Rapid Assessment: Covid-19 & Elections in Europe

The United Nations\(^1\) have called the outbreak of the Covid-19 pandemic the biggest international crisis in generations, and it is affecting people’s lives across Europe. As the number of infected people began to mount rapidly, governments put in place a variety of measures to contain the spread of the virus. Many of these measures reflect how emergency situations can impact the exercise and safeguarding of fundamental rights and democratic practices.\(^2\)

The Election-Watch.EU Rapid Assessment\(^3\) takes stock of the current impact of Covid-19 on elections in Europe – in the 27 EU Member States as well as in the prospective Member States Albania and North Macedonia\(^4\) and in the former Member State United Kingdom – in order to shed light on key questions: Which elections are taking place under the current conditions? Which elections are being postponed? How are these processes regulated? How can this be evaluated from a fundamental rights perspective? And what recommendations can be drawn from this assessment? A number of international organisations have started providing reflections on the general or case-specific conditions for holding elections in these circumstances and are referenced in this report.

Human rights cannot be suspended or dispensed with, but are needed in times of crisis. International human rights law allows for the limitation of certain rights and provides an established framework to evaluate the measures put in place by governments to respond to the outbreak of Covid-19.\(^5\) Temporary restrictions to fundamental and other human rights with a direct impact on electoral processes might concern the freedom of expression and information, the freedom of assembly, the freedom of movement, the right to vote and be elected, the right to privacy, and due process rights.\(^6\) However, democratic oversight must be maintained, and any restrictions must be prescribed in law. States can also introduce emergency laws when exceptional circumstances arise; these need to be proportionate and be in force for a limited time and in a supervised manner. Once the exceptional circumstances are over, governments must lift the emergency measures.

Where elections go ahead, the safety of electoral staff and voters might be at risk, and risk assessments from a public health perspective become necessary; unprecedented operational requirements might occur with the introduction of special measures to facilitate the vote; constitutional and other legal requirements to hold elections might have to be reinterpreted; turnout might decline; electoral campaigning in public space might not be possible at all; the public debate might only focus on the public health crisis, preventing a wider discussion of important topics; the prominence of governmental actors in the media might overly amplify the advantages of incumbency; and governments might potentially use emergency restrictions on certain rights to repress opposition candidates or media.\(^7\)

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\(^1\) A. Guterres: We are all in this Together: Human Rights and Covid-19 Response and Recovery, 23 April 2020.
\(^3\) Assessment period 10-20 April 2020, additional information taken into account up to 24 April.
\(^4\) The European Union has recently opened accession negotiations with Albania and North Macedonia.
\(^6\) Peremptory norms are non-derogable: the right to life, the right to be free from torture and other inhumane or degrading treatment or punishment, the right to be free from slavery or servitude, freedoms of thought, conscience and religion, and the right to be free from retroactive application of criminal laws (compare ICCPR Article 4, ICCPR General Comment 29, and the Siracusa Principles on the Limitation and Derogation of Provisions in the ICCPR). For further reading see the Council of Europe/European Commission for Democracy through Law (Venice Commission): Opinion on the Protection of Human Rights in Emergency Situations, 2006.
**Where do elections take place? Have any special measures been introduced to hold elections under the conditions of Covid-19?**

Such measures could include new or extended provisions for distance voting (e.g. postal, internet, proxy).  

**France:** During the 1st round of municipal elections on 15 March, polling stations were set up to allow for social distancing between voters and had to have disinfectant gel and/or soap and running water available. Proxy voting, which is one of several voting techniques in France, was further facilitated to support the electoral participation of voters confined due to illness. Turnout decreased significantly when compared with previous municipal elections. The government introduced more restrictive measures against Covid-19 shortly after the 1st round, leading to a postponement of the 2nd round.

**Germany:** During the 1st round of regional elections in Bavaria on 15 March, voters made increased use of postal voting. Following legal changes, the 2nd round of the regional elections on 29 March was held by using postal voting only. Turnout increased from the 1st to the 2nd round of voting.

