



## D1 Literature Review and Methodology

### **WP3: The Making and Breaking of Rules in crisis situations: The Rule of Law and Democratic Participation**



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## Toward a model of a democratic crisis governance: Insights from the Covid-19 pandemic

### Abstract

The Covid-19 pandemic was a stress test to democracies. To date, literature lacks a comprehensive assessment of the political legitimacy of governments' crisis responses in the context of multi-level political decision-making systems. LEGITIMULT aims to fill this gap in literature by analyzing the relationship between multilevel governance and political legitimacy from different angles.

Work package 3 focuses on the role of democratic participation and the rule of law in a politically legitimate crisis governance. This working paper aims to develop a model of a democratic crisis governance and its empirical indicators based on the example of the Covid-19 crisis. Thereby, it draws on the insights from a review of the extant literature on the democratic quality of the Covid-19 crisis governance. In addition, it presents an overview of the available datasets which assess the democratic quality and political legitimacy of governments' Covid-19 crisis responses. Finally, it formulates first ideas on case selection for more in-depth analyses.

Thus, this first deliverable provides the conceptual foundations of work package 3. Based on the suggested conceptualization and indicators of a democratic crisis governance, we will map the democratic quality of the Covid-19 crisis governance in 31 countries. To study the patterns of the results of this mapping, we will select a set of countries for an in-depth analysis of the impact of multi-level governance on the political legitimacy of Covid-19 crisis governance.



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## 1. Introduction

The Covid-19 pandemic has been a highly transboundary crisis (Ansell et al. 2010). It was transboundary in a geographical sense, since, within the first half of 2020, almost a million people around the globe had caught the Covid-19 virus (WHO 2020a). From a political perspective, it was transboundary in the sense that it crossed many horizontal and vertical political boundaries (Ginsburg and Versteeg 2021: 1509-1513). From a policy perspective, the Covid-19 pandemic was initially a health crisis, it has soon affected other policy areas too. Finally, from a temporal perspective, its beginning was rather demarcated, while its definitive ending can be much less captured. While the WHO declared the outbreak of Covid-19 as a pandemic on 11 March 2020, it is still unclear as of March 2023 when the WHO will declare the end of the pandemic (WHO 2020b). Given this transboundary nature of the Covid-19 pandemic, the Covid-19 crisis governance needed to rely on the coordination and cooperation between different levels of governance in order to be effective.

Much of the literature has investigated the performance of countries' Covid-19 crisis governance focusing on the determinants of the various Covid-19 measures and their effectivity. Some studies have explored the multi-level decision making processes and institutions that were involved in the formulations of Covid-19 measures. However, questions related to the political legitimacy and democratic quality of Covid-19 crisis governance have received less attention. In particular, there is a gap in literature on the relationship between multi-level governance and the political legitimacy of Covid-19 crisis governance.

Political legitimacy is commonly understood as the rightful and appropriate exercise of power. The legitimacy of crisis governance is shaped by both, its problem-solving capacity and its democratic quality. However, authorities often face a trade-off between effective and democratic political decision-making in crisis times. While effective action in crises needs to be fast, democratic decision-making processes tend to be slow. In addition, this trade-off appears to be more significant in political systems with a strong multi-level character and in a crisis that requires intensive coordination and cooperation between different levels of governance.

Work package 3 analyses the democratic quality of processes and outputs of Covid-19 crisis governance with a focus on the rule of law and democratic participation. In this working paper, we first aim to develop a model of a democratic crisis governance that is applicable to political systems where political authority is dispersed across and shared between authorities at different levels. We suggest that processes and outputs of a crisis governance need to be in line with the following five principles in order to be democratic: 1) legality, 2) participation, 3) transparency, 4) accountability and 5) the protection freedoms and rights.

Second, the working paper reviews the literature on the democratic quality of the Covid-19 crisis governance in light of these five principles. The review finds that extant literature on the democratic quality of Covid-19 crisis governance has mainly focused on measures and policies that have been formulated at the national. Much fewer studies address measures and policies formulated at the regional or EU level and their democratic quality. The role of local authorities in Covid-19 crisis governance received the least attention. It is also striking that the literature on the democratic quality and legitimacy of the EU's Covid-19 crisis governance has so far



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developed completely separately from the debate on national crisis governance and the discussion on the multilevel nature of Covid-19 crisis governance. The literatures on national and EU-level crisis governance have highly different understandings of crisis governance. Focusing on the national-level, scholars across disciplines understand crisis governance as substantially different from governance in normal times, whereas scholars of EU politics perceive crises and emergencies as a constitutive element of EU politics and the EU's development.

Third, building on the insights of the literature on democratic quality of Covid-19 crisis governance, this working paper identifies indicators and potential data sources (or lack thereof) that allow to assess the democratic quality of Covid-19 crisis governance. Overall, this working paper provides the conceptual and empirical foundations for the future tasks of work package 3. The next task of work package is to comprehensively measure the democratic quality of the Covid-19 crisis governance across 31 European countries and map its variation.

Finally, the working paper formulates first suggestions on the selection of cases for future in-depth analysis. Based on the future results of the mapping of the democratic quality of Covid-19 crisis governance, we will select ten cases for in-depth analysis to assess the relationship between multilevel governance and the democratic quality of Covid-19 crisis governance.

The structure of this working paper is as follows. The second section discusses the concept of political legitimacy. In the following, it develops a model of democratic crisis governance that can be characterized by the principles of legality, participation, transparency, accountability and the protection of freedoms and rights. The third section provides a brief overview of the literature on the democratic quality of Covid-19 crisis governance at the national, regional and EU-level and the relationship between the democratic quality of COVID-19 crisis governance and multilevel governance. In addition, it discusses the extant literature debating the democratic qualities of the Covid-19 crisis governance in light of the five principles of the model of a democratic crisis governance. The fourth section formulates indicators for these five principles and collects data sources for the measurement of these indicators. The fifth section discusses the selection of countries for an in-depth analysis. Finally, section six concludes by formulating the next steps.

## 2. The political legitimacy of crisis governance

Following the well-established definition of crisis by Rosenthal, Charles, and 't Hart (1989), a crisis is "a situation in which there is a perceived threat against the core values or life-sustaining functions of a social system that requires urgent remedial action in uncertain circumstances" (1989: 10). While this definition outlines the characteristics that all crises share, it leaves open the causes of the crisis and does not specify the tools and processes of the remedial action. As such this definition of crisis is suitable for our project as it can be applied to a wide range of crises such as terrorist attacks, financial crises, disasters and also pandemics.



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This definition of crisis incorporates the idea that an effective crisis governance needs to be able to formulate and implement crisis measures quickly. As a consequence, it is assumed that, in general, political decision-making in a crisis cannot follow the established political processes of normal times as they are too slow. It appears that authorities face a fundamental challenge of a trade-off between effective and democratic crisis governance.

Work package 3 builds on the idea that a politically legitimate crisis governance needs to balance these two qualities of crisis governance as only an effective and a democratic crisis governance can be considered or is perceived as politically legitimate.

Political legitimacy is commonly understood as the rightful and appropriate exercise of power (Beetham 1991). It has both a sociological and a normative understanding. From a normative perspective, political legitimacy refers to the moral justification to wield political power and exercise a monopoly on the making, application, and enforcement of laws (Buchanan 2002). From a sociological perspective, political legitimacy is derived from the characteristics of political processes and the outputs of the respective political system and citizens' evaluations of these processes and outputs. Sociological understandings of political legitimacy differ according to their views of the roles of policy and democratic performance of politically legitimate political systems and institutions.

An example for the view that policy performance only plays a secondary or indirect role for political legitimacy is Beetham's conceptualization of political legitimacy. According to Beetham (1991) political legitimacy has three components. First, legitimate political power needs to be in line with the established rules of liberal democracy.<sup>1</sup> If political power breaches these rules, political authority is *illegitimate*. Second, in liberal democracies, the acquisition and exercise of political power needs to be justified by beliefs that need to be shared by both the elite and citizens. In liberal democracies, popular elections authorize (and oblige) governments to protect individuals' rights. Political authority suffers from a *legitimacy deficit* if democratic rules are only weakly supported by societal beliefs. Finally, political power needs to be supported through the acts of acknowledgement and recognition by citizens. If consent and or recognition is publicly withdrawn or withheld, we observe a *delegitimization*. Therefore, political legitimacy consists of the quality of the rules, the belief that these rules are rightful across society and the actual support of these rules following Beetham (1991).

For many scholars the problem-solving capacity of a political system or institution is a source for legitimacy. For instance, scholars studying the legitimacy of the European Union and other supra-national organizations differentiated between different components of legitimacy, among them, output legitimacy is derived from the effectiveness of the problem-solving capacity (Scharpf 1999 and Schmidt 2013). Equally important to output are input and throughput legitimacy following these scholars. While input legitimacy derives from citizens' participation and representation and the responsiveness of the political elite to citizens' concerns, throughput legitimacy is associated with the quality of governance processes such as the

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<sup>1</sup> Beetham (1991) pointed out that liberal democracy is one among different systems of political rule. In this project, we don't consider other political rules than those of liberal democracy.



efficacy of the policy-making process, accountability, transparency, access to information and openness and inclusiveness to civil society (Schmidt and Wood 2019).

As it has been pointed out Tallberg and Zürn (2019: 592) this threefold conceptualization of legitimacy associates procedures with democracy and outcomes with effectiveness. Tallberg and Zürn (2019) argue that procedures and outcomes can both have democratic and purposive qualities. According to them, procedures and outcomes have a democratic quality when they give expression to or promote core values of the democratic process. Qualities are purposive when they serve and promote shared ends. Procedures are characterized by democratic standards such as participation, accountability, deliberation and transparency but can also meet purposive standards such as efficiency, legality, and expert involvement. Correspondingly, outcomes may pertain democratic aside of purposive qualities such as problem-solving capacity, collective welfare gains or distributive fairness. The quality of outcomes can be assessed by democratic standards such as the protection of rights and the democratic process.

Following this reasoning, we argue that the political legitimacy of crisis governance is both shaped by its purposive and democratic qualities. In the next section, we identify the democratic standards of crisis governance.

