

# Parliaments in emergency mode

## Lessons learnt after two years of pandemic

### SUMMARY

The outbreak of the coronavirus pandemic in March 2020 presented parliamentary institutions around the world with a new and unprecedented scenario. Parliamentary rules of procedure in representative democracies are commonly built upon the principles of pluralism, deliberation and transparency, aiming to provide an arena in which representatives of the people have the opportunity to publicly confront each other's points of view in a free and fair setting. It is, therefore, safe to say that ordinary parliamentary practice and procedures are essentially incompatible with measures seeking to minimise social contacts and discourage – or directly forbid – mass gatherings.

As a logical result of the adoption of the first restrictive measures aiming to limit the spread of the virus adopted in EU Member States in the first months of 2020, parliaments followed suit and implemented specific measures aiming to ensure the continuity of parliamentary business while limiting the spread of the virus and protecting the health of their members and staff. In the early days of the pandemic, the European Parliament, together with some other EU national parliaments rushed to digitalise parliamentary activities in an attempt to ensure that all members could take part in parliamentary proceedings despite the crisis situation. Some EU national parliaments opted to adopt decisions with a reduced number of members and others decided to adopt social distancing measures, while at the same time ensuring that all members could continue to take part in parliamentary activities. Nearly two years on from the beginning of the pandemic and with Covid-19 infection rates spiking all over Europe due to the Omicron variant, it is time to take stock of the lessons learnt from this health crisis from the point of view of parliamentary law. In this vein, this publication updates a previous briefing of April 2020 and analyses the modifications in the working methods of the European Parliament and selected EU national parliaments throughout the pandemic, aiming to show the advantages, but also the possible drawbacks of the new practices.



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## Introduction

The pandemic has been a veritable test bed for new parliamentary practice and procedures. Never before, in recent history, have parliaments had to adapt in such a short timeframe to a situation clearly putting into question the very idea of legislatures as collective deliberative bodies adopting decisions after unmediated, public and pluralist debates taking place in the free and fair setting of the Chamber's premises. It is therefore not surprising that, before the breakout of the current pandemic, neither the European Parliament's Rules of Procedure (RoP) nor any of the rules of procedure of the national parliaments analysed in this briefing expressly referred to working methods that could be adopted in times of crisis. Since the pandemic began, the parliaments analysed in this briefing have put in place a range of measures to address its consequences while ensuring the continuity of parliamentary business; some of these measures are still in place. In some cases, parliament's reviewed their rules of procedures to introduce emergency provisions, creating a form of '**parliamentary law for emergency situations**'. Debates and legal challenges to those emergency provisions show the difficulties inherent in trying to design a body of law that allows parliaments to address crisis situations while preserving the right of elected representatives to exercise their constitutional mandate and the deliberative nature of the parliamentary function. This briefing aims to take stock of the lessons learnt from the extraordinary measures adopted by the European Parliament and selected EU national parliaments during the pandemic.

## European Parliament: Digitalisation in response to the pandemic

The European Parliament and its governing bodies have adopted many different measures to ensure the continuity of parliamentary and administrative activities since the outbreak of the pandemic. Initially, when it was not yet known that the pandemic would last for more than two years, the solution was temporary. The [Rules of Procedure](#) did not, at the time, refer explicitly to the possibility of **remote electronic participation**, although they would be modified later on in the pandemic. Therefore, 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 did not require Members of the European Parliament (MEPs) to be physically present to participate in parliamentary sessions and vote. Initially, the new system was designed to complement existing voting procedures temporarily – only until 31 July 2020, but later extended<sup>1</sup> –, although it ultimately laid the foundations for the European Parliament's definitive response to this crisis.

### Initial reaction: Bureau decision of 20 March 2020

The system put in place by the **Bureau decision of 20 March 2020** could only be used under certain exceptional circumstances to be assessed by the President of the European Parliament, namely if the normal electronic voting procedure posed a risk to MEPs' or Parliament staff health or if it was impossible to use owing to Member States' travel restrictions. MEPs could attend the parliamentary session remotely and take the floor by means of a videoconference platform (Webex) and were also able to vote during the session, although remote voting did not take place in real time. Parliament held its **first plenary session with the remote electronic participation** of most of its members on **26 March 2020**. [Seventy-five MEPs and Parliament's President were present](#), as remote participation was not an obligation, but a possibility offered to MEPs.

As set out in the decision, the European Parliament's remote voting procedure was as follows: if the President decided to use the alternative electronic voting system, the decision had to 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 received the ballot papers in their official e-mail accounts with the items to be voted during the session and they were allowed a certain period

of time after the debate to print them out, fill in the vote, sign them, scan or photograph them, and return them using their official e-mail. The outcome of the votes was only announced by the President once the time allowed to cast the votes had expired and all the valid votes had been counted. For a remote vote to be valid it needed to be signed by the MEP and sent from their official e-mail account, providing two ways to authenticate the identities of MEPs voting remotely.