**Poland:** Poland plans to hold presidential elections on 10 May based exclusively on postal voting. Due to legal uncertainty, various state and local government institutions are preparing for the election in different ways, for voting at polling stations and by postal ballot. The latter option raises a variety of concerns including for voter registration and inclusion of all eligible voters, for the secrecy of the ballot, operational questions regarding the delivery, retrieval and validation of ballots, out-of-country voting, as well as the possibilities to observe the process for party agents and citizen observers. Measures to contain the virus led to restrictions directly affecting the ability to conduct election campaigns. The pandemic may also reduce citizens’ readiness to serve as members of precinct election commissions.

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*See IFES for international comparison. South Korea is currently discussed as a successful case study to hold elections under the conditions of the pandemic, which reveals important context-specific dimensions: South Korea started early to combat Covid-19; the measures introduced by the government (including testing and monitoring, contact tracing, self-isolation, social distancing, and strict quarantines) were accepted by the population; remote voting techniques (advance voting days, postal voting, out-of-country voting) had already been used in the past and were encouraged; a code of conduct for voters and clear instructions for poll workers for hygiene in polling stations; and clear public communications by the National Election Commission. Stringent health safeguards ensured voters and turnout increased despite Covid-19. Election campaigns had a much lower profile than in previous years, and political parties relied predominantly on campaigning online and by digital technology. (International IDEA, 21 April 2020).*


*IFES: Elections Held and Mitigating Measures Taken during Covid-19, 17 April 2020.*

*Prior to the pandemic, postal voting was limited to persons with disabilities.

*The Code of Good Practice in Electoral Matters of the Council of Europe’s Venice Commission provides that “the fundamental elements of electoral law should not be amended less than one year before an election” in order to guarantee the stability of the electoral law and the credibility of the electoral process.*

*Compare OSCE/ODIHR: Opinion on the Draft Act on Special Rules for Conducting the General Election of the President of the Republic of Poland ordered in 2020. 27 April 2020. OSCE/ODIHR stated on 7 April 2020 that if the presidential election goes ahead, it may fall short of a number of international standards.*
Where are elections postponed? Deadlines for holding elections are often embedded in a country’s legal or constitutional framework, but not all countries have provisions to postpone elections.

Electoral events have been postponed in 13 out of 30 European countries under consideration:

In 8 countries local elections, local referenda, early, repeat or by-elections in some constituencies: Austria, Croatia, Czech Republic, Italy, Latvia, Poland, Portugal, and Slovakia.

In 5 countries at nation-wide level: 2nd round of municipal elections in France, a constitutional referendum in Italy, local elections in Romania; local elections in the United Kingdom; and early parliamentary elections in North Macedonia.

In 3 countries at federal or regional level: municipal elections in Styria and Vorarlberg, Austria; seven regional elections, Italy; elections to the Basque and Galician parliaments, Spain.

Under which conditions are decisions about holding or postponing elections taking place? The postponement of elections might be necessary in some situations, but maintaining democratic institutions is vital.

Do national parliaments currently convene? Most parliaments apply social distancing measures.

Yes: 12 – Czech Republic; Finland, Germany, Hungary, Latvia, Luxembourg, Malta, Poland, Portugal, Romania, Slovakia; Albania

Yes (with reduced numbers of MPs and other measures): 11 – Austria, Belgium, Croatia, Cyprus, Denmark, France, Greece, Ireland, Netherlands, Sweden; United Kingdom

Fewer sessions/irregular sessions/different schedule (mostly to consider bills and acts related to the state of emergency): 6 – Bulgaria, Estonia, Italy, Lithuania, Slovenia, Spain

No: 1 – North Macedonia (parliament is dissolved, but with efforts to resume sessions)

Has the quorum for parliamentary decision-making been changed under the current conditions?

