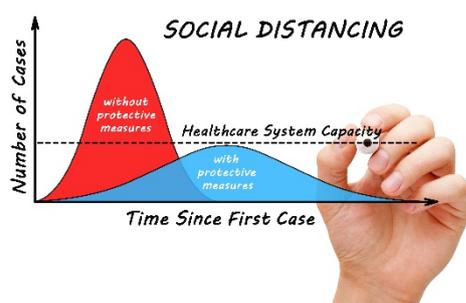


# States of emergency in response to the coronavirus crisis: Situation in certain Member States

## SUMMARY

With the first case of unknown pneumonia reported in the province of Wuhan (People's Republic of China) on 31 December 2019, within few weeks the coronavirus (Covid-19) was declared a pandemic by the World Health Organization on 30 January 2020. Since then it has spread to most corners of the globe. While the health threat it poses and the challenge it represents for human health is paramount, no less important is the strain it puts on the legal order. For most of the affected countries, in particular in the EU, this outbreak is posing unprecedented institutional challenges and has obliged institutions and governments to adopt strict measures affecting citizens' rights in a way unparalleled since the Second World War.

While some Member States' constitutions include mechanisms allowing for recourse to a 'state of emergency' or the entrustment of special powers to specific institutions, other Member States' legal orders do not, either for historic reasons or owing to institutional tradition. Crucial aspects of the exercise of public powers under a pandemic threat include not only the extent of the measures adopted, but also their legitimacy, raising the question of their duration and of the degree of parliamentary oversight. This briefing is the first in a series intended to offer a comparative overview of the institutional responses adopted in different Member States, in the light of i) the constitutional framework for the state of emergency or legitimation of the emergency legislation ii) the specific measures adopted, iii) the extent of the parliamentary oversight exercised over the measures adopted. This first briefing, therefore, offers an overview of the responses to the coronavirus pandemic in Belgium, France, Germany, Hungary, Italy, Poland and Spain.



### In this Briefing

- Introduction
- Belgium
- France
- Germany
- Hungary
- Italy
- Poland
- Spain

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## Introduction

Some of the government measures taken to address the public health emergency engendered by the [coronavirus pandemic](#) can be considered invasive. Whereas the content of the measures taken by the seven Member States considered in this briefing are broadly similar, the constitutional frameworks within which those measures have been taken differ. While some Member States' constitutions include detailed rules providing for a state of emergency (sometimes of various kinds) in the event of external or internal threats (FR, DE, PL, HU), others (BE, IT) address emergencies by making use of rules that allow for a certain modification of the normal balance of powers between the executive and legislative powers. Interestingly, however, even where specific emergency constitutional mechanisms exist, Member States have preferred not to trigger them, either for historical reasons (DE) or for fear of triggering a mechanism perceived as too repressive ([FR](#)). With the exception of Spain, the preference has been for ordinary urgent legislative measures. Legislation adopted in situations of emergency raises questions as to temporal limitations (HU), scope and proportionality, and legal certainty (IT). All seven of the Member States considered here, however, offer a degree of parliamentary control over the measures adopted (see Annex).

## Belgium

### Constitutional framework for emergency situations

The Belgian Constitution (1831) has **no specific provisions dedicated to 'the state of emergency' *stricto sensu***. On the contrary, [Article 187](#) of the Constitution clearly states that the Constitution cannot be suspended in whole or in part. Nevertheless, under [Article 105](#) a 'special powers' mechanism allows the Belgian parliament to delegate legislative powers to the government. This does not happen in a vacuum, however. A number of principles have been clarified by the legislative section of the Council of State. These [include](#) the existence of compelling reasons justifying the use of special powers that should be limited in time. The objective is to enable a quick reaction in a context where it would be ineffective to wait for the adoption of all the necessary laws by Parliament under the ordinary legislative procedure. Despite the need to act rapidly, Belgium's constitutional system has a system of checks. The acts (decrees) put forward under special powers must be confirmed by the legislator relatively quickly.<sup>1</sup> Moreover, the law enabling the special powers remains [subject](#) to judicial review by the Constitutional Court and the decrees are subject to the judicial review of the Council of State, unless ratified by the Parliament.

### Main measures adopted to address the coronavirus pandemic

With the pandemic looming, two enabling laws were adopted on 27 March 2020 to enable the King<sup>2</sup> (i.e. the Belgian government) to adopt measures to control the spread of Covid-19 for a maximum period of three months starting on the day the laws entered into force, i.e. 30 March. The two laws<sup>3</sup> deal with the matters covered by Articles 74 ([COVID-19 II](#)) and 78 ([COVID-19 I](#)) of the Constitution.<sup>4</sup> The enabling laws list the measures that the government can take, including but not limited to measures to protect public health, support economic activities and ensure the proper functioning of the judiciary. The government can also determine the administrative, civil and criminal sanctions applicable in cases of breaches of the measures taken. The measures adopted via decrees deliberated in the Council of Ministers may exceptionally have retroactive effects but not prior to 1 March 2020. In addition to the procedural safeguards i.e. the need to be converted into law within a set deadline, the enabling acts also provided for a number of substantive limits; for instance, the decrees cannot undermine families' purchasing power or existing social protection (Article 3, COVID-19 II).

