assessed the risks to public finances that could result from the loans and guarantees granted by the government.³²⁵ The Court also launched a monitor to illustrate the costs and impact of the governmental responses to the pandemic.³²⁶ In Canada, the House of Commons asked the Office of the Auditor General to deliver audit reports for winter 2020 and spring 2021 on governmental spending under the executive's 'expansive powers'³²⁷ granted for the emergency response.

In the UK, in order to help parliamentary scrutiny, the National Audit Office (NAO) produced a first report in May 2020 at the request of the House of Commons summarising the UK government's actions in response to the COVID-19 pandemic. This report did not 'assess the value for money of

³¹⁷ According to the International Organization of Supreme Audit Institutions (INTOSAI) definition: 'financial audit involves determining, through the collection of audit evidence, whether an entity's financial information is presented in its financial statements in accordance with the financial reporting and regulatory framework applicable'

³¹⁸ The full definition provided by INTOSAI, the International Organization of Supreme Audit Institutions, is available [here](#).

³¹⁹ International Budget Partnership (2021b), [Open Budget Survey 2021](#), p. 32.

³²⁰ OECD (2020a).

³²¹ Guasti, P. and Bustikova, L. (2022), p. 15.

³²² OECD (2020a), p. 14.

³²³ Ibidem.

³²⁴ Hoppe, R. et al. (2022), [Country Report Netherlands: Sustainable Governance in the Context of the COVID-19 Crisis](#), Bertelsmann Stiftung, p. 59.

³²⁵ Dutch Court of Audit (2022), [Topics: Coronavirus](#).

³²⁶ OECD (2020a), p. 14.

³²⁷ Lozano, M., Atkinson, M. and Mou, H. (2021), p. 14.

the measures adopted by government or the effectiveness of its response'.³²⁸ This was the focus of subsequent reports produced by the NAO at the request of the House of Commons, such as the Report published in May 2021.³²⁹ Between May 2020 and May 2021, the NAO produced 17 audit reports for the House of Commons, and the Committee of Public Accounts held sessions on 16 of these reports.³³⁰ The information and evaluation provided by the NAO assisted the Committee of Public Accounts in producing its own reports on the government's response to COVID-19 pandemic no fewer than ten were adopted between July 2020 and March 2021.³³¹ Another report prepared for presentation to the House of Commons was released by the NAO in November 2021: it evaluated the government's preparedness for the COVID-19 pandemic and concluded that 'most plans were inadequate to meet the demands' of a pandemic like COVID-19.³³²

In France, the Court of Accounts published an audit report in September 2021 on public spending during the COVID-19 crisis at the request of the National Assembly's Committee on Finance, the General Economy and Budgetary Audit. The report concluded that 'emergency measures [were] overall implemented quickly and effectively' and that given the sharp increase in public spending and in the public debt, there would be 'a greater need to control public spending after the health crisis'.³³³ Subsequently, the Committee organised a public hearing with the President of the Court of Accounts on the topic of the audit report.³³⁴

One factor that might explain why parliaments in countries such as Canada, Germany the Netherlands and the UK were more likely to collaborate with State Auditors during the pandemic is the institutional model of the SAI in these states. Thus, both the Westminster model of SAI organisation, used in the United Kingdom and most Commonwealth countries, and the Board or Collegiate model of SAI, used in Germany and the Netherlands (and several Asian countries), require audit reports to be submitted regularly to the Parliament or a parliamentary committee (e.g. the Public Accounts Committee in the Westminster model).³³⁵ This can nurture an ongoing collaborative relationship between the SAI and the committees and members of parliament which specialise in fiscal and budgetary matters.

This is not usually the case in countries that follow the Napoleonic model, used in France and francophone countries, (but also in Brazil, Colombia and Turkey³³⁶), for example, in which the SAI, usually called the Court of Accounts, is part of the judicial system. There are nevertheless important exceptions to this pattern, such as the very strong cooperation between the French Parliament and the *Cour des comptes*: between 2016 and 2020 the Court produced 70 reports at the request of the Parliament, an average of 14 requests a year, as shown in its 2021 Annual Report.³³⁷

³²⁸ UK National Audit Office (2020), [Overview of the UK government's response to the COVID-19 pandemic](#).

³²⁹ UK National Audit Office (2021a), [Initial learning from the government's response to the COVID-19 pandemic](#).

³³⁰ Ibidem, p. 8.

³³¹ Ibidem, p. 36.

³³² UK National Audit Office (2021b), [The government's preparedness for the COVID-19 pandemic: lessons for government on risk management](#), p. 9

³³³ French Court of Accounts (2021a), [Report to Parliament on public spending during the crisis and an operational review of how this expenditure was used](#), Communication to the National Assembly's Committee on Finance, the General Economy and Budgetary Audit.

