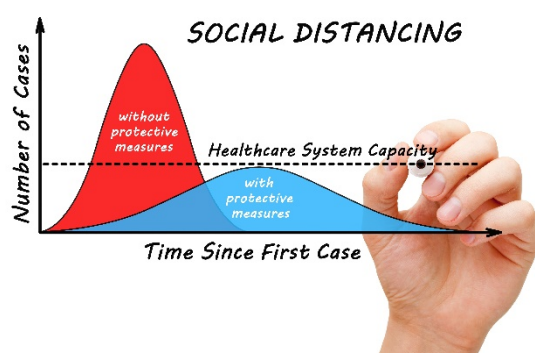


States of emergency in response to the coronavirus crisis: Situation in certain Member States III

SUMMARY

The spread of the coronavirus pandemic has prompted countries to take extensive and far-reaching measures to tackle the consequences of the outbreak. Apart from curbing the spread of the disease, these measures have also posed legal and economic challenges, significantly affecting people's lives. Due to the nature of the virus, citizens' rights and freedoms have been curtailed, inter alia affecting their freedom of movement and assembly, as well as the right to conduct economic activities. Whilst the measures are currently being relaxed, there is debate in some Member States over whether the measures were justified and proportionate. Some Member States resorted to declaring a 'state of emergency', whilst others did not, either because they have no such mechanism in their constitutional framework or because they chose a different path, giving special powers to certain institutions or using and modifying existing legislation. In either case, democratic scrutiny over the situation has been highly important, making parliamentary oversight crucial to ensure the rule of law and respect for fundamental democratic principles. This briefing covers the following countries: Croatia, Denmark, Finland, Luxembourg, the Netherlands, Portugal, and Sweden. It focuses on three key aspects: i) the constitutional framework of the state of emergency or legitimisation of the emergency legislation; ii) the specific measures adopted; and iii) the extent of parliamentary oversight exercised on the adopted measures.

This briefing is the third in a series aimed at providing a comparative overview of Member States' institutional responses to the coronavirus crisis. The [first](#) in the series gives an overview of the responses in Belgium, France, Germany, Hungary, Italy, Poland and Spain, while the [second](#) covers Austria, Bulgaria, Estonia, Latvia, Malta, Romania and Slovenia.



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Introduction

The coronavirus pandemic has posed a significant challenge to the EU and its Member States. All seven of the Member States considered in this briefing have taken special measures to combat the spread of the coronavirus. While the effects of these measures may be somewhat similar, the constitutional frameworks in which they were taken differ significantly. Not all the Member States examined have a constitutional mechanism allowing for a recourse to a 'state of emergency', and not all those who have one, took advantage of it. Among the countries examined, only Finland, Portugal and Luxembourg decided to activate their 'state of emergency' framework. The rest solely used already existing legislation and modified it when necessary. Sweden was the only country to predominantly rely on recommendations, instead of legally binding acts, although later in mid-April 2020 the existing Communicable Diseases Act (2004:168) was modified. All seven Member States considered offer a degree of parliamentary control over the measures adopted (see Annex).

Croatia

Constitutional framework for emergency situations

The provisions of the Croatian Constitution (OG [56/1990](#), [135/1997](#), [113/2000](#), [28/2001](#), [76/2010](#), [5/2014](#)) relating to emergency situations were originally [modelled](#) on the [French and Spanish](#) constitutions, even though they do not use the term 'state of emergency'. Nonetheless, according to Article 17 of the Constitution, Croatia has three types of emergency situation: **state of war**, **immediate threat to the independence and unity of the Republic of Croatia** and **severe natural disasters**. Apart from war, emergency situations need not be declared explicitly. Should one of these circumstances occur, certain rights and liberties guaranteed by the Croatian Constitution may be curtailed under specific conditions. Under Article 16 of the Constitution, constitutional rights and liberties can be curtailed by means of (regular) legislation to protect the freedom and rights of other people, as well as the legal order, public morality and health. Every limitation to the rights and freedoms must be proportionate to the nature of the need for limitations in each individual case. In contrast, the decision on limitations to constitutional rights and liberties in emergency situations is taken by the Croatian Parliament (*Hrvatski sabor*) with a two-thirds majority of all Members, and, if the Parliament cannot convene at the proposal of the Government, by the President of the Republic with co-signature by the Prime Minister. The scope of such limitations must be suited to the nature of the danger, and may not result in discriminatory provisions based on race, skin colour, gender, language, religion and national or social background. The provisions of the Constitution with regard to life, prohibition of torture, cruel or humiliating treatment or punishment, criminal acts and punishment, and freedom of thought, conscience and belief must be upheld.