### 3. A model of a democratic crisis governance

A central concern about the democratic quality of crisis emergency law-making and governance is the increase of the power of the executive branch of the government. Scholars described this phenomenon as “executive aggrandizement” referring to the strengthening of existing executive authority via ostensibly legal processes and the weakening of accountability mechanisms, particularly the opposition’s opportunities to scrutinize that can occur in normal times too (Lozano et al. 2021: 1). Political science and comparative constitutional law scholarship both debated whether and to which extent crises increase the power of the executive branch of government and whether the phenomena of “executive aggrandizement” has a negative impact on democracy in the long run.

The constitutional law literature on emergency law-making has been much revived by the security crisis in the aftermath of the terroristic attacks in September 2001 and the financial crisis have (Posner and Vermeule 2009; 2011). Scholars of comparative constitutional law often juxtapose the “Schmittian view” against that “Madisonian view” when debating the nature of emergency law-making. In a nut shell, according to the “Schmittian view”, in crisis situations “legislators, judges, and the public will entrust the executive branch with sweeping power to manage the crisis” because there is no other way for fast and effective action (Posner and Vermeule 2009: 1614). Following the “Madisonian view” even in crisis situations the executive may act only on the basis of clear legislative authorization that reflects public deliberation. In addition, the executive’s actions must be subject to judicial review. Based on this juxtaposition, Ginsburg and Versteeg’s (2021) seminal study of emergency law-making during the Covid-19



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pandemic collecting and analyzing information on emergency law-making questions Posner and Vermeule's (2009; 2011) view of the unbound executive. Following them, crisis governance of the Covid-19 pandemic was rather bound than unbound. They argue that the pandemic has required a crisis response that constrained executives more than the mentioned two other previous crises. A central insight of their study is that the characteristics of the crisis will shape the variable nature of emergency law-making and more generally emergency governance.

Political science literature has also debated the impact of crises and emergencies in studies of democratic backsliding and autocratization. Lührmann and Rooney's (2021) provided evidence supporting the negative impact of emergency law-making on democracy. Their study shows that governments that have declared the state of emergency were more likely to autocratize relying on the quantitative analysis of a sample of 60 countries from 1976 to 2006. Scholarship addressing the drivers of the current wave of democratic backsliding has argued that executive aggrandizement has become the dominant way how democratic backsliding has taken place since the end of the Cold War and replaced executive coups as the main form of autocratization (Bermeo 2016). During crisis times, autocrats can more easily advance because their power grab is more easily justified in comparison to normal times (Levitsky and Way 2018: 94).

While executive aggrandizement result from the disempowerment of the parliament and the judiciary, it can also be driven by centralization and undermining regional or local governments (Jakli and Stenberg 2021). The democratic quality of crisis governance therefore has a horizontal and a vertical dimension. LEGITIMULT aims to study the impact of the role of multilevel governance in the political legitimacy and democratic quality of COvid-19 crisis governance.

Within the framework of LEGITIMULT, the task of work package 3 is to focus on two central principles of liberal democracy, the rule of law and democratic participation. These two notions are broad concepts and include several sub-components. They have also to some extent a vague meaning and are also difficult to separate from each other. In addition, the disciplines of political science and constitutional law have different understandings of them. Political scientists have a more limited understanding of the rule of law in comparison to scholars of constitutional law. For instance, the V-Democracy project understand under the rule of law the questions to "what extent are laws transparently, independently, predictably, impartially, and equally enforced, and to what extent do the actions of government officials comply with the law" (Coppedge et al. 2023: 303). Scholars of constitutional law differentiate between material and immaterial aspects of the rule of law among of that legality being only one among them. Democratic participation on the other hand is understood by political scientists mainly as the sub-system of electoral democracy of a democratic political system. Constitutional law instead has a much broader understanding of it meaning the whole democratic process of political-decision making and legislation. To overcome these disciplinary differences, in the following, instead of proposing a conceptualization of democratic participation of the rule of law and sub-components, we propose five principles that essentially cover the ideas behind these two concepts. These five principles are *legality*, *participation*, *transparency*, *accountability* and the *protection of freedoms and rights*. We have identified these five principles drawing on the work



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of Tallberg and Zürn (2019) who aimed to disentangle the democratic and purposive aspects of legitimacy. Following their view, the democratic qualities of procedure and performance are those that give expression to or promote core values of the democratic process. The following five principles shape the democratic aspects of legitimacy.

**1. Legality.** The principle of legality means that the crisis measures need to have a legal basis and the formulation of these measures have followed the legal basis. As such the principle of legality is mainly relevant in the input and throughput phase of legitimacy.

**2. Participation.** The principle of participation relates to the idea that the fundamental democratic actors should be involved in the formulation of the crisis measures. This principle mainly relates to the input and throughput phase of the process.

**3. Transparency.** Transparency is a pre-condition for accountability. Transparency is given if information is provided about political processes and outputs that citizens and political representatives can access (Schmidt and Wood 2019: 732.) The availability and accessibility of such information guarantee public deliberation and allow accountability.

**4. Accountability.** Accountability means that political decision makers are rewarded or sanctioned based on their track records. While in normal times accountability mechanisms are already present in the throughput phase, during crisis times accountability mechanisms sometimes only take place after the formulation of crisis measures because of time constraints. Accountability results from elections linking the output with the input phase of the political decision-making cycle. During the throughput phase, it emerges from the work of oversight bodies.

**5. Protection of freedoms and rights.** The inherent nature of crisis governance consists of trade-offs between fundamental obligations and rights, it needs to fulfill and provide. Nevertheless, the legitimacy of the output of the political decision-making cycle is weakened if they undermine basic freedoms and right and have a discriminatory impact.

While these five principles are closely related to and build on each other, they partially overlap. For instance, political rights are fundamental human rights that need to be protected, preconditions for political participation and keep political representatives to their actions accountable.

#### 4. Review of the literature on the democratic quality of the Covid-19 crisis governance

This section reviews that state of the art on the democratic quality of Covid-19 crisis governance. As most contributions focus on specific territorial levels and aspects of the Covid-19 crisis governance's impact on democracy, we first present a general overview of the literature on Covid-19 crisis governance at the national, regional and EU-level separately and then discuss the literature on the Covid-19 crisis governance focusing on its multilevel nature.



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### *Crisis governance at the national level*

Very few studies of the impact of governments' emergency law-making during the Covid-19 pandemic on democracy draw on a comprehensive understanding of democracy or follow a cross-national approach. Almost all studies have exclusively focused on specific democratic players or core principles. As a result, we lack a general assessment of the Covid-19 crisis governance on democracy.

Two studies of the impact of Covid-19 crisis governance on democracy stand out with regard to their comprehensive approach and coverage. Edgell et al. (2020) have investigated whether the violation of democratic standards are associated with lower Covid-19 mortality. Drawing the Pandemic Backsliding dataset by the V-Dem Institute of the University of Gothenburg, the authors differentiate between two types of infringements of democratic practices and develop a new measure for democratic standards for emergency measures, the Pandemic Backsliding index. They first identify three types of illiberal practices that are infringements on personal autonomy and dignity: 1) Discrimination, 2) Non-derogable rights, 3) Physical violence by police. Second, they identify four types of authoritarian practices that sabotage political accountability: 1) No time limit on emergency measures, 2) Disproportionate limitations on the role of the legislature, 3) Official disinformation campaigns and 4) Limits of media and journalists. Following their results of the quantitative analyses, violations of democratic standards are not associated with lower reported Covid-19 mortality.

While Edgell et al.'s (2020) study contributes to the discussion on the tradeoff between democracy and efficiency of Covid-19 crisis governance, the study by Engler et al. (2021) investigates why some governments have restricted individual freedom more and accumulated more power than others of 34 European countries. They assess the restrictions of individual freedoms considering the intensity of following measures: 1) Restrictions on gatherings, 2) Stay at home requirements, 3) Restrictions on internal movement and 4) International travel controls. To measure these restrictions, the authors rely on the Oxford COVID-19 Government Response Tracker (OxCGRT) (Hale et al. 2020). The authors measure power concentration by the Pandemic Backsliding index. Following the results of the authors, individual freedoms have less restricted in those countries where these have been more protected before the onset of the crisis. In addition, the author find evidence for the diffusion of policies restricting individual freedoms. The government of a country was more likely restrict individual freedoms if the government of a neighboring country has done so. The authors' results of the analysis of the determinants of governments' power concentration are not robust.

Edgell et al and Engler et al study the causes and consequences of democratic quality of Covid-19 crisis governance at the national level without considering the role of decentralization, federalism or more broadly the multilevel nature of the political decision-making.



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### *Crisis governance at the regional level*

Literature lacks comparative analyses of the democratic quality of Covid-19 crisis governance at the regional level. This gap in literature is in particular problematic in the context of strongly decentralized and federal countries. In some federal countries as in Switzerland, some regional governments have declared the state of emergency based on an emergency clause in the cantonal constitutions, while others not. For one canton the option to declare the state of emergency was not given as its cantonal constitution did not include an emergency clause. (Wilhelm 2021). To our knowledge, there are no academic publications that descriptively map patterns of regional emergency law-making and investigate these patterns during the Covid-19 pandemic. This finding is in line with Ginsburg and Versteeg's (2021: 1501) previous assessment that extant scholarship of emergency powers has mainly focused on horizontal checks and balances and is silent on the role of sub-national governments in emergency law-making.

Ginsburg and Versteeg (2021) who assessed emergency-law making from a cross-national perspective have also paid attention to the involvement of subnational units in emergency law-making. Following their results, some of subnational governments demanded more aggressive measure than national governments, while others have pushed back against national leaders who have been perceived as over-reaching. However, their results rely on a rather crude mapping of several aspects of the role of subnational units in the Covid-19 crisis governance. Their datasets maps whether measures have been mainly taken at the subnational level, whether subnational units have been in decision-making and to what extent subnational units criticized central governments' decisions. These aspects have been assessed providing three answer categories (no, some, yes). Apart from Ginsburg and Versteeg (2012), the Pandemic Backsliding Project has aimed to assess whether a subnational variation has existed in crisis responses. Their dataset maps the level of subnational variation of emergency measures on a scale from 0 to 3.

Accordingly, there is also a gap in research on the involvement of regional parliaments and courts in emergency law-making. Focusing on the case of Germany, Höhne (2022) has argued that while intergovernmental cooperation between central and regional governments have been strengthened during the Covid-19 crisis, regional parliament have been largely marginalized in their legislative and oversight roles.