On 13 March, a [ministerial decree](#) signed by the Interior Minister prohibited a number of cultural, recreational and sporting activities, while also closing down schools and restaurants, inter alia. Stricter measures were introduced by ministerial decrees on [18 March](#) and [23 March](#) (including social distancing, distance learning and teleworking for non-essential business); these were further clarified on [24 March](#) and modified on [17 April](#). All the above-mentioned ministerial decrees refer to

the [precautionary principle](#) set out in Article 191 of the Treaty on the Functioning of the European Union (TFEU). It is worth noting that the use of ministerial rather than royal decrees is considered [appropriate](#) by the legal bases on which the decrees are based, which explicitly attribute prerogatives related to public order to the Interior Minister. Some [argue](#), however, that the Belgian Constitution specifically reserves the possibility to limit fundamental rights to the domain of the law only. Additional measures were taken at [community and regional](#) levels, as Belgium is a federal state in which powers are distributed between the federal, regional and community levels and the management of the pandemic cannot be restricted to the exclusive competence of one level only.

### Parliamentary control over emergency measures

Under the special powers provision, decrees need to be confirmed by law within a set deadline. In the specific case of a pandemic, the decrees need to be converted within a year of their entry into force. In the absence of such confirmation they will become void. Moreover, in the context of the coronavirus pandemic, the House of Representatives has created a new parliamentary [committee](#) devoted specifically to requesting information from, and overseeing, the members of the federal government with regard to measures taken under the 'special powers' provision. The Belgian government had already used the special powers for a sanitary emergency in 2009, under the threat of the [N1H1](#) pandemic, when special powers, though more limited, were attributed to the King of Belgium over drugs distribution and delivery, for instance.

## France

### Constitutional framework for emergency situations

The French Constitution (1958) and primary law deals with emergency situations by virtue of three sets of provisions, i) 'presidential exceptional powers', ii) the 'state of siege', and iii) the 'state of emergency'. All of them share common elements, namely the need to deal with an exceptional event, the existence of a threat or potential danger to the French nation and a consequent derogation from the law applicable in normal circumstances. Despite some similarities, it [appears](#) that the states of emergency and siege are framed by a system of checks and balances, whereas the exceptional powers grant the president wider powers with less of an institutional counter-balance.

In the event of a serious and impromptu threat to the independence and integrity of the French nation that risks interrupting the regular functioning of the constitutional public power, [Article 16](#) of the Constitution allows the President alone<sup>5</sup> to take the necessary measures, making use of **exceptional powers**. After 30 days, the Constitutional Council may examine whether the conditions of urgency are still met for the use of exceptional powers; this examination is automatic after 60 days.<sup>6</sup> Article 16 also states that the Parliament meets as of right and the National Assembly cannot be dissolved. Exceptional powers have been invoked only once, in 1961 by President De Gaulle in reaction to the '[Generals' putsch](#)'. According to the Council of State in 1962,<sup>7</sup> the Head of State has total discretion to take decisions in such circumstances.

[Article 36](#) of the Constitution and [Article L. 2121-1](#) of the Defence Code refer to the **state of siege**, proclaimed by a Council of Ministers decree and lasting a maximum of 12 days, unless prolonged by the Parliament. The decree must specify the territory to which it applies. It can be invoked in the [event](#) of foreign war or armed insurrection and, contrary to the state of emergency, it [implies](#) a transfer of certain powers from the civilian to the military authority, including responsibility for public order and increased policing powers. Certain rights may also be suspended e.g. freedom of press, assembly or movement. The state of siege has yet to be used under the Fifth Republic.

According to Law [No 55-385](#) of 1955, a **state of emergency** may be declared in the event of imminent danger resulting from serious breaches of public order, or in the case of events that by their nature and gravity endanger the public order. It is declared by a decree of the Council of Ministers, over part or all of the French territory, is limited to 12 days but can be extended by the Parliament, which then sets the definitive duration. The Parliament must be informed of the

measures taken by the government and may request further information at any time. Under the state of emergency, authorities may limit people's movement, establish security zones and close public spaces. A state of emergency has already been [declared](#) in the past, in 1955 during the war with Algeria, in 1984 in New Caledonia, in [2005](#) in France during the civil riots in the suburbs and, most recently, in [2015](#) following the terrorist attacks in Paris. In the latter case it was prolonged four times until 1 November 2017, with the adoption of new anti-terrorism legislation ([Law No 2017-1510](#) of 30 October 2017), which according to [some](#) has created a *de facto* permanent state of emergency.