Main measures adopted to address the coronavirus pandemic

When addressing the coronavirus issue, the Croatian Government decided not to activate the constitutional framework for emergency situations, relying instead on the [existing statutory framework](#) on civil protection and prevention of infectious diseases, albeit with some amendments. Two changes were especially important to modify the framework. A new provision, Article 22a, was [introduced](#) to the Civil Protection System Act (OG [82/15](#), [118/18](#), [31/2020](#)) and was then used as a legal basis for the decisions taken. This article states that in the case of special circumstances that involve an event or state that could not be predicted, and which inter alia puts the life and health of citizens in jeopardy, the Civil Protection Authority (*Stožer civilne zaštite*) may take decisions and instructions that are implemented by the local and regional civil protection units. The Infectious Diseases Protection Act ([79/2007](#), [113/2008](#), [43/2009](#), [130/2017](#), [114/2018](#), [47/2020](#)), which envisages which epidemiologic measures need to be taken during an epidemic also needed to be [amended](#), as before the change, the Act enabled the Minister of Health to act on proposals from the Croatian Institute for Public Health, not the Civil Protection Authority. The change authorised the

Authority to enact measures with the Ministry of Health and Croatian Institute for Public Health, under government supervision.

On 20 February, the Croatian Government [convened](#) the Civil Protection Authority to coordinate all the services to fight the coronavirus and on 11 March, the Minister of Health [declared](#) an epidemic in Croatia. Suspension of classes at schools and universities, as well as closure of kindergartens, was announced from 16 March. On 19 March, the Civil Protection Authority's [measures](#) to prevent the spread of the contagion by the novel coronavirus were put in place. Initially these were valid for 30 days. These measures [cancelled](#) public and religious gatherings and sports events and closed restaurants and cafes, shops besides those selling food and pharmacies, sports and recreational centres. A temporary ban on [border crossings](#), with some exceptions, was also put in place. On 21 March, the Authority limited time spent in [public spaces](#), and from 22 March, [public transport](#) was temporarily suspended. On 23 March, the Authority [banned](#) people from leaving their place of residence. The proposed changes to the Electronic Communications Act (OG [73/2008](#), [90/2011](#), [133/2012](#), [80/2013](#), [71/2014](#), [72/2017](#)) to make it easier for authorities to access the location data of people under self-isolation were not adopted by the Parliament due to concerns about fundamental rights. On 18 April, the Authority [prolonged](#) its decision to limit public gatherings until 4 May 2020, after which date all the measures have been relaxed in [three phases](#). Currently, only minimal epidemiological measures remain.

Parliamentary control over emergency measures

The Croatian Constitution does not provide the Government or the President of the Republic with any emergency powers [exceeding](#) their regular mandates as long as the Parliament is capable of assembling. Since the Parliament decided not to rely on the constitutional emergency framework, it also had no specific mandate to exercise control over governmental action. The Parliament's role was nonetheless crucial in passing the legislative amendments necessary to provide a comprehensive legal basis for the measures. The amendments were adopted under the regular legislative procedure. This course of action was not without its [critics](#), who considered the two-thirds majority in the Parliament generally applicable in emergency situations was necessary to legitimise the limitations of constitutional rights and freedoms caused by the measures to combat the virus. The amendment to the Civil Protection System Act was adopted by Parliament one day before the measures took place and was [criticised inter alia](#) for its undetermined scope, as it would give the Civil Protection Authority an unclear mandate. The necessary change to the Infectious Diseases Protection Act, which would give the mandate to the Civil Protection Authority to enact the epidemiologic measures that it has enacted, was adopted on [17 April](#), almost one month after the measures were introduced (and the subject of some [debate](#)).

Denmark

Constitutional framework for emergency situations

The Danish Constitution, *Grundloven*, contains no [specific](#) references to the declaration of a 'state of emergency' as such. However, Section 23 grants specific powers to the King (i.e. the government) to take measures in case the Parliament (*Folketinget*) is prevented from meeting. In that case, the King may issue provisional laws, but they must not contravene the Constitution. Once Parliament can reassemble, these provisional laws must be submitted for approval or rejection by a majority of Members. Although the Constitution does not define **emergency situations**, Section 23 may be applied when the Parliament is not able to meet due to, for example, war or natural disasters, but it could also be due to a general election. The only act that cannot be passed as a provisional act is the Finance Act (Section 46). According to Constitution (Section 41) a law has to be read three times in the Chamber of the Danish Parliament in order to be adopted. The third reading shall take place not earlier than 30 days after the introduction (see also Chapter IV, § 13 of the *Folketinget's Standing Orders*). The possibility of adding a provision on emergency accommodation was [discussed](#) when

the Constitution was to be adopted, but it was eventually decided to rely on an unwritten constitutional principle of necessity, based on two mechanisms. These are the unwritten principle of necessity that would allow the Government to take necessary measures to ensure its functioning and survival; and the provision of legal mandates for professionals. The measures taken have to be proportionate to the specific necessity and based on expert knowledge.