There is also a lack on research on how and to what extent regional authorities have formulated a range of Covid-19 policies that limited people's civil and political rights as in some countries regional governments' not just implemented Covid-19 crisis policies formulated by the central government. Various regional governments postponed regional and local elections and restricted internal and external movements. In the case of Switzerland, a first analysis shows that regional governments took different decisions on whether regional or local elections should be postponed in the first months of the pandemic (Wilhelm 2021).



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### *Crisis governance at the EU-level*

Crises at the national level are mainly discussed as states of emergencies when there is a need to break with regular procedures to provide a fast and effective solution to the unfolding crisis. Crises are sometimes also debated as “critical moments” or “critical junctures” that lastingly change the course of politics. These views of crises stand in contrast to the role of crises and emergencies in EU politics. The project of European integration is often seen as one that has been developing through a series of crises (Ladi and Wolff 2021). There is the view that emergency politics is a permanent feature of EU politics (Kreuder-Sonnen and White 2021). Following White (2015), emergency politics consists of “actions breaking with established norms and rules that are rationalized as necessary responses to exceptional and urgent threats” (White 2015: 30).

What is clear is that even if EU politics is perceived as emergency politics, there is no general script of emergency politics as the EU’s responses and solutions to the different recent crises such as the Euro Area, Brexit, Refugee and Covid-19 pandemic crises have been different (Ferrara and Kriesi 2021; Schmidt 2022). With regard to the EU’s response to the Covid-19 crisis, Ladi and Wolff (2021) have argued that the EU has taken in several ways a new approach to this crisis in comparison to the previous ones. They call this new approach as “coordinative Europeanization” and define it “as a bottom-up process where member states are actively involved in the policy making process early on in order to guarantee the highest level of implementation possible” (Ladi and Wolff 2021: 32). This new mode of Europeanization signifies a difference to the EU’s reaction to the Euro Area crisis that has been characterized as “coercive Europeanization” (Leontitsis and Ladi 2018) that is characterized by the “conditionality and monitoring of EU member states by EU institutions” (Ladi and Wolff 2021: 32). As Schramm et al. (2022: 9) have pointed out that Ladi and Wolff’s (2021) conceptualization goes beyond the debate between “more” or “less” Europeanization because these concepts refer both to “more” Europeanization but suggest different roles of supranational and national actors and types of interactions between them. In the following, we discuss how the role of EU actors have evolved during the Covid-19 pandemic and assess the political legitimacy of their roles.

**European Council:** A widely shared view is that the European Council and its engine consisting of the Franco-German cooperation was the key player among EU actors in particular of the fiscal domain of the EU’s Covid-19 crisis response even if it took some time until it reacted (Ferrara and Kriesi 2022; Ladi and Wolff 2021; Schomaker et al. 2021; Schmidt 2022). Ferrara and Kriesi (2022) explain the key role of the European Council by the combination of two features of the Covid-19 pandemic. As a health crisis, Covid-19 pandemic was a shock to all member states that has symmetrically affected all of them and for that none of the member states could be blamed. Because of the symmetric impact of this crisis, member states could reach more easily consensus toward a European fiscal response. Furthermore, as the Covid-19 pandemic was primarily in the initial phase a health crisis, EU institutions did simply not have the capacity to act because health policy is not a central part of their mandate.

From the point of view of legitimacy, the Council’s political legitimacy derives from the member state leaders that have been appointed through elections in their home states. As such, the



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Council has some input legitimacy and following Schmidt's (2022) brief analysis once it acted, it managed to deliver the desired output during the Covid-19 crisis.

European Commission: It is frequently argued that the European Commission's competences have always expanded in crises (Ladi and Wolff 2021). Schomaker et al. (2021) argue that the EU's response to the Covid-19 crisis was to some extent characterized by a centralization of decision-making that resulted in the empowerment of the Commission mainly in the field of socio-economic policies. With regard to other aspects such as the development of Covid-19 tracing apps and other health policy measures, the Commission failed to make an impact and enforce coordination.

European Parliament: Following Ladi and Wolff (2020), even though that the European Parliament's functioning was highly challenged by the pandemic, it remained a key player during the negotiation of the Multiannual Financial Framework defending it from the cuts of several future-oriented programmes proposed by the European Council. Another important contribution was its pressure to ensure a sanction mechanism against the violation of the rule of law within the Multiannual Financial Framework. The European Parliament's involvement in the EU's crisis response strengthens the political legitimacy of the EU's crisis governance as every member of the European Parliament has a direct electoral mandate and therefore fulfills a representative function in EU politics.

European Central Bank: The ECB and other technical and specialized EU agencies lack input legitimacy (Schmidt 2022). However, scholars have argued that the European Central Bank's contribution to the EU's Covid-19 crisis governance was substantive (Quaglia and Verdun 2022) and managed to ensure throughput and output legitimacy (Schmidt 2022).

### *Multilevel nature of the Covid-19 crisis governance and*

While it is the task of work package 2 to review the literature on multilevel governance, this section aims to point out that there is a lack in literature that addresses the relationship between multilevel governance and the democratic quality of Covid-19 crisis governance.

A number of studies investigated the various patterns of cooperation between the regional and national level during the Covid-19 crisis. These studies have mainly focused whether, why and to what extent the crisis induced new or strengthened previous dynamics and generally friction (e.g. Angelici et al. 2023; Cazula and Pazos-Vidal 2021; Kuhn and Morlino 2022; Salvati 2022). There is growing literature on Covid-19 in federations (see edited volumes by Chattopadhyay et al. 2022 and Steytler 2022). This literature has mainly investigated the nature of multilevel government institutions and how the different phases of the Covid-19 pandemic led to more or less centralization (e.g. Hegele and Schnabel 2021; Schnabel and Hegele 2021). Another strand of the literature on Covid-19 crisis governance in federations focuses on policies. This strand of literature aims to explore to which extent federal and regional have formulated health policies (e.g. Adeel et al. 2020; Shvetsova et al. 2021) and the effectivity of these policies (e.g. Buthe et al. 2020).

As a result, our review shows that neither the democratic quality of subnational Covid-19 crisis governance nor the relationship between multilevel governance and the democratic quality of



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Covid-19 crisis governance received much attention in scholarship. In the following sections, we discuss how the findings of the literature on the democratic quality of the Covid-19 governance related to the principles of legality, participation, transparency, accountability and the protection of freedoms and rights.

#### 4.1 Legality

Literature shares a general fear that in emergency situations governments accumulate power through the declaration of a state of emergency that they then misuse to dismantle democracy. Given this concern of “executive aggrandizement”, scholars, think tanks and international organizations have closely tracked governments’ choices to declare the state of emergency during the Covid-19 pandemic (e.g. Bjørnskov and Voigt 2022; Ginsburg and Versteeg 2021). Bjørnskov and Voigt (2022) analysis shows that the rule of law and press freedom have negatively shaped the declaration of the state of emergency during the Covid-19 pandemic. These findings provide additional evidence to Engler et al.’s (2021) findings that in countries with stronger democracies, governments were more cautious to take measures that jeopardize democratic principles. But during the Covid-19 pandemic, some governments have also come under much criticism because they belittled the Covid-19 virus as a flu like the Brazilian president Bolsonaro and have undertaken too little to protect citizens (Ginsburg and Versteeg 2021: 1523-4).

#### 4.2 Participation

Parliaments’ activities have received the most attention in comparison to other democratic institutions and principles in the debate of the democratic quality of emergency governance during the Covid-19 pandemic. Academic scholars, think tanks and international organizations alike have pointed to legislatures’ manifold crucial contributions to the political legitimacy of the Covid-19 emergency governance (Griglio 2020; Judge and Leston-Bandeira 2021; Petrov 2020). Legislatures serve three core functions such as representation, legislation and control (Pedersen and Borghetto 2021). All of these functions contribute to the political legitimacy of crisis governance and have been challenged and/or limited during the pandemic. First, the Covid-19 pandemic challenged parliaments’ representation function as they had to find new ways to regulate plenary and committee meetings to comply with social distancing requirements (Griglio 2020; Pedersen and Borghetto 2021). To continue to work, parliaments had to take measures to ensure the safety of the MPs and the staff. They also took organizational measures and implemented new technological tools to hold virtual sessions to continue to operate (Crego and Kotsanidis 2020: 30-32; Murphy 2020). The Venice Commission has suggested that parliaments should meet and function during the emergency (Venice Commission 2020: 17).<sup>2</sup> A number of scholars pointed out that is not only important

<sup>2</sup> Emergency law-making usually means the exercise of governmental powers and remains at the discretion of states. International law and international organizations however constrain the boundaries of governments’



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that parliaments continue to work but that all MPs should have equal chances be able to participate in meetings representing different constituencies (Chaplin 2020; Lozano et al. 2021).

Second, because the containment of the pandemic required fast action, parliaments' legislative function was put in question and challenged because legislative processes had to be speeded up to accommodate the need for fast action and simultaneously for co-decision (Pedersen and Borghetto 2021). To meet these challenges, some parliaments have decided to limit their activities to urgent matters.

Third, parliaments' control function was challenged through the Covid-19 crisis as they had to activate or install new oversight mechanisms to counter the expansion of executive power (Pedersen and Borghetto 2021). Scholars emphasized the importance that MPs could access information on governments' emergency activities and review and amend any emergency bills before they were passed. Scholars have discussed several activities related to parliaments oversight functions. They have stressed the importance of parliaments' participation of the declaration of the status of emergency or in the decision to grant special powers to the executive in the initial period of the crisis governance (Griglio 2020; Lozano et al. 2021). In some parliaments, MPs have engaged with governments' emergency activities through government statements and through questioning in the plenary during the pandemic (Griglio 2020). In addition, some standing committees continued to held their regular meetings virtually and others have established ad hoc bodies to scrutinize crisis measures (Griglio 2020). Lozano et al. (2021) stressed the importance that oversight committees include MPs from oppositional parties (Lozano et al. 2021). Parliaments have been involved in the oversight of budgetary that have been adopted at the EU level (Griglio 2020). The Venice Commission (2020: 5; 18) pointed out the necessity of parliamentary (and judicial) scrutiny. According to it, the declaration and potential prolongation of the state of the emergency should be subject to effective parliamentary control and so the activation and application of emergency powers.