In addition to the ground-breaking Bureau decision of 20 March 2020, in the initial phase of the pandemic, Parliament was forced to modify its [draft calendar](#) of activities for 2020 ([Decisions of the Conference of Presidents of 10 March 2020](#), [19 March 2020](#), and [2 April 2020](#) adopted on the basis of [Rule 154\(3\) RoP](#)) and extraordinary part-sessions were convened in Brussels – rather than Strasbourg – on the basis of [Rule 154\(4\) RoP](#) on [26 March 2020](#) and [16-17 April 2020](#) to deal with urgent Covid-19 related files.

## Modification of Parliament's Rules of Procedure in December 2020

One year into the pandemic, the European Parliament came to the conclusion that a more permanent **change in its Rules of Procedure** was required in order to allow the continuity of parliamentary business under exceptional circumstances. On **17 December 2020**, Parliament adopted [amendments to the Rules of Procedure](#), adding a new Title XIIIa and providing for two different situations in which Parliament or some of its Members could work under extraordinary measures, including remote working methods, outside its usual procedures: i) in cases of 'exceptional and unforeseeable circumstances beyond Parliament's control'; or ii) when the 'political balance in Parliament is severely impaired because a significant number of Members or a political group cannot take part in Parliament's proceedings' under its usual procedures.

### Extraordinary measures in 'exceptional and unforeseeable circumstances'

[Rule 237a RoP](#) provides for a **generalised scheme applicable to all members of Parliament** under '**exceptional and unforeseeable circumstances** beyond [Parliament's] control' which 'hinder it from carrying out its duties and exercising its prerogatives under the Treaties' and make 'a temporary derogation from Parliament's usual procedures' necessary to enable Parliament to continue to carry out its duties. The definition of 'exceptional circumstances' included in the RoP is not limited to the present crisis situation or a pandemic, in an attempt to cover other possible future crises. Indeed, exceptional circumstances may be found whenever 'the President comes to the conclusion, on the basis of reliable evidence confirmed, where appropriate, by Parliament's services, that for reasons of security, or safety or as a result of the non-availability of technical means it is, or will be, impossible or dangerous for Parliament to convene in accordance with its usual procedures'.

In such 'exceptional circumstances', extraordinary measures may be adopted, but only as a **last resort** and to the extent that they are 'strictly necessary to address the extraordinary circumstances under consideration' (Rule 237a(5)), i.e. in line with the principle of **proportionality**. Furthermore, Rule 237a must be applied in due respect of the **principles of representative democracy**, the **equal treatment of Members**, of the **right** of Members to **exercise their parliamentary mandate without impairment**, including their rights stemming from [Rule 167](#) (**multilingualism**) and their right to **vote freely, individually and in person**, and of [Protocol No 6](#) on the location of the seats of the institutions and of certain bodies, offices, agencies and departments of the European Union, annexed to the Treaties, which provides, most notably, that Parliament must hold **12 sessions in Strasbourg, including the budgetary session**, that additional sessions are to be held in Brussels, and that its committees meet in Brussels.

### Decision-making procedure

The decision-making procedure is laid down in Rules 237a(2) first subparagraph, which provides that the extraordinary measures are **triggered by the President with the approval of the Conference of Presidents**. However, the second subparagraph of this rule provides a derogation under circumstances of 'imperative urgency', when the Conference of Presidents is unable to meet

neither in person nor virtually. In such absolutely exceptional circumstances, the President may decide by him or herself to trigger extraordinary measures, nonetheless such a decision lapses five days after its adoption, unless the Conference of Presidents approves it.

Furthermore, the entire **decision** or any of its measures **may be subject to plenary approval** without debate (Rule 237a(2) third subparagraph). Such a review is triggered at the request of 'Members or a political group or groups reaching at least the medium threshold' (a tenth of Parliament's component Members) and may be triggered 'at any time'. The item is put on the agenda of Parliament's first sitting following the tabling of the request. If an extraordinary measure fails to win a majority of the votes, it lapses after the end of the session at which it was voted; a measure that receives plenary approval may not be subject to further voting at the same session.

**Decisions** on extraordinary measures must **state the reasons** on which they are based (e.g. pandemic) and must be **limited in time** (Rule 237a(4)). They enter into force upon their publication on Parliament's website or, if that is not possible, upon being made public 'by the best available alternative means'. A decision may be **renewed**, even many times, but the President must revoke it once the extraordinary circumstances no longer stand (Rule 237(a)(4) fourth subparagraph).

### Scope of possible measures

The **catalogue of possible extraordinary measures** that Parliament can apply is laid down in Rule 237a(3) and is an open one ('all appropriate measures ... and in particular ... the following'), not limited to the possible use of remote participation tools as was the case under the temporary Bureau decision of 20 March 2020. The **non-exhaustive** list of measures include:

- **postponement** of a scheduled part-session, sitting or meeting of a committee to a later date and/or **cancellation** or **limitation** of meetings of inter-parliamentary delegations and other bodies;
- **displacement** of a part-session, sitting or meeting of a committee from Parliament's seat to one of its working places or to an external place, or from one of its working places to Parliament's seat, to one of its other working places or to an external place;
- holding of a part-session or a sitting on Parliament premises in whole or in part in **separate meeting rooms** allowing for appropriate physical distancing; in that case, under new [Rule 237d](#), the meeting rooms used in this context are considered to collectively constitute the Chamber and the President may, if necessary, determine the manner in which the respective meeting rooms can be used, in order to ensure that physical distancing requirements are respected;
- holding of a part session, sitting or meeting of Parliament bodies under the **remote participation regime** (as provided for in Rule 237c);
- **temporary replacement of Members** in a committee by political groups, unless the Members concerned oppose this (if the ad hoc replacement mechanism provided for in Rule 209(7) is not sufficient).