Only in Germany (from 50% to 25% of MPs, as a temporary measure) and in Sweden (from 345 to 55 MPs)

* See IFES for international comparison.
* For legal elements to consider, see for example IFES: The Legal Quagmire of Postponing or Modifying Elections, 14 April 2020.
* Parliament was temporarily suspended during the outbreak of Covid-19, but has meanwhile resumed sessions.
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Have parliamentary sessions been moved online?¹⁸

Parliaments across Europe have different rules regarding MP voting and remote sittings. Different rules may also apply to plenary sessions and working committees.

**Yes:** 3 – Cyprus (voting remains in-person inside parliament), Latvia (after an MP has tested positive with Covid-19); Albania

**No:** 20 – Austria, Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Finland, France, Greece, Hungary, Lithuania, Luxemburg, Malta, Netherlands, Portugal, Slovakia, Slovenia, Spain, Sweden; North Macedonia

**Partly:** 3 – Poland (MPs can vote remotely online), Romania (some offline sessions); United Kingdom (new hybrid)

**Remote sittings being discussed:** 3 – Estonia, Germany, Italy

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¹⁸ DRI Backgrounder: [Covid-19 and States of Emergency in Europe](https://www.election-watching.eu/covid-19-and-states-of-emergency-in-europe), 3 April 2020: „While steps must be taken to ensure that (parliamentary) voting is effective and safe, there is no general need to shut down the legislative branch and use the pandemic as an excuse to have the executive take over the entirety of lawmaking.“
United Kingdom is trying a hybrid model: Up to 50 MPs are allowed inside the chamber of the House of Commons, sitting apart from each other in line with social distancing guidelines. Screens have been installed in the chamber which will allow up to 120 MPs to take part in debates via the Zoom video-conferencing tool.\textsuperscript{19}

**Has any Covid-19 specific legislation been passed that affects the holding of democratic elections?**

**YES – in 13 countries:** Specific legislation has been passed in particular to allow the postponing of elections in Austria, Croatia, France, Italy, Latvia, Romania, Slovakia, Spain; United Kingdom; and North Macedonia. In Germany (Bavaria), changes to the law at federal level facilitated the holding of the 2\textsuperscript{nd} round of municipal elections by postal ballot only. However, new laws in Hungary and Poland affect elections in ways beyond postponement.

**Hungary:** The Law on Protection against Corona Virus (XII/2020) adopted on 30 March stipulates that no election can be called until the end of the state of emergency period, which is open-ended; previously called elections must be cancelled, and all elections foreseen during the period of the state of emergency must be called within 15 days after the state of emergency is over. The law results in unlimited powers for the Hungarian government to rule by decree. It also introduces amendments pertaining to the definition of scaremongering in the criminal code. As a result, journalists have already reported increased difficulties. In addition, concerns have been raised regarding access to information.\textsuperscript{2} The Minister for Innovation and Technology can, in the interest of crisis management, gain access to and manage any data held by state and municipal authorities as well as private actors, both companies and individuals. Against this background, civil society has expressed fears that the Hungarian government uses the “distraction of the pandemic to introduce further restrictions to democratic rights and freedoms.”\textsuperscript{27}

**Poland:** In preparation for presidential elections on 10 May, parliament passed legislation introducing postal voting as an option for voters in quarantine and those aged 60 and above. Subsequently, on 6 April, a legislative proposal in the lower house introduced postal ballots as the only form of voting, to be passed in the upper house. The bill also foresees replacing already formed precinct election commissions with new electoral commissions and vests significant powers for the organisation of the election in the Ministry of State Assets, removing these responsibilities from the National Election Commission. Although the bill on postal voting becomes law at the earliest on 6 May, the government is already preparing for this option. The Minister of Health issued a recommendation for the conduct of the election, in line with the proposal for postal voting.\textsuperscript{2} The election could be rescheduled by the introduction of a state of emergency or a political agreement between ruling coalition and the opposition. A few weeks before election day, there is still considerable legal uncertainty about the legal framework, in contradiction with good international practices. Citizen election observers in Poland have expressed concerns about the deviation from democratic practices.