³³⁴ French Court of Accounts (2021b), [Public spending during the Covid-19 crisis and the operational report of their use](#).

³³⁵ SAI Independence Resource Centre (2022), [What Are Supreme Audit Institutions?](#)

³³⁶ Ibidem.

³³⁷ French Court of Accounts (2022), [2021 Annual public report](#).

5.3. Parliaments' collaboration with Independent Fiscal Institutions

Independent Fiscal Institutions (IFIs) are non-partisan public bodies, other than the central bank. The role of IFIs is to promote sustainable public finances by monitoring compliance with fiscal rules, producing or endorsing macroeconomic forecasts for the budget, and/or advising the government or the parliament on fiscal policy matters. While some have existed for a long time, most were established after 2008 financial crisis.³³⁸ It is worth mentioning that some IFIs function under the supervision of the executive (fiscal councils), while others are directly affiliated with the legislature, being usually called Parliamentary Budget Offices (PBOs). As parliament-internal structures, PBOs are natural advisors of parliaments during both normal times and periods of crisis. Seven of the OECD countries covered by this literature review have established PBOs: Austria, Canada, Greece, Ireland, Italy, Portugal and the US.³³⁹

An analysis by the OECD³⁴⁰ covering the period up to the end of May 2020 illustrated that several parliaments in our sample collaborated intensively in the early months of the pandemic with IFIs in order to assess government planning assumptions or to gain access to reliable economic and fiscal scenario analyses and forecasts. According to this source, in Canada, Finland, Ireland, Italy, Latvia and the US, IFIs responded directly to requests from parliamentary committees and individual members to supply rapid analysis and commentary on pandemic-related issues. In Austria, Canada, Ireland and the US, PBOs have estimated the costs of emergency legislation.³⁴¹

Figure 3 maps the type of involvement of PBOs in the first wave of the pandemic, while also illustrating the two cases in which other IFIs, both Fiscal Councils, responded to the request of parliamentary committees or members to provide rapid analysis (in Finland and Latvia). Of the EU Member States which are also part of the OECD's Network of Parliamentary Budget Officials and Independent Fiscal Institutions³⁴², the Italian PBO was particularly active. It provided rapid analyses (i.e. it assessed government planning assumptions, conducted economic and fiscal scenario analyses, and provided economic and fiscal forecasts in real time at their own initiative and at the request of the legislature), monitored the activation and implementation of escape clauses (i.e. clauses which, because of exceptional circumstances, allow deviation from budgetary rules such as the limits imposed on budget deficits by the Stability and Growth Pact³⁴³) and estimated the costs of emergency legislation. As a more specific example, the Italian PBO produced a memorandum for the parliament's budgetary committees on the executive's request to deviate from the fiscal rules, which informed the members' deliberations and votes on the matter.³⁴⁴

³³⁸ Jankovics, L. and Sherwood, M. (2017), [Independent Fiscal Institutions in the EU Member States: The early Years](#), European Commission (European Economy Discussion Paper 67), p. 12.

³³⁹ OECD (2021), [Independent Fiscal Institutions Database](#), Version 2.0.

³⁴⁰ OECD (2020b), [Independent fiscal institutions: Promoting fiscal transparency and accountability during the Coronavirus \(COVID-19\) pandemic](#). (OECD Policy Responses to Coronavirus (COVID-19)).

³⁴¹ Ibidem.

³⁴² For more information see the [OECD webpage](#) dedicated to the network and its activities.

³⁴³ Delivorias, A. (2020), [The 'general escape clause' within the Stability and Growth Pact: Fiscal flexibility for severe economic shocks](#), EPRS, European Parliament.

³⁴⁴ OECD (2020a), p. 15.

Figure 3: The collaboration of parliaments with IFIs in the first pandemic wave

Country	assumptions	briefing	scenario	forecasts	legislative request	monitoring	costing
AT							
CA							
EL							
FI							
IE							
IT							
LV							
US							

Source: Author's elaboration based on [OECD](#)

It can be noted that PBOs were particularly active, providing two or more different types of analyses in all the cases. In Austria, the PBO 'highlighted a lack of transparency on COVID-19 measures, inadequate information for parliamentarians, and the need for comprehensive reporting to parliament'.³⁴⁵ Following up on the PBO's intervention, a successful motion of the opposition in the National Council resulted in an investigation of procurement transactions and contract awards related to the COVID-19 pandemic between March 2020 and January 2021 within the standing sub-committee of the Court of Audit Committee.³⁴⁶ Similarly, in Canada the PBO's publicly expressed concerns about the federal government's emergency measures and their ability to circumvent parliamentary scrutiny empowered opposition parties and led to the amendment of the controversial legislation.³⁴⁷

³⁴⁵ Ibidem.