### Protecting Parliament's regional and political balance with targeted measures

In addition to the generally applicable regime provided for under [Rule 237a](#) RoP, the newly added [Rule 237b](#) RoP addresses a different **exceptional situation only affecting a number of Members**. If 'for reasons of security or safety, or as a result of the non-availability of technical means' a significant number of Members or a political group cannot take part in Parliament's works under its usual procedures and that circumstance may '**severely**' **impair the political balance in Parliament**, the President, with the approval of the Conference of Presidents, may adopt measures to allow such Members to participate by the application of selected technical (as provided in Rule 237c(1)) or other appropriate means (Rule 237b(1)). The scope of such measures does not extend to all members, but only to a 'significant number of Members' if the exceptional circumstances which affect them occurred 'in a regional context' or to the members of a political group(s) if the exceptional circumstances are outside that group's control (Rule 237b(2)).

## Navigating the pandemic as a digital Parliament

Parliament's remote participation regime was initially provided for by the Bureau decisions of March 2020 and was applied for the first time at the 26 March 2020 plenary session. Parliament worked under that remote participation regime uninterruptedly until the amendment to the RoP adopted on 17 December 2020 entered into force. Parliament's **remote participation regime** has been fully enshrined in the new [Rule 237c RoP](#) and **continues to be used** in plenary and committee meetings **at the time of writing (January 2022)**, although new videoconferencing tools and remote voting solutions have been developed.

### Requirements to be met under Parliament's remote participation regime (Rule 237c(2))

- Members must be able to **exercise their parliamentary mandate without impairment**, including, in particular, their right to speak in plenary and in the committees, to vote and to table texts.
- All votes are cast by Members **individually and in person**.
- The remote voting system enables Members to cast ordinary votes, roll call votes and secret ballots and to verify that their votes are counted as cast.
- A **uniform voting system** is applied for all Members, regardless of whether they are present or not on Parliament's premises.
- [Rule 167](#) on **multilingualism** is applied 'to the greatest extent possible'.
- The IT solutions are **'technology neutral'**.
- The participation of Members in debates and votes is managed and supervised by Parliament's services **directly and internally**, and IT solutions are **secure**.

Under the current RoP, the **remote participation** regime can be **applied to all Members** (Rule 237a), as has been the case since the pandemic began, or can be introduced selectively to protect Parliament's political and regional balance (under Rule 237b), thus applying only to the Members concerned (Rule 237c(1) second subparagraph), a possibility that has yet to be used. Furthermore, the remote participation regime can be applied to any meeting of Parliament bodies, including plenary, committee meetings or meetings of any of Parliament's governing bodies (Rule 237c(3)).

For the purpose of **calculating quorums and votes**, Members who **participate remotely** are deemed to have been **physically present** in the Chamber. A hybrid regime is also possible, whereby the President may determine the use of the Parliament's Chamber during the application of the remote participation regime, with the presence of a certain maximum number of Members attending physically (Rule 237c(4)). Written statements in lieu of speaking in the Chamber are also allowed by way of derogation from Rule 171(11). The **Bureau** adopted the **detailed measures governing voting** under the new remote participation regime by a decision adopted **on 8 February 2021**.

Application of the new rules, implemented through a series of decisions by the president, began with the adoption of the [Decision of 13 January 2021](#) on extraordinary measures, and the [Decision of 11 January 2021](#) on the displacement of a part-session. These decisions allowed the remote participation regime to apply under new Rule 237a to plenary, committee, and interparliamentary delegation meetings as well as to other Parliamentary body meetings. In addition, the January and February 2021 plenary sessions were moved from Strasbourg to Brussels to avoid unnecessary travel. These decisions were followed by a number of others, extending application of the remote participation regime until the time of writing and moving the March, April and May 2021 plenary sessions from Strasbourg to Brussels ([11 February 2021](#), 13 April 2021 and [12 May 2021](#)). **Parliament returned to Strasbourg for the [June 2021 session](#)**, but **attempts to reconvene with full physical presence of MEPs have been frustrated by the spike in infections caused by the Omicron variant**. On [15 December 2021](#), a decision provided for the January 2022 plenary session (17-22 January 2022) to be held with the physical presence of all members in Strasbourg, using two

other rooms along with the hemicycle to ensure social distancing. However, given the worsening of the epidemiological situation, Parliament's President adopted a new decision on [13 January 2022](#), returning to the remote participation regime, including for plenary sessions.

