

Parliaments in emergency mode

How Member States' parliaments are continuing with business during the pandemic

SUMMARY

The coronavirus pandemic has been accompanied by a huge array of public measures aiming to protect against and mitigate the consequences of the virus. While citizens have had to adjust to weeks of lockdown in their homes as a consequence of the emergency measures adopted by Member States, public institutions have been forced to move quickly to adapt their ways of working to a new and unprecedented scenario. These changes are particularly challenging for parliamentary institutions, as their functioning is based on the principles of pluralism, deliberation and transparency. How can decisions be adopted on the basis of those principles if many members cannot attend parliamentary sessions owing either to the restrictions on freedom of movement and bans on public gatherings in virtually all Member States, or to personal health concerns?

National parliaments in the EU have adopted a variety of approaches to address this challenge. Some have gone entirely digital, using remote technology to ensure all members can take part in parliamentary work, including voting. Others have opted to adopt parliamentary decisions with a reduced number of members while ensuring the balance of power between their different political groups. Some others, finally, have decided to adopt social distancing measures, allowing members to continue with their parliamentary activities from different rooms of the parliament premises or from another location entirely. Given the particular difficulties in travelling between Member States, the European Parliament opted for the first solution, holding its first ever digital plenary session, in which Members voted remotely using a new electronic voting procedure, on 26 March 2020.



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Introduction

Parliamentary law and procedures play a major role in structuring the conduct of business in parliaments and in making them effective institutions, capable of dealing with the tasks entrusted to them in representative democracies. The role and functioning of parliaments in contemporary representative democracies can seem far from classical accounts of parliaments as deliberative assemblies, representing the nation and seeking the best societal outcomes through public deliberation processes, and parliamentarians as individual and autonomous politicians freely exercising their mandates and therefore not bound by orders or instructions.¹ Universal suffrage, the emergence of mass political parties and the influence of the media have profoundly transformed representative democracies and the functioning of parliaments, with political parties assuming a fundamental role in aggregating and representing political preferences and in selecting political leaders.² This transformation has impacted parliamentary rules of procedure, which often encapsulate the existing contradiction between the still common characterisation of the parliamentary mandate as personal and free and the recognition of the fundamental role played by political parties and disciplined voting in organising parliamentary work.³ Although there is no agreement on the exact set of procedural rules that best serve a parliament's role in a contemporary democracy, there is broad consensus around the idea that parliamentary rules of procedure should be built upon the principles of pluralism, deliberation and transparency, facilitating an arena in which the representatives of the people have the opportunity to publicly confront each other's points of view in a free and fair setting.⁴ Rules of procedure requiring a certain number of members to be present and participate in parliamentary debates and votes are thus common in contemporary parliaments,⁵ as they are considered to be instrumental in ensuring the plural and inclusive character of parliamentary debates and decision-making procedures.

However, the situation created by the spread of Covid-19, where mass gatherings are discouraged or even forbidden as a result of the emergency measures adopted in virtually all European Union Member States, has made it difficult for parliaments to continue using their normal deliberative and decision-making procedures.⁶ In order to address the current situation, most Member States' national parliaments have decided to [adjourn](#) their parliamentary sessions, maintaining only essential activities, and to adopt [hygiene measures](#) aimed at stopping the spread of the virus, such as limiting the access of journalists and other visitors, encouraging the use of hand disinfectant gels, and disinfecting seats and podiums. In addition to these measures, some Member States' national parliaments and the European Parliament itself have decided to modify their operating rules, introducing appropriate innovations adapting parliamentary procedures. Some other national parliaments have decided to deal with the situation by resorting to political agreements and making use of the room for manoeuvre available in existing parliamentary rules.

The ways in which parliamentary activities have been adapted to the situation caused by the coronavirus pandemic can be divided roughly into three groups:

- 1 introduction of **electronic remote participation**; this method essentially digitalises parliamentary activity, but maintains the number of members who can potentially participate in parliamentary sessions intact;
- 2 **reduction of the number of parliamentary members** participating in parliamentary work either by political agreement or by legal means, creating a sort of emergency 'mini-parliament'. In some cases, this solution is combined with the delegation of votes of absent members of parliament (MPs) to those who are able to attend parliamentary sessions (proxy voting);
- 3 **social distancing measures** not affecting the number of members participating in parliamentary sessions or their right to vote, etc., but ensuring social distance, either moving parliamentary activities to bigger locations permitting members to hold plenary sessions while maintaining social distancing or reducing the number of members present in the room at the same time, or voting at any one time, etc.

