

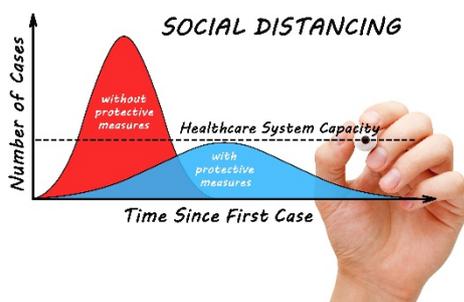
# States of emergency in response to the coronavirus crisis: Situation in certain Member States II

## SUMMARY

Member States have adopted a range of emergency measures in response to the unprecedented public health crises generated by the coronavirus pandemic. Whereas not all Member States dispose of constitutional mechanisms to enable the declaration of a 'state of emergency', all have taken exceptional and far-reaching emergency measures that affect citizens' rights and freedoms as well as democratic processes. These institutional changes and the restrictions imposed on citizens' lives pose significant institutional and democratic challenges.

Given their impact on fundamental rights and freedoms and on the normal functioning of democracy, emergency measures need to be carefully examined, matched with adequate legal safeguards, and subject to close democratic scrutiny. This is particularly true in the context of rapid changes of circumstances and in view of new evidence about the evolution of the crisis and its implications. This briefing covers the following countries: Bulgaria, Estonia, Latvia, Malta, Austria, Romania, and Slovenia. It focuses on three key aspects: i) the constitutional framework of the state emergency or legitimation of the emergency legislation; ii) the concrete measures adopted; and iii) the extent of parliamentary oversight exercised on the adopted measures.

This briefing is the second in a series aimed at providing a comparative overview of Member States' institutional responses to the coronavirus crisis. The [first](#) in the series covered an initial set of seven Member States.



### In this Briefing

- > Introduction
- > Austria
- > Bulgaria
- > Estonia
- > Latvia
- > Malta
- > Romania
- > Slovenia

EPRS | European Parliamentary Research Service

Authors: Nikolai Atanassov, Hubert Dalli, Costica Dumbrava, Gianna Eckert,  
Ulla Jurviste, Anja Radjenovic, Sofija Voronova

Members' Research Service

PE 651.914 – May 2020

## Introduction

All seven Member States analysed in this briefing have adopted special measures to tackle the spread of the coronavirus, involving to varying degrees the imposition of temporary restrictions on certain rights and freedoms, such as freedom of movement, freedom of assembly and of association, the right to education, and the right to engage in work. All these Member States, except Austria, have specific constitutional provisions allowing for the declaration of a state of emergency in exceptional situations, such as pandemics. However, amongst the Member States analysed in this briefing only Bulgaria, Estonia, Latvia and Romania have resorted to these provisions in order to tackle the coronavirus crisis. Malta and Slovenia instead chose to adopt emergency measures on the basis of ordinary public health law. In some cases new laws were adopted to amend previous legislation related to public emergencies (Malta and Romania) or to provide a legal basis for emergency measures (Bulgaria, Estonia and Austria). Certain executive acts and emergency measures have been contested in courts, e.g. before Bulgaria's Supreme Administrative Court and before the constitutional courts of Romania and Slovenia. Overall, parliamentary scrutiny over emergency measures exists in all the Member States discussed in the briefing. The state of emergency was either proclaimed by the parliament (Bulgaria) or approved by the parliament (Estonia, Latvia and Romania). Parliaments have also exerted ex-post parliamentary scrutiny by various means, including by receiving periodic information, involving the government in parliamentary committee meetings, asking parliamentary questions, and requiring mandatory reporting on emergency measures.

## Austria

### Constitutional framework for emergency situations

The Austrian Constitution, which is composed of several constitutional acts (*Bundesverfassungsgesetze*) does not provide for a state of emergency. The Constitution, however, sets out certain procedures applicable in **times of distress**, should the Republic face serious and irreparable harm requiring immediate action and the parliament is [unable to convene](#). In such cases, Article 18 of the [Bundesverfassungsgesetz](#) of 1945 provides that legislative power shall be transferred from the parliament to the federal president. As a result, the president may enact ordinances, following a proposal from the federal government, and take far-reaching measures to prevent or tackle the damage. Nonetheless, measures taken by the president in exercising this prerogative must be strictly 'necessary' and may not amend the Constitution or touch upon the fundamental principles enshrined in [Article 10](#) of the Constitution, such as the country's federal structure or the democratic principle. Moreover, all presidential ordinances require the countersignature of the federal government (Article 18). Lastly, Article 79 of the [Constitution](#) regulates the role of the [armed forces](#) in times of crisis, allowing them to intervene to restore order and security after natural disasters and serious calamities as well as to protect the constitutional order and citizens' rights.