## Covid-19 certificate and other security measures

Along with decisions affecting Parliament's working procedures, Parliament's governing bodies also adopted a series of security measures to protect the health of its Members and staff. Under [Rule 22\(5\) RoP](#), and for some measures also under the [Bureau Decision of 15 January 2018](#) on rules governing security and safety in the European Parliament, the President issued a series of decisions limiting access to Parliament premises,<sup>2</sup> introducing an obligation to wear a mask as of May 2020,<sup>3</sup> introducing temperature checks upon entry,<sup>4</sup> and requiring all external visitors to show a valid EU digital COVID certificate to enter Parliament premises from 6 September 2021,<sup>5</sup> among other measures. Security measures have been tightened or loosened as the epidemiological situation has evolved. Among them, the **requirement to present a valid EU digital Covid certificate to enter Parliament premises** merits special attention, not least since it was **extended also to Members and staff** by a [Decision of the Bureau of 27 October 2021](#), entering into force on 3 November 2021. The decision was based on [Rule 25 RoP](#), and on the [Staff Regulations](#) (Article 1e(2)) and Conditions of Employment of Other Servants of the European Union (Articles 10(1), 80(4) and 126(2)), and was **challenged before the Court of Justice of the EU** both by a group of Members ([T-710/21](#)) and by staff members ([T-711/21](#)), arguing that the measure unduly restricted the rights of Members to fulfil their parliamentary mandate and the rights of Parliament's staff to exercise their professional activities and take their children to the crèche. Although the General Court first granted interim measures in favour of the applicants, the measures were lifted on 30 November 2021. The Court has still to adopt a final decision on the cases.

## EU national parliaments and the pandemic: Two years on

As was the case in the European Parliament, the outbreak of the pandemic in March 2020 forced many national parliaments around the world to adapt their ordinary working procedures quickly to preserve parliamentary activity in the new crisis scenario.<sup>6</sup> In the first months following the outbreak of the pandemic (March to April 2020), [three main approaches](#) were followed by the EU Member States' national parliaments to adapt their usual working methods: i) implementation of new systems to allow for deputies' **remote participation by digital means** in parliamentary meetings (e.g. Poland and Belgium); ii) **reduction in the number of participating deputies** attending plenary sessions or committee meetings, with respect to the legally required quorum (which could be, for those purposes, additionally lowered, as in the case in the German Bundestag) and in keeping with the political balance between groups (e.g. Austrian *Nationalrat*, French *Assemblée nationale*, the two Chambers of the Irish Parliament or the Swedish *Riksdag*); and iii) a final option (sometimes used in combination with one of the other two, as in the Polish example) of **ensuring social distancing** by different means, for example by spreading deputies across **different various interconnected meeting rooms** (e.g. Latvian *Saeima*) or moving the parliament's meetings to **bigger premises** (e.g. the Irish *Dáil Éireann* and the *Chambre des députés* of Luxembourg).

Nearly two years on (in January 2022), the picture of parliamentary working methods around the Union has changed to some extent. On the one hand, **some national parliaments are still working** under the **arrangements set up** at the **start of the pandemic** to curb the spread of the virus and protect deputies' and staff health. However, in some cases those arrangements have been used intermittently not constantly, depending on the epidemiological situation or parliamentary needs. Similarly, the solutions being implemented today by the national parliaments analysed are essentially the same as at the beginning of the pandemic (remote participation, reduced number of members present or social distancing), and nearly two years since the pandemic began, the tools available to parliaments to address the consequences of the crisis do not seem to include any new ground-breaking solutions. On the other hand, **some national parliaments** have decided to go

back to their **ordinary working methods**, with some adaptations aiming to ensure a safe working environment for members and staff, e.g. requiring a Covid-19 certificate to enter parliamentary premises, imposing the use of masks and/or hand sanitiser, doing temperature checks at the entrance to parliament premises and/or ensuring social distancing, to cite just some of the frequently adopted measures. In any case, the situation may again change in some national parliaments in the coming weeks given the current [spike](#) in the number of coronavirus infections.

## Remote participation: Two years of digital parliamentary activities

The outbreak of the pandemic was followed by a cascade of EU Member States' national parliaments introducing **remote digital participation methods for parliamentary meetings**, for either both plenary and committee meetings or one or the other. The remote participation solutions implemented in the early months of the pandemic are still in use in some Member States' national parliaments (e.g. Spain, Belgium and Germany, although in the latter case only for committee meetings), whereas some other national parliaments have adopted new rules allowing remote participation in parliamentary proceedings (e.g. Croatia and Estonia).

The two **Houses of the Spanish Parliament** were among the first to use remote participation solutions to ensure the continuity of parliamentary business at the start of the pandemic. Building on existing provisions concerning remote electronic voting in plenary, the bureaus of both houses of the Spanish Parliament allowed deputies and senators to cast their votes remotely in plenary and the [first plenary sessions](#) after the pandemic began, including those deciding on the extension of the state of emergency declared by the government, were held in both houses with very limited physical presence of members and remote electronic voting. In the lower chamber of the Spanish Parliament (*Congreso de los Diputados*), remote electronic voting has been used throughout the pandemic, but not for every plenary vote and not in the same generalised fashion as at the beginning of the pandemic. Since a decision adopted by the Bureau on 28 October 2021, remote voting in plenary can be authorised by the Bureau in individual cases of pregnancy, maternity and paternity leave, serious illness and also self-isolation or infection for Covid-19 or under exceptional circumstances. This last possibility has been used to authorise remote voting in a generalised way (for all members wishing to use the system) for specific plenary sessions. In the Spanish Senate (*Senado*), the use of the remote voting procedure in plenary was the rule until [28 September 2021](#). As of [30 November 2021](#), the Senate's Presidency can decide on the use of the remote voting procedure for specific sessions when regular voting procedures cannot be used and after hearing the spokespersons of all political groups.