Remote participation: Digitalising parliamentary activities

Some Member States' national parliaments have opted to allow their members to take part in parliamentary sessions remotely. The practice was not widespread among parliaments before the coronavirus pandemic. In its [2018 World e-Parliament Report](#), the Inter-Parliamentary Union reported that only Paraguayan and Spanish parliaments enabled their members to vote remotely in plenary sessions. In the Spanish case, the only EU national parliament allowing for that possibility before the pandemic, the members of both houses of the Spanish Parliament (Cortes Generales) were allowed to cast their votes through a remote electronic system ([Article 82 Standing Orders of the Congreso de los Diputados](#) and [Article 92 of the Standing Orders of the Senado](#)), but only if they could not attend plenary sessions because of certain justified circumstances. Some other Member States' national parliaments allowed absent members to cast their votes by different means, although the possibility was exceptional and the physical presence of the member casting the vote was almost always required.⁷ The Hellenic Parliament (Voulí ton Ellínon) allowed absent members to cast their votes in advance of the parliamentary session under certain circumstances, by either letter or fax ([Article 70A of the Standing Orders of the Hellenic Parliament](#)). Written voting procedures were also allowed in certain Member States' parliamentary committees under specific circumstances (e.g. [Rule 72 of the Bundestag Rules of Procedure, vote for urgent matters outside plenary weeks](#)).

The limited use of remote electronic participation in Member States' national parliaments before the coronavirus pandemic is not surprising. Remote electronic participation and voting by members in parliamentary sessions can be challenging from a technical and a logistical point of view, especially if the system used allows members to cast their votes when off house premises at the same time as those physically present on house premises and to participate fully in the parliamentary session: taking the floor or asking questions, etc. When implementing such a system, care must be taken to verify the identity of those MPs who are participating remotely, and particular attention must be paid to security concerns (i.e. cyber-attacks, identity fraud). In addition, the system needs to be sufficiently reliable, as a system allowing members to participate in sessions in real time needs high capacity to be able to transmit large amounts of data. Members using it might need familiarisation with the system, and also to ensure that they have access to secure connectivity in order to use it.⁸ If the system is not reliable enough to allow for participation in real time, remote votes need to be cast in advance (as in the Spanish case) or members participating remotely need to be given some time after the debate in order to cast their votes (as now in the European Parliament). Either possibility must be made compatible with the normal functioning of the parliamentary session. To give an example, if members participating remotely are obliged to cast their votes in advance, it is impossible to allow them to do it in relation to proposals that can be modified during the parliamentary session (as in the Spanish case). Similarly, a specific procedure is needed to allow members participating remotely to cast their votes when the vote is made by secret ballot.⁹

In addition to all these concerns, the system used for members' remote participation needs to ensure that members can exercise their mandate freely, without any undue external interference, a requirement that might be difficult to fulfil when members are exercising their mandate outside the secure location provided on house premises. Finally, the system must be sufficiently transparent, allowing external and internal actors to have a complete understanding of what happened during the session.¹⁰ Under the digital option, therefore, security and technical concerns demand careful consideration. However, if implemented in a sufficiently secure way, remote participation allows members who cannot be present on house premises to cast their votes personally and, ideally, participate fully in the session, thus honouring the free and independent nature of the parliamentary mandate, one of the cornerstones of European democratic constitutionalism.¹¹

Since the outbreak of the coronavirus pandemic, remote electronic participation and voting of members in parliamentary sessions has been identified as one way to ensure the continuity of parliamentary business and, as such, it has already been implemented in some parliaments around

the world. Outside the EU, some national parliaments have established a system allowing their members to participate and vote remotely in plenary and committee sessions (i.e. Brazilian lower House: [Resolução da Câmara dos Deputados nº 14, de 2020](#); Brazilian upper house: [Ato da Comissão Diretora do Senado Federal n. 7, de 2020](#)); whereas others have adopted a hybrid model, limiting remote participation to committee sessions (i.e. [Norwegian Storting](#)) or to some plenary sittings. That is the case, for example, in the British House of Commons, where committees [were temporarily allowed](#) to use electronic means of communication on 24 March 2020 and a hybrid system [was temporarily established](#) for some plenary sittings as from 22 April 2020. The hybrid model would first be used only for specific sessions (oversight sessions and some substantive proceedings) and would allow a certain number of MPs (120) to take part in plenary sessions (including votes) by means of a videoconference platform while other MPs would participate in the proceedings from the house premises, respecting social distancing rules. Within the EU, the European Parliament and some Member States' national parliaments have also resorted to this solution. However, the legal framework and the technical means used to implement this option differ.

Remote deliberation and voting

Remote electronic participation by MPs, including voting, is currently allowed by the rules applicable to the European Parliament and some Member States' national parliaments, although the possibility is not for use in normal circumstances, where physical presence of members in parliamentary premises is still required, but on rather exceptional basis.