³⁴⁶ Austrian Parliament, Unterausschuss des Rechnungshofausschusses wird Beschaffung von COVID-19-Tests und Schutzmasken prüfen, [press release](#), 12 December 2020.

³⁴⁷ OECD (2020a), p. 15.

5.4. The risk of pandemic financial irregularities and the role of parliaments

During the pandemic, financial irregularities could result from several different sources, one of which was related to the trade-off between making support measures available quickly and the potential abuse of such schemes by those not entitled to support. In order to prevent fraud and ensure that support schemes were available only to the targeted beneficiaries, parliaments in countries such as Belgium and France adapted the support measures designed for self-employed workers several times.³⁴⁸

Guasti and Bustikova argue that the expansion of the state to fund the supplementary costs of the healthcare sector and save the economy has provided an opportunity for three types of pandemic heist: 'irregularities/corruption in pandemic-related procurement, the use of the pandemic opportunities to rewrite the fiscal rules, and tilting the pandemic relief towards loyalists or regions controlled by the governing party'.³⁴⁹ They provide evidence of such phenomena happening in Hungary and Poland, often through laws passed by the government-controlled parliamentary majorities. One such law, adopted in March 2020 in Poland, provided impunity for the procurement of personal protective equipment (PPE) equipment and other pandemic-related materials at inflated prices. In Hungary, the ways in which competencies of municipalities were revoked and their revenues were diverted appeared to follow partisan patterns, in which opposition strongholds were punished.³⁵⁰

A study by the International Budget Partnership (IBP) that assessed the performance of 120³⁵¹ countries across the globe on transparency, parliamentary oversight and public participation in COVID-19 relief packages found that 'two thirds [of these countries] failed to follow transparent procurement procedures'.³⁵² Indeed, irregularities in public procurement related to the pandemic were signalled in several countries in our sample, such as Czechia³⁵³, Slovakia,³⁵⁴ Bulgaria, Slovenia³⁵⁵, Switzerland³⁵⁶ and the UK, but only a handful of parliaments have initiated inquiries or select committees to scrutinise these decisions. In Austria, the parliament was not able to establish an inquiry committee for procedural reasons (see Section 2.3), but the National Council's Court of Audit Committee repeatedly requested 'detailed information on the Government's procurement activities (e.g. concerning face masks) during the crisis'.³⁵⁷

In Bulgaria, the National Assembly established a cross-partisan 'Temporary Parliamentary Committee for Control of the Expenditures of Public Funds Related to Overcoming the Consequences of the Spread of COVID-19' in mid-May 2020. Its main aims included obtaining and publishing information on the spending of national and EU funds related to the pandemic, verifying their compliance with existing spending regulations and analysing their cost effectiveness.³⁵⁸ The

³⁴⁸ OECD (2022b), [First Lessons from Government Evaluations of COVID-19 Responses: A Synthesis](#).

³⁴⁹ Guasti, P. and Bustikova, L. (2022), p. 13.

³⁵⁰ Idem, p. 16.

³⁵¹ This included 17 of the countries in the sample of study. These are listed in Table 1

³⁵² Ramkumar, V. and Rebegea, C. (2021). [Democracy when you need it most: Strengthening legislative transparency and accountability during crises](#), International Budget Partnership, National Democratic Institute, p. 7.

³⁵³ Hájek, L. (2021), p. 6.

³⁵⁴ Ramkumar, V. and Rebegea (2021), p. 13.

³⁵⁵ Butković, H. (2021), p. 20.

³⁵⁶ SWI swissinfo.ch. (2022), [Audit finds mistakes but no legal violation in Covid-19 vaccine procurement](#), 10 November 2022. An external audit found that two contracts with vaccine manufacturers were signed by the government prior to parliament's approval of funds.

³⁵⁷ Stöger, K. (2021).

³⁵⁸ Belov, M. and Tsekov, A. (2020), p. 29.

committee gave equal representation to all parliamentary party groups and organised hearings with the Minister for the Economy, the deputy Prime Minister and high-level bureaucrats from the Managing Authorities in charge of EU-funded programmes.

In Romania, an inquiry committee was established in November 2021 in the lower chamber of the Parliament to investigate public procurement in the health sector during the states of emergency and alert.³⁵⁹ The committee had 90 days following the approval of its membership to produce a report with its conclusions on the inquiry. The report was then to be debated by the plenary of the Chamber of Deputies. Neither appear to have happened at the moment of writing this brief.