The two **chambers of the Belgian Parliament** are also still using the remote participation regime adopted at the beginning of the pandemic. In the Belgian *Chambre des représentants / Kamer van volksvertegenwoordigers*, the remote electronic voting procedure put in place on the basis of amendments to the Rules of Procedure adopted on [26 March 2020](#) is in use. However, the number of members allowed to be present in the plenary meeting room has increased from 2 per political group to a total of 67, as of 5 October 2021. The Belgian *Sénat / Senaat* amended its Rules of Procedure to allow remote participation in plenary and committee meetings later on in the pandemic (15 May 2020), but current [Articles 43 and 45](#) also provide for a remote voting procedure and authorise the Bureau of the Chamber to consider members casting their votes remotely as present members for the purposes of reaching the quorum under exceptional circumstances threatening public health and preventing senators from being physically present in the Chamber.

The situation is partially different in **Romania**, another of the national parliaments that clearly opted to digitalise parliamentary activities at the beginning of the pandemic. Although the Romanian *Camera Deputaţilor* decided on [2 April 2020](#) to modify its Rules of Procedure to allow members to participate and vote remotely in plenary and committee meetings in exceptional circumstances declared by the Bureau of the Chamber, after consulting the Committee of Parliamentary Group Leaders, the Chamber soon decided to switch to ordinary working methods and, as of 4 June 2020, only allows remote participation in individual cases (e.g. self-isolation). In contrast, the Romanian

Senate initially held its sessions on line and soon established a procedure for the use of electronic means to participate remotely in deliberations, including remote voting (by phone) ([Decision](#) of the Bureau of 30 March 2020). As of 15 May 2020, plenary meetings have been held in the Senate in hybrid mode and remote electronic voting procedures are now available to members (Decisions of the Bureau of [22 April 2021](#) and [14 June 2021](#)).

**Other EU Member States have also embraced remote participation**, with a growing number of parliaments digitalising their activities to cope with the health crisis. For example, the **Dutch Eerste Kamer** has applied various measures in the last two years and is currently using remote participation. At the beginning of the pandemic, the *Eerste Kamer* decided to reduce the number of plenary sittings and hold them with a reduced number of members ([Decision of 14.4.2020](#) of the President, in concertation with the political group chairs). In [May 2020](#), the *Eerste Kamer* decided to move temporarily to bigger premises; and on [29 October 2020](#), it finally decided to amend its Rules of Procedure to allow members to participate in plenary sittings either physically or virtually and to cast a digital vote. This temporary measure was extended on several occasions until [1 September 2021](#), but the worsening of the country's epidemiological situation caused the *Eerste Kamer* to modify its Rules of Procedure once again ([16 November 2021](#)) and reintroduce the possibility for members to participate and vote remotely in plenary with effect until 1 February 2022.

Remote participation was made available in committee and plenary sittings of the **Greek Parliament** (*Vouli ton Ellinon*) early in the pandemic, although extension of existing remote voting rules (postal voting) required modification of the Rules of Procedure of the Chamber adopted on [1 October 2020](#). In the Greek Parliament, remote participation has been accompanied by reduced presence of members in the plenary hall – currently 120 members out of 300 can take part in plenary meetings – everyone wishing to participate in plenary and committee meetings must show a valid Covid-19 certificate – proof of full vaccination, recovery or an up-to date negative PCR or antigen test.<sup>7</sup> The **Estonian Riigikogu** also moved to remote committee meetings soon after the pandemic began ([16 March 2020](#)) and extended that possibility to plenary sittings through modification of its Standing Rules adopted on [20 May 2020](#) (in force since 12 June 2020), using that possibility intermittently ever since (e.g. it was used in the plenary held on 17 December 2020 and, more recently, in all plenaries held between 18 January and 20 May 2021 and 10 to 25 November 2021).

In the **Bulgarian National Assembly** (*Narodno sabranie*), remote electronic participation in plenary has also been [made available](#) to individual members having to isolate or quarantine because of Covid-19. In the **Croatian Parliament** (*Sabor*), meanwhile, since the Rules of Procedure of the Chamber were amended on [11 November 2020](#), the Presidency has been allowed to adopt special measures, including the use of electronic means of participation, if an infectious disease epidemic, the risk of an infectious disease epidemic or an infectious disease pandemic is declared by the competent authority. In application of the amended rules, the Presidency of the Chamber recently [decided](#) to allow four groups of members of parliament to participate in plenary sessions remotely, namely: members who do not have a valid Covid-19 certificate, those who do not want to be tested, those who are in self-isolation, and members whose state of health puts them at greater risk of developing more severe forms of Covid-19. Other members are required to participate in person.