The **European Parliament** held its first plenary session with remote electronic participation of most of its members on 26 March 2020 ([only 75 Members and Parliament's President were present](#)). Although the [Rules of Procedure](#) do not refer explicitly to this possibility, the Bureau of the European Parliament decided to [supplement](#) the decision on rules governing voting in Parliament on 20 March 2020 and establish an 'alternative electronic voting system,' complementary to the electronic voting system used on house premises, and which does not require Members of the European Parliament (MEPs) to be physically present to participate in parliamentary sessions and vote. The system complements the existing voting procedures temporarily, as the decision is, in principle, applicable only until 31 July 2020 (the date can be reviewed by the Bureau). The system can only be used under certain exceptional circumstances to be assessed by the President of the European Parliament: it can only be used if the normal electronic voting procedure poses a risk to the health of MEPs or the Parliament's staff or if it is impossible to use owing to the travel restrictions imposed by the Member States as a result of the coronavirus pandemic. MEPs can attend the parliamentary session remotely and take the floor by means of a videoconference platform (Webex) and are also able to vote during the session, although remote voting does not take place in real time. Remote participation is not an obligation, but a possibility offered to MEPs, as demonstrated by the fact that 75 out of a total of 705 members decided to attend the 26 March plenary session physically on Parliament premises.

As provided for in the Bureau decision of 20 March, the procedure for remote voting in the European Parliament is the following: if the President decides to use the alternative electronic voting system, the decision must be published on Parliament's website at least 24 hours before the opening of the session, together with the voting list and the opening and closing time of the vote; MEPs receive the ballot papers in their official mailbox with the items to be voted during the session and they are allowed a certain period of time after the debate to print them, fill in the vote, sign it, scan or photograph it, and return it from their official mailbox. The outcome of the votes is only announced by the President once the time allowed to cast the votes has expired and all the valid votes have been counted. For a remote vote to be valid it needs to be signed by the MEP and sent from their official mailbox, providing two ways to authenticate the identities of MEPs voting remotely.

Whereas the European Parliament has introduced a modification to its operating rules that will only be applicable during the present coronavirus pandemic, the approach taken by the Sejm in Poland and the Chambre des représentants / Kamer van volksvertegenwoordigers in Belgium is different,

as both have introduced a modification in their rules of procedure that could potentially be applied to other crisis situations. In **Poland**, on 26 March 2020 the Sejm (lower house) – sitting in [12 different rooms](#) to maintain social distancing – [adopted](#) an amendment to its rules of procedure that would only be applicable in times of epidemic (declared as from 20 March 2020) or any of the states of emergency provided for in the constitution (state of exception, state of natural disaster, or martial law, none of which has been declared as yet). The amendment allows plenary sessions, and also committee and sub-committee sessions, to be held by electronic means, if the speaker, after consulting the [Council of Elders](#) (a body composed of the speaker, deputy speakers and political group leaders) decides that this should be the case. According to the rules, all members are entitled, but not obliged, to participate remotely, including by voting. Those of the 460 MPs who wish to participate physically on the premises of the Sejm, may use the plenary chamber, where only a very limited number of MPs, in proportion to political groups, are allowed, or additional rooms (where social distancing is implemented). The length of MPs' speeches is reduced, and the debates are shortened. The new system has been applied as of 27 March 2020. On 15 April 2020 the Senat (upper house) also began working according to the '[hybrid model](#)', whereby all 100 Senators wishing to participate in person could do so, either in the plenary room or in a parallel room, allowing for social distancing in both. Which senators are allowed into the plenary room is determined by consensus of the political groups to maintain proportion between them. Both rooms were connected by live audio-video-link. Other senators may participate remotely, including to take the floor, table motions and vote. This mode of work was [introduced](#) by decision of the Council of Elders of the Senat of 9 April 2020, based on Article 16(3)(4) of the Senat's rules of procedure, which provide that the Council of Elders 'fulfils its tasks by (...) considering or proposing requests concerning the way in which discussions or sittings of the Senat are conducted'.

In **Belgium**, remote voting of the members of the two houses of the national parliament (the Sénat / Senaat and the Chambre des représentants / Kamer van volksvertegenwoordigers) was not allowed before the coronavirus pandemic. However, the president of the Chambre / Kamer (lower house) [tabled a proposal](#) (on 19 March 2020) to modify the rules of procedure of the house in order to be able to convene parliamentary sessions and vote remotely. The proposal was [adopted](#) on 26 March 2020, allowing MPs to vote remotely both in plenary and committee sessions, but only in serious and exceptional circumstances endangering public health and preventing MPs from being physically present on house premises and only in relation to urgent matters. The existence of such a situation would be declared by the Conference of Presidents and notified to all MPs, who would then inform the president or the secretariat if they planned to cast their vote remotely (Article 42.3bis, Rules of Procedure). Members casting their votes remotely are considered present in order to determine whether the necessary quorum has been met, and the remote vote has to be cast before the close of voting (Article 58.3, Rules of Procedure). The Chambre / Kamer first used the new remote electronic voting system at the [9 April 2020 plenary session](#), physically attended only by two members of each political group, with the rest of the MPs participating in the session and the votes remotely.

