



# Spotlight on Parliaments in Europe

Drafted by the Directorate for Relations with National Parliaments  
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## **Emergency Laws and Legal measures against Covid-19**

On April 04, the French *Assemblée Nationale* submitted the request 4373 to the ECPRD network asking for the Parliaments' contribution on how their Governments were legally able to deal with the pandemic and how they made use of this legal system. The request also refers to the form of parliamentary participation in these processes and how much the Parliaments' participation was limited or not even necessary. Finally, it covers the judicial review exercised over the use of those legal measures, by ordinary and constitutional courts. The request received 37 replies from National Parliaments and Chambers, covering 28 countries in total, with 22 EU Member States and 6 non-EU countries.

All of the replying Parliaments confirmed introduction of certain COVID-19 related legal measures. These measures included the declaration of a nationwide state of emergency as one of the options, but it was not used in all countries. There were various approaches used by the national Governments also to the extent of parliamentary participation in adopting and controlling these measures.

### **State of emergency**

The Austrian *Nationalrat* and *Bundesrat*, the German *Bundesrat* and *Bundestag*, the Slovenian *National Assembly* and the Swedish *Riksdag*, indicated no proclamation of state of emergency. Most of the remaining replies refer to the official declaration of an emergency situation.

The measures reveal a major difference in the involvement of the Parliament. The responses from the French *Assemblée Nationale*, the Portuguese *Assembleia da República* and the Georgian *Parliament* state that the Governments asked the Parliaments for their approval in order to establish the state of emergency. The Bulgarian *National Assembly's* reply specifies that it was the Parliament itself proclaiming this extraordinary status on the proposal of the Council of Ministers. The answer distributed by the *National Council* of the Slovak Republic informs about the declaration of a state of emergency by decree, as well as the reply from the Polish *Senat*, where the Ministry of Health was solely responsible for declaring the state of emergency. According to its reply, the Romanian *Chamber of Deputies* used a slightly different approach by having first the state of emergency installed and then waiting for the Parliament's approval, with no acts of modification being actually possible.

The installation of a state of emergency was not always mandatory in order to adopt further legal measures. The German *Bundesrat* and *Bundestag* state in their joint reply that there has been no declaration of a state of emergency, while the Federal States were put in charge of deciding and adopting appropriate measures. The response from the Dutch *Tweede Kamer* refers to so called 'Security Regions'. This system enables the work and coordination of various administrative bodies structured in 24 areas within the Netherlands.

### **Legal measures and their adoption**

The declaration of a state of emergency is only one way to deal with the pandemic by legal measures. The replies refer to several approaches to governance. One example is the modified 'Communicable Diseases Act' in Sweden. According to the Swedish reply, the Swedish *Riksdag* authorizes the Government to adopt legal measures. As another example, the Hungarian

response explains how the Government can derogate from existing laws by issuing decrees without consulting the Hungarian *National Assembly*.

An additional strategy being brought up is the implementation of new governmental task forces, with their own competences to adopt appropriate measures. Such are the new Inter-Ministerial Committee in Albania, the Civil Protection Management Committee in Croatia or the Government's Crisis Coordination Committee in Lithuania. In fact, as they were created by the Governments to coordinate the Governments' actions there is no information that the Parliaments' approval or scrutiny was involved.

### **Parliamentary control**

When it comes to the Parliaments' control over the legal measures adopted, according to the replies from the Greek *Vouli ton Ellinon*, the Cypriot *House of Representatives* and the Swedish *Riksdag* the parliamentary scrutiny continues as usual on every legal measure, without any declaration of a state of emergency. At the same time, the answers received by the Croatian *Hrvatski Sabor*, the Spanish *Congreso de los Diputados* and *Senado* and the Portuguese *Assembleia da República* state as well that debates, questions and parliamentary ratification still continue, even during the state of emergency. According to Estonian *Riigikogu*, Polish *Sejm* and *Senat*, Hungarian *National Assembly* and Turkish *Grand National Assembly*, parliamentary participation in ruling under a state of emergency was not foreseen. The rule by the Government without the Parliament's scrutiny, is justified by urgency, unique circumstances or a better concentrated coordination. The reply by the Austrian *Nationalrat* and *Bundesrat* explains how the Federal Government did not consult its Parliaments on the measures taken, as this was formally not necessary, while de facto the Government has kept close contact with all the political groups' leaders before introducing specific measures. In addition, the replies received from the Italian *Camera dei Deputati*, the Finnish *Eduskunta* and the Albanian *Assembly* give several examples how to combine the rule by decree with at least parliamentary ex-post approval. According to their replies, the Parliaments approve, adjust or reject the Government's decrees after their adoption.

The Swiss *Bundesversammlung* gives insight on its very special case, where the measures taken during a state of emergency are actually not clearly defined by law. The Government can rule by ordinance, though it has to be ratified within 6 months and the *Bundesversammlung* can at the same time issue their own ordinances and therefore replace the ones given by the Government.

Finally, the respondents also gave insight on the judicial review exercised over the use of the implemented legal measures. The replies from the Parliaments in Croatia, Cyprus, Finland, Germany, Italy, Luxemburg, North Macedonia, Poland, Romania, Slovakia, Slovenia, Spain, Sweden and Turkey indicate that the judicial review applies as normal. As example, according to the reply from the *Bundestag* in Germany, the measures can there be appealed to the Administrative and the Constitutional Court, where the courts will then decide case-by-case, whether the measures were appropriate. However, as shown in the response from Luxemburg's *Chambre des Députés*, the actual judicial review may be delayed and even postponed to the time after the crisis.

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