In Slovenia, opposition parliamentarians initiated an interpellation against the Minister of the Economy in late April 2020, accusing him of tolerating the lack of transparency in COVID-19-related public procurement, but they failed to gather the signatures required to organise a censure vote against the Minister. In late June, following the initiation of a parliamentary inquiry committee and pressure from the opposition over the procurement scandal, the Minister of Home Affairs and the head of the Police resigned.³⁶⁰

In the UK, the House of Commons' Public Accounts Committee published a report in July 2022 on its investigation of the Government's award of £777 million in COVID-19-related contracts to the healthcare firm Randox. The report concluded that 'basic civil service practices to document contract decision making were not followed',³⁶¹ the Department of Health and Social Care had awarded the contract and an extension to it without competition and had not considered potential conflicts of interests adequately.

In the US, the CARES Act³⁶² established a Congressional Oversight Commission, a bipartisan panel composed of five members appointed by the leaders of the majority and minority parties. The Commission was mandated to report on the impact and cost effectiveness of loans, loan guarantees and investments made under the Act, on the extent to which the information made available on transactions under the Act contributed to market transparency as well as on the use by the leadership of the Federal Reserve System of authority granted by the Act.³⁶³ An additional bipartisan committee, the Select Subcommittee on the Coronavirus Crisis, was also created, which had 12 members, five of whom are recommended by the minority leader. An OECD analysis concluded that these are 'well-resourced commissions and committees with considerable legal powers to seek information to hold the government accountable for the more than USD 2 trillion in relief.'³⁶⁴

Last but not least, the report of the Latvian inquiry committee which investigated the government's management of the COVID-19 pandemic emphasised the Ministry of Health's lack of a mechanism for decision making regarding the procurement of vaccines based on the planned vaccination processes, and argued that 'the shortcomings and deficiencies in the activities of the Ministry of Health could have had a significant impact on the decision to purchase BioNTech/Pfizer vaccines'.³⁶⁵

³⁵⁹ Romanian Chamber of Deputies (2021b), [Hotărâre nr. 75 din 3 noiembrie 2021 pentru înființarea unei comisii parlamentare de anchetă privind achizițiile publice efectuate în sectorul sanitar în timpul stărilor de urgență și de alertă pe teritoriul României](#).

³⁶⁰ Butković, H., pp. 20-21.

³⁶¹ UK House of Commons, Committee of Public Accounts (2022), [Government's contracts with Randox Laboratories Ltd](#), Seventeenth Report of Session 2022–23, p. 3.

³⁶² The Coronavirus Aid, Relief, and Economic Security Act – [CARES Act](#), Public Law 116-136, 116th Congress.

³⁶³ Straus, J. R. and Egar, W. T. (2020), [COVID-19 Congressional Oversight Commission \(COC\)](#), Congressional Research Service Insight IN11304.

³⁶⁴ OECD (2020a), p. 12.

³⁶⁵ Latvian Saeima (2022).

5.5. Parliamentary oversight of the budgeting process: 2019 and 2021 compared

This section compares the parliamentary oversight of budgeting processes, drawing on data from the 2019 and 2021 Open Budget Surveys³⁶⁶ collected by the International Budget Partnership (IBP). These surveys included 17 of the countries and legislatures covered in our sample. The index of parliamentary oversight is based on responses to 12 fact-based questions that assess the parliament's involvement in the approval of the budget and its oversight over implementation and execution. The first series of questions includes items related to whether the legislature debated budget policies prior to the tabling of the Executive's Budget Proposal, how far in advance of the start of the budget year the legislature receives the Executive's Budget Proposal, whether the legislature approves the Executive's Budget Proposal before the start of the fiscal year, and two items examining the legislature's power to amend – as opposed to simply accept or reject – the budget proposal presented by the executive and whether this power is used in practice (and at least some amendments accepted).

These are followed by two questions asking whether the budget approval stage requires the involvement of a) a specialised budget or finance committee and b) sectoral committees in sections of the budget that concern their policy jurisdiction. The final questions concern the oversight of the execution and changes in the approved budget: whether there was parliamentary oversight of budget execution exercised by a committee; whether the executive seeks approval from the legislature (and is legally required to do so) before shifting funds between administrative units, spending excess revenue or cutting spending; and whether ex post oversight following the implementation of the budget is conducted by a committee examining the audit report on the annual budget produced by the SAI.³⁶⁷

Table 1 presents the IBP index of parliamentary oversight for the two years, which was computed for each year as the average score of the responses for the 12 questions mentioned above. As illustrated by the Table, the experts surveyed by the IBP considered that the level of parliamentary oversight of budgeting processes declined during the pandemic in seven of these 17 countries. The UK, Canada, Romania and France appear to have suffered the most from this deterioration, followed by Sweden, Poland and Italy. In several countries the decline is associated with the legislature receiving the executive's budget proposal later than ideal, or not approving it before the start of the fiscal year. This is somewhat less problematic compared to a lack of scrutiny in the execution of the budget, given that in many countries the legal framework allows for an extension of the previous budget if the new one is not adopted in time.