### Main measures adopted to address the coronavirus pandemic

As both chambers of the Austrian parliament have been able to convene at all times throughout the coronavirus epidemic, there was no need to resort to the special constitutional provisions applicable in times of distress. Instead, the National Council (*Nationalrat*) passed a comprehensive [legislative package](#) in March, which, along with the [Epidemics Act of 1950](#), has served as the legislative basis for a variety of measures designed to slow down the spread of Covid-19. For instance, the [Covid 19 Act](#), which allows for the closure of factories, office spaces and other companies that have direct contact with consumers (such as restaurants and hairdressers), is governed by the federal ministry of social matters, health, care and consumer protection. Additionally, depending on the geographical scope of the measure, either the governor of a region or the Federal Ministry of Social matters, Health, Care and Consumer Protection can ban people from entering or spending time in certain public spaces. However, all governmental restrictions must be strictly 'necessary' and should

remain proportional. When the Covid-19 Act is deemed to become void, on 31 December 2020, the special prerogatives of the government will expire automatically and the measures taken on the basis of the Covid-19 Act will become invalid ([Article 4](#)) if not lifted by then.

At the beginning of the outbreak, the federal government made wide use of these far-reaching competencies and imposed a [nation-wide curfew](#), according to which citizens were only allowed to leave the house to do grocery shopping or provide care for people in need. Moreover, gatherings of any kind as well as mass events were banned and [restaurants, bars, cafes and schools](#) were closed. On 1 May, the federal government [lifted](#) the curfew, after the reopening of small shops in mid-April had not led to an increase of infections. According to the new regime, gatherings of up to [10 people](#) are permitted and [restaurants](#) will be allowed to reopen in mid-May, provided they rearrange their services so as to enable guests to maintain a minimum social distance.

## Parliamentary control over emergency measures

The parliament does not exercise direct control over the individual measures taken by the government on the basis of the Covid-19 Act. In principle, the regional and federal ministries remain primarily responsible for imposing and lifting the restrictions. However, the parliament continues to exercise indirect control, scrutinising whether the federal government has exceeded its competences as set out in the Covid-19 Act and the Epidemics Act of 1950.

Even in times of distress, when the parliament is unable to meet and legislative power is transferred to the president, the parliament maintains [control](#) over the presidential ordinances taken. In this regard, Article 18 of the [Constitution](#) stipulates that all presidential ordinances must be submitted to the Parliament without delay. [Within four weeks](#) of submission, the Parliament can either endorse the presidential ordinance by replacing it with a federal law or pass a resolution demanding the immediate abolition of the ordinance in question. In addition to this *ex-post* control, the federal government must obtain the consent of the standing sub-committee of the National Council, which is appointed by the main committee of the same house (*Nationalrat*), prior to communicating the proposal for an ordinance to the president (Article 18).

## Bulgaria

### Constitutional framework for emergency situations

Under Article 84, paragraph 12 of the [Bulgarian Constitution](#), the National Assembly (*Narodno Sabranie*) has the power to introduce martial law or declare a **state of emergency** in all or part of the country's territory, following a motion from the president of the Republic or the government. The president can proclaim a state of war or a state of emergency, including martial law, in the event of an armed attack against the country or when urgent actions are required by virtue of an international commitment (Article 100(5)). This provision applies only when the National Assembly is not in session and cannot be convened, and the Constitution requires that the National Assembly must be convened immediately to deliberate on the president's decision. The state of emergency allows for the temporary suspension of civil rights (Article 57(3)). However, certain rights – such as the right to life, the prohibition of torture and degrading treatment, the presumption of innocence until being found guilty, the right to privacy and freedom of conscience, thought and choice of religion – cannot be curtailed. The Constitution also places an obligation upon citizens to assist the state and society in the event of a natural or other disaster in accordance with conditions and in a manner established by law (Article 61).

The [Defence and Armed Forces Act](#) (Article 123) provides that in a state of war, martial law or a state of emergency, the powers of state bodies and the armed forces include: restricting or banning flights by civil aircraft; controlling or banning crossing the state border; restricting traffic on the main roads; restricting railway traffic and introducing controls over passengers and freight; restricting free movement and introducing controls over citizens and vehicles; establishing control over the

country's critical infrastructure; and applying other measures that do not contradict international acts guaranteeing the defence of human rights in conditions of war. The [Disaster Protection Act](#) (Article 52) allows authorities to restrict, under certain conditions, the right of inviolability of persons and premises during temporary evacuation, the right to use a property for the purposes of protecting the life, health and property of persons or the environment, and freedom of movement and residence. A nationwide state of emergency has never been declared since the adoption of the present Constitution in 1991.