Several cross-national studies have explored the impact of the Covid-19 pandemic on the functioning of legislatures and their roles in crisis governance. The study by Waismel-Manor et al. (2022) stands out as it not only maps the level of activities of parliaments during the Covid-19 pandemic world-wide but also tests several explanations for the varying level of parliaments' activities. It focuses on the level of legislatures' activities and use of technical solutions to ensure the continuity of legislatures' activities across 159 countries. In a series of quantitative analyses, they investigate the impact of the severity of the crisis, institutional variables (democracy, parliamentary system and strength of legislature), the nature of the executive (coalition government and populism) and technological advancement on the level of legislatures' activities and use of technical solutions. The results of the quantitative analyses cannot confirm systematic relationships between these variables. The results of the descriptive analyses suggest that some institutional variables have shaped by the activities of legislatures. Partly free countries have been most affected by the pandemic. Stronger legislatures remained

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emergency law-making. A number of international organizations acted during the Covid-19 pandemic and tried to provide guidance for governments. The Venice Commission, which is the council of Europe's advisory body on constitutional matters has issued a toolkit for member states to guide their crisis response (Venice Commission 2020).



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more active during the pandemic. Finally, in parliamentary systems legislatures have been more active only in totally free countries. The authors suggest to investigate how these different institutional variables interacted with each other and shaped together legislature's activities during the pandemic in future research.

Based on a survey of legal responses to the Covid-19 crisis through summer 2020 in 106 countries, Ginsburg and Versteeg (2021) show that two thirds of the investigated national legislatures have been involved in crisis management. They either had to or extended a state of emergency or they passed new legislation. The vast majority of those that passed new legislation attempted to provide safeguards against abuse by making these new laws specific to the current crisis and temporary in nature. They have also amended laws and in some cases established parliamentary oversight committees.

During the Covid-19 crisis, established expert committees have been activated and new committees have been formed with the goal to provide governments a better understanding of the complexities of the Covid-19 pandemic and advise governments in formulating crisis measures (Hodges et al. 2022; Vicentini and Galanti 2021). Experts have also been in the spotlight of the media during the Covid-19 pandemic. Some of them have even become popular media personalities explaining, justifying or especially at the later stages criticizing governments' crisis measures or the lack of them almost at daily base.

In modern days, it is taken for granted that policy-makers need to rely on expertise to make good decisions given the ever-increasing complexity of policy issues (Christensen et al. 2023: 9-15). In extraordinary situations such as crises, the demand for experts' advice is even higher. The political legitimacy of expert influence on political-decision making is challenged by a number of issues in the context of democracies (Christensen et al. 2023: 78-90). First, experts, expert committees and specialized public agencies lack input legitimacy as they have not been appointed through elections. For this reason, the selection process of experts needs to consider a number of criteria. The selection of expert committees should be transparent and the composition of expert committees should be made public (Donovan 2021; Pelling et al. 2022). Scholars have found that some countries have not the membership lists of their main Covid-19 task forces open to the public (Rajan et al. 2021). To begin with, there are different types of expert given various sources of expertise such as scientific training and expertise and long-standing practical engagement. Members of expert committees are usually academics teaching and researching at universities, civil servants with a higher academic degree or civil society actors and interest group representatives with relevant knowledge (Christensen et al. 2023: 17-18). According to their various backgrounds and values, experts are divided on many issues. When they advise policy makers, they not just pass on knowledge but formulate an advice that is the result of a contested process and negotiations. A selection process that ensures a diversity is therefore key. It should guarantee the representation of a range of disciplinary expertise but also other sources of diversity should be considered. Following the results of Rajan et al.'s (2020) systematic analysis of the composition of Covid-19 task forces, these task forces were dominated by politicians, virologists and epidemiologists. Women and civil society actors were under represented. Potential conflict of interest of experts should be also consider in the selection process.



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Second, the task of the experts and the advisory process should be clearly defined (Donovan 2021). There should be clarity to which extent experts can be held accountable for their advice and in what ways they are involved in the communication process with the media or other actors. As it became visible during the Covid-19 pandemic, scientific experts who became publicly well-known through their frequent appearance in talk shows or government's press conferences became also exposed to verbal and even physical harassment.

While the role of science and scientific experts have received much attention in the public and academic debate in the Covid-19 crisis governance, international trackers of Covid-19 measures interested in the impact of these measures on democracy, have not scrutinized the roles of scientific advice and expert committees in Covid-19 crisis governance. This neglect is surprising as experts were very visibly playing a role in Covid-19 crisis governance even if their roles and impact have been less clear. Rajan et al. (2020) brief analysis of the composition of Covid-19 crisis task forces across 24 countries is the most comprehensive study of the role of scientific advice during Covid-19 crisis governance. While it provides very useful first insights on the composition of these task forces, the selection procedures and the decision-making process of these task forces should be comparatively mapped and explored too.

Elections represent a central feature of democracies and provide their input legitimacy. Crises represent a challenge to elections. Crises change the content of parties' electoral campaigns and voters' reasoning behind their electoral participation and vote choices and challenge the management of the elections (Leininger and Wagner 2021). Elections need to fulfill certain qualities to provide the input legitimacy and these might be difficult or impossible to ensure during a crisis. In addition, holding elections might threaten humans' security during crises. These difficulties are proven by the 80 postponed elections and referendums across the world during the first two years of the Covid-19 pandemic.<sup>3</sup> Following James and Alidhodzic (2020) five key democratic principles need to be taken into account when deciding about the holding respectively postponing of elections. These are opportunities for deliberation, equality of participation, equality of contestation, electoral management quality and the institutionalization of the rules.

### 4.3 Transparency

Transparent communication by governments about their decisions explaining and justifying them to public authorities, media and the general public appears to be crucial in crisis times. Only if citizens know and understand governments' actions, they can evaluate the governments' performance and keep the government accountable (Lozano et al. 2021). For this reason, media should be able to scrutinize governments' crisis governance and actions that are not related to crisis governance. Scholars have accumulated evidence that media has influenced Covid-19 prevention behaviors such as social distancing and support for face-covering (Choi and Fox 2022). Media therefore can both enhance the legitimacy and the efficiency of governments' measures. On the downside, during the Covid-19 pandemic fake

<sup>3</sup> See <https://www.idea.int/news-media/multimedia-reports/global-overview-covid-19-impact-elections> (last accessed January 9, 2023).



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news and conspiracy theories have spread through social media and among others likely increased vaccine hesitancy (Montagni et al. 2021; Puri et al. 2020). Pomeranz and Schwid's (2020) brief analysis reveals that governments' have undertaken different efforts to provide accurate information during the Covid-19 crisis. In some countries like the UK, governments made an increased effort to improve media literacy for instance through campaigns or have combatted commercial fraud for fake Covid-19 preventions and cures. In others, governments have released false information and led disinformation propaganda. Some governments have restricted access to information by refusing to disseminate information or by restricting media through new laws that criminalize expressions about Covid-19 that are not in line with governments' statements.

#### 4.4 Accountability

Courts play an important role in crisis governance mainly by their oversight function. Ginsburg and Versteeg (2021) have outlined several ways how courts can exert their oversight function during a crisis. First, courts can ensure that procedural requirements are followed. When constitutional emergency provisions have been invoked, courts can evaluate whether all the constitutional requirements have been adhered to, such as the rule that the parliament must authorize and extend the use of emergency power. If a country's emergency response is not rooted in constitutional emergency powers, courts can insist that there must be legal authorization, typically by legislation, to ground measures taken by the executive. Second, courts can also be engaged in substantive right review, with the goal of ensuring that the restrictions on rights are necessary, proportional and equally applied. The review of substantive rights is in particular important in crises with a longer time horizon and without a clear end such as the Covid-19 pandemic was (Wiley and Vladeck 2020). Judicial review is one of the guarantees that governments won't undermine checks and balances and misuse their power for purposes unrelated to the crisis. Finally, in some countries, courts can also demand that the executive take action to fulfill its constitutional obligations. While Ginsberg and Versteeg (2021) found examples for all these activities, their survey results show that courts were more active in democratic than in autocratic countries. In the case of Kongo, Ginsberg and Versteeg (2021) also found that the Constitutional Court legitimized the government's action to declare the state of emergency without the consultation of the parliament despite that the constitutional rule to consult the parliament. This finding suggests the need to analyze the interaction of democratic institutions too.

However, during the pandemic also courts were challenged to continue to operate. In some countries such as in the Czech Republic, the Ministry of Justice recommended to post-pone non-urgent hearings (Petrov 2020: 88).



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## 4.5 Protection of freedoms and rights

The limitations of civil liberties and political rights by Covid-19 crisis measures had the most immediate democratic impact on citizens' life. The limitation of these rights constituted the center piece of critic at governments' crisis governance voiced in various Covid-19 demonstrations (Plümper et al. 2021).

A widely shared view is that political authority can only be legitimate if it protects the most basic human rights and provides this protection through processes, actions and policies that also protect these human rights (Buchanan 2002: 703). Accordingly, even during crisis times there are a set of rights that governments must not violate. The International Covenant on Civil and Political Rights (ICCPR) notes several such rights such as the right to life (Art. 6), the freedom from torture and cruel and inhuman treatment (Art. 7), freedom from slavery (Art. 8) and freedom of thought, conscience and religion (Art. 18). Furthermore, the ICCPR also identifies three principles related to the rule of law (Art. 11, Art. 15, Art. 16).

Drawing on the ICCPR, the Pandemic Backsliding Project has assessed whether non-derogable rights have been derogated during the Covid-19 pandemic. During the Covid-19 pandemic in Europe, according to the dataset of the Pandemic Backsliding Project, asylum seekers rights to non-refoulement and the prohibition of cruel and inhuman treatment have been violated by border authorities in Bosnia and Herzegovina, Croatia and Greece. Asylum seekers suffered from unhuman conditions and violence in the countries in refugee camps, at the border or at their arrival at the Greek coast. Asylum seekers have been therefore a group that were most at the risk of human rights derogation during the Covid-19 pandemic. Apart from the Pandemic Backsliding Project other cross-national datasets tracking Covid-19 measures have not assessed the violation of human rights during the Covid-19 pandemic.

The principle of non-discrimination relates to the idea that everyone has an equal right to human rights. The ICCPR (Art. 4) states that crisis measures should not "discriminate solely on the ground of race, colour, sex, language, religion and social origin." Following Edgell et al. (2021) discriminatory measures are "illiberal practices that infringe on individual autonomy and dignity" (Edgell et al. 2021: 3). Accordingly, discriminatory crisis measures clearly violate the legitimacy of the output of crisis governance.