Main measures adopted to address the coronavirus pandemic

The management of epidemics is regulated by the Act on Measures against Infectious and Other Communicable Diseases (*Epidemiloven*, the Epidemic Act). [Before](#) the outbreak of Covid-19, this Act delegated wide-ranging competences to five regional Epidemic Commissions. Composed of representatives from police, emergency management authorities, health authorities and local politicians, the commissions' competences include limiting public assemblies, quarantining individuals or groups, issuing mandatory vaccines, and closing down cities. In the face of the Covid-19 outbreak, the Government proposed a number of amendments to the Epidemic Act, transferring considerable powers from the regional commissions to the government, in particular the Minister of Health. According to the EU Agency for Fundamental Rights, measures introduced in Denmark could potentially [impact](#) constitutional rights granted by *Grundloven's* Sections 71 (freedom from deprivation of liberty) and 79 (freedom of assembly), as well as rights granted by the European Convention on Human Rights, such as article 5 (deprivation of liberty), article 8 (right to family and private life) and article 11 (freedom of assembly).

In mid-March, the Prime Minister [ordered](#) the closure of public schools, universities, nurseries and kindergartens. All civil servants not working in 'critical functions' were sent home. Work must, if possible, be conducted from home. On 11 March 2020, Danish courts [launched](#) an emergency alert system to handle critical cases, while still abiding by the public-sector shutdown and the precautionary health measures. Critical cases are assessed in cooperation with a number of presiding judges and the Danish Court Administration. On 12 March, the Minister of Health proposed [amendments](#) to the Epidemic Act to contain and curb the repercussions of the outbreak. The *Folketinget* adopted the Act (L133), which entered into force on 17 March 2020. It enabled the Minister of Health to order the isolation of persons suspected of being infected, to prohibit and further limit assemblies of over 100 persons and events, as well as access to or restrictions on means of transport. The Act will be repealed on 1 March 2021, in line with a sunset clause attached to the act. On 13 March 2020, the existing temporary border controls were [expanded](#) to all Danish borders. On 17 March, the Prime Minister announced further [restrictions](#), including a temporary ban on holding or attending (indoor and outdoor) gatherings of more than 10 people. On 7 April, the government and *Folketinget* agreed a plan for gradual [reopening](#) of the country from 15 April 2020.

Parliamentary control over emergency measures

In emergencies, relevant bills are [presented](#) to the *Folketinget*. During the coronavirus crisis, the *Folketinget* passed a series of urgent acts related to the outbreak. On 12 March 2020, *Folketinget* fast-tracked and unanimously adopted the proposed amendments to the Epidemic Act (L133) within [12 hours](#). However, whereas the government initially proposed to grant the police the right to access private homes without a court order in cases of suspected coronavirus infection, this proposal was [abandoned](#) during the legislative process. Thus, a court order will be needed to access homes, if the person in question must be forcibly examined or admitted. In addition to L133, *Folketinget* has adopted a number of [urgent Acts](#) related to Covid-19. On 27 May, *Folketinget's* [Committee on the Rules of Procedure](#) decided to set up a [special subcommittee](#) to evaluate the government's handling of the crisis. The subcommittee will appoint a group of independent experts to analyse and evaluate the process. The results of the evaluation are expected to be published by the end of 2020.

Finland

Constitutional framework for emergency situations

According to [Article 23](#) of the Constitution ([731/1999](#), as amended by Act 1112/2011), temporary exceptions to fundamental rights that are compatible with Finland's international human rights obligations and that are deemed necessary in the case of an armed attack against Finland or during other **situations of emergency** defined by an act as posing a serious threat to the nation, may be enacted through an act, or through a government decree issued on the basis of authorisation given in an act for a specific reason and subject to a precisely circumscribed scope of application. The grounds for temporary exceptions shall always be laid down by an act. Article 23 also states that government decrees concerning temporary exceptions must be submitted to Parliament for consideration without delay, and Parliament may decide whether the decrees are in force. In addition, the constitutional framework for emergency situations consists of the [State of Defence Act \(1083/1991\)](#) and the [Emergency Powers Act \(1552/2011\)](#). The purpose of the Emergency Powers Act is to secure the livelihood of the population and the national economy, to maintain legal order and fundamental and human rights, and to safeguard the territorial integrity and independence of Finland in emergency conditions. The Emergency Powers Act defines various emergency conditions and gives the government the power to issue emergency decrees on a temporary basis (maximum length six months; however, three months for urgent decrees entering into force immediately). Parliament will decide whether these decrees will be adopted or repealed. A precondition for the application of the Emergency Powers Act is that the Government, in coordination with the President of the Republic, declares that there is a state of emergency in the country. Under the State of Defence Act, during situations of emergency, measures relating to national defence and national security can be taken in order to safeguard national independence and law and order. This Act is applied if the powers provided under the Emergency Powers Act are not sufficient. A state of defence is declared by a Presidential Decree for a period of three months, which may be extended up to one year at a time. Parliament decides whether it is in force.