\textsuperscript{2} BBC, 21 April 2020.
\textsuperscript{2} Compare CIVICUS: *Corona virus bill’ seeks to erode freedom of expression even further*, 27 March 2020.
\textsuperscript{2} EPDE: *An early balance of emergency measures in Hungary*, 23 April 2020.
\textsuperscript{2} See also EPDE: *High-speed changes to electoral law disregard international norms*, 23 April 2020.
Romania: On 6 April, the government issued an emergency ordinance on the organization of local elections. In addition to postponing the 2020 local elections, the ordinance also allowed candidates to register with half the number of support signatures previously required and introduced the possibility to submit lists of signatures in electronic format. Another provision introduced by parliament foresees that the date of local elections is established by organic law rather than being set by the government.

Has a partial or full state of emergency been declared as a response to Covid-19?

States of emergency are defined and declared in different ways across Europe. They can be graded according to the gravity or type of emergency, be called differently (e.g. state of alarm), and might be regulated in constitutions or laws. In some countries, the constitutionality of the measures taken is being questioned, such as in Austria. In most cases where initial states of emergency or other measures were declared, they have also been prolonged after a first period – usually with oversight and permission from the legislature. In Romania, for example, the government has to report to parliament on a weekly basis since the extension of the state of emergency. Whatever they are called and however they are declared, emergency measures must be legal, necessary, proportionate to the risks at hand, non-discriminatory, temporary, focused, subject to regular review, and should take the least intrusive approach possible.

Yes: 12 – Bulgaria; Czech Republic, France, Hungary, Italy, Latvia, Luxembourg, Portugal (partial), Romania, Slovakia; Albania, North Macedonia

Other legislation applies: 15 – Austria, Croatia, Cyprus, Estonia, Finland, Germany, Greece, Ireland, Lithuania, Malta, Poland, Slovenia, Spain, Sweden; United Kingdom

No: 3 – Belgium, Denmark, Netherlands

Hungary stands out as a case where emergency measures have already caused intense criticism:

Hungary: On 11 March, Hungary announced a full state of emergency by government decree. The state of emergency, including the right of the government to take extraordinary measures, is indefinite. By law, the parliament has the right to withdraw its grant given to the government to take extraordinary measures before the end of the state of emergency, however, it is unlikely to do so as the ruling party holds the majority in the legislature.

Special powers for the government and parliamentary oversight can also be established by other measures, as the case of Belgium illustrates:

Belgium: The government has acquired special powers to rule through “royal decrees” for addressing the consequences of the COVID-19 crisis without parliamentary consent for a period of three months, renewable once. To ensure oversight over the government decisions during this period, the parliament has set up a dedicated committee to control these special powers, in which the responsible minister participates.

*"The Polish Constitutional Tribunal also emphasized the need to maintain the so-called legislative silence, i.e. the need to maintain at least six months between the entry into force of significant changes in the election law and the official beginning of the election campaign.” (EPDE, Policy Alert Poland, 23 April 2020).

*Some of the newly introduced measures raise concerns about respect for fundamental rights.

*OSCE/ODIHR: Newly declared states of emergency must include a time limit and parliamentary oversight, OSCE human rights head says, 30 March 2020.
Has an app been introduced to monitor the movement of citizens as a measure against the spread of Covid-19?

Surveillance measures aimed at combating Covid-19 have raised concerns over the implications for privacy. In the EU, efforts are focusing on making contact tracing apps effective, secure and privacy-compliant, forcing existing rules on data to adapt (or not) to the conditions of the pandemic. The data protection community recognises the importance of tackling the virus and ensuring that current privacy rules do not obstruct health solutions, but human rights and digital rights organisations argue that privacy and data protection should not be ignored during the pandemic, fearing that compromises made during the emergency will be hard to reverse.