While it has to be guaranteed that crisis measures do not discriminate people based on their membership to different social groups and that they are equally applied to all, it needs to be considered that the Covid-19 pandemic has affected peoples' life differently. As a health crisis, the Covid-19 pandemic put older people more under risk than younger ones. At the same time, in particular at later stages of the pandemic, it has been discussed that the social costs of some measures such as social distancing and lock downs have disproportionately affected the well-being of children and adolescents.

The debate on how the Covid-19 pandemic shaped social inequalities has focused on the role of gender, ethnicity and race and show that these types of inequalities have indeed increased due to the differential impact of the pandemic and its crisis governance on man and women and different ethnicities (e.g. Blundell et al. 2020; Chowkwanyun and Reed 2020; Farré et al. 2020). Given this impact, experts formulated various measures to combat these inequalities



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for instance to achieve equal rates of vaccination across ethnic groups (Farina and Lavazza 2021).

## 5. The indicators of a politically legitimate crisis governance

This section discusses a set of indicators for the five principles that shape the political legitimacy of crisis governance. These indicators aim to assess the political legitimacy of crisis measures at the national level but could be also applied to other governance levels with some adaptations.

Indicators of the legality principle (see Table 1): These indicators aim to assess whether emergency measures have been formulated in accordance with the existing legal framework and with a limited time frame. We will assess how and whether the state of emergency has been declared. In addition, we will focus here on those measures that had an impact on the principles of participation, transparency, accountability and the protection of freedoms and rights. The identification of these measures is challenging as some measures had only an indirect impact on democratic procedures and rights. For instance, stay at home requirements only indirectly had various limiting effects on political rights.

Indicators of the participation principle (see Table 2): These indicators map to which extent national legislatures, further national actors, regional actors and scientific experts have been involved the formulation of emergency measures. Ideally, these indicators will be able to assess whether these actors have been meaningfully involved.

Indicators of the transparency principle (see Table 3): These indicators map to which extent the executive provided information about the formulated crisis measures and to what extent this information were accessible for the media and public.

Indicators of the accountability principle (see Table 4): These indicators map to which extent national legislatures and courts and regional actors could oversee crisis measures.

Indicators of the principle to protection of freedoms and rights (see Table 5): These indicators map to which extent crisis measures have limited citizens' civil rights and were discriminative.

These indicators have been identified by the review of extant cross-national Covid-19 crisis measure trackers. In the section Supplementary Information, we provide an overview of these trackers.



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Table 1. The indicators of legality

1. LEGALITY			
	<i>Indicators</i>	<i>Dataset</i>	<i>Variable</i>
State of emergency	Presence of emergency clause in the constitution (yes or no)	Comparative Constitutions Project dataset	EM
	If emergency clause present: Circumstances under which emergency can be claimed	Comparative Constitutions Project dataset	EMCOND
	State of emergency has been declared during the Covid-19 pandemic (yes or no)	IDEA SOE dataset	Natl_emerg_binary
	If state of emergency has been declared: from when to when	IDEA SOE dataset	SOE_start; SOE_renewed; SOE_end
	Legal basis of state of emergency	IDEA SOE dataset Pandemic Backsliding Project dataset	SOE_type; SOE_type_specify Emergency measures legal instrument (emlaw)
Legal basis of crisis measures	Presence of legal basis of crisis measures	No comparative dataset, first we need to establish the relevant set of crisis measures	
	Temporal limits of crisis measures and their extensions	No comparative dataset, first we need to establish the relevant set of crisis measures	



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Table 2. The indicators of participation

2. PARTICIPATION			
	<i>Indicators</i>	<i>Dataset</i>	<i>Variable</i>
State of emergency	If emergency clause present: Actors that are allowed to declare emergency	Comparative Constitutions Project dataset	EMDECL
	If emergency clause present: Actors who need to approve emergency	Comparative Constitutions Project dataset	EMAPPR
	If emergency clause has been activated: Actors who declared emergency	No comparative datasets	
	If emergency clause has been activated: Actors who approved emergency	No comparative datasets	
Crisis measures	Participation of national legislatures in formulation of crisis measures	No comparative datasets	Special attention should be devoted here to the inclusion of MPs representing different constituencies and influence of oppositional MPs
	Participation of other national actors in formulation of crisis measures	No comparative datasets	
	Participation of regional actors in formulation of crisis measures	Ginsburg and Versteeg (2021) (but not specific enough)	Subnational units involved in national decision-making (0: No; 1: Yes; 2: specifically implementation)
	Participation of scientific experts in formulation of crisis measures	No comparative datasets	Selection process of expert committees: <ul style="list-style-type: none"> <li>○ Transparency</li> <li>○ Diversity, variety of disciplines</li> </ul>



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		No comparative datasets	Decision-making process within expert committees (type of voting procedures etc.)
		No comparative datasets	Advice process of the expert committees
Continuation of regular legislation	Continuity of non-Covid 19 related legislation	INTER PARES Parliamentary responses tracker	<p>Types of parliamentarian responses (taking into account the lower chamber):</p> <ol style="list-style-type: none"> <li>1) Exceptional adjournment / Dissolution: includes legislatures that were adjourned due to the pandemic, or dissolved and could not fulfil their constitutional duties.</li> <li>2) Normal procedure: includes legislatures that adopted sanitizing measures or use existing procedures to operate during the pandemic.</li> <li>3) Social distancing measures: includes legislatures that adopted measures that comply with the WHO guidelines.</li> <li>4) Partial suspension of business: includes legislatures that suspended their plenary activities or reduced them considerably and continued their activities through special committees.</li> <li>5) Procedural change: includes legislatures that adopted a reform, a decision by the presiding officer, political agreement, or resolution to change their regular procedure. In addition, for each of the five categories plenary and committee procedures, remote voting and meeting mechanisms and staff measures are described.</li> </ol>
Political rights	Freedom of expression	No comparative datasets	
	Freedom of association and assembly	Oxford COVID-19 Government Response Tracker	Restrictions on gathering size (1: restrictions on very large gatherings (the limit is above 1000 people); 2: restrictions on gatherings between 101-1000 people; 3: restrictions on



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			gatherings between 11-100 people; 4: restrictions on gatherings of 10 people or less; blank: no data)
	Voting rights / Elections and referendums	IDEA Election tracker	Overview of postponed elections



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Table 3. The indicators of transparency

<b>3. TRANSPARENCY</b>			
Communication of crisis measures	Disinformation by the government	Pandemic Backsliding Project	Government disinformation (govdis) Question: During this quarter, how often does information provided by the government or its agents about Covid-19 related matters deviate from the official information provided by the World Health Organization (WHO)? 0: Never, or almost never. The information provided by the government and its agents' never or almost never deviates from the official information provided by the WHO at the time. (1: Occasionally; 2: Often; 3: Always or almost always)
	Government action against disinformation	IDEA Disinformation legislation database	Coverage of relevant legislation (without classifying the content of it)
Media	Limitations on access to Covid-19 related information for media	Pandemic Backsliding Project	<p>Limitations on access to Covid-19 related information (meinf) Question: During this quarter, how often does the government and its agents limit media access to Covid-19 related information?</p> <p>0: Never or almost never. There are no or almost no reports of the government or its agents limiting media access to Covid-19 related information;</p> <p>1: Occasional. There are a few isolated reports of the government or government officials limiting media access to Covid-19 related information, but these are not systematic or ongoing;</p> <p>2: Often. There are widespread and ongoing reports of the government and its agents limiting media access to Covid-19 related information.</p>



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Table 4. The indicators of accountability

4. ACCOUNTABILITY			
National legislature		No comparative datasets	Existence of parliamentary oversight committees including MPs from oppositional parties
Regional actors		No comparative datasets	
Judiciary		No comparative datasets	Application of procedural review; Substantive right review; Appel to the executive to act
Media	Harassment of journalists	Pandemic Backsliding Project	Verbal harassment (mevhar) Question: During this quarter, has the government or its agents verbally harassed journalists reporting about Covid-19? (0: No; 1: Yes) Physical harassment of journalists (mephar) Question: During this quarter, has the government or its agents physically harassed journalists reporting about Covid-19? (0: No; 1: Yes)
	Covid-19 measures limiting media freedom	Pandemic Backsliding Project	Media limitations (melim) Question: During this quarter, to what extent do any emergency measures de-jure limit media freedom? 0: Not at all. Media freedoms are not affected by the emergency measures. 1: Somewhat. The emergency measures de-jure allow the government to put some limitations on how the media can report on Covid-19. These provisions are explicitly limited to stopping disinformation on Covid-19, such as closing news websites that misreport on the origins or how the disease spreads; 2: To a large extent. The emergency measures de-jure put strict limitations on how the media can report on Covid-19. These provisions are not limited to



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			stopping the spread of disinformation on Covid-19, but include any reporting on Covid-19 such as the prevalence of the virus and the government response; 3: Almost completely. The emergency measures de-jure require that all or almost all media reporting on Covid-19 reflect the government’s position.
	Limitations on media reporting about Covid-19	Pandemic Backsliding Project	Limitations on media reporting about Covid-19 (merefact) Question: During this quarter, have the media faced de-facto limitations on reporting about the nature of the Covid-19 virus? 0: No; 1: Yes
	Limitations on media reporting about non-Covid-19 related news	Pandemic Backsliding Project	Limitations on media reporting about non-Covid-19 related news (merepoth) Question: During this quarter, has the government placed de-facto limitations on reporting about non-Covid-19 related news, but with reference to the pandemic? 0: No; 1: Yes



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Table 5. The indicators of the protection of freedoms and rights

5. PROTECTION OF FREEDOMS AND RIGHTS			
Civil rights	Non-derogable rights	Pandemic Backsliding Project	<p>Non-derogable rights (ndrights)</p> <p>Question: During this quarter, have any of the emergency measures derogated from non-derogable rights as defined by the ICCPR</p> <p>Clarification: Non-derogable rights include:</p> <ul style="list-style-type: none"> <li>– Right to life (Article 6).</li> <li>– Freedom from torture and cruel/inhuman treatment (Article 7).</li> <li>– Prohibition of slavery and servitude (Article 8, I &amp; II).</li> <li>– Prohibition of imprisonment due to inability to fulfill a contractual obligation (Article 11).</li> <li>– No conviction for a crime which was not a crime at the time of commitment (Article 15).</li> <li>– Right as a person before the law (Article 16).</li> <li>– Freedom of thought, conscience and religion (Article 18)</li> </ul>



