



## LEGITIMULT

### WP 3 – The Making and Breaking of Rules in Crisis Situations: The Rule of Law and Democratic Participation

**Lead beneficiary:** UNIFR

**Participants:** Eurac; UiB; IDEA; TalTech

**Start month:** M1; **End month:** M36

**Goal:** Explanation and analysis of how multilevel governance influenced the impact of crisis governance on the rule of law and democratic participation.

*The Covid-19 pandemic has been a stress test for the political legitimacy of democratic governance. WP3 aims to identify the standards of the rule of law and democratic participation in crisis governance collecting and making use of a dataset on Covid-19 measures, this WP will assess the quality of the rule of law and democratic participation during the Covid-19 pandemic in 31 European countries (the 27 EU countries + Switzerland, Norway, Iceland, and the UK). Through qualitative case studies, in particular, it tests also the impact of multilevel governance on the Covid-19 emergency measures in relation to the rule of law and democratic participation. Finally, WP3 proposes policy recommendations on how to maintain political legitimacy in multilevel governance crisis governance.*

#### Objectives

Objective 1: Identify and compare legal emergency frameworks, with a special focus on the role of parliaments, subnational units, and other institutions

The Covid-19 crisis has led to a proliferation of new and often unforeseen regulations, and to the neglect and violation of existing rules and principles. Like other crises before, the pandemic has generated measures and decisions which lie both inside and outside the legal order. It has also led to rules and decisions which have not gone through normal processes of consultation, deliberation and participation. States of emergency, alarm or exception were declared in most European states at national and sometimes subnational levels, granting governments extraordinary powers reaching beyond their normal constitutional limits. While such power shifts can be necessary to tackle rapidly emerging, multi-faceted and unfamiliar challenges, the risk of undermining the rule of law and democratic governance looms large. Special constitutional, statutory or *de facto* prerogatives are therefore often contested and criticised for their impact on the balance of power, in particular due to reduced parliamentary and judicial involvement and citizen participation, and due to centralisation and re-nationalisation. The first objective of WP 3 is to identify, collect and compare legal emergency frameworks and Covid-19 measures with a focus on vertical and horizontal power-sharing and assess their effects on the rule of law and democratic participation.



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Objective 2: Develop a crisis-resilient (crisis adapted) understanding of the rule of law and democratic participation and identify measures to improve rule-based democratic governance in situations requiring an adaptation of normal competences, rules and procedures

Emergency regulations challenge the principles of the rule of law and of democratic participation. While it is undisputed that these two highly interlinked and mutually dependent key principles of good governance do not lose their relevance in the event of a crisis, but must be adopted to urgency situations, we currently lack clear benchmarks against which compliance with rule of law principles and requirements for democratic participation can be measured in such situations. The second objective of WP 3 is to develop a crisis-resilient understanding of the rule of law and democratic participation and to identify measures to improve democratic governance in times of crisis.

### **Description of work and methodology**

To go about such research, UNIFR starts with conducting a systematic overview of the relevant literature on the rule of law and democratic participation in times of crises. It follows a multidisciplinary approach, focusing on insights on crisis governance in the fields of comparative constitutional law, comparative politics and public administration to identify the requirements for legitimate crisis governance, applicable to the rule of law and democratic participation. These standards of the rule of law and democratic participation are the basis to assess the political legitimacy of Covid-19 measures in the main part of the project.

Following this literature review, UNIFR – with support from Eurac, UiB, IDEA and TalTech – will map the legal bases applicable to cases of exception in all 31 countries (focusing on the national, the European and the international level) and their application in the Covid-19 pandemic. As a first step, it will collect the emergency provisions, the specifications for the declaration, prolongation and termination of the emergency rule as well as required participation of other institutions (e.g. parliaments, constitutional courts, territorial units), procedures and oversight during a state of exception. Using doctrinal legal research methodology (“black letter”), it will describe and analyse the legal rules in primary sources (constitutions, statutes, regulations as well as treaties). As a second step, responses taken to combat the Covid-19 pandemic based on emergency rule are collected. This is done by using the detailed existing data on emergency rule during the Covid-19 pandemic (e.g. [International IDEA’s Global Monitor of Covid-19’s Impact on Democracy and Human Rights](#); [Covid-19 Civic Freedom Tracker](#); [CCPR’s Covid-19 State of Emergency](#)) and by assessing whether and to what extent states followed their prescribed legal frameworks for emergencies and complied with the standards of the rule of law and democratic participation.

Our own ratings of compliance are then compared with existing democracy and rule of law indices (e.g. [IDEA’s Global State of Democracy](#), [Freedom House](#), [WJP Rule of law index](#)). This allows for drafting a matrix of overlapping indicators and for refining our analytical framework in order to determine which states performed well in terms of adherence to the rule of law and the principle of democratic participation, both in normal times and in times of crisis, and which states have deteriorated or



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improved in their ratings. Based on this matrix, a selection of case studies for the qualitative research is put forward.

To determine how multilevel governance shapes the degree of adherence to the rule of law and the principle of democratic participation, in-depth case analyses are conducted of the measures taken to combat the Covid-19 pandemic. We select 10 cases with variable multilevel governance (3 countries with centralised structures, 3 countries with strong multilevel arrangements such as strong local autonomy, 3 federal or regional countries, as well as the EU) based on the matrix of indicator (see above). For this in-depth analysis additional data is collected, including detailed constitutional and legal bases on regional levels, court decisions, documentation by civil society, reviews of informal politics. In each case study, the measures taken on all levels of governance are analysed, and their compliance with the rule of law and democratic participation is assessed. These in-depth case analyses will deliver a better understanding on the impacts of multilevel governance and other factors on countries' performance with regards to the rule of law and democratic participation during the Covid-19 crisis. Based on our findings, we will propose policy recommendations and application scenarios in cooperation with stakeholders on how to safeguard the standards of the rule of law and democratic participation in crisis governance.

### **Deliverables of WP 3**

D3.1 Working paper: literature review and methodology

D3.2 Working paper: research outline

D3.3 Submission of article for peer-review

D3.4 Dataset publication

D3.5 Submission of draft book chapter for edited volume



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