In some other Member States' national parliaments, remote participation of members is allowed only in committee sessions, but not in the plenary. For example, in **Estonia**, the Constitutional Committee of the Riigikogu decided on [16 March 2020](#) that, according to the existing rules of procedure, committees could hold their sessions making use of remote electronic means during the coronavirus emergency situation. The Constitutional Committee decided by consensus that the Riigikogu Standing Rules and Internal Rules Act allowed Riigikogu committees to work remotely if all relevant conditions for participating in the sitting, such as opportunities to make comments, ask questions and vote were ensured. Although this possibility had been used in exceptional cases in the past (for individual members of the committees or guests), the coronavirus pandemic marks the first time such widespread use has been allowed, including for committees as a whole.

In some other Member States' national parliaments, the rules of procedure have had to be amended in order to allow committees to work remotely. In **Lithuania**, the Seimas adopted an amendment of

its [Statute](#) on 17 March 2020 allowing committees to hold sessions and vote remotely if a state of emergency had been declared ([Article 144 of the Constitution of Lithuania](#)) and the Board of the Seimas had made a decision in that sense, as is currently the case, a state of emergency having been [declared](#) due to the coronavirus pandemic on 26 February 2020. According to Section 186(11) of the Statute of the Seimas, the system used by committees to hold remote sessions must ensure the verification of the identity and the voting intention of the members participating remotely and a recording of the sitting (only audio) must be broadcast on the Seimas website if possible, an important requirement from the point of view of the transparency of parliamentary business. Similarly, the **German Bundestag** [decided](#) on 25 March 2020 to temporarily amend its Rules of Procedure (*Geschäftsordnung*), allowing committees to organise their meetings using electronic means of communication and to take legally binding decisions and proceed to valid votes by using the same channels ([Rule 126a\(III\), Rules of Procedure](#)). Members participating remotely will be considered as present in order to determine whether the quorum has been satisfied (Rule 126a(II)). Similarly, the modification provides for extended possibilities for committees to use the written procedure for adopting decisions, as they may decide to use that procedure even during plenary weeks (Rule 126a(III)), a possibility that was not normally permitted under Rule 72. The amendments will be in force until 30 September 2020, but may be abrogated earlier by the Bundestag.

Only remote voting

Some other Member States' national parliaments are limiting the participation of members who are not physically present on the house premises to voting only. That is the case of the two houses of the **Spanish Parliament** (the Congreso de los Diputados and the Senado) and of the **Hellenic Parliament** (Voulí ton Ellínon), although with significant differences as regards the possibilities offered to non-physically present MPs to cast their votes. According to [Article 70A of the Standing Orders of the Hellenic Parliament](#), absent members can cast their votes when they are on a governmental or parliamentary mission abroad and, if they are pregnant, during the last month of pregnancy and the first following the birth. The vote must be addressed to the Speaker of the House either by letter (that can be sealed in the case of secret votes) or by fax, must be signed and must identify the item put to the vote. Although the circumstances under which this possibility can be used are limited, the Hellenic Parliament decided to make a flexible interpretation of the provision during the Covid-19 pandemic, as explained by its president on [12 March 2020](#).

The provisions allowing for remote electronic voting of members of the two houses of the Spanish national parliament have also been used to maintain parliamentary business during the coronavirus pandemic. According to [Article 82 of the Rules of Procedure of the Congreso de los Diputados](#) (lower house) and [Article 92 of the Rules of Procedure of the Senado](#) (upper house), remote voting is only allowed in the two houses of the Spanish parliament in cases of pregnancy, maternity and paternity leave, and serious illness, and only if the member cannot exercise their parliamentary mandate and the Bureau of the House considers it sufficiently justified. Remote voting is only permitted in plenary (not committee) sessions and only when it can be known in advance when and how the vote will take place, thus when proposals put to the vote cannot be modified during the plenary session. This requirement is explained by the fact that members participating remotely are obliged to cast their votes in advance.

The member concerned must ask the Bureau of the house in writing for authorisation to vote remotely, justifying the reasons why they cannot exercise their parliamentary mandate and determining the timeframe during which they will not be able to exercise their parliamentary mandate in full. The Bureau has to decide formally on the request and notify its decision to the member concerned, indicating whether the authorisation to vote remotely has been granted, the plenary sessions for which the authorisation has been granted, the votes that can be cast remotely and the timeframe for the member to cast their vote. The procedure used to cast the vote remotely provides for the verification of the identity of the person casting the vote and the intention of the vote through several steps. In the [Spanish Congress](#), members cast their votes through the Congress

intranet and with their personal digital signature certificate. Once the vote has been cast and before the plenary vote starts, the identity of the member participating remotely and the intention of their remote vote is verified by a phone call. In the [Senate](#), members also use the house intranet to cast their votes and must sign the operation through a two-step verification process (with their username and password, and an SMS code that is sent to their phones and expires after 15 minutes). The speakers of the houses must have the votes cast remotely before the plenary vote starts and announce the results of the votes, including both the votes cast remotely and those cast on parliamentary premises. In order to safeguard the secrecy of a member's vote if the vote is made by secret ballot, the vote cast remotely will be printed and placed in the ballot box by the presidency of the house without indicating the identity of the member who cast it.