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	Freedom of movement	Oxford COVID-19 Government Response Tracker	<p>– Stay at home requirements (C6) (0: no measures; 1. recommend not leaving house; 2: require not leaving house with exceptions for daily exercise, grocery shopping, and 'essential' trips; 3: require not leaving house with minimal exceptions (e.g. allowed to leave once a week, or only one person can leave at a time, etc); Blank - no data)</p> <p>– Restrictions on internal movement (C7) (0: no measures; 1: recommend not to travel between regions/cities; 2: internal movement restrictions in place; Blank - no data)</p> <p>– Restrictions on international travel (C8) (0: no restrictions; 1: screening arrivals; 2: quarantine arrivals from some or all regions; 3: ban arrivals from some regions; 4: ban on all regions or total border closure; Blank: no data)</p>
	Personal integrity and security	IDEA'S Global Monitor	<p>Personal integrity and Security (not concerning, to watch, concerning)</p> <p>Relevant questions:</p> <ul style="list-style-type: none"> <li>- Are there surveillance mechanisms or apps in place to monitor the virus?</li> <li>- Are these compulsory or voluntary?</li> <li>- How do they store the data? has the right to privacy been respected?</li> <li>- Are contact-tracing surveillance programs adopted on the basis of a broad consensus among major political actors and independent experts?</li> <li>- Are contact-tracing surveillance programmes administered in a transparent manner?</li> <li>- Are contact-tracing surveillance programmes subject to independent oversight?</li> <li>- Has there been an excessive use of force – against individuals or people’s homes - used to enforce pandemic containment measures?</li> </ul>



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	Access to justice	Ginsburg and Versteeg (2021)	Courts operate in person (0: no; 1: yes) Courts operate holding virtual meetings (0: no; 1: yes)
Non-discrimination	Non-discrimination	Pandemic Backsliding Project	Discrimination (discrim) 0: No, not at all; 1: Not de-jure, but minor de-facto discrimination; 2: Minor de-jure discrimination; 3: Yes, major, systematic de-jure or de-facto discrimination.



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As these tables show some indicators need more specification and some indicators are not covered by existing trackers of Covid-19 crisis measures. In particular, indicators mapping the multi-level nature of crisis responses and corresponding data trackers are lacking.

To assess the overall legitimacy of Covid-19 crisis response at the national level, we propose to calculate an additive index of political legitimacy for national crisis measures based on the presented indicators of these five principles. Furthermore, several other indices could be developed and calculated making use of these indicators. Indices could assess the roles of specific actors summing up the indicators that focus on a specific type of actors such as legislatures. An index could be developed that measures the strength of the multi-level dimension of the legitimacy of crisis measures.

While we aim to conceptually adapt these indicators to the EU, regional and local level, we won't be able to assess the legitimacy of Covid-19 crisis responses in all regions and local communities across the included 31 countries in our project. We will have to limit our assessment of the regional and local level to specific countries where it has been observed that regional and local approaches have strongly deviated from the national approach or where a strong variance in regional and local responses to the Covid-19 crises has been observed.

## 6. Case selection

Based on the above presented conceptualization, we will assess the political legitimacy of Covid-19 crisis measures in 31 countries at the national level and the EU. Based on the results of this assessment, we will select nine countries and the EU in which we will analyze the impact of multi-level governance on the institutional legitimacy of crisis governance more in depth. The nine countries will include three federal countries or countries with strong regions, three centralized countries with strong local governments and three centralized countries. We will select each of these three countries to include at least one country with a low and one with a high legitimacy score. In addition, in the group of federal countries or countries with strong regions, we aim to include countries whose regions show a high variance in their legitimacy scores. In the group of centralized countries with strong local governments, we consider to include countries with cities with a high variance in their legitimacy scores.

To gain more clarity about the composition of these three country groups, we rely on the most recent waves of the Regional Authority Index (RAI) (Hooghe et al. 2016; Shair-Rosenfield et al. 2021) and the Local Authority Index (LAI) (Ladner et al. 2021). Figure 1 shows the level of regional and local authority in the 31 European countries included in our analysis.



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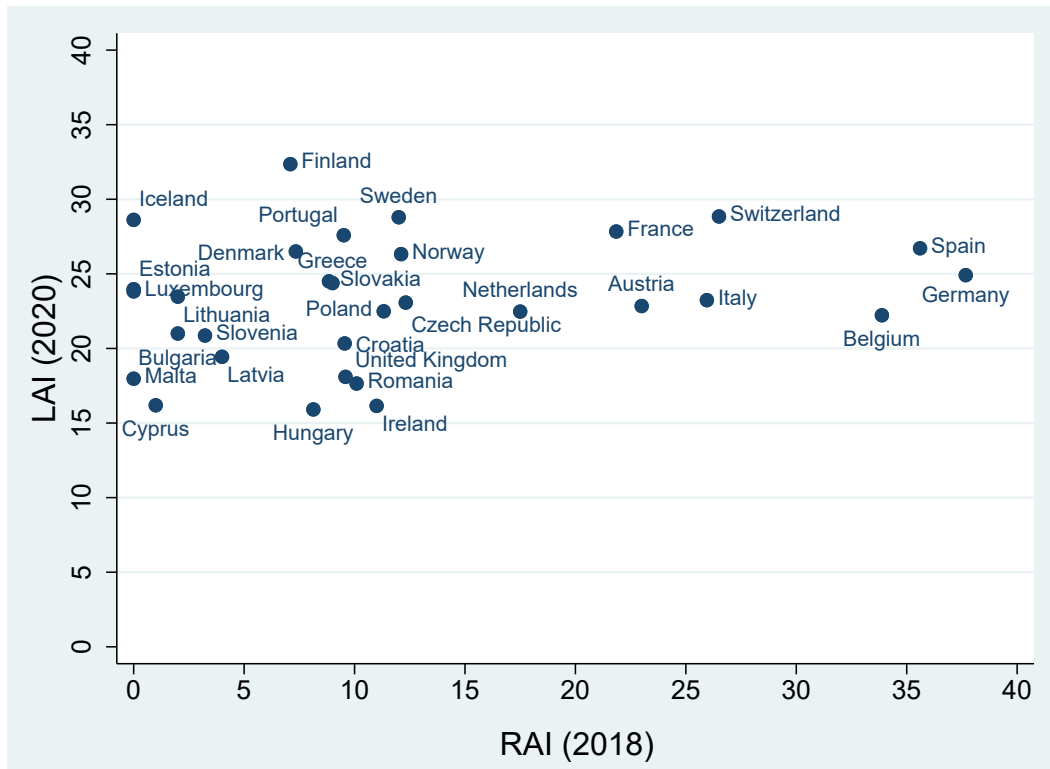
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Figure 1. Regional and local authority in 31 European countries



According to Figure 1, federal countries or countries with strong regions are represented by Germany, Spain, Belgium, Switzerland, Italy and Austria. Centralized countries with strong local autonomy are Finland, Iceland, Sweden, Portugal, Denmark and Norway. Finally, centralized countries with weak local autonomy are Hungary, Ireland, Cyprus and Romania.

We will select countries from these groups according to their assessed institutional legitimacy. In addition, we will consider the impact of pre-Covid 19 democratic quality as we expect that the political legitimacy of crisis governance will be lower in less democratic contexts. The democratic resilience in less democratic countries in crisis times is likely weaker. Furthermore, we will consider the level of regional and local authority in the fields of health and social policies in the country selection. As the Covid-19 crisis was a health and later on an economic crisis, we will need to take into account the level of decentralization of these policy fields to grasp the impact of multi-level governance on the institutional legitimacy of the Covid-19 crisis governance.



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## 7. Conclusion

This working paper has outlined a first model of a democratic crisis governance. To identify the indicators of a democratic crisis governance, it has reviewed the literature on Covid-19 crisis governance with a focus on its democratic quality and political legitimacy and the various cross-national trackers of Covid-19 measures that have been collected. As such, the paper provides the conceptual foundations for the analysis of the relationship between multi-level governance and political legitimacy in crisis governance. As a next step, we will refine the indicators of a democratic crisis governance. At the same time, we will start to collect the legal bases of Covid-19 measures and to assess the democratic qualities of various measures



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## Supplementary information on Covid-19 crisis measure trackers

Table A1. Datasets assessing the role of national governments during the Covid-19 pandemic

<b>Datasets</b>	<b>Variables</b>	<b>Indicators</b>
<b>IDEA's Global Monitor</b>	<p><b>State of Emergency (SoE)</b></p> <ul style="list-style-type: none"> <li>• Has the country declared a state of emergency and is it in line with constitutional provisions?</li> <li>• At what level has it been declared (national or sub-national)?</li> <li>• Has another kind of emergency been declared or a functional equivalent to a SoE?</li> <li>• Has it been according to constitutional provisions?</li> <li>• Is the state of emergency time-bound or not?</li> <li>• How long is the state of emergency lasting?</li> <li>• Does the authorizing regulation specify the circumstances of the emergency situation?</li> </ul>	<p>State of emergency: yes/no</p> <p>When declared and the end date</p> <p>Additional explanation/ comments</p> <p>When information is available, nr of times renewed, by government/Parliament etc.</p>
<b>Pandemic Backsliding Project</b>	<p><b>Emergency measures legal instrument (emlaw)</b></p>	<p>1: Declaration of state of emergency, within existing legal framework.</p> <p>2: Declaration of state of public health emergency, within existing legal framework that distinguishes between a public health emergency and a state of emergency.</p> <p>3: Declaration of state of disaster / catastrophe, within existing legal frameworks where this differs from a state of emergency.</p> <p>4: Other legislation, where this differs from a state of emergency, public health emergency, or disaster/catastrophe.</p> <p>5: None, the state has a national-level emergency response without specific reference to legal instruments.</p>



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		6: None, the state has no national-level emergency response. 7: Other
	<b>Emergency response name</b> (emname)	Legal instrument defined in emlaw: constitution, law, executive order, or other legal mechanism.
	<b>Beginning of emergency response</b> (emstart)	Date that the legal instrument defined in emlaw was first used to enact a national-level emergency response to the Covid-19 pandemic.
	<b>End of emergency response</b> (emend)	Date that the implementation of the legal instrument mentioned in emlaw ended.
	<b>Time limit</b> (emlimit)	0: No end date for some or all provisions. 1: Yes.
	<b>Time limit end date</b> (emlimitdate)	Official end date for the implementation of the legal instrument used as the main national-level response to Covid-19
<b>Ginsburg and Versteeg (2021)</b>	<b>Existence of an emergency constitution</b> (emergency_regime)	0: No 1: Yes 2: ambiguous/very limited (Thailand/US/Italy)
	<b>Declaration of a state of emergence</b> (emp_invoked)	0: No 1: Yes 2: In a limited manner (e.g., Germany) 99: NA because the constitution does not have an emergency regime
	<b>Dispute over how the state of emergency should be declared</b> (const_dispute)	0: No 1: Yes