It should be noted, however, that **not all these changes have been uncontroversial**. The current version of the **Croatian Sabor's** Rules of Procedure was adopted following a decision of the **Constitutional Court** ([Decision](#) No 20, October 2020) on a prior modification of the Rules of Procedure ([30 April 2020](#)) that provided for a reduction in the number of members participating in parliamentary proceedings in cases of epidemic or pandemic. The Court took the view that such a measure limited the rights of the members, who would not be able to participate actively in parliamentary debates, and was not justified given that other technical solutions – remote electronic participation, for example – would allow them to participate fully in parliamentary proceedings. As a result of the decision, current [Article 293\(b\) of the Rules of Procedure](#) allows the Presidency of the Chamber to reduce the number of members participating in parliamentary proceedings from the meeting room – currently reduced to 77 – but recognised the right of those members who could

not participate in person to debate and vote electronically, thus complying with the Constitutional Court's decision.

While the possible reduction of the number of members participating in the Chamber was controversial in Croatia, it is worth noting that the holding of remote parliamentary sittings has been at the heart of significant legal controversies in other EU Member States. That was the case in **France**, where the **Constitutional Council** (*Conseil Constitutionnel*) declared unconstitutional the amendment introduced by the French *Assemblée Nationale* to its Rules of Procedure in order to allow for remote participation of its members in plenary and committee meetings under exceptional circumstances. The amendment to the Rules of Procedure followed discussions on parliamentary working methods in crisis situations within a special working group [set up](#) by the Conference of Presidents of the National Assembly on 5 May 2020. Adopted on [1 March 2021](#), the amendment allowed the Conference of Presidents to adapt temporarily the arrangements for the members' participation in committee and in public meetings, including by using remote tools, in the event of exceptional circumstances significantly affecting conditions for members' participation, deliberation or voting. The decision of the Conference of Presidents was to be adopted after the Presidency had informed the spokespersons of all the political groups and was to be reviewed every 15 days. In its decision, the French Constitutional Council considered the amendment unconstitutional as the new provision did not sufficiently specify which sort of adaptations could be adopted by the Conference of Presidents and, therefore, the Council could not determine whether they would impinge on the right of individual members to fulfil their parliamentary mandates (Decision [No 2021-814 DC](#), 1 April 2021). This Constitutional Council decision draws attention to the difficulties of framing emergency provisions that could serve to adjust parliaments' procedures to any type of crisis while at the same time ensuring individual members rights are upheld.<sup>8</sup>

However, these difficulties can appear not only at the time of drafting the emergency provisions, but also when applying them, if exceptional measures restricting member's rights are not used as a last resort. This is the question that is at the root of the recent decision of the Constitutional Review Chamber of the **Estonian Supreme Court** on remote plenary meetings held by the **Estonian Riigikogu** between 10 and 25 November 2021 (Decision of 23 December 2021, No [5-21-32](#)). Questioned on whether 'compelling reasons' justified the decision to hold remote plenary sessions in November 2021, the Court stated that remote sessions could only be held exceptionally, when members were prevented from meeting physically. Although the Court agreed that the epidemiological situation in the country was worrying at the time the decision was adopted, it also took into account that most of the members and parliamentary staff were fully vaccinated and that other measures could have been taken to maintain physical presence in parliamentary meetings (e.g. introduce social distancing, disperse the members of the *Riigikogu* in the chamber, improve ventilation, etc.). Therefore, the decision of the Court stated that a remote participation regime generally applicable to all members of parliament was not justified at the time, although it acknowledged that it could be justified if limited to specific members – such as those belonging to high-risk groups or who had medical reasons for not being vaccinated. The decision highlights the limitations of remote tools to replace an ordinary parliamentary meeting with the physical presence of all members of parliament and seems to impose a gradual and proportional approach to decisions adapting parliamentary procedures to emergency situations.

## Reduction in the number of members participating

As in the early days of the pandemic, some EU national parliaments are still coping with the challenges of the public health crisis by trying to apply social distancing rules and **reducing the number of members participating in parliamentary proceedings**, either through purely political arrangements or formal amendments to their rules of procedure to decrease the quorum needed for the chamber to adopt valid decisions. This is the solution being used by the **Dutch Tweede Kamer** (lower chamber) still working with reduced physical presence of members in the plenary meeting room, with representatives of political groups voting on behalf of their entire groups. Votes

by roll call are taken in groups of 50 members to ensure social distancing.<sup>9</sup> Similarly, the **two Chambers of the Irish Parliament** (*Dáil Éireann and Seanad Éireann*) are once again meeting back in their normal venues, Leinster House, after having moved to bigger premises in [April 2020](#), but sittings are still not taking place under normal working procedures. In this vein, a 50 % attendance arrangement of members is in place for plenary sittings in the lower house (*Dáil Éireann*), while the plenary sittings in the upper house (*Seanad Éireann*) can only be attended by 31 out of 60 Senators plus the Speaker. Committee meetings are in person only by the chair, the clerk and one support staff, and members normally join virtually, appearing in the meeting room only to vote, as votes cannot be cast remotely.

Finally, it is also worth noting that, after a brief [return](#) to its conventional plenary rules, on 10 December 2021 the **German Bundestag** decided to return to a reduced plenary quorum – one quarter of its members ([Section 126a\(1\) Rules of Procedure of the German Bundestag](#)) – as had been the case since the [beginning of the pandemic](#). In contrast, the reduced committee quorum also adopted in the early days of the pandemic [was not prolonged](#), but remote participation remains possible. Consequently, committees meet the required quorum if the majority of their members are physically or remotely participating (Sections 126a(2) in conjunction with 67 Rules of [Procedure of the German Bundestag](#)).