## Main measures adopted to address the coronavirus pandemic

On 13 March 2020, the National Assembly [declared](#) a state of emergency (until 13 April). This was followed by an [ordinance](#) of the minister of health ordering measures including the closing of shops (with the exception for food stores, pharmacies and drugstores), entertainment establishments, restaurants, schools and kindergartens. The ordinance also suspended mass cultural and sports events and called on employers to allow employees to work remotely from home. On 23 March 2020 the National Assembly adopted the [State of Emergency Measures and Actions Act](#) (SEMA). The SEMA made it possible to freeze judicial proceedings and enforcement-related procedural time limits for the duration of the emergency, gave employers the possibility to ask their employees to work from home and provided for the nationwide closure of schools. The law authorised armed forces to assist other bodies with the [implementation](#) of anti-epidemic measures and to enforce restrictions on the basis of a specific government decision (not yet adopted). The SEMA also amended the Electronic Communications Act, to oblige telecommunication companies to keep and disclose communication data, upon the request of the national police force, in order to isolate infected people and track those placed under quarantine (e.g. persons returning from abroad). Importantly, court permission is no longer a prerequisite for such police requests. A previous [version](#) of the law was [vetoed](#) by the president of the Republic owing to controversial provisions to introduce sanctions for crimes relating to speculation on the prices of goods, and to disseminating false information about infectious diseases. These provisions were later [dropped](#) by the National Assembly. On 3 April, the National Assembly [voted](#) to prolong the SEMA until 13 May 2020.

A number of criticisms have been voiced regarding the implementation of the state of emergency. Some analysts [worry](#) that certain measures have implications beyond public health and may create opportunities for arbitrary acts and human rights violations, including potential abuses by the police. On a request from one of the opposition parties (the Bulgarian Socialist Party – BSP), the Constitutional Court [initiated proceedings](#) on the constitutionality of amendments to the Electronic Communications Act, [concerning](#) in particular the new powers of the Ministry of Interior to track people's phones without a prior court permission. After receiving a number of complaints, the Supreme Administrative Court [announced](#) the opening of five cases against the Health Ministry in connection with its [order](#) of 12 April to impose the mandatory wearing of masks in public.

## Parliamentary control over emergency measures

On 26 March, the National Assembly [decided](#) to suspend its regular plenary sittings on the basis of Article 86 of the Constitution (parliament's power to vote legislation) and to meet only when legislation concerning the state of emergency needs to be considered. While parliamentary committees have continued their work, parliamentary scrutiny has been limited to written questions and answers. Under the Bulgarian Constitution (Article 78) and the National Assembly's Rules of Procedure (Article 46), the president of the National Assembly should convene an extraordinary parliamentary session no later than seven days after a request made by: a minimum of 48 members of parliament (i.e. by one fifth of all 240 MPs), the president of the Republic, the government or the National Assembly president on his or her own initiative. An extraordinary sitting to hear the prime minister on the effectiveness of emergency measures was [scheduled](#) at the request of the opposition BSP for 21 April, but failed owing to the lack of a quorum. During the extraordinary [sitting](#) that took place on 28 April the government [announced](#) that it would put forward legislative

proposals for combating the spread of the coronavirus beyond the scheduled end of the state of emergency on 13 May. On 12 May, the National Assembly [amended](#) the Public Health Act at second reading, allowing the government to declare a temporary nationwide or regional 'emergency epidemiological situation', based on a Ministry of Health proposal following an epidemiological risk assessment by the Chief State Public Health Inspector. The Ministry of Health may also introduce temporary anti-epidemic measures, but these may not include an entry ban for foreigners or a temporary ban on the movement of persons in the country. The amended act also maintains existing fines for contravening anti-epidemic measures, and prolongs for up to two months social and economic measures introduced during the emergency concerning judicial proceedings and enforcement-related procedural time limits.

## Estonia

### The constitutional framework for emergency situations

The [Constitution of the Republic of Estonia](#) (Article 87) and the [Emergency Act](#) (Articles 13, 19(1), 21(1) and 23) provide that the government can declare an **emergency situation** in the event of a natural disaster or a catastrophe, or in order to prevent the spread of an infectious disease. The government also decides when to terminate the emergency situation (Article 22 of the Emergency Act) when it is no longer necessary. In the event of a threat to the Estonian constitutional order, under the Constitution (Articles 129, 130 and 131) and the [State of Emergency Act](#), the parliament (*Riigikogu*), acting on a proposal from the president or the government, can declare a **state of emergency**. The state of emergency can be declared for the entire national territory for a period not exceeding three months (Article 2(3) of the State of Emergency Act). Possible threats to the constitutional order are listed in Article 3 of the State of Emergency Act. The parliament decides on the duration of the state of emergency, acting on a proposal of the president or the government (Article 14 (1) of the State of Emergency Act.)