Main measures adopted to address the coronavirus pandemic

On 16 March 2020, the Government announced, in cooperation with the President of the Republic, a [state of emergency](#) due to the coronavirus outbreak.¹ To prevent the spread of the coronavirus, protect the population, in particular at risk groups, and safeguard the capacity of the healthcare system and functioning of society and the economy, a variety of measures have been taken in accordance with the Emergency Powers Act, and also on other than specific emergency powers, namely on the [Communicable Diseases Act \(1227/2016\)](#), and other relevant legislation. The Government has issued [decrees](#), including extensions of validity periods of decrees, pursuant to the Emergency Powers Act, relating to functioning of healthcare and social welfare units ([section 86](#)); restriction of sale of medicines, goods and services used in healthcare services ([section 87](#)); health care and social welfare services and health protection ([section 88](#)); derogations to the terms and conditions of employment relationships and dismissals ([section 93-94](#)); obligation to work ([section 95 et seq.](#)) and closure of schools and other educational institutions ([section 109](#)).² The Government also restricted movement of people between the Uusimaa region and other parts of the country between 28 March and 15 April 2020 ([section 118](#)). Restaurants, cafés and bars were also closed until 31 May, with the exception of take-away and delivery services ([Act 153/2020](#), enacted directly under Article 23 of the Constitution). The government has made other [decisions and recommendations](#) concerning, for example, social distancing, restrictions on cross-border traffic and travel abroad, closure of sports facilities and cultural venues, bans on public gatherings of more than ten people and on mass events, prohibition of visits to care homes for the elderly, and self-quarantine-like conditions for persons over 70 years of age (to the extent possible). On 6 May, the government decided to move from extensive measures to a '[hybrid strategy](#)'. While some remain in place, gradual lifting of the restrictions has started. For example, as of 14 May, school and early childhood

education resumed and dismantling of the restrictions on cross-border traffic began. As of [1 June](#), gatherings of up to 50 persons are permitted and public premises reopened (e.g. museums, sports facilities). Restaurants, cafés and bars [reopened](#) with temporary restrictions relating to requirements on hygiene and social distancing, and limiting the number of customer seats and opening and licensing hours. The [government](#) has made decisions to support [businesses](#) financially and [supplementary budget proposals](#) for 2020 aim to stimulate the economy and ease the situation for businesses. On 15 June 2020, the Finnish Government [decided](#) to lift the state of emergency as of 16 June, and to manage the Covid-19 epidemic using regular powers.

Parliamentary control over emergency measures

As provided in the [Emergency Powers Act \(1552/2011\)](#), the government's emergency decrees concerning temporary exceptions have to be submitted to the Parliament for consideration without delay, and in the review, the Parliament decides whether the decrees are in force. The [Parliament's standing Constitutional Law Committee](#) scrutinises the constitutionality and conformity of the emergency decrees with fundamental rights. When reviewing the government decrees, the [Committee](#) has drawn [attention](#) to weaknesses in the context of some decrees, such as the need to have more information on the necessity of measures, an assessment of their impact and alternative measures, as well as due issuance of different types of emergency decrees. Generally, the Parliament has stressed its right to receive information in accordance with [Article 47 of the Constitution](#).

Luxembourg

Constitutional framework for emergency situations

The concept of emergency and the accompanying legal tools, are well known in Luxembourg and have [evolved](#) over time. Even prior to the introduction of the constitutional provision, at the beginning of the 20th century, the executive could take emergency measures based on the Law on State of Emergency. It is reported that the Luxembourg Government took around 618 emergency measures before 1935. At the time, the Parliament was hardly involved, as the only duty of the Government was to inform the Chamber of Deputies. Following the terrorist attacks in the United States of America in September 2001, political discussions started to define and enhance the legal framework to prepare for emergency situations. In 2004, this resulted in the [modification](#) of the Constitution of [1868](#). However, Article 32.4, as we know it today, is the result of a subsequent [revision](#) that took place following the terrorist attacks in France in 2015. Strictly speaking, the current Constitution of Luxembourg still does not provide for a 'state of emergency', as Article 32.4 only attributes special regulatory powers to the Grand Duke in the event of a serious international crisis and other urgent situations. Similar to Belgium, where the Constitution provides for the attribution of '[special powers](#)' to the King, and in Italy where Article 77 of the [Constitution](#) states that in extraordinary events of necessity and urgency, the Government may legislate through 'decree-laws'.

According to Article 32.4, the Grand Duke may take regulatory measures that may derogate from existing laws 'in the event of an international crisis, real threats to the vital interests of all or part of the population or imminent danger resulting from serious attacks on public security'. The emergency powers are not granted to the executive in a vacuum however, indeed they are framed by substantive safeguards. Emergency measures must be necessary, adequate and proportionate to the objectives pursued, they cannot derogate from the Constitution, although they may depart from existing law, and they can be taken only in the event that the Chamber of Deputies cannot duly legislate because of the emergency. The same article states that the '**state of crisis**' (*état de crise*) cannot go beyond 10 days unless authorised by a law of Parliament and cannot go beyond three months even if authorised in law. All the Grand-Ducal regulations (*règlements grand-ducaux*) will be valid only during a state of crisis as such (sunset clause). It is also [understood](#) that the scope of Article 32.4 is limited to the adoption of measures which cannot be taken via the 'ordinary' legislative

procedure under normal circumstances and which must be exclusively related to the crisis situation. The time factor is therefore a key element in deciding whether or not to resort to this article.