This was the case in Canada, Italy, Poland and the UK. The finding corroborates previous analyses which emphasized that the pandemic disrupted the annual budget submission and reporting cycle; the most affected countries were those, like Canada, where the financial year begins in spring or summer.³⁶⁸ In Poland and Romania there seems to have been a decrease in the involvement of parliamentary committees in scrutinising the budget proposal. In Sweden, the legislature was less successful at amending the budget in 2021 compared to 2019. All these developments appear intuitively related to the disruption caused by the pandemic and it remains to be seen whether the legislatures will be able to bounce back to their pre-pandemic levels of budgetary oversight.

At the opposite end of the spectrum, parliamentary oversight appears to have improved in Croatia and Spain, albeit from relatively limited levels. In contrast to the examples above, the progress in

³⁶⁶ International Budget Partnership (2019), [Open Budget Survey 2019](#); International Budget Partnership (2021b), [Open Budget Survey 2021](#).

³⁶⁷ International Budget Partnership (2021c), [Guide to the open budget questionnaire: An explanation of the questions and the response options](#).

³⁶⁸ OECD (2020a), p. 14.

both countries was registered with respect to the timing of the legislature receiving and approving the executive's budget proposal. For no fewer than eight countries the pandemic does not seem to have brought significant changes. The level of legislative oversight over budgeting processes in 2021 stayed the same as in 2019: at a high level for Czechia, Germany, Portugal, Slovenia and the US, and a more limited level for Bulgaria, Hungary and Slovakia.

Table 1: Parliamentary oversight of budgeting processes before and during the pandemic

Country	Parliamentary oversight 2019	Parliamentary oversight 2021	Difference
Bulgaria	53	53	0
Canada	44	33	11
Croatia	47	53	-6
Czechia	81	81	0
France	95	89	6
Germany	89	89	0
Hungary	47	47	0
Italy	83	81	2
Poland	78	75	3
Portugal	69	69	0
Romania	42	31	11
Slovakia	42	42	0
Slovenia	81	81	0
Spain	42	53	-11
Sweden	86	81	5
United Kingdom	67	50	17
United States	78	78	0

Source: Author's elaboration based on IBP data from the Open Budget Surveys 2019 and 2021.

Beyond the data provided by the Open Budget Surveys with respect to the 17 of the 31 parliaments in the sample, the scholarship reviewed includes other examples of legislatures playing a key role in budgetary oversight during the pandemic. In Austria, the strong reaction of the National Council and especially of non-government members led to the abandonment of a controversial provision in the federal budget law which would have granted the Minister of Finance 'the possibility for an overdraft of up to EUR 28 billion of the expenditures projected in the bill without giving any details on the purpose of this overdraft except 'financial countering of the pandemic'.³⁶⁹ The Federal Minister of Finance modified the overdraft clause specifying which categories of measures the additional funds would be used for.

In Luxembourg, the Finance and Budget Committee and Budget Oversight Committee of the Chamber of Deputies organised joint meetings at which the Finance Minister was invited to report on changes in state finances and provide information about the amount of money spent on the response to the pandemic.³⁷⁰ The information was not broken down by measure or type of

³⁶⁹ Stöger, K. (2021).

³⁷⁰ OECD (2022a), p. 193.

beneficiary, but in 2022, at the recommendation of the Court of Auditors, the Ministry produced such a document focusing on the spending for each measure introduced in 2020.³⁷¹

³⁷¹ Ibidem.

6. Best practices and new tools for oversight in future crises

The section synthesises the best practices identified by legal scholars, political scientists and practitioners with respect to parliamentary oversight during the COVID-19 pandemic.³⁷² Special emphasis will be placed on means and procedures that allow members of parliament continued access to information, opportunities for interaction with members of the executive and scrutiny of their delegated powers, and the prioritisation of oversight over other parliamentary activities. The section will also review the extent to which new parliamentary procedures have been put in place to ensure effective oversight during future crises. There is some preliminary evidence that several EU national parliaments have considered 'new tools for oversight, requirements for fast-track public hearings' or the institutionalisation of a parliamentary committee charged with monitoring the executive during emergencies and chaired by an opposition Member.³⁷³

6.1. Best practices and lessons learned for parliamentary oversight from the COVID-19 pandemic

The Venice Commission has highlighted the essential need for parliamentary control of the declaration and prolongation of state of emergency, for opportunities for the parliament to review and terminate it, as well as the necessity of parliamentary scrutiny for the 'activation and application of emergency power'³⁷⁴ and for the control of the 'legal regulations issued by the executive during such a state'.³⁷⁵ The latter is particularly salient when the executive is delegated legislative powers or enabled by the declaration of the state of emergency or of a statutory regime to pass ordinances or other acts equivalent to law. In those cases, adequate parliamentary debate is needed to evaluate the extent to which the contents of these regulations are necessary and proportional, and for parliaments not to act as rubber-stamps even if the pressure to act quickly is high.³⁷⁶