Although this voting procedure was clearly not created to be extended to a wide number of members of both houses of the Spanish national parliament simultaneously, but to address justified absences of individual MPs, the bureaux of both houses of the Spanish Parliament have interpreted the existing rules loosely and have generalised the possibility so as to address the situation created by the coronavirus pandemic. Since the [declaration of the state of alarm](#) by the Spanish government on 14 March 2020, the Spanish Congress has conducted plenary sessions on 18 March, 25 March and 9 April. Although no votes were included in the agenda of the first plenary sitting ([18 March](#)), several votes were scheduled for the [25 March](#) and [9 April](#) plenary sessions, including votes to authorise the prolongation of the state of alarm declared by the government. During the latter two sessions, only 43 MPs attended the plenary session physically (speakers [designated](#) by the political groups and the government, and members of the Bureau) and 306 (out of 350) MPs cast their votes remotely. The Spanish Senate has conducted just one plenary session since the crisis began, on 17 March 2020, during which [259 senators voted remotely](#) and just 5 attended the session and voted in person on the Senate's premises.

Reducing the number of participating MPs

Another way used by some parliaments to continue parliamentary business while at the same time coping with the challenges of the coronavirus pandemic is to resort to a 'mini-parliament' method of work, whereby **a sub-group of MPs constitute a kind of 'emergency parliament' exercising the powers of the whole parliament**. This solution does not have any of the technical and security inconveniences pointed out in relation to the digitalisation of parliamentary work. However, it questions the personal and representative nature of the parliamentary mandate, and seems to be built on the importance assumed by political parties in the structure of modern representative democracies: democratic processes and electoral success are partially determined by the political affiliation of individual candidates, and party apparatus and disciplined voting along party lines have substantially narrowed individual members' parliamentary freedom. As the solutions analysed under this heading are built on political parties' cohesion and on party leadership capacity to impose the official position on backbenchers, they might not work in countries where parliamentary groups are not unitary actors and party discipline is fragile for various reasons, such as for example electoral rules favouring intra-party competition and greater responsiveness to constituents, or presidential forms of government where parliamentary disunity does not seem to have such a strong impact on a party's electoral success, as suggested by academic literature.¹² Similarly, this option might not be available if there is no agreement between different political groups on the specific arrangement to be used to reduce the number of MPs present, while, at the same time, maintaining the balance of power between the various political groups forming the majority, on one hand, and the opposition, on the other.

This solution has been implemented by various Member States' national parliaments during the coronavirus pandemic, either through purely political arrangements or through formal amendments in the rules applicable to the house in question, and essentially takes three forms:

- a reduction in the number of members actively participating in parliamentary work, respecting the minimum required by the legal quorum (no change in the legal rules, but political arrangement between political groups),
- a reduction in the legally required quorum,
- use of proxy voting, i.e. the delegation of the vote to selected members.

Keeping to the minimum quorum or reducing the quorum

A simple way to reduce the number of members attending parliamentary sessions without requiring a change in the rules of procedure, is to stick to the minimum legal quorum, e.g. 50 % of members. For this solution to be implemented fairly, a political agreement on 'pairing' must be reached between the political groups, to ensure that despite a reduction in the number of members in the room, the proportions of each political group are the same as in the full composition of the house. Otherwise,

Pairing arrangements

'Pairing' arrangements enable a member of parliament to be absent, and to agree with another member to be absent at the same time. By this mutual agreement, a vote is neutralised on each side, and the actual size of the majority is not affected.

Source: Thomas Erskine May, [Treatise on the Law, Privileges, Proceedings and Usage of Parliament](#), 25th edition, 2019, Chapter 20.

the solution would not be accepted by all political players, as it would distort the relative force of each political group in the house. This solution is a *de facto* 'mini-parliament' or 'emergency parliament', because by virtue of a political agreement a portion of the members (50 % or a percentage agreed by the political forces) represent the entire parliament (100 %). The solution is not completely innovative, as pairing arrangements have a [long tradition](#) in the UK Parliament and were already used in several Member States' national parliaments (e.g. Belgium and Sweden) before the coronavirus pandemic.¹³ However, its use seems to have been generalised in some parliaments under the current circumstances, based on the assumption that what matters is the proportion between political groups in parliament, rather than the individuality of the members.