Main measures adopted to address the coronavirus pandemic

On 16 March 2020, a [ministerial decree](#) introduced [several limitations](#) to the freedom of movement of individuals as well as limitations on economic activities. Only the activities considered of 'essential' interest such as the health service, energy supply, food production and delivery, public transport or waste removal, were maintained. The decree also reinforced police patrols, introduced measures for social distancing and allowed for fines for those who did not respect the new measures. The legal basis for this decree was a law on the measures to be taken to counter the spread of [contagious diseases](#), dating back to 1885, Article 1 of which authorises the Minister of Health to take the necessary decrees (*arrêtés*) in case of epidemic. Two days later, on 18 March, a [regulation](#) of the Grand Duke (*Règlement grand-ducal*) declared a state of crisis, based on Article 32.4 of the Constitution. It confirmed the restrictive measures and, among other things, limited entry to Luxembourg territory of third-country nationals (with the exception of EU citizens, British citizens and countries associated with the Schengen area (Article 14)) for one month. On the other hand, more favourable conditions were granted to third-country nationals already in Luxembourg. For instance, the period of validity for visas, temporary residence permits, or residence permits due to expire in March 2020, was extended for the duration of the state of crisis. The status of those individuals in need of international protection and/or temporary protection was also extended for the duration of the state of crisis (Article 13). Finally, on 24 March, as required by Article 32.4 of the Constitution, a [law](#) of the Parliament prolonged the state of crisis declared by the Grand Ducal regulation to three months. The law was adopted according to Article [114.2](#) of the Constitution and in this specific case was approved [unanimously](#).

Parliamentary control over emergency measures

Article 32.4 establishes that the Chamber of Deputies cannot be dissolved during a state of crisis. Any extension of a state of crisis beyond ten days can only be decided by Parliament which votes according to Article 114.2 of the Constitution (adoption by a qualified majority of two-thirds of the votes – 40 votes out of 60). The state of crisis may be suspended or revoked at any time by the Chamber of Deputies. The 20 March Report of the Committee on Institution and Constitutional Revision [reaffirmed](#) that the 'Chamber of Deputies keeps for the duration of the state of crisis the fullness of its powers'. In 2017, the same Committee on the occasion of the revision of Article 32.4, stated clearly that while it is important to ensure a prompt reaction by the executive in cases of emergency, it is also essential to guarantee that the legislative branch fully assumes its constitutional prerogatives (cf. doc. parl. 6938/10). On the same occasion, the Council of State (*Conseil d'Etat*) [recalled](#) that the Chamber of Deputies maintains its legislative prerogatives and thus may legislate, at any time, on matters covered by a regulation adopted under Article 32.4, even during the crisis.

Netherlands

Constitutional framework for emergency situations

Article 103 of the [Dutch Constitution](#), together with the 1996 [Coordination Act for Exceptional Circumstances](#), provide that the government may declare, by royal decree and upon a proposal from the Prime Minister, a '**limited state of emergency**' or a '**general state of emergency**', 'if exceptional circumstances so require in order to maintain external or internal security'. A royal decree proclaiming a (limited or general) state of emergency shall be notified immediately to the Parliament (States-General), which shall, in a joint session of both Houses immediately and continuously, discuss the continuation (and effect) of the legislative measures that have entered into force. The decree proclaiming a state of emergency opens the power to activate – again by royal decree – for all or a part of the country's territory, specific 'emergency provisions' included in regular

laws or special 'emergency laws' listed in List A (limited state of emergency) and B (general state of emergency) of the Coordination Act. The state of emergency may exceptionally restrict the powers of decentral executive bodies, such as provinces, municipalities, certain other public bodies and water boards (*waterschappen*), as well as certain human rights and fundamental freedoms (listed in [Article 103\(2\)](#) of the Constitution). All emergency laws listed in List A and B of the Coordination Act contain, moreover, a standard clause allowing for the activation – again by royal decree – of one or more emergency provisions of the relevant act, without a state of emergency having been declared ('separate activation'). The government must then immediately submit a law for parliamentary approval, in order for the emergency provisions to remain in force. This way, an emergency act like the [Act on Extraordinary Powers of Civil Authority](#), which plays a key role in granting the Minister of Justice and Security powers relating to the maintenance of law, order and public security in exceptional circumstances, can be activated without a heavy emergency regime.