## Main measures adopted to address the coronavirus pandemic

Notwithstanding the possibility to apply a state of emergency to the health crisis, on 23 March, the French Parliament adopted a law on urgent measures ([Law No 2020-290](#)) in response to the coronavirus pandemic and declared a public health emergency for the first time ever. In addition to sanitary measures, the law provides for emergency financial and electoral measures. According to Public Health Code Article L3131-12, created by the above law, a public health emergency requires the existence of a 'health catastrophe endangering, by its nature and its gravity, the health of the population'. It is declared by a Council of Ministers decree on the basis of a report by the Health Minister, it must include *de jure* and *de facto* justifications, in particular the scientific data on which the decision is grounded. In this respect, the public health emergency differs slightly from the general state of emergency, which, under Law 55-385, requires no specific justifications.<sup>8</sup> A public health emergency can be declared for one month and then prolonged by a law of Parliament, after consultation of the scientific committee (Public Health Code Article L3131-19). However, should the public health emergency cease to exist, it can be terminated by Council of Ministers decree before its expiry. In the current case, given the urgent nature and extent of the public health crisis and by derogation to the provisions of Public Health Code [Article L3131-13](#),<sup>9</sup> the [public health emergency](#) was declared by Law No 2020-290 for a period of two months throughout the national territory. Its prorogation can be decided only by a law of Parliament. The number of measures that can be taken under the state of public health emergency are strictly limited to 10 (Public Health Code Article L3131-15), and include for example the possibility to restrict or prohibit the movement of people and vehicles; to introduce quarantine and/or isolation for individuals affected by the virus; to close one or more categories of establishment temporarily and to control the prices of certain products. The measures must be proportionate to the health risks, they can be terminated at any time when the specific conditions are not met anymore. Most recently, in March 2020, the Council of State [noted](#) that emergency measures must be proportionate to the health objective they serve.

## Parliamentary control over emergency measures

Both the French National Assembly and the Senate must be informed of the measures taken by the government and may request further information at any time (Public Health Code L3131-13). Moreover, because the public health emergency introduces the possibility to limit fundamental rights and liberties enjoyed fully by citizens under normal circumstances, there is the possibility to appeal against them before the administrative court (Public Health Code L3131-18). Within the limits of [Article 38](#) of the French Constitution, the government can issue orders containing temporary measures that are usually in the domain of the law, however a ratification law must be introduced by Parliament within three months of publication of the order. It is worth mentioning that since the beginning of the 20th century, French administrative [jurisprudence](#) has reaffirmed that freedom is the rule and police restriction the exception.

## Germany

### The constitutional framework for emergency situations

While initially the German Constitution (1949), hereafter the 'Basic Law', did not contain any rules regarding a legal regime for emergencies, given the fatal role such provisions played in German history, [emergency laws](#) were added to the Basic Law in 1968 so as to allow the Federal Government to react to crisis situations. Ever since, the Basic Law has distinguished between [internal and external](#)

[states of emergency](#). The external state of emergency covers two specific regimes, the 'state of tension', governed by Basic Law [Article 80a](#), and the 'state of defence', set out in Basic Law [Article 115a](#). The latter can be declared if the country finds itself under [military attack](#) or facing an imminent threat of that kind. Prior to declaring a state of defence, the Parliament can declare a [state of tension](#), the stage preceding the state of defence. The activation of either emergency regime requires a [two thirds majority](#) of votes cast in the Bundestag, with a 50 % quorum. The declaration of the state of defence must also then be approved by the Bundesrat. Neither emergency regime has ever [been activated](#).

However, in light of current events the constitutional provisions covering an internal emergency appear more relevant (Basic Law [Articles 35 and 91](#)). They can be triggered in the event of a natural catastrophe or other kind of grave disaster, as well as in response to an event threatening public security or the democratic order in the Federation or the *Länder* (e.g. riots). Although Basic Law Articles 35 and 91 do not mention the epidemic scenario explicitly, their wording does not exclude their [application](#) to the Covid-19 outbreak. Interestingly, the Bundestag is not involved in declaring an internal emergency – a decision that can be taken by the Federal Government on its own. The internal emergency would give the Federal Government [additional competencies](#) and temporarily suspend the strict division of powers between the *Länder* and the Federal Government (Basic Law [Article 35](#)). However, while the declaration of an internal emergency may be legally possible, German politicians have been reluctant to use this tool during the current pandemic. Historical considerations render the application of these emergency laws [highly controversial](#) and the declaration of a state of emergency is regarded as measure of last resort. The [demonstrable effectiveness](#) of the current restrictions makes use of the internal state of emergency unlikely.

## Main measures adopted to address the coronavirus pandemic

Contrary to other Member States, [Germany](#) has not declared a nation-wide state of emergency in order to combat the pandemic. The central legislative tool used during the country's fight against Covid19 is the [Infection Protection Act](#). Passed in 2001, this Federal statute outlines the Federal and *Länder* governments' scope for action during an epidemic and equips them with various means designed to prevent, control and combat the spread of disease. On this basis, a variety of restrictions have been imposed, ranging from a nation-wide [contact ban](#) on gatherings of more than two people to the forced closure of care facilities for minors ([paragraph 33](#)) and a ban on events or large gatherings ([paragraph 28](#)) following a drastic increase in Covid-19 infections across the country. Initially envisaged for a total duration of two weeks, this regime was subsequently extended until [19 April](#). Throughout the entire process, the *Länder* governments remained the primary actors in charge. According to the system of shared competencies between the *Länder* and the Federation, the *Länder* hold the sole power to execute Federal Acts, and this is reiterated in [paragraph 32](#) of the Infection Protection Act. As a result, the measures listed in the Infection Protection Act may only be [enacted](#) by the *Länder* governments. Equally, the *Länder* governments are responsible for managing the gradual lifting of the restrictions, which has already commenced in some regions. However, the contact ban remains applicable until [3 May](#), as agreed in a recent compromise between the *Länder* governments. In an attempt to strengthen the competencies of the Federal Government during the pandemic, the Bundestag [amended](#) the Infection Protection Act substantially during its last plenary session in mid-March. The March [amendments](#) enable the Bundestag to declare an 'epidemic outbreak of national importance', conferring additional competencies upon the [Federal Health Ministry](#), such as the right to procure medical equipment for care, disinfecting and research purposes, and the right to reorganise the deployment of medical personnel across the territory.