The Venice Commission also emphasised the role of parliaments in the predictability of emergency legislation and their responsibility in shaping emergency regimes prior to crises: '[t]he emergency regime should preferably be laid down in the Constitution, and in more detail in a separate law, preferably an organic or constitutional law. The latter should be adopted by parliament in advance, during normal times, in the ordinary procedure.'³⁷⁷

One of the lessons emerging from the literature reviewed here is that crises such as the COVID-19 pandemic that require swift action and potentially delegating broad legislative powers to the executive create the need for legislatures to prioritise their oversight work over other legislative functions.³⁷⁸ On 11 April 2020, the Canadian House of Commons adopted a motion that prioritised the work of the Finance Committee and the Health Committee, which were perceived to be critical for the ability of the House to ensure oversight of the government and the emergency measures it

³⁷² Deveaux, K., Švecová, N. and Baker, T. (2021); Emmons, C. V. (2022), 'Responding to COVID-19 with States of Emergency: Reflections and Recommendations for Future Health Crises' in Grogan, J. and Donald, A. (eds.). *Routledge Handbook of Law and the COVID-19 Pandemic*; Maciel, G. G. (2021); Simonelli, M. A. (2022).

³⁷³ Pedersen, H. H. and Borghetto, E. (2021), p. 416.

³⁷⁴ Venice Commission (2020d), p. 5.

³⁷⁵ Idem, p. 7.

³⁷⁶ Díaz Crego, M. and Kotanidis, S. (2020a), p. 30.

³⁷⁷ Idem, p. 5.

³⁷⁸ Murphy, J. (2020), [Parliaments and Crisis: Challenges and Innovations](#), Parliamentary Primer No. 1, International Institute for Democracy and Electoral Assistance, p. 24; Deveaux, K., Švecová, N. and Baker (2021).

proposed.³⁷⁹ Similarly, in France the lower chamber 'originally barred activities from its committees that were not related to the pandemic'.³⁸⁰

While observers of COVID-19 politics have decried the reduced role of parliament as a forum of debate and the reliance on informal meetings of government officials with parliamentary leaders in several countries in the sample³⁸¹, question time has functioned as a major oversight mechanism during the pandemic not only in the UK Parliament but also in Canada, Finland, Germany and the Netherlands.

Another important lesson concerns the role of the parliaments in ensuring the temporary character of the emergency measures, of derogations from fundamental rights and of the delegation of legislative powers to the executive³⁸². Several parliaments in the sample have been successful in convincing executives to include sunset and review clauses to ensure that these fundamental rights limitations and shifts in power distribution are not extended beyond the period they are actually required.

Especially given the unprecedented nature of civil liberties restrictions and emergency public spending, proper parliamentary oversight during the COVID-19 pandemic required accurate information and expert analyses and forecasts originating from outside the government and its agencies. This suggests the salience of parliaments developing their own in-house expertise, such as the expertise on fiscal and budgetary matters offered by Parliamentary Budget Offices (PBOs), and of building partnerships with independent oversight institutions, like Supreme Audit Institutions (SAIs).

Another best practice identified refers to the timely establishment of inquiry and special committees, investigating the executives' response to the crisis. In order to be effective they required enough resources and powers to access relevant information and expertise. Several such committees produced thorough reports, which were then debated by the plenary. Giving opposition members a prominent role in – permanent or temporary – oversight committees during emergencies can contribute to a more thorough scrutiny of the executive while conferring legitimacy on the process and avoiding accusations of partisan shielding. Such prominence could be reflected in the composition of the committee (i.e. more members from opposition parties, as in the Australian Federal Senate Select Committee on COVID-19³⁸³) or in its leadership (nominating an opposition Member of Parliament as chair).

An interesting hypothesis that could be explored by further research is whether parliamentary reforms that have strengthened parliamentary oversight in response to the COVID-19 pandemic have happened mainly in those countries where state of emergency provisions were not already institutionalised, and the executives had to negotiate the support of opposition parties.

³⁷⁹ Canadian House of Commons (2020), [House of Commons Debates Official Report \(Hansard\)](#), vol. 149(33), 11 April 2020.

³⁸⁰ Deveaux, K., Švecová, N., and Baker, T. (2021), p. 28.

³⁸¹ Venice Commission (2020e), [Interim Report on the measures taken in the EU member States as a result of the Covid-19 crisis and their impact on democracy, the Rule of Law and Fundamental Rights](#), adopted by the Venice Commission at its 124th Plenary Session, 8-9 October 2020, p. 18.

³⁸² Idem, pp. 5-7.

³⁸³ Moulds, S. (2021), 'Democratic Scrutiny of COVID-19 Laws', *European Journal of Law Reform*, vol. 23(2), p. 268.