Spain: There is an app for persons with symptoms to conduct a Covid-19 self-diagnosis before getting in touch with a doctor. The app uses geo-localization to define what regional health system is competent to treat the person; its use is voluntary. In Catalonia, the app is also used for mapping patients with Covid-19 symptoms. The protocols for data protection are applied in a way that only the public administrations (health system), and not the service providers, can use the data collected.

The government has devised a project to be conducted by the National Institute of Statistics, to track the location of mobile phones through telecom antennae. Officially, the purpose of the project is to monitor to what extent the confinement is respected, and to assess transportation needs during the state of alarm. The data from each antenna are collected in bulk and anonymized. The telecom companies provide information about the position of the telephones, but no personal data about the clients. Some consumer associations have expressed concerns about this project.

When are the next elections scheduled?  
(presidential, parliamentary, local, referendum, other)

Electoral events in 2020 are scheduled in: Austria, Croatia, Czech Republic, France, Germany, Italy, Latvia, Lithuania, Poland, Portugal, Romania, Slovakia, Spain; North Macedonia (likely).

Electoral events in 2021 are scheduled in: Bulgaria, Cyprus, Denmark, Estonia, Finland, Netherlands; Albania; United Kingdom.

Have there been any cases of fake news/disinformation regarding Covid-19 and the holding of elections in your country?

The coronavirus pandemic has come with a range of disinformation from various sources both within and outside Europe. The World Health Organisation has stated that the outbreak of and response to COVID-19 has been accompanied by a massive “infodemic”, which it describes as an over-abundance of information – some accurate and some not. At this stage, however, fake news have not been reported in the nexus of elections and Covid-19.

Are there any consequences of the current situation on the longer electoral cycle?

Belgium: The Belgian government has been a caretaker government since it lost its majority in December 2018. As prescribed by the Constitution, after the May 2019 federal elections, the King nominated a series of “informateurs”, politicians tasked to evaluate whether a majority coalition could be formed. That work was interrupted in March 2020 when an agreement emerged between all parties for a minority government (with the same political parties supporting the caretaker government). Had the work of these “informateurs” not been interrupted, the King could have come to the conclusion in April or later that no majority coalition was possible to build, and as a consequence, new parliamentary elections would have been called.

Cyprus: Discussions about potential electoral reforms ahead of 2021 parliamentary elections are delayed.

Hungary: A ban on national or local by-elections introduced by the “coronavirus law” ensures that the composition of the parliament is not altered during the state of emergency.\(^*\)

Lithuania: The campaign period for the 11 October 2020 parliamentary elections started on 10 April. The current lockdown renders rallies effectively impossible and restricts other types of campaigning. Under these conditions, the advantage of incumbency is potentially exacerbated. Government approval ratings are going up, which may occur in relation to its Covid-19 response and the visibility this provides. The CEC allows campaign finance registration documents to be filed by e-mail during the lockdown, subject to later submission of hardcopies.

Spain: The creation of the digital voter register by the Spanish election administration becomes delayed.

Sweden: The National Election Authority stressed the need to develop regulations in case of a requirement to postpone an election, for instance in case of a future pandemic or terror attack. No such regulations are in place. Future measures could include new or extended provisions for distance voting (e.g. postal, internet, or proxy).

North Macedonia: The postponement of the 12 April parliamentary elections has a negative impact on the budget allocated for elections. The most significant organizational and financial consequence is that lower-level commissions will need to be retrained, and there may be a need for supplementary recruitment of commissioners.

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\(^*\) EPDE, Policy Alert Hungary, 23 April 2020. The next regular parliamentary elections are scheduled for 2022 and local elections for 2024.
Can elections during the Covid-19 pandemic be independently observed?