In addition to the measures taken under the Infection Protection Act, [some Länder](#) declared a regional-level state of catastrophe. For instance, the Bavarian Interior Minister declared a state of catastrophe, which subsequently triggered the application of the [Bavarian Catastrophe Protection Act](#). This specific regime allows the Bavarian Interior Ministry to [coordinate](#) the action of all relevant authorities throughout the territory. Similar provisions are found in other *Länder* legislation, as disaster management falls within the [competences](#) of the *Länder*.

## Parliamentary control over emergency measures

On 25 March the Bundestag [declared](#) by a simple majority that the spread of Covid-19 constituted an epidemic of national importance. Justification for this decision were the high infection rates across the nation, the acute risk of disrupting the national healthcare system and the dynamic growth of the epidemic. The Federal Government is thus entitled to resort to the measures listed in [paragraph 5](#) of the Infection Protection Act, until the Bundestag decides otherwise, or until 31 March, at which point governmental measures based on this provision automatically become void.

## Hungary

### Constitutional framework for emergency situations

In exceptional situations, the state may operate under [special rules](#) recognised by the Hungarian Constitution under the umbrella term 'special legal order'. These special rules are set out in the [Fundamental Law of Hungary](#) (2012), i.e. the **Hungarian Constitution**, in [Articles 48 to 54](#), whereby six types of special legal order can be distinguished: i) state of national crisis (Articles 48 and 49), ii) state of emergency (Articles 48 and 50), iii) state of preventive defence (Article 51), iv) state of terrorist threat (Article 51/A), v) unexpected attacks (Article 52) and vi) state of extreme danger (Article 53).

The Hungarian Constitution allows a special legal order to be governed by 'cardinal acts', i.e. legislative acts [adopted](#) by a two-thirds majority in the National Assembly. It also provides for the possible suspension or limitation of fundamental rights – with the [exception](#) of fundamental rights to which international obligations apply, such as the right to human dignity – beyond the limits of the fundamental rights test. Application of the Hungarian Constitution may not be suspended by any special legal order, nor may the operation of the Constitutional Court be restricted. If the conditions for the special legal order no longer apply, the organ that introduced it shall withdraw it.

As regards the state of extreme danger – the special legal order that applies for the coronavirus pandemic – the main rules are laid down in the Hungarian Constitution, while the detailed rules are set out in two cardinal acts: [Act CXXVIII of 2011 on disaster management and amending certain related Acts \(Disaster Management Act\)](#), and the recently adopted [Act XII of 2020 on the containment of coronavirus \(Coronavirus Containment Act\)](#). Under the Hungarian Constitution, a state of extreme danger may be declared by the government 'in the event of any natural disaster or industrial accident endangering life or property, or to mitigate the consequences'. The Disaster Management Act includes among the incidents that cause a state of danger a human epidemic or threat of an epidemic causing a mass illness. This act also includes a description of extraordinary rules and measures the government is entitled to adopt during a state of danger. On the basis of the new act on the containment of coronavirus, the government may adopt further measures in the context of the COVID-19 epidemic. Government decrees will remain in force for 15 days, but on the basis of the [authorisation](#) of the National Assembly, the government may extend the validity of the decrees. Upon termination of the state of danger, the government decrees will be repealed.

A state of danger was first declared in Hungary for a specific part of the country in 2001 owing to the flooding of the [Tisza River](#). Other examples include the state of danger declared after a red mud storage dam [burst](#) in 2010, and another in 2013 during the flooding of the [Danube River](#).

### Main measures adopted to address the coronavirus pandemic

On 11 March 2020, with Government Decree [40/2020](#), the Hungarian government declared a state of danger for the entire country. Extraordinary government [measures](#) relating to the epidemic situation were set out in a separate government [decree](#). Subsequently, a number of government decrees on extraordinary measures were released, and, in the framework of the control of the epidemic, other measures were also taken, such as the establishment of 10 action groups. The [government](#) organised the defence against the coronavirus along military, police, healthcare and economic axes. For example, an initial package of [measures](#) to protect the economy has been

extended in several steps with further economic measures, and a government [decree](#) has been adopted on [deploying army officers](#) to lend support to certain hospitals. The government introduced [restrictions on movement](#) across Hungary as of 28 March 2020; these were extended for an unlimited period of time on 9 April 2020.