## Requiring a Covid-19 certificate to enter parliament premises

As it is currently the case in the European Parliament, some national parliaments require **proof of full vaccination, recovery or an up-to-date negative Covid-19 test to allow entry to their premises** or participate in parliamentary meetings. Although some houses only impose those requirements on external visitors (e.g. the French *Assemblée nationale and Sénat*), other chambers include members among those subject to the obligation, a decision that has caused controversy as it could be seen as restricting members' right to fulfil their constitutional mandate. The requirements imposed vary from chamber to chamber, as do the consequences of not complying with them.

In this vein, along with the **Greek Parliament**, already mentioned above, the **Italian Parliament's two chambers** have also required a valid Covid-19 certificate – full vaccination, recovery or a negative antigen or PCR test result – for everyone entering parliamentary premises, including members, since 15 October 2021. The **Croatian Sabor** imposed similar requirements as of [15 November 2021](#), following the deterioration of the epidemiological situation in the country. On 14 November 2021, the **Latvian Saeima** joined the ranks of EU national parliaments requiring a valid Covid-19 certificate to participate in parliamentary proceedings, with the entry into force of the [Act on temporary additional requirements for work of members of the Saeima and deputies of local government councils](#) (adopted on 12 November 2021 and in force until 2 July 2022). **Bulgaria** provides another example, with the **Narodno sabranie** [requiring](#) everyone wishing to access Parliament's premises to show proof of vaccination, recovery or a negative antigen test not older than 48 hours or a negative PCR test not older than 72 hours from 24 January 2022.

As a final example, the **German Bundestag** and the **Austrian Nationalrat** recently decided to tighten up their existing requirements to participate in parliamentary meetings. In the German *Bundestag*, the so-called 3G rule – proof of full vaccination, recovery or a negative test result no older than 24 hours for antigen tests and no older than 48 hours for PCR test – initially applied to parliamentary meetings since the General Order of the President of 8 November 2021. However, a new General Order adopted on [11 January 2022](#), applicable as of 12 January 2022, provides for the application of the 3G rule to anyone entering the Bundestag premises and for the application of the so-called 2G plus ('2G+') rule to those participating in plenary or committee sessions. This means that only vaccinated or recovered persons who have tested negative or have received a booster vaccination dose are granted access to the plenary hall and adjacent sites and to committee meetings. If a member of the Bundestag, or a member of the Federal Government or the Bundesrat, is not vaccinated or has recovered from Covid-19, he or she can still attend plenary and committee sessions from specific designated seats, respecting the 1.5-metre distance rule, but only if she or he

has tested negative for Covid-19. In the case of committee meetings, members who do not meet any of these requirements can also take part through remote electronic means, as provided in Rule 126a(2) and (3) of the Bundestag Rules of Procedure.

In the **Austrian Nationalrat**, as of [14 January 2022](#), entry into closed rooms within parliamentary premises is generally authorised under the 2G rule – proof of vaccination or recovery – but a 2G+ rule – an additional negative PCR test not older than 48 hours – applies to those attending meetings of more than 25 people. An exception nevertheless applies to certain categories of people, including members of the two houses of the Federal Parliament, the Federal government and staff working for those bodies, as they can enter closed rooms in parliament simply providing proof of a negative PCR test not older than 48 hours or a negative antigen test not older than 24 hours.

## Returning to normality, with some adaptations

Several EU Member State parliaments have decided to **return to normal**, but in most cases with some adaptations aiming to ensure social-distancing or protect the health of members and staff (e.g. making it compulsory to wear masks, providing hand sanitiser, imposing temperature checks at the entrance, etc.). As already indicated, this is the case for example of the **Romanian Camera Deputaţilor** and the **Estonian Riigikogu**, which have both stopped using a remote participation regime applicable to all members of Parliament. Similarly, the two chambers of the **Polish Parliament** have also gradually gone back to ordinary working methods. At the beginning of the pandemic, both chambers of the Polish Parliament worked on the basis of a [hybrid model](#) with a limited presence of members in the plenary hall, but the last session of the *Sjtem* (lower chamber) with only 40 or 50 deputies in the plenary room was held on [28 May 2020](#) and, since [2 June 2020](#), the chamber has returned to its normal working arrangements with all members present in the plenary hall. The Polish Senate continued to work in two rooms to allow for physical distancing until July 2020 and the [sitting of 11 August 2020](#) was the first held in a single room (the Senate chamber).

Although they have never used remote working methods, but have worked under arrangements providing for a reduction in the number of members participating in parliamentary sessions, the two chambers of the **French and Italian Parliaments** are examples of a gradual return to normality too. At the beginning of the pandemic, the *Assemblée Nationale* was working in a [reduced format for sittings](#), with only a few members allowed to participate in committee and plenary meetings, and extended possibilities for proxy voting. The number of members allowed to be present in parliamentary meetings has been increased over time and, after a failed attempt to introduce remote working procedures, the chamber decided to go back to ordinary working methods in May 2021. Since June 2021, the French Senate has also gradually lifted the special arrangements applying to senators, in particular the limits on members' physical presence in meeting rooms.