This solution has been introduced notably in **Austria** where the Nationalrat (lower house) was meeting in a [reduced 50 % format](#) reflecting the proportions between political groups until the 23 April plenary session, from which time this precautionary measure [was lifted](#) in line with the country's coronavirus exit strategy. The reduction in the number of MPs was done on the basis of consensus among the political groups, rather than on the basis of a specific emergency rule, and was permitted by the fact that Rules 48 and 82 of the Rules of Procedure state that the Nationalrat may only proceed to legally binding votes and elections if one third of its members is present and half of these have voted in favour of the bill in question. A similar solution has been implemented in **Ireland** where the outgoing prime minister (Taoiseach), the party and group leaders, agreed to reduce the number of MPs attending [Dáil Éireann](#) (lower house) and the [Seanad Éireann](#) (upper house) meetings to approximately one third of the full membership. In both cases, the agreement was facilitated by the Standing Orders of the house, as Article 21 of the Dáil Éireann Standing Orders requires a general quorum of 20 MPs to constitute a meeting (160 is the total number of MPs) and Article 19 of the Seanad Éireann Standing Orders requires a quorum of six or twelve of a total of 60 senators, depending on the agenda of the sitting. However, as Dáil Éireann is expected to need to vote soon to elect a new taoiseach, the Business Committee considered different proposals regarding alternative venues for sittings of the house that would allow all the MPs to participate and vote on specific occasions (such as the election of the taoiseach) while respecting social distancing. On 8 April 2020, the Business Committee of Dáil Éireann [decided](#) to move those plenary sessions involving all MPs to the Convention Centre while maintaining Dáil Éireann's regular venue (Leinster House) for all other sittings with restricted numbers of MPs present.

In **Sweden**, there is no legal quorum for the Riksdag to hold a valid vote (save for exceptional votes, such as the modification of the Riksdag Act ([Article 17, Chapter 8, Instrument of government](#)), and

therefore the group leaders of the parties have [agreed](#) on a reduced number of MPs when voting in the chamber (55 MPs will represent the 349 MPs), ensuring that the distribution of seats among the parties is the same as if all 349 MPs were present. In **France**, the Assemblée nationale has adopted a similar approach, with the Conference of Presidents agreeing on 17 March 2020 on specific working methods to be applicable during the coronavirus pandemic. In order to ensure the continuity of democratic life in the country while respecting health recommendations, the Conference of Presidents [decided](#):

- to suspend all current activities, apart from the adoption of emergency laws and question time with the government (*questions au gouvernement*);
- to apply a reduced format for sittings (including for committee meetings), limited to three members per political group (the group chair or their representative, and two members), with a total of 24 MPs present in the hemicycle, plus the president of the sitting;
- to extend proxy votes (the possibility for a single member to cast votes for all the members of their political group).

These limitations on the number of attending members will be eased from 28 April, as decided by the Conference of Presidents on [21 April](#). From that day, the number of MPs allowed to be present in the hemicycle will be 75 (before it was only 24), respecting the following distribution among political groups: LaREM: 40 MPs; LR: 13 MPs; Modem: 5 MPs; SOC: 4 MPs; UDI-Agir: 4 MPs; LT: 3 MPs; FI: 3 MPs; GDR: 3 MPs. Although these decisions do not respect the usual quorum required for the Assemblée nationale to have a valid vote, as in principle an absolute majority of members must be present within the building for a vote to take place, a vote may take place even if a quorum is not present if none of the chairs of the political groups ask for the quorum to be verified before the vote takes place. Furthermore, a political group chair cannot ask for the quorum to be verified if the majority of the members of their group are not on the house premises ([Article 61 of the Rules of Procedure](#)). This reduction in members present, allowed by the current rules of procedure, is combined with voting by proxy, as discussed below.

As already noted, the **German Bundestag** modified its Rules of Procedure temporarily in order to adjust parliamentary activity to the coronavirus pandemic. On 25 March 2020, the Bundestag held a one-day plenary session during which the house amended its rules of procedure (*Geschäftsordnung*) not only to allow the remote electronic participation of its members in committee sessions, but also to lower substantially the quorum required for the chamber to proceed to valid votes. While, in principle, [Rule 45 of the Geschäftsordnung](#) requires the presence of half the members in order to take legally binding decisions and proceed to valid votes, this threshold has been lowered considerably for the sake of parliamentary continuity. According to the recently inserted [Rule 126a](#) the quorum requirement is already satisfied when a quarter of all members of the Bundestag are present. This arrangement applies not only to plenary but also to committee sessions, although in the latter case members participating using remote electronic means are considered present in order to determine whether the quorum has been met. The measures not only reduce the number of parliamentarians present (and limit the spread of the virus), but also allow the Bundestag to exercise its parliamentary control over the measures taken by the government. As mentioned above, the legal basis for this new arrangement, Rule 126a of the *Geschäftsordnung*, will automatically expire on 30 September 2020 (Rule 126a V). Alternatively, the Bundestag has the possibility to abrogate the article on an earlier date.