The National Assembly [adopted](#) the Coronavirus Containment Act on 30 March 2020. Among other things, the act allows the government to take further extraordinary measures, to a proportionate and necessary extent, during the state of danger 'to ensure that the life, health, person, property and rights of citizens are protected, and to guarantee the stability of the national economy'. Moreover, it includes the National Assembly's authorisation to the government to extend the application of its decrees adopted during the state of danger until the end of this period. The act does not specify the exact date until which authorisation is granted. The act also supplements the Penal Code with rules on the act of obstructing epidemic containment and scaremongering. Following the entry into force of the act, the government ordered the extension of the applicability of its state of danger-related extraordinary measures until the end of this period. [Domestic](#) and [foreign](#) criticism of the act relate mainly to the broad powers it grants the government without a time limit and the rules related to scaremongering, which, for instance, [could be used](#) to limit freedom of expression. Hungarian decision-makers have stressed, inter alia, that the [duration](#) of the government's authorisation lasts until the end of the state of danger only, and that the act covers the communication of [deliberately false statements](#) in front of a large audience only. The [President of the European Parliament](#) asked the European Commission to examine whether the act complied with Article 2 of the Treaty on European Union.

## Parliamentary control over emergency measures

Before the end of the state of danger period, the National Assembly may revoke the authorisation given to the government to extend the application of its decrees, and, according to the [draft act's](#) detailed justification section, the National Assembly also has the option to revoke the authorisation of any government measure adopted. The government shall inform the National Assembly regularly of the measures taken, and the continued operation of the Constitutional Court must be ensured during the state of danger.

## Italy

### Constitutional framework for emergency situations

The Italian Constitution (1948) does **not set out rules for a state of emergency** or the transfer of special powers to a specific institution in times of crisis. Although Article 78 of the Italian [Constitution](#) provides for the declaration of a state of war with attribution of the necessary powers to the government, this provision is ill-suited to situations not arising from the threat of armed conflict. Despite this gap, the Italian legal system allows for specific measures to be put in place under extraordinary circumstances. First, the government can step in and replace local entities (regions, provinces, metropolitan cities and municipalities) in the exercise of their powers for reasons of public security, to preserve the legal and economic unity of the state or to guarantee essential levels of assistance concerning social and civil rights (Article 120 of the Constitution). Second, the government may under its own authority adopt 'decree-laws' with the same legal standing as ordinary laws, if an extraordinary situation of urgency and necessity calls for it (Article 77 of the Constitution). Decree-laws must be submitted to Parliament (Chamber of Deputies and Senate) for their conversion into law within 60 days of their adoption, failing that they become void *ab initio*. This legal instrument has been used frequently for law-making in recent decades, most recently in response to the coronavirus pandemic.

### Main measures adopted to address the coronavirus pandemic

In addition to decree-laws, a broad set of measures have been introduced by decree of the prime minister (*Presidente del Consiglio dei Ministri*), as well as civil protection orders and Health Ministry

decrees and orders. Powers of an administrative and operational nature have been activated under the [Civil Protection Code](#), which provides for the declaration of a state of emergency ([Article 24](#)) for emergencies of natural or human causes requiring an immediate response for a limited and predetermined time. The Civil Protection Department can adopt orders, with the consent of the regions and autonomous provinces concerned and provided national and EU law is upheld. These orders concern operational aspects (e.g. emergency interventions, first help and assistance to the population, restoring the operations of public services and public infrastructure). On 31 January 2020, a Council of Ministers decision declared a [state of emergency](#) for a period of six months. This period may be extended to 12 months and renewed only once (Civil Protection Code Article 24(3)). Before that, however, air traffic from China was banned by orders of the Health Ministry ([27 January](#) and [30 January](#)). Several measures were adopted on the basis of Health Ministry orders issued on the basis of powers conferred by [Article 32](#) of Law 833/1978: on [21 February](#) a 14-day quarantine, with active surveillance, was imposed on anyone who had had contact with an infected person, and confinement at home for anyone returning from affected regions; in agreement with the Lombardy region, a number of activities were [suspended](#) (public gatherings, and educational, commercial, cultural activities) and public transport was prohibited from stopping in 10 affected municipalities; on [22 February](#) the same measures were extended to two Veneto municipalities. Between [23 February and 24 February](#), by order of the Health Ministry, similar measures were applied to almost all mid-northern regions of Italy (Lombardy, Emilia Romagna, Veneto, Friuli-Venezia Giulia, Piedmont and Liguria).

With a first [Decree-Law](#) No 6 of 23 February 2020, the government established a range of measures that national competent authorities would be able to adopt to contain the coronavirus pandemic, including *inter alia*, prohibition to exit or enter an affected municipality, and suspension of transport of goods and persons, and of educational activity. Although in some instances these measures lacked clarity, they were [implemented](#) by means of decrees of the prime minister, introducing restrictive measures in rapid succession to a 'red zone' of 10 municipalities, to other municipalities of central-northern regions, and ultimately to the entire [national territory](#). Other administrative, financial and overarching legal measures were adopted on the basis of [seven decree-laws](#).