Article 2 of the Emergency Act defines an emergency situation (or risk of emergency) as an event or a chain of events or interruption of a vital service that endangers the life or health of many people, causes major proprietary damage, major environmental damage or severe and extensive interferences with the continuity of vital services, the resolution of which requires prompt coordinated activities by several authorities or persons involved by them, the application of a command organisation different from usual and the involvement of more persons and means than usual. The State of Emergency Act and the Emergency Act allow for the suspension of certain fundamental rights entrenched by the Constitution ([Chapter II](#)). They also provide for the possibility to involve the national defence forces in public life to help implement the measures adopted by the government.

### Main measures adopted to address the coronavirus pandemic

On 12 March 2020, in response to the coronavirus pandemic, the government of Estonia [declared](#) an emergency situation for the first time since the adoption of the 1992 Constitution. Set initially to last until 1 May, the state of emergency was [extended](#) by the government until 17 May. The government also established a committee (on the basis of Article 4 of the Emergency Act), chaired by the prime minister, to manage the spread of the coronavirus and to manage economic problems. In line with the provisions of the Emergency Act (Articles 26-33, Division 3, Chapter IV), the government adopted a number of emergency [measures](#) including: the closure of educational and cultural establishments and cancellation of cultural, educational and sports activities; the prohibition of visits to social welfare institutions and hospitals; the prohibition of visits to prisons; restrictions on freedom of movement; restrictions on freedom to exercise economic or commercial activities; and [restriction of movement](#) between the islands and the mainland (police to control the traffic); [temporary control measures at the border](#); and [additional restrictions](#) concerning the movement restriction and leisure time.

On 2 April, the government submitted draft legislation to the parliament consolidating amendments to the law developed for the implementation of coronavirus [control measures](#). The government also proposed crisis measures in relation to the coronavirus [supplementary budget](#). A majority of the parliament had to vote in favour in order for the act to pass. The government committee adopted its coronavirus crisis [exit strategy plan](#) on 22 April.

## Parliamentary control over emergency measures

Regular [parliamentary supervision](#) has been maintained during the emergency situation, as [confirmed](#) by the Chancellor of Justice. Ministers have attended the parliament's committee meetings and have provided overviews about what has been done and on the impact of the crisis in their areas of responsibility (Articles 22 and 142 of the [Riigikogu Rules of Procedure and Internal Rules Act](#)). As stipulated in the [State of Emergency Act](#) (Article 18(5)), the head of the state of emergency (i.e. the prime minister or, in his or her absence, the minister deputising, Article 18(1)) must report on his or her activity to the parliament and the government. Supervision of the legality of legislation of general application regulating the state of emergency is exercised by the Chancellor of Justice. In the emergency situation supervisory competence is exercised by the Ministry of the Interior, or by the authority specified in a government order, or by the authority organising the continuity of the vital service, as set out in the [Emergency Act](#) (Articles 45 and 46). On 12 March, the prime minister [informed](#) the parliament of the situation resulting from the spread of the coronavirus. On 2 April, the parliament heard another [political statement](#) by the prime minister in connection with the supplementary budget. The parliament approved the coronavirus crisis measures by adopting a [supplementary budget](#). On 15 April, the parliament passed an act relating to the [implementation of the emergency situation](#). The act [amends](#) 33 acts (updated [consolidated texts](#) including all amendments).

## Latvia

### The constitutional framework for emergency situations

According to [Latvian Constitution](#) (Article 62), the government (cabinet of ministers) may proclaim a state of emergency (also referred to as a 'state of exception') 'if the State is threatened by an external enemy, or if an internal insurrection which endangers the existing political system arises or threatens to arise'. In addition, the 2013 '[Law on Emergency Situation and State of Exception](#)' draws a distinction between the two separate legal regimes: the '**emergency situation**' and the '**state of exception**'. While the law refers to the 'state of exception' in the same terms as described in the Constitution, the 'emergency situation' is defined as 'a special legal regime, during which the cabinet has the right to restrict the rights and freedoms of State administration and local government authorities, natural persons and legal persons, as well as to impose additional duties to them' (Article 4). The emergency situation may be declared in the event of a threat to national security relating for instance to a disaster, if the 'safety of the State, society, environment, economic activity or health and life of human beings is significantly endangered'. This emergency regime has been used before, for example to deal with the African swine fever outbreak (in [2014](#) and [2017](#)) and with floods (in [2017](#)), but was however limited to certain territories. The cabinet declares the emergency situation for a fixed time period of maximum three months and can extend it for a period not exceeding three months. Until recently, such an extension was possible only once; however, the law was amended on 3 April 2020 to allow for an unlimited number of extensions. The 'state of exception' can be declared for a maximum period of six months and can be extended by periods of no more than six months (with no limit). The 'state of exception' also allows the government to restrict the rights and freedoms of natural and legal persons, as well as imposing additional duties on them (Article 11). For both the 'emergency situation' and the 'state of exception' legal regimes, the decision on the proclamation, as well as on the extension or any modification thereof has to be notified to the [presidium of the parliament](#) (*Saeima*) within 24 hours and put on the parliament agenda without delay. If the parliament rejects the decision, it is repealed and the measures

introduced under it revoked. Moreover, the law (Article 19(4)) states that measures relating to an emergency situation or a state of exception 'may not be in contradiction with the international norms of human rights, which are binding on the Republic of Latvia'. Administrative decisions taken 'must have a legitimate purpose, must be commensurate, non-discriminating, justified and necessary' (Article 19(2)). According to Article 20, such administrative decisions can be contested, appealed and reviewed in accordance with the procedures laid down in the [Administrative Procedure Law](#).