Voting by proxy

Voting by proxy has long been used in various parliaments around world to ensure that MP absences do not affect the actual size of the majority on a vote. Before the coronavirus pandemic, legislative proxy voting was allowed within the European Union in France and Luxembourg, but also in some other national parliaments, such as, for example, the British House of Commons, where a [pilot proxy voting scheme](#) was introduced on 1 February 2019 as an alternative to the traditional informal

pairing agreements, allowing new mothers, fathers or adoptive parents to give another member the power to vote in their name.¹⁴ Under the pandemic, extensive use of proxy voting has been suggested in some national parliaments (for example, France and the [United Kingdom](#)) as a way of reducing the number of members present while maintaining the balance of power between different political groups.

In **France**, where proxy voting in parliament has a long tradition,¹⁵ MPs' right to vote is characterised by Article 27 of the Constitution as a personal right, although an MP may exceptionally delegate their vote under certain circumstances provided for in that constitutional provision, [Ordonnance No 58-1066](#) of 7 November 1958, [Article 62 of the Rules of Procedure of the Assemblée nationale](#) and [Articles 63 to 64 of the Rules of Procedure of the Sénat](#). Members of both houses of the national parliament (Sénat and Assemblée nationale) are allowed to delegate their votes if illness, accident or a serious family event prevents them from attending parliamentary sessions; if they are doing their military service, or are on a temporary mission entrusted by the government; if they are participating in sessions of international assemblies under an appointment made by the French Parliament; for some extraordinary sessions; and in cases of *force majeure* when decided by the bureau of each of the houses of the national parliament. Each member may delegate their vote to another member and the delegation must be notified to the president of the house indicating the identity of the member receiving the delegation and the reason why the delegating member cannot attend the session. Making use of these provisions on 17 March 2020, the Conference of Presidents of the Assemblée nationale [decided](#) to extend the possibilities for proxy voting and allowed a single member to cast the votes of all the members of his or her political group.

The **Luxembourg** parliament was already very lenient on proxy voting by absent members before the coronavirus pandemic. Delegation to one of the members present is possible, with no specification as to the situations in which this can take place, except that no member can be the delegate for more than one absent member ([Article 65 of the Constitution of Luxembourg](#) and [Article 47 of the Standing Rules of the House of Representatives](#)). The delegated member casts the vote of the absent member provided that this has been authorised in advance by the Bureau. Voting by delegation is not permitted in relation to specific matters (constitutional reform – Article 114 of the Constitution). Although the system is used frequently by the members of the Chambre des députés, the house is trying to ensure continuity of parliamentary business during the coronavirus pandemic by applying [measures](#) that aim to guarantee social distancing between members of parliament, as explained below.

Social distancing measures during parliamentary sittings

Finally, some Member States' national parliaments are trying to maintain parliamentary activity by means of purely organisational or hygiene-related measures, aimed at ensuring social distancing between members present. These measures are often combined with the reduction of members physically present on the premises (e.g. in France and Germany) and are, actually, a natural outcome of that reduction (fewer deputies in the hemicycle enables those present to keep further apart from each other). In other instances, they aim to maintain social distancing at the same time as ensuring participation of all members of parliament. Some national parliaments have decided to hold sittings in different locations that are big enough to ensure social distancing even if all members of parliament are present at the same time (e.g. the Irish Dáil Éireann and the Chambre des députés of Luxembourg, which [began](#) holding plenary sittings after the Easter holidays in the Cercle Cité instead of in its usual location, the Hôtel de la Chambre). Some other Member States' national parliaments have decided to reduce the number of members physically present in the hemicycle, but then allow them to vote in turn or to participate in the debates and votes from different rooms located on the usual premises. For example, the Latvian [Saeima](#) is currently holding its plenaries in eight different rooms, connected by videolink. The Saeima is planning to switch to remote participation once the public procurement procedure for appropriate technology is completed.

Similarly, at the Danish Folketing members vote in the same room, but enter in turn, keeping a distance of 2 metres from each other.¹⁶

Annex - Overview of measures in selected national parliaments of the EU Member States