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Table A2. Datasets assessing the role of national legislatures during the Covid-19 pandemic

<b>Datasets</b>	<b>Variables</b>	<b>Indicators</b>
<b>Waismel et al. (2021)</b>	<b>Parliamentary Activity Index (Parl Act Index)</b>	<p>1: The legislature was supposed to be in session during this time of year, but shut down due to coronavirus;</p> <p>2: The legislature is closed due to a usual break (e.g. Easter break; elections recess), which has started earlier or was extended due to coronavirus;</p> <p>3: The legislature is closed due to a usual break (e.g. Easter break; elections recess), whose duration was not changed due to coronavirus;</p> <p>4: The legislature is closed due to a usual break (e.g. Easter break; elections recess), whose duration was not changed due to coronavirus, but held 1-2 emergency meetings due to coronavirus;</p> <p>5: The legislature is operating in skeletal form – plenum and committees are closed, while the leadership of the legislature (e.g., some very small forum of speakers of each house, leaders of each party) continue to meet;</p> <p>6: The legislature is partly operating – committees are operating, whereas plenum is closed;</p> <p>7: The legislature is partly operating – plenum is operating, whereas committees are closed;</p> <p>8: The legislature is officially fully operating, but meetings are sparse – 0-2 meeting in last two weeks;</p> <p>9: The legislature is officially fully operating, but meetings were reduced – 3-4 meeting in last two weeks;</p> <p>10: The legislature is fully operating as usual.</p>
	<b>Parliamentary use of technological solutions (ParlTech)</b>	<p>1: Physical presence still used in debate and vote (or legislature is closed). No special technological solutions adopted;</p> <p>2: Physical presence still used in debate and vote, but technological solutions such as videoconferencing are used to communicate with other governmental bodies, hear experts, etc.;</p> <p>3: Plenum still requires physical presence, but committees use technological solutions such as videoconferencing and remote voting in lieu of physical presence;</p>



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		4: Both plenum and committees use technological solutions such as videoconferencing and remote voting in lieu of physical presence.
<b>Pandemic Backsliding Project</b>	<b>Legislature limitations</b> (leglimit)	<p>0: Not at all. The lawmaking role of the national legislature is not affected;</p> <p>1: Very little. The legislature has given the executive branch the power to relatively widely interpret Covid-19 related laws, but not to rule by decree.</p> <p>2: Somewhat. The executive branch has the right to rule by decree on several, narrowly defined Covid-19 related issues such as deciding on physical distance measures and measures to support the health system.</p> <p>3: To a large extent. The executive branch has the right to rule by decree on many issues, which may exceed Covid-19 related issues due to vague formulation in emergency laws.</p> <p>4: Completely. The legislature has been dissolved, suspended, or equivalent with reference to Covid-19.</p> <p>5: No legislature existed prior to Covid-19 or the legislature has been dissolved for some reason other than Covid-19 (e.g. coup d'Etat) that falls outside of "normal" legal frame- works.</p>
<b>Ginsburg and Versteeg (2022)</b>	<b>Parliament's involvement in declaring state of emergency under the constitution</b> (parliament_involved)	<p>0: no;</p> <p>1: yes, in declaring emergency;</p> <p>2: yes, in extending the emergency;</p> <p>3: in both;</p> <p>4: in some other fashion (e.g approving emergency decrees as in Argentina).</p>
	<b>Legislature's involvement in the Covid response</b> (legislature_involved)	<p>0: no (this is the case if only existing legislation is used and no emergency is declared for example);</p> <p>1: yes in state of emergency;</p> <p>2: yes in passing legislation or amendment of legislation (this is also the case, if under existing legislation a state of emergency has to be declared b parliament);</p> <p>3: yes in both.</p>
	<b>Parliament operates in person</b> (parliament_inperson)	<p>0: no;</p> <p>1: not generally, but some exceptions;</p> <p>2: yes;</p> <p>99: unclear.</p>



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	<p><b>Ongoing role for parliament in the Covid response</b> (parliament_ongoing)</p>	<p>0: no; 1: yes (this is the case when 1) parliament has to extend state of emergency on constitution; 2: it passes legislation with an expiration date; 3: there is a parliamentary oversight committee; 4: some other form of oversight.</p>
<p><b>IDEA's Global Monitor</b></p>	<p><b>Effective parliament</b> Questions that are evaluated:</p> <ul style="list-style-type: none"> <li>- Is the parliament dissolved?</li> <li>- Are there arrangements enabling the parliament to continue its work? -</li> <li>If the military is used to implement civilian crisis management tasks: is the military subject to civilian oversight? - Is the state of emergency approved by parliament?</li> <li>- Was there parliamentary debate and approval of the state of emergency, if there was one?</li> <li>- Does the government involve other political parties from parliament in decisions about measures and tools to curb COVID-19?</li> <li>- Does the state of emergency allow for parliamentary scrutiny during the pandemic and after?</li> <li>- Has this occurred in practice?</li> <li>- Does it allow for effective legislative (emergency) budget scrutiny or budget expenditure oversight</li> <li>- Can parliament control the duration of the emergency situation?</li> </ul>	<p>Not concerning (no label): No evidence that parliamentary functions and oversight is weakened or restricted</p> <p>Potentially concerning to watch: Parliament functions, debate and oversight during or after the pandemic facing some restrictions or parliament was not adequately consulted or there was insufficient debate on SoE or evidence that points to risk of constitutional instability:</p> <p>Concerning: Measures in relation to parliament are not proportional, necessary, legal or temporary, i.e., parliament is dissolved or closed without justification or parliament did not approve SoE or no civilian oversight of the military or no oversight of handling of pandemic allowed during or after the pandemic</p>
<p><b>INTER PARES Parliamentary</b></p>	<p>Focus on how legislatures have adapted to continue to fulfill their</p>	<p>There are five types of parliamentarian responses to the pandemic presented in this map report (taking into account the lower chamber):</p>



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<p><b>responses during the COVID-19 Pandemic – Data Tracker<sup>4</sup></b></p>	<p>constitutional duties during the Covid-19 crisis</p>	<p>1) Exceptional adjournment / Dissolution: includes legislatures that were adjourned due to the pandemic, or dissolved and could not fulfil their constitutional duties.</p> <p>2) Normal procedure: includes legislatures that adopted sanitizing measures or use existing procedures to operate during the pandemic.</p> <p>3) Social distancing measures: includes legislatures that adopted measures that comply with the WHO guidelines.</p> <p>4) Partial suspension of business: includes legislatures that suspended their plenary activities or reduced them considerably and continued their activities through special committees.</p> <p>5) Procedural change: includes legislatures that adopted a reform, a decision by the presiding officer, political agreement, or resolution to change their regular procedure.</p> <p>In addition, for each of the five categories plenary and committee procedures, remote voting and meeting mechanisms and staff measures are described.</p>
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<sup>4</sup> See <https://www.inter-pares.eu/en/inter-pares-parliamentary-data-tracker> (last accessed: January 13, 2023).



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Table A3. Datasets assessing the role of national courts during the Covid-19 pandemic

<b>Datasets</b>	<b>Variables</b>	<b>Indicators</b>
<b>Ginsburg and Versteeg (2021)</b>	<b>Courts operate in person</b>	0: No; 1: Yes
	<b>Courts holding virtual hearings</b>	0: No; 1: Yes
	<b>Courts involved in the pandemic response</b>	0: No; 1: Yes
<b>IDEA's Global Monitor</b>	<b>Judicial Independence</b> - How have courts functioned during the pandemic? Has their independence been affected? Are there arrangements enabling the High Court / Constitutional Court to continue working? - Are the crisis management activities of law enforcement agencies subject to judicial review? - Is the existence and duration of the emergency situation subject to judicial review?	No concern, no label: no evidence that judicial independence has been affected by measures Potentially concerning to watch: functioned during the pandemic? Has their independence been affected? Are there arrangements enabling the High Court / Constitutional De jure measures that if implemented may affect judicial independence Concerning: Measures in relation to judicial system and courts are not proportional, necessary, legal or temporary Independence of court severely affected, and/or courts closed



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Table A4. Datasets assessing the role of the media during the Covid-19 pandemic

<b>Datasets</b>	<b>Variables</b>	<b>Indicators</b>
<b>Pandemic Backsliding Project</b>	<b>Limitations on access to information</b> (meinf) Question: During this quarter, how often does the government and its agents limit media access to Covid-19 related information?	0: Never or almost never. There are no or almost no reports of the government or its agents limiting media access to Covid-19 related information; 1: Occasional. There are a few isolated reports of the government or government officials limiting media access to Covid-19 related information, but these are not systematic or ongoing; 2: Often. There are widespread and ongoing reports of the government and its agents limiting media access to Covid-19 related information.
	<b>Verbal harassment of journalists</b> (mevhar) Question: During this quarter, has the government or its agents verbally harassed journalists reporting about Covid-19?	0: No; 1: Yes
	<b>Physical harassment of journalists</b> (mephar) Question: During this quarter, has the government or its agents physically harassed journalists reporting about Covid-19?	0: No; 1: Yes
	<b>Government disinformation</b> (govdis) Question: During this quarter, how often does information provided by the government or its agents about Covid-19 related matters deviate from the official information provided by the World Health Organization (WHO)?	0: Never, or almost never. The information provided by the government and its agents' never or almost never deviates from the official information provided by the WHO at the time; 1: Occasionally. There are a few reported instances where the government or its agents have communicated information on Covid-19 that deviates from the official information provided by the WHO at the time, but this is not necessarily intentional; 2: Often. The government or some of its agents frequently disseminate information on many key issues concerning Covid-19 that deviates from official information provided by the WHO at the time; 3: Always or almost always. The government and its agents systematically disseminate information on a wide range of basic matters concerning Covid-19 that always or almost always deviates from the official information provided by the WHO at the time.