## Main measures adopted to address the coronavirus pandemic

On 12 March 2020, in order to contain the spread of the coronavirus, the Latvian government adopted [Order No 103 regarding declaration of the emergency situation](#), establishing an emergency situation regime throughout the country for an initial period of one month, which was subsequently extended until [12 May](#) and again until [9 June](#). Latvia also [notified](#) the Council of Europe about exercising its right of derogation from its obligations under the Human Rights Convention, pursuant to its [Article 15](#). Order No 103 is based on the Law on Emergency Situation and State of Exception, but also on the [Epidemiological Safety Law](#), which imposes on the cabinet the duty to determine the epidemiological safety measures to limit the spread of individual infectious diseases (Article 3(2)). The main measures taken since the declaration of the emergency situation include: closing educational establishments and ensuring distance learning; requiring citizens to keep a two-metre distance in public places (with exceptions); reducing working hours for cultural, entertainment and outdoor sports venues, and closing non-essential shops during week-ends and holidays; prohibiting all public events, meetings, demonstrations, pickets, religious gatherings, indoor sports activities, and any private events; as of 17 March, cancelling all international passenger transport and prohibiting external EU border crossings by any road (air, sea or land), except for carriage of freight; imposing 14 days self-isolation in the place of residence on persons arriving from foreign countries and on anyone having had contact with someone infected by Covid-19; imposing strict isolation for those with a confirmed Covid-19 diagnosis; granting the state police the right to search for and forcibly transfer to quarantine or their actual residence people with a confirmed Covid-19 diagnosis or their contacts, as well as to request information on the phone numbers and location of infected persons or their contacts in order to conduct epidemiological investigations and check movements; imposing administrative or criminal liability for non-respect of the measures or false declarations (on 3 April, the parliament [amended](#) the law to raise the level of administrative fines). On 7 May, the government [announced](#) a gradual easing of restrictions.

The parliament passed a special [law](#) laying down support mechanisms for the industries worst affected. These include tax extensions, an unemployment compensation scheme, and state loans. The parliament also [amended](#) several laws to provide additional social support for families with children and to expand the number of people eligible for unemployment benefits during the crisis.

## Parliamentary control over emergency measures

The parliament has played an active role in relation to the emergency measures put in place. On 12 March the government notified the parliament of its decision to declare an emergency situation. Parliament [approved](#) the decision the next day in an extraordinary meeting. In the following weeks, the parliament examined and approved numerous amendments to the initial decision, introducing additional measures, as well as the extensions of the emergency situation until 12 May. During the emergency situation, the parliament put its ordinary business on hold and met regularly in extraordinary sittings to adopt urgent measures relating to the coronavirus crisis, using [video-conference](#) tools to work remotely from different rooms on the parliament premises.

## Malta

### Constitutional framework for emergency situations

The [Constitution](#) of Malta (Article 47(2)) provides for the following three circumstances that are to be considered as periods of 'public emergency':

- a. periods during which Malta is engaged in any war;
- b. periods during which a proclamation by the president is in force declaring that a **state of public emergency** exists. Any such proclamation is to be communicated to the House of Representatives without delay and is valid for a period of 14 days unless it is revoked earlier by the president or unless it is extended by the House of Representatives for further periods of up to three months at a time. If the House of Representatives is not in session at the time of a presidential proclamation of a period of emergency and is not planned to be in session within 10 days of the proclamation, the president is bound to convene the House of Representatives within five days;
- c. periods during which a resolution of the House of Representatives supported by a two-thirds majority of all the members of the house is in force 'declaring that democratic institutions in Malta are threatened by subversion'. Such a resolution is valid for a year, unless it is revoked earlier or unless it specifies a shorter period of validity.

Upon the expiry of the validity of a proclamation or resolution declaring a period of public emergency the president can make a new proclamation or the House of Representatives can pass a new resolution. The Constitution provides that a number of rights may be curtailed during periods of public emergency. These are the right to protection from arbitrary arrest or detention (Article 34) (curtailment not applicable in cases of a presidential proclamation of a public emergency (case b.) and therefore limited to the other two possible cases of emergency (cases a. and c.), the right to protection from forced labour (Article 35), and the right to protection from discrimination (Article 45). The Emergency Powers Act ([Chapter 178](#) of the Laws of Malta) gives emergency powers to the president acting on the advice of the prime minister and subject to approval (within a period of two months), amendment or revocation by the House of Representatives.