## Parliamentary control over emergency measures

The Italian response to coronavirus was led by prominent use of governmental legal instruments in the form of decree-laws, prime ministerial decrees and ministerial orders. While this legal architecture, built in a very short timeframe under an extreme emergency situation, was sometimes criticised for [lack of legal certainty](#) and the suspicion of abuse of government prerogatives to the detriment of Parliament, the usual guarantees of the Italian legal system remain applicable to the adopted legal acts. Decree-laws are subject to the conditionality of necessity and urgency for their adoption and to double scrutiny: first by the President of the Republic (Article 87 of the Constitution) who promulgates them and, in that capacity, performs an initial scrutiny of their constitutional compliance; second by Parliament (Article 77 of the Constitution) through their conversion into law within 60 days, failing which they become void *ex tunc*. Concerning ministerial decrees or civil protection orders, although they do not enjoy the parliamentary scrutiny of a decree-law, they are subject, like other administrative acts, to ordinary means of redress before the administrative jurisdiction for violation of a legitimate interest (or civil jurisdiction in case of violation of legal rights). Prime ministerial decrees, the ultimate legal form of a series of restrictive measures impacting various fundamental rights (personal freedom, freedom to circulate, religious expression, entrepreneurship, etc.), deserve special consideration. The possibility - sometimes [criticised](#) - of such decrees to introduce restrictive measures was initially provided by Decree-Law 6/2020, which also contained a highly controversial 'open clause' allowing the prime minister to adopt 'any other necessary measure'. Under [Decree-Law 19/2020](#) this controversial aspect was [corrected](#) and a more precise perimeter of governmental powers in the adoption of prime ministerial decrees was established. Redress against these decrees also remains subject to the ordinary rules on jurisdiction (administrative or ordinary).

## Poland

### Constitutional framework for emergency situations

The [Polish Constitution](#) (1997) provides for **three states of emergency**: i) martial law, ii) a state of exception and iii) a state of natural disaster. The latter is governed by Article 232 and can be introduced by the Council of Ministers for a definite period no longer than 30 days, and extended with the consent of the *Sejm* (lower house of parliament). There is no limit on the number of extensions. More detailed rules are contained in the [Act of 18 April 2002](#) on the state of natural disaster, which, in its legal definition of a natural disaster, mentions explicitly the 'massive occurrence of (...) **infectious diseases of human beings**'. The state of natural disaster may be prolonged an indefinite number of times, and is removed only once the natural disaster in question recedes. According to the Constitution (Article 233(3)), during a state of natural disaster the following **fundamental rights may be limited**: freedom of economic activity, personal freedom, inviolability of the home, freedom of movement and sojourn on the territory of the Republic of Poland, the right to strike, the right of property, freedom to work, the right to safe and hygienic conditions of work and the right to rest (Article 233(3)). The Act of 18 April 2002 provides for a number of specific measures, including quarantine, obligatory medical examination, obligatory medical treatment, including vaccination, rationing of the sale of certain products, suspension or prohibition of certain forms of economic activity, prohibition of people from staying in specific places or buildings or a specific territory, prohibition of mass gatherings, prohibition of specific movements of people. A special act provides for **compensation** for those whose fundamental rights are limited as a result of a state of emergency ([Act of 22 November 2002](#)). During any state of emergency, including the state of natural disaster, it is prohibited to modify electoral laws. **No elections may take place**, including presidential elections, during any state of emergency or within 90 days of its completion. The term in office is prolonged automatically.

### Main measures adopted to address the coronavirus pandemic

Until now, **no constitutional state of emergency has been declared**, and the Polish response to the coronavirus pandemic has been based on ordinary legislation, as well as executive implementing decrees, based on that legislation. The main legislative acts to have been used are: the [Act of 5 December 2008](#) on the prevention and combat of contagious and contagious diseases in humans ('Contagious Diseases Act'), which is an ordinary law, and the [Act of 2 March 2020](#) on special solutions connected with preventing, countering and combating Covid-19, which entered into force on 8 March 2020 (the Covid-19 Act, which is also an ordinary law, but was adopted specifically for the pandemic. On the basis of the Contagious Diseases Act, a **state of epidemic risk** was [declared](#) on 13 March and a **state of epidemic** was [declared](#) on 20 March. These two states should not be confused with the constitutional states of emergency described above.

Executive decrees of the Minister of Health and of the Council of Ministers, based on the Contagious Diseases Act, have provided for the following health security [measures](#): as of 15 March closure of national borders to foreigners (apart from legal residents); obligatory quarantine for nationals and residents returning to Poland, including cross-border workers (as of 27 March); suspension of public cross-border transport (railways, airlines), apart from for repatriation; closure of schools and universities; closure of shopping malls (with exceptions for food stores; pharmacies; construction and renovation stores; petrol stations; and cosmetics shops, but not for perfumeries); prohibition of public gatherings; obligatory social distancing in public (2 metres); general prohibition on people circulating (with exceptions for: travel to work, religious purposes, and things 'necessary for everyday life') (1-19 April); closure of parks and forests (1-19 April), playgrounds (as of 1 April); ban on people under 18 going outside without their parents (as of 1 April), as of 20 April this applies only to people under 13; obligatory covering of face and nose in public (as of 16 April), in public transport only 50 % of places may be occupied; closure of restaurants (take away and delivery allowed); bars, fitness clubs, night clubs, cinemas, spas, theatres, swimming pools; limitation of customers in shops