Main measures adopted to address the coronavirus pandemic

In response to the Covid-19 pandemic the Dutch Government did not declare a state of emergency or separately activate any emergency provisions. Existing legislation and regulations were [considered](#) to provide sufficient powers to address the crisis. The central legislative instrument used in the control and prevention of the Covid-19 virus is the [Public Health Act](#) (PHA), which provides for quarantine measures, a clear division of tasks and powers between central and local government and classifies infectious diseases into categories: A, B1, B2 and C, based on the extent to which mandatory measures³ can be imposed to protect the population. Category A includes the coronavirus⁴ (PHA, Article 1(e)). Assisted by a special [team](#) from the National Institute for Public Health and the Environment (RIVM), the Minister of Public Health, Welfare and Sport - who has the lead in the control of an infectious disease of category A (Article 7(1) PHA) - instructed the local authorities on the measures to be taken against the spread of the virus. Based on Article 6(4) PHA, the Chairs of the 25 security regions are responsible for the implementation and the enforcement of the control measures. In addition, given the scale of the crisis, the [Act on Security Regions](#) (Article 39(1)) attributes the Chairs of the security regions with powers to take measures, by means of (binding) emergency ordinances, for the maintenance of public order and safety to which the Mayor is regularly entitled. On this basis, a variety of restrictions have been imposed, ranging from health [advice](#), the interdiction of large-scale events, a call to work from home as much as possible or to spread working hours throughout the day, over the [closure](#) of schools and nurseries and the catering sector, to an 'intelligent lockdown' with [more restrictive measures and fines](#) for non-compliance, and an [extension](#) and in some respects easing of the measures to 28 April 2020 and again to [20 May](#). In the week before 20 May, the government decided to relax further some of the measures (e.g. most contact professions are allowed to operate as of 11 May 2020; nurseries and primary schools are open as of 11 May). However, as the crisis continues, the question arises as to whether the emergency ordinances still provide the appropriate [legal basis](#) for shaping and enforcing the 'one and a half metre society'. Several legal reflections have been published on the topic, touching, inter alia, upon the [possible non-constitutional character](#) of the measures laid down in the emergency ordinances, [enforcement powers](#) and [accountability](#), and the [lack](#) of [democratic control](#). The government is therefore preparing a [temporary law](#) that should replace the emergency ordinances and give the measures tackling the spread of the coronavirus a firmer legal and democratic basis.

Parliamentary control over emergency measures

Throughout the coronavirus crisis, the House of Representatives [continued](#) to meet on a regular basis – although in reduced form – to [discuss](#) the government's anti-epidemic measures, vote on tabled motions and receive updates from National Public Health Institute experts. Parliamentary scrutiny furthermore took the form of [written questions](#) addressed to the ministers responsible and of voting on temporary (emergency) acts submitted by the government, notably the acts to facilitate the functioning of decentralised authorities ([Digital Deliberation Act](#)) and the judiciary and public administration (Act on Covid-19 [Justice and Security](#)) during the crisis. Committee meetings on

specific topics restarted in mid-April 2020. Parliament also recently asked the Council of State for [advice](#) on the constitutional aspects of adopted and planned coronavirus measures. The Senate [stopped](#) meeting physically altogether. Notwithstanding the legal provisions in place, [some](#) argue that the Dutch Parliament exercised a '[very light oversight](#)'.

Portugal

Constitutional framework for emergency situations

In Portugal, the Constitutional setting ensures that fundamental rights are respected during emergency crises and that both the executive and legislative branches operate in agreement. According to Article 18.2 of the Portuguese [Constitution](#) of 1976, certain rights and guarantees can be restricted by law while respecting a number of limits. Other rights can never be suspended or else affected, including but not limited to, the rights to life, personal integrity, citizenship, the non-retroactivity of criminal law, freedom of conscience (Article 2 of the [organic law no 44/86](#))⁵. Article 19 of the Constitution further specifies that only the [bodies](#) that exercise sovereign power may do so, should the '**state of siege**' (*estado de sítio*) or the '**state of emergency**' (*estado de emergência*) be declared over a part of the entirety of the territory of Portugal. The former can be declared only in cases of 'actual or imminent aggression by foreign forces, a serious threat to or disturbance of democratic constitutional order, or public disaster'. The latter can be declared when the conditions appear to be less serious (*menor gravidade*) and thus the suspension of rights will only affect some rights and liberties (Articles 19.2 and 19.3 respectively).

The Constitution cannot be modified during a state of emergency or siege (Article 289). Neither declaration happens in a vacuum, indeed some substantial safeguards must be respected, such as the principle of proportionality. The declaration must contain some elements such as territorial application, the duration and the rights the exercise of which is limited or suspended (Article 15 of [organic law no 44/86](#)). In addition, both the extent and duration shall be limited to what is strictly necessary to promptly restore the constitutional 'normality'. States of siege or emergency cannot last more than 15 days, unless renewed for one or more periods, within the same time limits (Article 5 of [organic law no 44/86](#)). Whenever possible, the state of siege must be replaced by the state of emergency. Whereas the state of emergency or siege is declared by Presidential decree (Article 134), the President must consult the Government and seek Parliament's (*Assembleia da República*) binding authorisation ([Article 138](#)), in the form of a [resolution](#). Should it prove impossible for the Parliament to sit, an alternative procedure is envisaged.