### Main measures adopted to address the coronavirus pandemic

Since the start of the coronavirus pandemic, no use has been made of the emergency powers available under the Constitution (to the extent that they are applicable in the circumstances) or under the Emergency Powers Act. Instead, use has been made of powers – including emergency powers – granted to the minister responsible for public health and to the superintendent of public health under the Public Health Act ([Chapter 465](#) of the Laws of Malta). As authorised under that law, the Superintendent declared that a [public health emergency](#) existed in relation to the coronavirus pandemic, the first known use of this power since the enactment of the Public Health Act in 2003. The powers of the Superintendent in such an emergency include the power to segregate or isolate people, to evacuate people from any area, to prevent access to any area, to control the movement of vehicles, to order people to undergo medical examination, and generally to order such other action considered appropriate 'in order to reduce, remove or eliminate the threat to public health'. Infringement of such directions is considered an offence.

The coronavirus pandemic has so far been handled mainly through the issuance of a series of regulations and orders, including the imposition of penalties for infringements, by the health minister and the superintendent of public health respectively, under powers delegated to them by the Public Health Act. Among the first of such measures was the imposition of a [period of quarantine](#) for people arriving in Malta from the areas initially affected by the coronavirus. This measure was gradually extended until a total [travel ban](#) to and from Malta was ordered as of 21 March. Other measures taken within the framework set up under the Public Health Act include the [closure of schools](#) and many [places open to the public](#) (including places of entertainment and [shops](#) selling

non-essential goods or providing non-essential services), the suspension of [organised events](#), the order for several categories of [vulnerable persons](#) to remain segregated at home, the order for people diagnosed with Covid-19 to [self-isolate](#) and [social distancing rules](#) for the whole population. A number of ancillary measures were taken by other ministers under similar powers delegated to them under other laws. These include the [suspension of legal and judicial time periods](#) by the justice minister, measures by the social welfare minister to ensure the [continuation of essential social welfare services](#) in the exceptional circumstances engendered by the Covid-19 pandemic, and a provision for [quarantine leave](#) by the employment and industrial relations minister.

## Parliamentary control over emergency measures

The measures in response to the Covid-19 pandemic discussed above, in the form of regulations and orders, constitute subsidiary legislation and as such are not subject to parliamentary debate or scrutiny before their adoption. In making such subsidiary legislation, however, the superintendent and the ministers may not act beyond the powers delegated to them by parliament in the parent act, and the measures taken by them are subject to judicial review in this regard. Furthermore, in accordance with the Maltese Interpretation Act ([Chapter 249](#) of the Laws of Malta) subsidiary legislation is to be submitted for parliamentary scrutiny after it is made and may be annulled or amended by a resolution of the House of Representatives within sixty days of being so submitted. Moreover, as events relating to the coronavirus pandemic unfolded, the parliament took legislative action to grant new delegated powers or to enhance or clarify existing delegated powers. For example, the parliament adopted [amendments](#) to the Public Health Act to clarify and enhance the powers of the Superintendent of Public Health and enacted the [Legal and Other Time Periods \(Suspension and Interruption\) Act](#) granting the justice minister new delegated powers.

## Romania

### Constitutional framework for emergency situations

The [Constitution](#) provides for the president to declare a state of siege or a **state of emergency** for the entire country or for certain territorial administrative units and then ask the parliament for its approval within five days (Article 93(1)). If the parliament is not in session, it must be convened by law no later than 48 hours after the declaration of the state of emergency and it must remain in session throughout the period (Article 93(2)). Moreover, the parliament cannot be dissolved during a state of emergency or siege (Article 89(3)). According to the Constitution, the state of siege and the state of emergency must be governed by an organic law (Article 73(3)(g)) that can only be passed if it wins the votes of the majority of the members of each parliamentary chamber (Article 76(1)). The Constitution allows for restrictions to be imposed on the exercise of certain rights or freedoms if this is provided by law and only if necessary, as the case may be, to defend national security, public order, health, or public morals, or the rights and freedoms of citizens; to investigate a crime; or to prevent the consequences of a natural calamity, a disaster or a particularly severe catastrophe (Article 53(1)). Such restrictions can only be imposed if this is 'necessary in a democratic society', they must be proportionate to the situation, be applied in a non-discriminatory manner and must not eliminate the right or freedom in question (Article 53(2)).