Country	Remote electronic participation in plenary		Reducing the number of active MPs in plenary	Proxy voting
	Remote deliberation	Remote vote		
Belgium	√ (only Chambre des représentants / Kamer van volksvertegenwoordigers)	√ (only Chambre des représentants / Kamer van volksvertegenwoordigers)	√ (only Sénat)	X
Bulgaria	X	X	X	X
Czechia				
Germany	X	X	√ (Bundestag and Bundesrat)	√ (votes of each Land can be cast by the Stimmenführer in Bundesrat)
Spain	X	√ (Congreso de los Diputados and Senado)	X	X
Estonia	X	X	X	X
France	X	X	√ (Assemblée Nationale and Sénat)	√ (Assemblée Nationale and Sénat)
Croatia	X	X	√	X
Ireland	X	X	√ (Dáil Éireann and Seanad Éireann)	X
Italy	X	X	√ (Camera dei deputati and Senato della Repubblica)	X
Cyprus	X	X	√	X
Latvia	X	X	X	X
Lithuania	X	X	X	X
Luxembourg	X	X	X	√
Netherlands	X	X	√ (Tweede Kamer and Eerste Kamer)	√ (exceptionally, political group delegates vote for the members of their groups in the Tweede Kamer)
Austria	X	X	√ (Nationalrat - measures lifted from 23 April plenary session- and Bundesrat)	X
Poland	√ (Sejm and Senat)	√ (Sejm and Senat)	X	X
Portugal	X	X	√	X
Romania	√ (Camera Deputaţilor; Senat; Common sessions)	√ (Camera Deputaţilor; Senat; Common sessions)	X	X
Slovenia	√ (Državni zbor and Državni svet)	√ (Državni zbor and Državni svet)	X	X
Finland	√	X	√	X
Sweden	X	X	√	X

ENDNOTES

- ¹ Edmund Burke, *Speech to the Electors of Bristol*, 1774; Montesquieu, *De l'esprit des lois*, Livre XI, Chapitre VI, 1748; Emmanuel Joseph Sieyès, *Qu'est-ce que le Tiers état ?*, 1789; John Stuart Mill, *Considerations on Representative Government*, Parker, Son & Bourn, 1861.
- ² Among many others, see: Giuseppe Maranini, *Governo parlamentare e partitocrazia : lezione inaugurale dell'anno accademico '49-'50*, Editrice universitaria, 1950; Manuel Garcia Pelayo, *El Estado de partidos*, Alianza Editorial, 1986; Bernard Manin, *The principles of representative government*, Cambridge University Press, 1977, pp. 193-236.
- ³ Zdzisław Kędzia and Agata Hauser, *The impact of political party control over the exercise of the parliamentary mandate*, Inter-Parliamentary Union, 2011, p. 9.
- ⁴ Wolfgang C. Müller and Ulrich Sieberer, 'Procedure and Rules in Legislatures', in Shane Martin, Thomas Saalfeld, and Kaare W. Strøm (eds.), *The Oxford Handbook of Legislative Studies*, Oxford University Press, 2014, p. 314.
- ⁵ Venice Commission, [Parameters on the Relationship between the Parliamentary Majority and the Opposition in a Democracy: a checklist](#), CDL-AD(2019)015-e, pp. 15-17.
- ⁶ For an overview of the measures adopted by different parliaments around the world to continue parliamentary business during the coronavirus pandemic, see the [website of the Inter-Parliamentary Union](#).
- ⁷ For an analysis of the situation in the other Member States, see [Democratic scrutiny, transparency, and modalities of vote in the National Parliaments of the Member States and in the European Parliament](#), Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, 2012.
- ⁸ Office of the Majority, Committee on Rules, US House of Representatives, [Majority Staff Report Examining Voting Options during the COVID- 19 pandemic](#), pp. 6-10.
- ⁹ Piedad Garcia Escudero, 'Voto parlamentario no presencial y sustitución temporal de los parlamentarios', *Corts. Anuario de Derecho Parlamentario*, num. 24, 2010, pp. 106-110.
- ¹⁰ Office of the Majority, Committee on Rules, US House of Representatives, op. cit., pp. 10.
- ¹¹ Venice Commission, [Report on the imperative mandate and similar practices](#), CDL-AD(2009)027, p. 14.
- ¹² See for instance J.M. Carey, *Legislative Voting and Accountability*, (CUP 2009); [C.J. Kam](#), *Party Discipline and Parliamentary Politics*, (CUP 2009).
- ¹³ Piedad Garcia Escudero, op. cit., pp. 84-85.
- ¹⁴ Proxy voting is also allowed in some other national parliaments, such as for example, the [US Senate](#) (Rule XXVI of the [Standing Rules of the Senate](#) allows proxy voting for committees votes only); the [New Zealand Parliament](#) (Rules 139-155 of the Standing Orders of the New Zealand Parliament allow for proxy and party votes); and the Australian House of Representatives ([Resolution of 13 February 2008 allows proxy voting for members nursing infants](#)).
- ¹⁵ F. Rouvillon, 'Heurs et malheurs d'un principe: le vote personnel des députés', *Revue du droit public*, No 3, 1998; F. Thuriot, 'Vote personnel : efficacité collective contre légitimité individuelle', *Revue politique et parlementaire*, No 1 008, 2000.
- ¹⁶ Danish reply to [ECPRD request 4354](#) (20 March 2020).

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