Main measures adopted to address the coronavirus pandemic

On 18 March 2020, the *Assembleia da República* [authorised](#) the Portuguese President to [declare a state of emergency](#), based on the existence of a public calamity and referring to the [World Health Organization announcement](#) of the Covid-19 pandemic. Following Presidential Decree [14-A/2020](#), which initiated the state of emergency based on a public calamity for the first time ever, the Government approved Decree [2-A/2020](#) on 20 March ([rectified](#) the same day), aiming to implement the declaration to the entire national territory from midnight on 22 March 2020. Some [measures](#) to prepare for the major outbreak were introduced ahead of the formal declaration (e.g. to strengthen health facilities and limit travel). The Presidential Decree (Article 4) established the possibility to impose the necessary restrictions over the right to move and settle and the right to exercise economic activities. It also introduced the possibility to limit workers' rights, such as the right to strike, as well as sanitary controls on persons and goods arriving into Portuguese territory. The [governmental decree](#) implemented the original presidential decree and further specified confinement rules, inter alia, for infected people, introduced compulsory teleworking whenever feasible and clarified which commercial, sporting and cultural activities were to close and those that could remain open.⁶ It is [reported](#) that the Presidential decision to declare a state of emergency was preceded by a political [debate](#) about the necessity of making the declaration and then, [questioned](#)

because, inter alia, it touched upon rights (e.g. to travel, strike, freedom of assembly) that are usually reserved for Parliamentary action, even in a state of emergency. On 2 April, the *Assembleia da República* [authorised](#) the President to [renew](#) the state of emergency until 17 April, after which a second renewal was [authorised](#) and [declared](#) until 2 May. From 4 May, Portugal embarked upon a [plan for lifting the lockdown measures](#).

Parliamentary control over emergency measures

Parliament has exclusive competence to legislate on matters governing the states of siege and emergency (Article 164 of the Constitution). It oversees the application of both the declaration of a state of siege or emergency (Article 162) and cannot be dissolved during these exceptional times (Article 172). According to [organic law no 44/86](#), while the execution of the declaration is a government responsibility, this latter must keep the President of the Republic and the Parliament informed. Moreover, no later than 15 days after the cessation of the state of siege or emergency, the Government must provide Parliament with a detailed report on the adopted measures. Parliament will vote on a resolution based on this specific report, as well as any other information and documents that it may deem necessary to request. While the constitutional setting of the state of emergency envisages substantive safeguards coupled with the intervention and agreement of the President, Government and Parliament, [some](#) point out that procedural issues may hinder the role of Parliament. For instance, the reduced number of meetings may de facto increase the role of the executive at the expense of the legislative.

Sweden

Constitutional framework for emergency situations

The basic principles of Swedish democracy are manifested in the [Instrument of Government](#) (*Regeringsformen* (RF)), which is one of four fundamental laws of the [Constitution of Sweden](#). The Instrument of Government makes no specific reference to 'state of emergency'. However, RF Chapter 15 contains a framework for redistribution of legislative power in war or the danger of war. In war, the government is obligated to fulfil the duties of the Swedish Parliament (the *Riksdag*) to the extent necessary to protect the state and finish the war if the *Riksdag* or the War Delegation are unable to fulfil its duties (RF 15:5). In peacetime, the Government is obliged to manage civilian crises, such as the spread of infections like Covid-19, within the limits of the constitutional framework. Only the *Riksdag* can temporarily restrict the constitutionally protected free movement of individuals, with a five-sixths majority of those voting needed to impose such restrictions. However, a draft law like this shall be held in abeyance, unless rejected by the *Riksdag*, for a minimum of 12 months if so moved by at least ten members. Freedom of assemblies, nevertheless, can be restricted to limit the spread of an epidemic in accordance with RF 2:24. The Instrument of Government also enables a more rapid and flexible legislative process which can be useful when handling a civilian crisis. The RF chapter 8 contains multiple paragraphs regarding how legislative power can be delegated from the *Riksdag* to the government and how it can sub-delegate to its administrative agencies.

Main measures adopted to address the coronavirus pandemic

The measures taken by the Swedish Government to limit the spread of the coronavirus differ from those taken by many other governments, since workplaces, primary schools, shops and restaurants have generally remained open. The Public Health Agency of Sweden has issued strong [recommendations](#) for the Swedish citizens: to maintain social distance and good hand hygiene, work and study from home if possible, abstain from non-necessary domestic travel, avoid going to work with symptoms and not visit people at risk. Shops and stores have been advised to limit the number of visitors. Elderly persons aged over 70 have been strongly advised to limit their social contacts to the bare minimum. Upper secondary schools, higher institutions of education and adult learning have been [recommended](#) to carry out distance learning. This recommendation was later