The state of emergency is regulated by Government Emergency Ordinance [1/1999](#), as approved and amended by Law [453/2004](#). Article 10 of the Emergency Ordinance provides that the state of emergency can be declared by the president by means of a decree countersigned by the prime minister. The decree should specify the reasons for the measure, the geographical area concerned and the duration (Article 14). A state of emergency can be declared in cases of: i) grave danger, actual or imminent, to national security or the functioning of constitutional democracy; and (ii) imminent or actual calamity that necessitates the prevention, limitation or removal of fallout from disaster (Article 3). The state of emergency can be instituted for a maximum period of 30 days, which can be prolonged with the approval of the parliament (Article 15). While the exercise of certain rights and

freedoms can be restricted, the right to life, the prohibition of torture or inhuman or degrading treatment, the prohibition of unlawful punishment, and free access to justice cannot be limited during the state of emergency (Article 3). On 26 March 2020, the government adopted Emergency Ordinance [34/2020](#) amending Emergency Ordinance 1/1999 and providing, not least, for sanctions relating to non-compliance with emergency measures and for the suspension of rules on institutional transparency and social dialogue in relation to emergency measures.

## Main measures adopted to address the coronavirus pandemic

On 16 March 2020, the Romanian president issued Decree [195/2020](#) proclaiming, for the first time since the adoption of the 1991 Constitution, a state of emergency throughout the territory of the country for an initial period of 30 days. The state of emergency was prolonged for an additional 30 days by Decree [240/2020](#). The decrees allow for restrictions to the exercise of the following rights: the right to free movement; the right to intimate, family and private life; the right to inviolability of the home; the right to education; the right to free assembly; the right to private property; the right to strike; and the right to economic freedom (Article 2). The decrees imposed measures on the isolation of people traveling from risk zones, prohibited public manifestations and gatherings, limited the activity of the courts, suspended all classroom-based educational activities, temporarily closed public establishments (restaurants, bars, clubs, etc.) and limited the freedom of movement of persons and vehicles.

Emergency measures have been specified by a number of [military ordinances](#). For example, the Military Ordinance [2/2020](#) of 21 March provides for mandatory 'institutionalised quarantine' for persons who do not observe self-isolation orders. According to the government's National Committee for Special Emergency Situations ([CNSSU](#)), 2 253 persons have been [placed](#) in institutionalised quarantine as of 4 May. The Romanian Ombudsman (*Avocatul Poporului*) has [challenged](#) the constitutionality of Emergency Ordinance 34/2020 before the Constitutional Court on the grounds that its provisions on contraventions and sanctions lack clarity and predictability and that the ordinance cannot have effects on constitutional rights, freedoms and duties. On 4 May the president [declared](#) that the state of emergency will not be prolonged beyond 15 May.

## Parliamentary control over emergency measures

As provided in the Constitution, the president's decree on the state of emergency must be approved by the parliament within five days of its adoption. On 19 March, the parliament [approved](#) the decree imposing the state of emergency unconditionally. The decree extending the state of emergency was debated more thoroughly in the parliament and was approved after imposing a number of safeguards. The parliament's Decision [4/2020](#) approving the decree provided that restrictions on rights and freedoms during the state of emergency should only be based on law and should be strictly for the purpose of preventing and combating the pandemic. Moreover, the decision obliges the government to report weekly to parliament on the measures adopted or envisaged (including the reasons underpinning them) for preventing and combating the pandemic. The government is also required to present a full report within 30 days of the end of the state of emergency.

## Slovenia

### Constitutional framework for emergency situations

The [Slovenian Constitution](#) (1991) provides for a **state of emergency** (Article 92) in the event that a great and general danger threatens the existence of the state. The Slovenian National Assembly declares a state of emergency on a proposal from the government. If the National Assembly cannot meet, the president can decide to proclaim a state of emergency. When the National Assembly is next in session the proclamation must be put before it immediately for approval. In the event that the National Assembly cannot meet because of a state of emergency or war, the president of the Republic may, on a proposal from the government, issue decrees with the force of law (Article 108).

Such decrees may exceptionally restrict individual rights and fundamental freedoms as provided by Article 16 of the Constitution. Certain human rights and fundamental freedoms may be suspended or restricted only for the duration of the state of emergency and only to the extent required by the situation. For example, Constitution allows for restrictions on the freedom of movement (Article 32) and the right of assembly and association (Article 42) for the purpose of preventing the spread of infectious diseases. However, the measures taken must not lead to inequality based solely on race, national origin, sex, language, religion, political, or other conviction, material standing, birth, education, social status, or any other personal circumstance. No temporary suspension or restriction is permitted in the case of the right to life, the prohibition of torture, the protection of human personality and dignity, the presumption of innocence, the principle of legality in criminal law, legal guarantees in criminal proceedings or freedom of conscience.

The president of the Republic must submit decrees with the force of law for approval to the National Assembly as soon as the latter meets. If either the parliamentary (Article 81) or the presidential (Article 103) term comes to an end during a state of emergency, the term shall be prolonged until six months after the end of the state of emergency, or, as concerns the National Assembly, earlier if the latter so decides.