6.2. New tools for oversight and adapting parliaments for future crises

The Danish Parliament branded the creation under its auspices, for the first time in its existence, of an expert investigation committee tasked with analysing the management of the first stage of the COVID-19 crisis (see Section 2.3.2) as an 'institutional innovation' and the 'outcome of a debate going on for some years about strengthening Parliament's powers of control'.³⁸⁴ Moreover, the Parliament also established the Epidemics Committee, a permanent investigation committee which is tasked with scrutinising the application of the provisions in the Epidemics Act, as well as the Scrutiny Committee, a new permanent sub-committee of the Standing Orders Committee.

Crises of the magnitude of COVID-19 pandemic offer parliaments the opportunity to think big about structural reforms, national priorities and key directions of policy change. The Spanish and French Parliaments both took advantage of this opportunity in two distinct, but equally relevant ways. In Spain, the special committee for the Social and Economic Reconstruction tried to identify and reach a cross-partisan consensus around the country's strategic priorities for the following years in the 'areas of health preparedness and resilience, and of economic investment and recovery'.³⁸⁵ Its report was then adopted by the plenary.³⁸⁶ In France, the Parliament set up a virtual forum and consulted the citizens on the direction of the post-pandemic policy priorities using Decidim, a deliberation platform which respects data protection (GDPR) norms.³⁸⁷ No fewer than '15,000 French citizens made accounts and discussed topics such as health, labor, consumerism, education, solidarity and democracy'.³⁸⁸

In order for parliamentarians to learn from the COVID-19 crisis and avoid scrutiny and oversight failures or being side-lined by executives with respect to law-making in future crises, a certain amount of organisational self-reflection is necessary – an aspect that has been recognised and framed as a practical recommendation by legislative scholars and practitioners. Parliaments may decide to review their constitutional or legal role under a state of emergency,³⁸⁹ find ways to strengthen their access to governmental or independent information, and evaluate how their rules of procedures and logistical infrastructure can be adapted to facilitate oversight. The latter includes, but is not limited to, setting up reliable and secure means of voting and deliberating remotely³⁹⁰ and allowing committees to organise online or paper hearings (i.e. witnesses or experts submitting their testimonies in writing, a practice introduced in response to the pandemic in April 2020 in the US Congress³⁹¹). Such flexibility with respect to the medium used for parliamentary committee hearings in order to facilitate legislative oversight has been also identified as a best practice by the Venice Commission.³⁹² Moreover, the Venice Commission has criticised the problematic nature of decisions by some parliaments allowing the temporary replacement of deputies or reduction in their attendance, even if the latter was done in a proportional manner.³⁹³

³⁸⁴ Folketinget (2021), p. 9.

³⁸⁵ Utrilla, D., García-Muñoz, M. and Pareja Sánchez, T. (2021).

³⁸⁶ For the composition of the committee, and the documents it produced see its official [webpage](#).

³⁸⁷ Deveaux, K., Švecová, N., and Baker, T. (2021), p. 41.

³⁸⁸ Ibidem.

³⁸⁹ Maurer, A. (2022), pp. 120-127.

³⁹⁰ Deveaux, K., Švecová, N., and Baker, T. (2021), p. 45.

³⁹¹ Smith Baugh, A. (2020), [Congressional Paper Hearings: The Future or The Past?](#), Global Policy Watch.

³⁹² Venice Commission (2020e), p. 20.

³⁹³ Idem. p. 20. Practices in this regard are known from the parliaments of Austria, France, Germany, Ireland and Sweden, see Díaz Crego, M. and Mañko, R. (2020), pp. 7-9.

7. Conclusions

This literature review maps both successful cases, in which democratic standards of parliamentary involvement in decision-making and government scrutiny were upheld during the pandemic, and those cases, less frequent in this sample of mostly well-established democracies, in which parliaments have been marginalised in their law-making role and were obstructed in or unwilling to play their oversight role, according to political scientists, legal scholars and international practitioners. The scope of some of these oversight shortcomings and the fact that in certain cases there seems to be a clear continuity of questionable practices that existed before the pandemic, might trigger self-reflection and reform processes from within the parliaments themselves.

The literature reviewed here has shown that parliaments were generally more resilient in fulfilling their oversight roles where constitutional and legal frameworks created opportunities for scrutiny. One example of the latter dimension is, in bicameral parliaments, the existence of an upper chamber elected distinctly from the lower chamber; this seems to have enhanced the quality of the oversight of COVID-19 governmental measures in several of the selected countries. There is also evidence illustrating a detrimental role on the part of a unified executive: in the absence of the checks and balances that are embedded in coalition governance, unified executives were able to quickly settle on a COVID-19-containment strategy and were willing to curtail the formal role of the parliament to enforce their solution.