[eased](#) and upper secondary school students can return on 15 June, but for the rest, distance learning may need to be partially administered until further notice. The Swedish Ministry of Foreign Affairs has [issued](#) also a recommendation not to travel abroad if not absolutely necessary until 15 July 2020. However, the *Riksdag*, the government and the Public Health Agency have decided to impose some legislative measures. In line with the Act (2020:148) on Temporary Closure of Activities within the Field of Education During Extraordinary Events in Peacetime, [adopted](#) by the *Riksdag* on 19 March 2020, the government has the possibility to temporarily close preschools and schools if necessary. The possibility provided by this law has not been used so far and there are currently no plans to do so. On 11 March, the government [decided](#) upon a request from the Public Health Agency, to temporarily ban all public gatherings, for example demonstrations, and cultural and sports events with more than 500 participants. This decision, as permitted by RF 2:24 and the Public Order Act (1993:1617) 2:15, was [revised](#) on 27 March, lowering the limit to 50 people. On 17 March, the government also [decided](#), upon a request from the European Commission and the European Council, to enforce a temporary travel ban from all non-EU countries, except the United Kingdom, Norway, Iceland, Liechtenstein and Switzerland. The ban does not apply to Swedish citizens. The ban is currently [extended](#) to 15 June 2020. The Public Health Agency [issued](#) new regulations and general guidelines on crowding in restaurants, cafés and bars on 25 March, as permitted by paragraph 12 of the Communicable Diseases Ordinance (2004:255). On 31 March, the Government also [decided](#) on a temporary prohibition on visiting retirement homes, to limit the spread of coronavirus among the elderly.

On 16 April 2020, the *Riksdag* [approved](#) authorisation for the government to adopt provisional amendments to the existing Communicable Diseases Act (2004:168) concerning relations between individuals and the public institutions that relate to the obligations of individuals, or that otherwise encroach on their personal economic circumstances, only where necessary to reduce the spread of Covid-19. The temporary authorisation means the measures taken are in force only until 30 June 2020, at the latest. The bill gives the government better ability to act faster to limit the spread of the virus. The temporary measures that might be relevant are listed in the law; they include limitations on public gatherings, closing of trading, social and cultural meeting places such as restaurants and travel centres. The government may also temporarily enable mutual trade or redistribution of medicines and medical equipment regarding private healthcare actors. They may also concern similar temporary measures.

Parliamentary control over emergency measures

If the *Riksdag* decides to delegate legislative power to the government to deal with civilian crises, which it did on 16 April 2020, the legislation introduced by the government can, in line with RF 8:4, be subordinated to scrutiny by the *Riksdag*, if it so decides. The provisional amendments to the Communicable Diseases Act approved by the *Riksdag* were made with a clarifying supplement, stating that the government can adopt further provisions only if the decision cannot await the approval of the *Riksdag*. Thus, any such provisions shall, in each individual case, immediately be examined by the *Riksdag*. However, in times of war or danger of war, RF chapter 15 contains multiple paragraphs as to how legislative power can be delegated to the government. Mainly, even if the *Riksdag* or the War Delegation cannot fulfil its duties, the government is not empowered to enact, amend or abrogate a fundamental law, the *Riksdag* Act (2014:801), or the Election Act (2005:837). If the government cannot fulfil its duties due to war, the *Riksdag* may form a new government (RF 15:4).

ENDNOTES

- ¹ The state of emergency was stated on the basis of a health emergency (Section 3, item 5) and an economic emergency (Section 3, item 3), as defined in the Emergency Powers Act. For the time being, the decrees issued have been based only on Section 3, item 5 (health emergency).
- ² The closure was initially carried out on the basis of the Communicable Diseases Act, but government decrees were issued on the basis of the Emergency Powers Act after the state of emergency was declared.

- ³ Mandatory measures include admission to hospital isolation, home isolation, medical examinations, quarantine with medical supervision, as well as a ban on practising a profession.
- ⁴ On 28 January 2020, the Minister for Medical Care and Sports [designated](#) the coronavirus a group A infectious disease.
- ⁵ Amended by the Organic Law No 1/2011, of 30 November, and by the Organic Law No 1/2012, of 11 May.
- ⁶ The full package of measures undertaken by the Portuguese Parliament due to Covid-19 can be found on the dedicated [government website](#).

Annex – Summary table on coronavirus states of emergency in seven Member States

	Measures adopted at the national level	Temporary	Parliamentary oversight*	Previous use
Croatia	Civil Protection System Act and Infectious Diseases Protection Act (with new amendments)	No **	Yes	No
Denmark	Amendments to the Epidemic Act	Yes	Yes	No
Finland	Most measures have been taken on the basis of the Communicable Diseases Act (1227/2016) and the Emergency Powers Act (1552/2011)	Yes	Yes	No
Luxembourg	Regulation of the Grand Duke of 18 March 2020 introducing measures to fight Covid-19 (Art. 32.4 of the Constitution)	Yes	Yes	Yes
Portugal	Art. 19, 134 (d) and 138 of the Constitution and Law no 44/86	Yes	Yes	No
Netherlands	Classification of Covid-19 as an infectious disease in category A (Public Health Act , Article 1 (e))	Yes	Yes	Yes
Sweden	Authorisation for the government to adopt provisional amendments in the Communicable Diseases Act (2004:168)	Yes	Yes	No

* Parliamentary oversight includes a set of tools to hold the Government accountable, one of which is the duty of the institution concerned to provide Parliament with information on the measures adopted.

** The legislation does not directly prescribe any time limitations for the duration of measures but the Civil Protection Authority is authorised to introduce measures only in case of 'special circumstances' endangering the lives and health of citizens. All the measures were introduced with an incorporated time limit (mostly 30 days) and prolonged once

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