Election observation is critical, but difficult to implement during the Covid-19 pandemic. As international observers face travel restrictions in addition to health risks, citizen election observation is even more important. The EU and its Member States conduct and promote election observation globally and have committed themselves to facilitate access for international and citizen election observers as OSCE participating states. At the time of the 2019 European elections not all EU Member States had implemented this commitment through national law. Eight Member States had legislation and accreditation systems in place for both international and national observers, and voting and counting processes were open to the public without limitations in five additional Member States.² The introduction of postal voting and new lower-level election commissions in Poland raises concerns about the rights and access of citizen observers and candidate proxies, potentially limiting civic oversight of the counting process, which in turn might additionally undermine the legitimacy of an already controversial election.

RECOMMENDATIONS

- **Democratic oversight** must be maintained in times of crisis. Emergency measures must be based in law, necessary, proportionate to the purpose, non-discriminatory, temporary, focused, subject to regular review, and should take the least intrusive approach possible.
- **Decisions about holding or postponing elections** should be based on context-specific assessments, taking international standards and regional best practices into account.
- **Electoral reforms and new voting methods cannot be introduced in a rush.** Special measures to hold elections under the conditions of a crisis should be introduced with the largest possible political consensus and only if they are feasible in the specific legal and operational context, with sufficient time, and with sufficient voter information.
- **In analysing the impact on elections of Covid-19 and any emergency measures, law and policy makers should look beyond election day at the longer electoral cycle,** taking for example processes of voter registration, candidate registration, election preparations, election campaigning and electoral dispute resolution into account.
- **All EU Member States should include in their legislation provisions to explicitly allow for access and accreditation of international and citizen election observation** according to international principles.
- **Further research** on the nexus of holding or postponing elections under emergency conditions and democratic oversight should be conducted and encouraged.

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Election-Watch.EU / wahlbeobachtung.org is an independent, non-partisan initiative aiming to strengthen democracy in Europe by assessing European elections and electoral processes in EU Member States, based on international obligations, commitments and best practices. Originating in Austria, it seeks to contribute to the improvement of electoral systems and processes in the EU through research, recommendations and advocacy, and more broadly to the strengthening of European fundamental values and democratic political practice in Europe.

Disclaimer: The information contained in this infographic is based on qualitative data collected within the network for Election-Watch.EU and does not claim to represent all possible details pertaining to the topic.

Acknowledgements: Co-ordinator: Michael Lidauer; country-specific contributions: Paul Grohma (wahlbeobachtung.org/AT); Geoffrey Weichselbaum (BE); Aleksandra Baryakova, Svetozar Kolibarski (BI); Eirini Skouzou, Nicolas Koutoullis (CY); Marcela Mašíková (CZ); Carsten Schürmann (DK); Iulia Krivonosova (EE); Xabier Meilan, Leandro Nagore, Mauro Calvo (ES); Markku Sukki (FI); Raphael Pouyé (FR); Adam Busuleanu, Daniela Radanovytch, Kira Mössinger (EPDE/DE); Polyna Lemos, Christos Georgakis (GR); Josipa Dika, Jelena Berković, Orlana Ivković Novokmet, Melissa Skender (GONG/HR); Márta Nagy, Péter Kramer (HU); Anne Marlborough (IR); Renata Tardioli, Pietro Tesfamariam (IT); Karolis Butkevičius, Julius Liusnas (White Gloves/LT); Nadine Haas (LU); Anitra Jankevica, Inta Lase (LV); Nathania Tabone (MT); Jetske Klein, Agnes Venema (NL); Zofia Lutkiewicz, Robert Lech, Slawek Szyszka (Observers in Action/PL); Cristina Alves (PT); Maria Krause (Fiecare Vot/RO); Marek Mračka, Rasto Kuzel, Ivan Godářsky (MEMO98/SK); Adriana Aralić (SL); Lena Ohre (SE); Frančeska Muço (YPN/AL); Goran Petrov (MK); Rebecca Cox (UK). Contact Tracing: Giovanna Maiola, General Comments: Rebecca Cox, Goran Petrov, Gilles Saphy. Graphics: Khaldoun Dudin, Giorgio Grasso/Democracy Essentials.

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