(until 19 April – three customers per cash desk, regardless of the shop's surface area; as of 20 April four customers per cash desk in shops up to 100 m<sup>2</sup>, and one customer per 15 m<sup>2</sup> in larger shops); between 10 a.m. and 12 noon only elderly citizens (65+) may do shopping in food stores and pharmacies; closure of construction (home improvement) hypermarkets at weekends; closure of hairdressers, barbers, beauty therapists, tattoo studios, piercing studios; permission for only five people to attend a religious service (not including the religious minister), as of 20 April raised to 1 participant per 15 m<sup>2</sup>); closure of all cultural institutions (museums, galleries, theatres, concert halls, opera houses, cinemas, film clubs, libraries, archives); closure of hotels (with exceptions for people who checked in before 31 March, people on business trips, people using hotels for work, e.g. construction workers, and medical staff, and people in quarantine). A **14-day quarantine** is obligatory for anyone: a) returning from abroad; b) living with a person under quarantine (as of 1 April); c) having had contact with an infected person. The quarantine was initially monitored by the police, but since 19 March an obligatory [mobile app](#) has been in place to track citizens' locations and ask them to take geotagged selfies from time to time.

## Parliamentary control over emergency measures

The [Covid-19 Act](#), as amended on 31 March, contains numerous rules adapting civil, administrative and criminal law to the pandemic, and providing for support for employers and the self-employed. 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 executive decrees based on that legislation.

## Spain

### Constitutional framework for emergency situations

Article 116 of the [Spanish Constitution](#) (1978), together with [Organic Law 4/1981](#), provides for the possible declaration of **three different states of emergency**, namely: a state of alarm, a state of emergency and a state of siege (martial law), in [three different objective scenarios](#). The state of alarm can be declared for a maximum period of 15 days by the national government, immediately informing the *Congreso de los Diputados* (lower house of parliament) afterwards. Temporary extension of the state of alarm is subject to authorisation by the *Congreso de los Diputados*. Article 4 of [Organic Law 4/1981](#) allows the government to declare a state of alarm under very specific circumstances, essentially, in cases of natural disasters, health crises, when public essential services are paralysed and certain [requirements](#) are met, or when there is shortage of goods of primary necessity. However, the state of alarm can only be declared when the competent authorities cannot ensure the return to normality making use of their ordinary prerogatives (Article 1.1 [Organic Law 4/1981](#)).<sup>10</sup> Prior to coronavirus, a state of alarm had only been declared once, on [4 December 2010](#), when civilian air traffic controllers abandoned their duties in a concerted way, provoking the closure of Spanish airspace.

The state of emergency and the state of siege have never yet been declared. The first can be declared by the government with prior authorisation of the *Congreso de los Diputados* for a maximum period of 30 days, that can be extended for another 30 days following the same procedure. It can be declared in cases of serious public disorder, or any other events seriously affecting the free exercise by citizens of their fundamental rights, or the normal functioning of the democratic institutions or of public essential services (Article 13 [Organic Law 4/1981](#)). The state of siege has to be declared by an absolute majority of the members of the *Congreso de los Diputados* (176 out of 350), on a proposal presented by the government, and it can only be declared if a violent uprising or some other act of force endangers Spanish sovereignty or independence, the territorial integrity of Spain or the Spanish constitutional order (Article 32 [Organic Law 4/1981](#)). Both the state of emergency and the state of siege allow for the suspension of several of the fundamental rights enshrined in the Constitution ([Article 55 \(1\)](#)), whereas under the state of alarm only allows those fundamental rights to be limited (Article 11 [Organic Law 4/1981](#)). In addition, the declaration of a state of siege entails

[limited militarisation](#) of public life, as the military authorities would be responsible for implementing the measures adopted under the authority of the government.

## Main measures adopted to address the coronavirus pandemic

The Spanish government addressed the situation caused by the coronavirus pandemic by [declaring](#) a state of alarm on 14 March 2020. It was prolonged for the first time on [27 March](#) (until 12 April), for the second time on [10 April](#) (until 26 April), for the third time on [24 April](#) (until 9 May). Before the declaration of the state of alarm, most Spanish regions had already adopted [measures](#) to address the situation (i.e. closing schools; cancelling cultural, educational or sporting activities, etc.). However, the declaration of the state of alarm extended the measures to the whole of Spain, imposed important [restrictions](#) on public freedom of movement and freedom to exercise economic or commercial activities and had a considerable impact on the distribution of competences between the national and regional authorities.<sup>11</sup> The [decree](#) declaring the state of alarm placed all security forces (including regional and local forces) and all personnel of the national health system (previously the responsibility of regional authorities) under the authority of the national government; forbade citizens from circulating freely in public places except for specific purposes (i.e. to buy food or other essential goods, to go to work, etc.); suspended classes at all educational levels; imposed the closure of all commercial activities, except for those considered essential; forbade all public celebrations; allowed national authorities to requisition necessary goods and impose compulsory personal services, if needed to address the effects of the pandemic; and decided to reduce the provision of transport services. However, as of [26 April](#), the public lockdown was partially eased, with children under 14 allowed to go for a walk every day with an adult, respecting social distancing measures.