## Main measures adopted to address the coronavirus pandemic

The state of emergency has never been declared since the adoption of the current Constitution in 1991. The measures adopted in response to the coronavirus pandemic are based on ordinary legislation, as well as decrees (*odredba*) and ordinances (*odlok*), based on that legislation.

On 12 March, the Slovenian government adopted the [Decree on declaration of Covid-19 epidemic](#), based on Article 7 of the [Communicable Diseases Act](#) and following an expert opinion of the [National Institute of Public Health](#). Measures to curb the spread of the coronavirus are based on ordinances adopted by the government on the basis of Article 39 of the Communicable Diseases Act. The act enables the government to: determine the conditions for travel to and from a country where there is a possibility of infection with a dangerous communicable disease; prohibit or restrict the movement of the population in protected or directly endangered areas; prohibit the gathering of people in schools, cinemas, public places and other public places until the danger of spreading a communicable disease ceases; and restrict or prohibit the marketing of particular types of goods and products.

The government adopted the following [main measures](#): measures to [prevent social contact](#) such as a temporary prohibition (with some exceptions) on public gatherings at public meetings and public events and other events in public places (as of 20 March); a prohibition (with some exceptions) on movement outside the municipality of permanent or temporary residence (as of 30 March); suspension of public bus and railway transport, gondolas and funicular railways (as of 16 March); a temporary ban on the [supply and sale of goods and services](#) directly to consumers (as of 16 March); [border control](#) measures including the suspension of air traffic in Slovenia (as of 17 March), the closure of borders with neighbouring countries (with some exceptions) and a mandatory seven-day quarantine for persons entering Slovenia (as of 11 April); closure of all education institutions in Slovenia (as of 16 March) with the exceptions; a ban on visits to healthcare institutions and a prohibition on travelling abroad for health professionals; a complete ban on visits to retirement homes (as of 6 March) and restrictions on visiting certain prisons (as of 13 March).

On 16 April, the Slovenian Constitutional Court [suspended](#) part of the ordinance on movement outside the municipality of permanent or temporary residence and ordered the government to review the justification of the measures under the ordinance immediately after receiving the Court's decision and then at least every seven days.

## Parliamentary control over emergency measures

The Constitution includes no provisions regarding parliamentary involvement in decisions to prolong and terminate the state of emergency. No special rules on parliamentary oversight are

envisaged for the state of epidemic, which is regulated in ordinary legislation and enforced on the basis of decrees and ordinances based on that legislation. The government of Slovenia must inform the National Assembly immediately about measures adopted on the basis of Article 39 of the Communicable Diseases Act.

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

	Measures adopted at national level	Temporary	Parliamentary oversight*	Used previously
<b>Austria</b>	<a href="#">Epidemics Bill</a> (1950), <a href="#">Covid-19 Bill</a> (16.3.2020)	Yes	Yes	No
<b>Bulgaria</b>	State of emergency (Article 84 of the <a href="#">Constitution</a> ), <a href="#">State of Emergency Measures and Actions Act</a> (SEMA)	Yes	Yes	No
<b>Estonia</b>	Emergency Situation (Article 87 of the <a href="#">Constitution</a> ), <a href="#">Emergency Act</a>	Yes	Yes	No
<b>Latvia</b>	Emergency situation ( <a href="#">Law</a> on Emergency Situation and State of Exception, <a href="#">Cabinet Order No 103</a> on declaration of emergency situation)	Yes	Yes	Yes
<b>Malta</b>	Public health emergency ( <a href="#">Public Health Act</a> ), <a href="#">Legal and Other Time Periods (Suspension and Interruption) Act</a>	Yes	Yes	No
<b>Romania</b>	State of emergency (Article 93 of the <a href="#">Constitution</a> , OUG <a href="#">1/1999</a> , OUG <a href="#">34/2020</a> ), Decree <a href="#">195/2020</a> , Decree <a href="#">240/2020</a> )	Yes	Yes	No
<b>Slovenia</b>	Emergency measures (ZNB <a href="#">33/06</a> , Decree <a href="#">19/20</a> )	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.

## DISCLAIMER AND COPYRIGHT

This document is prepared for, and addressed to, the Members and staff of the European Parliament as background material to assist them in their parliamentary work. The content of the document is the sole responsibility of its author(s) and any opinions expressed herein should not be taken to represent an official position of the Parliament.

Reproduction and translation for non-commercial purposes are authorised, provided the source is acknowledged and the European Parliament is given prior notice and sent a copy.

© European Union, 2020.

Photo credits: © Ivelin Radkov / Adobe Stock.

[epers@ep.europa.eu](mailto:epers@ep.europa.eu) (contact)

[www.epers.ep.parl.union.eu](http://www.epers.ep.parl.union.eu) (intranet)

[www.europarl.europa.eu/thinktank](http://www.europarl.europa.eu/thinktank) (internet)

<http://epthinktank.eu> (blog)