The **two Chambers of the Italian Parliament** have also decided to return to their normal working arrangements. In the *Camera dei Deputati*, after an initial period (March and April 2020) where, by virtue of an agreement among [political groups](#), the number of members present in the chamber was temporarily reduced and the chamber's activity was reduced, since May 2020 the full presence of all members has been guaranteed, with special measures to ensure safety among the participants. In this vein, the Committee on the Rules of Procedure [decided](#) on 7 May 2020 that a wide corridor adjacent to the plenary hall – the 'Transatlantico' – would be used to accommodate 120 members in order to abide by social distancing rules. However, it should be noted that the decision of the College of Quaestors to require everyone wishing to access parliamentary premises to show a Covid-19 certificate, adopted on 12 October 2021, was followed by a decision of the Conference of Presidents of 27 October 2021 stating that the chamber would [no longer](#) use the 'Transatlantico' as an extension of the plenary hall as of Monday 8 November 2021. In the Italian Senate too, the decision of the College of Quaestors adopted on 13 October 2021 (Delibera No 406/XVIII) imposing the Covid-19 certificate as a requirement to enter parliamentary premises was accompanied by a loosening up of social distancing measures in the Chamber (Delibera No 414/XVIII, 18 October 2021).

The **Cypriot House of Representatives** is another example of a national parliament currently working on the basis of quasi ordinary procedures, as it decided to abandon the practice of working with a reduced number of participating members – from 13 March 2020 until 14 May 2020 – and decided to move to bigger premises from 19 May 2020 (Decision of 14 May 2020), in order to be able to reintroduce its ordinary working procedures while fully respecting social distancing rules. Finally, the **Swedish Riksdag** decided to return partially to ordinary working methods in September 2021, when the Speaker of the House and the party group leaders [decided](#) not to extend the application of the [agreement](#) put it place at the beginning of the pandemic, by which only a reduced number of members would be present in the plenary hall when voting (55 out of 349). Although the latest agreements concerning the Riksdag's working methods have maintained the possibility for committees to meet remotely, they have not reduced members' presence in plenary sittings (Agreement of [10 January 2022](#)).

## ENDNOTES

- <sup>1</sup> Initially, the decision of 20 March was in force until 31 July 2020, but it was later extended until 31 December 2020 (Decision of the Bureau of 14 September 2020, [Bureau Notice No 7 / 2020](#)), and later until 31 March 2021 (Decision of the Bureau of 23 November 2020, [Bureau Notice No 10/2020](#)). By that time, the reform of the Rules of Procedure had already been implemented (see next section).
- <sup>2</sup> See the President's decision of 2.3.2020 on Covid-19 measures, followed by decisions of 9.3.2020, 26.3.2020, 29.4.2020.
- <sup>3</sup> See the President's decision of 8.5.2020 on Covid-19 measures (community masks).
- <sup>4</sup> The President's decision of 28.5.2020 on Covid-19 measures eased restrictions on accessing Parliament's premises but upheld the obligation to wear a mask and introduced the obligation to check the body temperature of all entering Parliament premises, a decision that was renewed by the President's decision of 24.6.2020 on Covid-19 measures. This was followed by the President's decision of 26.8.2020 on Covid-19 measures which maintained a number of restrictions on access to Parliament's premises, and upheld the mask obligation (community mask) and temperature checks, and was followed by other similar decisions (President's decisions of 24.9.2020, 13.10.2020, 27.10.2020, 30.11.2020, 13.1.2021, 4.3.2021 (medical mask required from then on), 22.4.2021, 1.6.2021 and 8.7.2021).
- <sup>5</sup> See the President's decision of 2.9.2021 on security measures, followed by the President's decisions of 30.9.2021 and 14.10.2021 and the [Bureau decision of 27 October 2021](#), extending the obligation to all. Since the latter Bureau decision, some previous restrictions have been loosened up by the President's decisions of 28.10.2021, 25.11.2021, 15.12.2021.
- <sup>6</sup> For further information relating to parliamentary practices in the pandemic, see the website of the Inter-Parliamentary Union ([Parliaments in a time of pandemic](#)) and also the website [Parliamentary responses during the Covid-19 Pandemic – Data Tracker](#), by INTER PARES.
- <sup>7</sup> F. Fitsilis and A. Pliakogianni, '[The Hellenic Parliament's Response to the COVID-19 Pandemic](#)', *IALS Student Law Review*, Vol. 8, COVID Special Issue, 2021, pp. 19-27; V. Kondylis, '[The Greek Parliament in the context of the Covid-19 crisis. Tackle effectively the novel pandemic](#)', Study, Robert Schuman Foundation, 2020.
- <sup>8</sup> P. Jense-Monge and A. de Montis, 'Conseil constitutionnel et droit parlementaire de crise', *Revue française de droit constitutionnel*, December 2021, No 128, pp. 135-141.
- <sup>9</sup> For the situation at the start of the pandemic, see the *Tweede Kamer Presidium* [Decisions](#) of 12 and 15 March 2020.

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