The literature also emphasises that oversight resilience was more limited in parliaments that were already in a weak position vis-à-vis the executive before the start of the pandemic. Last but not least, the assertiveness of parliaments vis-à-vis the executives' management of the pandemic also depended on the strategy adopted by the opposition parties, i.e. whether these parties chose to politicise the topic and how cooperative they were in their parliamentary behaviour. Unfortunately, the studies reviewed did not assess the role of the ideological distance between the political actors that had the potential to veto governmental policies related to the pandemic. Similarly, most research ignored the potential differences in governmental strategy and space for parliamentary oversight depending on the ideological orientation of the executives.³⁹⁴

In line with international standards and best practices, constitutional states of emergency in 9 of the 10 EU Member States that declared them were temporary, the only exception being Hungary. Moreover, statutory emergency declarations had sunset clauses in 8 EU Member States, while the legislation adopted by parliaments in response to the pandemic also contained sunset clauses in 13 of the countries included in the sample. These clauses meant the automatic expiry of the legislation at a clear date in the future, if not renewed by the parliament. Such a procedure is salient not only for measures restricting fundamental rights, but also given that the legislation adopted in these circumstances might not have been subject to sufficient scrutiny or impact assessments. In 3 of the 13 countries, Austria, France and Ireland, there is evidence that sunset clauses were introduced due to the efforts of members of parliament. On the contrary, review clauses – which create the opportunity for the parliament, or the obligation for the government, to assess how the legislation worked and to evaluate whether it is still necessary before the automatic expiry date – were adopted in very few cases, the Danish and the UK parliaments standing out in this respect. The literature reviewed did not explore whether there is a connection between the timing of the expiry dates imposed by sunset clauses included in the COVID-19-related legislation and parliaments refraining from imposing review clauses: i.e. shorter sunset clauses mean the existence of a guaranteed review of how the legislation is working is less relevant.

³⁹⁴ Moving beyond the degree of governing parties' adherence to a majoritarian or illiberal vision of democracy, the role of the left-right divide remains rather unexplored, although some differences in strategies corresponding to this divide were observed across advanced industrial democracies. See Jahn, D. (2022), who shows that left-wing governments promoted more stringent lockdowns than right-wing governments in the first pandemic wave.

On the one hand, the analyses and data presented here stress that many national parliaments were able to conduct adequate budgetary oversight even under the difficult conditions created by the pandemic and that they were helped in this pursuit by their collaboration with supreme audit institutions and independent fiscal institutions. Related to the latter, the clear advantages of notably having parliamentary budget offices' in-house expertise, independent from that of the government – provided parliaments in the form of analyses of government fiscal assumptions, assessments of policy costs, and forecasts – suggest that setting up such an office in each national parliament could be a policy recommendation.

On the other hand, there are several countries where experts have noted a decline in budgetary oversight compared to pre-pandemic levels, which was associated with the legislature receiving the executive's budget proposal later than ideal, not approving it before the start of the fiscal year, or with decreased scrutiny of budget proposals by parliamentary committees, often under extreme time pressure. Related to this, there has been significant variation in the extent to which national parliaments have scrutinised irregularities in pandemic-related public procurement. Beyond the ex-post oversight, the adoption of legislation increasing the accountability and transparency of the procedures for emergency public procurement in times of crisis is something parliaments might wish to consider.

This literature review has highlighted a series of best practices emerging from these cases, such as the decision of certain parliaments to prioritise oversight work over other functions, giving opposition members a prominent role in oversight committees and setting up expert committees investigating the executives' handling of the pandemic. Some national parliaments have also made the most of the opportunity created by the crisis to provide their own input on structural reforms, national priorities and key directions of policy change or to conduct mass citizen consultations on these themes.

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Conducted at the request of the European Parliament's Special Committee on the COVID-19 pandemic, this literature review examines the patterns in, consequences of and correlation between national approaches to parliamentary oversight of governments' responses to the COVID-19 pandemic in the EU27 and four other countries (Canada, Switzerland, the United Kingdom and the United States).

The review begins by assessing parliaments' involvement during the early stages of the health crisis, when many countries were operating under emergency regimes or statutory frameworks that provided for rapid action. It then maps the parliaments' law-making and oversight role during the pandemic, demonstrating that they were not necessarily side-lined. The study goes on to assess successes and failures and, on that basis, factors in the resilience of parliamentary oversight.

Mapping the widespread use of sunset and review clauses in emergency legislation, the study reflects on parliaments' cooperation with supreme audit institutions and independent fiscal institutions, which enhanced their budgetary oversight role during the pandemic. The literature review also identifies best practice regarding oversight during the COVID-19 pandemic and reforms that parliaments could pursue to strengthen their preparedness for future crises.

This is a publication of the Ex-Post Evaluation Unit
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