Most of the measures adopted at national level to address the economic and social impact of the pandemic have been adopted by means of decree-laws, a specific type of legal act, with the same legal standing as ordinary laws, that can be adopted by the executive in urgent situations (Article 86 of the Constitution). Since the outbreak of the pandemic, the Spanish government has adopted [ten decree-laws](#), including [Decree-Law 10/2020](#), toughening the lockdown by providing for the closure of all non-essential economic activities from 30 March until 9 April 2020.

## Parliamentary control over emergency measures

The *Congreso de los Diputados* plays an important role in controlling the measures adopted by the government under the state of alarm. As such, at the outbreak of the pandemic the *Congreso* was informed of the declaration of the state of alarm on 16 March and a plenary session, in which the president of the government explained the situation and all political forces could take part, took place on [18 March](#). The three extensions of the state of alarm were also authorised by the *Congreso de los Diputados* in plenary sessions held on [25 March](#) (321 votes for and 28 abstentions), [9 April](#) (270 votes for, 54 against and 25 abstentions) and [22 April](#) (184 votes for, 160 against and 6 abstentions). As the *Congreso de los Diputados* also controls how the government exercises its competence to adopt decree-laws (it decides whether to validate them and convert them into law within 30 days of their adoption), it is important to note that the chamber has already decided to validate seven of the decree-laws adopted during the pandemic and has decided to transform some of them into law. The parliamentary sessions went ahead with [minimal attendance](#) of members on the house premises and making use of the remote electronic voting system [used](#) by the chamber since 2012 (more than 300 members voted remotely in all plenary sessions).

## ENDNOTES

<sup>1</sup> [Council of State](#), Legislative Section, Avis 47.062/1/V, 18 August 2009, point 2.4.1.

<sup>2</sup> *Loi habilitant le Roi à prendre des mesures de lutte contre la propagation du coronavirus COVID-19 (II)*, No 1104/6, and *Loi habilitant le Roi à prendre des mesures de lutte contre la propagation du coronavirus COVID-19 (I)*, No 1104/5.

<sup>3</sup> Article 3 of Law [COVID-19 \(I\)](#) and Article 5 of Law [COVID-19 \(II\)](#).

<sup>4</sup> The Belgian constitution allows for [three](#) different procedures for the adoption of a law: the compulsory bi-cameral procedure – Article 77, optional bicameralism – Article 78, and the single chamber procedure – Article 74.

- <sup>5</sup> After consulting the prime minister, the presidents of both chambers and the Constitutional Council, though in theory the French president is not [bound](#) by these opinions.
- <sup>6</sup> This latter provision was introduced in 2008 after the modifications of Constitutional Law [No 2008-724](#), 23 July 2008.
- <sup>7</sup> Council of State, judgment of 2 March 1962, (Rubin de Servens judgment).
- <sup>8</sup> For a comparison between the state of emergency under L55-385 and the public health emergency see [here](#).
- <sup>9</sup> According to which the public health emergency may be declared for a month and may be renewed only by Parliament.
- <sup>10</sup> Vicente Álvarez García, '[El Coronavirus \(Covid-19\): Respuestas Jurídicas Frente A Una Situación De Emergencia Sanitaria](#)', El Cronista del Estado Social y Democrático de Derecho, Nos 86-87, 2020, pp. 10-11.
- <sup>11</sup> Francisco Velasco Caballero, '[Estado de alarma y distribución territorial del poder](#)', El Cronista del Estado Social y Democrático de Derecho, Nos 86-87, 2020, pp. 78-87.

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

	Measures adopted at national level	Temporary	Parliamentary oversight*	Used previously
<b>Belgium</b>	Special powers (Article 105 <a href="#">Constitution</a> )	Yes	Yes	Yes
<b>France</b>	Public health emergency ( <a href="#">Public Health Code</a> )	Yes	Yes	No
<b>Germany</b>	Characterisation of Covid-19 crisis as an 'epidemic outbreak of national importance' ( <a href="#">paragraph 5 Infection Protection Act</a> )	Yes	Yes	No
<b>Hungary</b>	<a href="#">Act XII of 2020</a> on coronavirus containment, <a href="#">Government Decree 40/2020 (11 March)</a>	No <sup>1</sup>	Yes	Yes
<b>Italy</b>	Decree laws (Article 77 Constitution), <a href="#">Decree</a> of President of Council of Ministers, <a href="#">Law</a> 833/1978, <a href="#">Code</a> of civil protection (Article 24)	Yes	Yes	Yes
<b>Poland</b>	State of epidemic ( <a href="#">Act of 5 December 2008</a> on the prevention and combat of contagions and contagious diseases in humans); executive decrees of the Minister of Health and Council of Ministers, based on the <a href="#">Act of 5 December 2008</a>	Yes	Yes <sup>2</sup>	No
<b>Spain</b>	State of alarm (Article 116 <a href="#">Constitution</a> and Articles 4-12 <a href="#">Organic Law 4/1981</a> ), decree-laws (Article 86 Constitution)	Yes	Yes	Yes

NB: \* *Parliamentary oversight includes a set of tools to hold governments accountable, one of which is the duty of the institution concerned to provide parliament with information on the measures adopted.*

<sup>1</sup> *The relevant act refers to the end of the state of danger without indicating a precise date or duration.*

<sup>2</sup> *General rules apply, no specific rules for state of epidemic.*

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