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	<p><b>Media limitations</b> (melim) Question: During this quarter, to what extent do any emergency measures de-jure limit media freedom?</p>	<p>0: Not at all. Media freedoms are not affected by the emergency measures.</p> <p>1: Somewhat. The emergency measures de-jure allow the government to put some limitations on how the media can report on Covid-19. These provisions are explicitly limited to stopping disinformation on Covid-19, such as closing news websites that misreport on the origins or how the disease spreads;</p> <p>2: To a large extent. The emergency measures de-jure put strict limitations on how the media can report on Covid-19. These provisions are not limited to stopping the spread of disinformation on Covid-19, but include any reporting on Covid-19 such as the prevalence of the virus and the government response;</p> <p>3: Almost completely. The emergency measures de-jure require that all or almost all media reporting on Covid-19 reflect the government's position.</p>
	<p><b>Limitations on media reporting about Covid-19</b> (merefact) Question: During this quarter, have the media faced de-facto limitations on reporting about the nature of the Covid-19 virus?</p>	<p>0: No; 1: Yes</p>
	<p><b>Limitations on media reporting about non-Covid-19 related news</b> (merepoth) Question: During this quarter, has the government placed de-facto limitations on reporting about non-Covid-19 related news, but with reference to the pandemic?</p>	<p>0: No; 1: Yes</p>
	<p><b>Limitations on access to information</b> (meinf) Question: During this quarter, how often does the government and its agents limit media access to Covid-19 related information?</p>	<p>0: No; 1: Yes</p>
<p><b>IDEA's Global Monitor</b></p>	<p><b>Media Integrity</b></p> <ul style="list-style-type: none"> <li>- How free are journalists to voice their opinion and report on the pandemic?</li> <li>- Is media coverage on COVID-19 crowding out other important scrutinizing news?</li> </ul>	<p>Not concerning, no label: no evidence of restrictions on media freedom and integrity</p> <p>Potentially concerning to watch: Media freedom and integrity is somewhat restricted, for example media coverage on COVID-19 crowding out other important scrutinizing news, or media asked to remove information or critical media scrutiny of government response to pandemic is weak or authorities not responsive to media requests or reluctance of</p>



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	<ul style="list-style-type: none"> <li>- Is social media debate being curtailed?</li> <li>- Is the government or authorities ignoring media requests?</li> <li>- Have measures against fake news on the virus been implemented and could/have they been exploited for undemocratic means?</li> </ul>	<p>Concerning: Media freedom is severely restricted, journalists are not free to report on the pandemic and face severe restrictions, i.e., fines, imprisonment or killing or expulsion from country authorities to share data with journalists or government authorities publicly shaming journalists or limited and rare press briefings on the COVID-19 situation or media outlets closing due to loss in revenues</p>
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Table A5. Datasets assessing the quality or postponement of elections during the Covid-19 pandemic

<b>Datasets</b>	<b>Variables</b>	<b>Indicators</b>
<p><b>IDEA's Global Monitor</b></p>	<p><b>Clean elections</b></p> <ul style="list-style-type: none"> <li>- Were elections scheduled to take place?</li> <li>- Have they been postponed, or will they go ahead during the COVID-19 crisis?</li> <li>- If they have been postponed, has a new date been set?</li> <li>- If elections are postponed: Is this decision supported by a broad consensus among political parties and independent experts and observer organizations?</li> <li>- Has the opposition/civil society protested the delay/suspension/carry out of elections?</li> </ul> <p>If elections are (to be) held:</p> <ul style="list-style-type: none"> <li>- How likely (avoid references to likelihood; how can it be measured?) is it that they will be free, fair and competitive and were they seen as that?</li> <li>- What was the level of voter turnout and did it affect perceptions of legitimacy?</li> <li>- Does (did) the government adjust voter-registration rules to ensure voters can safely participate in elections if they are held</li> </ul>	<p>Not concerning, no label: Broad consensus that national elections that will be held are likely to be free, fair and competitive or that national elections held were free and fair</p> <p>Concerning: national elections proceeding or held with severe restrictions for opposition parties and impartial media before and during national elections and broad accusations of risk or de facto evidence of unfairness or irregularities if national election was held Measures are not</p> <p>Potentially concerning, to watch: No new date set if election postponed or if elections have been postponed several times Revisions to electoral law that may undermine freedom and fairness of national elections if enforced Other potentially concerning electoral developments ahead of national elections that deserve to be watched from a democracy perspective (i.e., likely electoral violence, likely low voter turnout due to restrictions, opposition parties warning of likely weakened legitimacy of elections, likely weak independence or impartiality of electoral management body. If national elections were held, and had low voter turnout or there was criticism from political parties on weakened legitimacy of elections or some problems with voter registry for elections proportional, necessary, legal or temporary</p>



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	<p>during the pandemic? Does (did) the government adjust polling station procedures to ensure voters can safely participate in elections during the pandemics?</p> <p>- Did government introduce special voting arrangements, such as postal or e-voting, to facilitate voting?</p>	
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Table A6. Datasets assessing civil liberties and political rights during the Covid-19 pandemic

<b>Datasets</b>	<b>Variables</b>	<b>Indicators</b>
<b>IDEA's Global Monitor</b>	<p><b>Freedom of expression</b></p> <ul style="list-style-type: none"> <li>- Are people free to voice their opinion related to COVID-19 and the handling of the crisis?</li> <li>- Have there been laws passed (or have existing laws been used) to restrict freedom of expression in the name of combating disinformation on the virus?</li> <li>- Did the law impose fines or imprisonment for violation?</li> <li>- Have the government or any institution taken the opportunity to restrict online communications?</li> <li>- Have free media suffered restrictions in their capacity to inform the public?</li> </ul>	<p>Not concerning: No evidence of measures that limit freedom of expression</p> <p>Potentially concerning, to watch: De jure, passing of laws with measures that if enforced may limit Freedom of Expression</p> <p>Concerning: Measures implemented are de facto affecting freedom of expression and are not proportional, necessary or legal (i.e., journalists, news outlets or citizens have been detained and/or investigated through criminal cases for spreading information or reporting on the virus)</p>
	<p><b>Freedom of Association and Assembly</b></p> <ul style="list-style-type: none"> <li>- Are people restricted from gathering in groups?</li> <li>- What type of restrictions are in place for gatherings?</li> <li>- If so, groups of what size</li> <li>- Are people restricted from protesting or are demonstrations allowed? Are there particular restrictions on political gatherings?</li> </ul>	<p>Not concerning: No de jure or de facto measures that affect Freedom of Association and Assembly</p> <p>Potentially concerning, to watch: There are restrictions that temporarily affect this freedom, although they are still within the law, temporary and determined by the SoE and proportionate to the health threat. However, if they are maintained they can pose risks to democratic rights.</p>



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		Concerning: Measures taken to restrict freedom of movement are not proportional, necessary, legal or temporary and are not taken through due democratic process
	<p><b>Freedom of Movement</b></p> <ul style="list-style-type: none"> <li>- Are there freedom of movement restrictions and emergency restrictions of internal movement? Are they limited in duration?</li> <li>- Are there freedom of movement restrictions and emergency restrictions of external movement? Are they limited in duration?</li> <li>- Are surveillance mechanisms or apps used to track people's movement? Are these compulsory or voluntary?</li> <li>- How do they store the data?</li> </ul>	<p>Not concerning: No de jure or de facto measures that affect Freedom of Movement</p> <p>Potentially concerning: Penalization of breach through for example enforcement of fines but temporary and in line with legal framework and SoE. Concerns if restrictions were to be maintained. Enforcement of curfews by non-state actors such as drug gangs.</p> <p>Concerning: Not limited in duration and/or criminalization of breach, such as detention or imprisonment</p>
	<p><b>Freedom of Religion</b></p> <ul style="list-style-type: none"> <li>- Are people allowed to exercise their freedom of religion during the crisis?</li> <li>- What restrictions are imposed and on whom? i.e., are religious allowed to congregate, to attend their places of worship?</li> <li>- Are certain groups singled out and barred from exercising their religion while others are not</li> </ul>	<p>Not concerning: No evidence of measures that affect Freedom of Religion</p> <p>Potentially concerning: There are restrictions that temporarily affect this freedom although they are still within the law and determined by the SoE and proportionate to the health threat. If maintained they can pose risks to democratic rights</p> <p>Concerning: Measures have not been agreed through due democratic process, are not proportional, necessary, legal or temporary, or applied equally to all citizens, i.e., certain groups are discriminated and barred from religious exercise while others are not</p>
	<p><b>Personal integrity and Security</b></p> <ul style="list-style-type: none"> <li>- Are there surveillance mechanisms or apps in place to monitor the virus?</li> <li>- Are these compulsory or voluntary?</li> <li>- How do they store the data? has the right to privacy been respected?</li> <li>- Are contact-tracing surveillance programs adopted on the basis of a broad consensus among major political actors and independent experts?</li> </ul>	<p>Not concerning: No use of surveillance and contact tracing apps and no evidence of excessive use of force to enforce measures</p> <p>Potentially concerning: For example, surveillance apps are used for contact tracing but they are voluntary and do not store personal data.</p> <p>Concerning: Measures are not proportional, necessary, legal or temporary, ie monitoring apps are compulsory and store personal data and will likely be used for purposes other than curbing the pandemic, given the democratic context or large-scale excessive use of force to individuals or their homes to enforce measures</p>



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<ul style="list-style-type: none"> <li>- Are contact-tracing surveillance programmes administered in a transparent manner?</li> <li>- Are contact-tracing surveillance programmes subject to independent oversight?</li> <li>- Has there been an excessive use of force – against individuals or people’s homes - used to enforce pandemic containment measures?</li> </ul>	
<p><b>Access to Justice</b></p> <ul style="list-style-type: none"> <li>- Have people affected by measures taken to curb the spread of the virus had proper access to justice?</li> <li>- Is the right to a fair trial preserved?</li> <li>- Have courts been closed?</li> <li>- Are services related to securing effective and equal treatment before the law reduced?</li> </ul>	<p>Not concerning: No evidence that access to justice has been affected</p> <p>Potentially concerning: Measures implemented may limit or have somewhat limited access to justice, i.e., courts temporarily closed or working hours</p> <p>Concerning: Measures are not proportional, necessary, legal or temporary and are severely affecting access to justice, such as for example closure of courts</p>

Table A7. Datasets assessing human rights during the Covid-19 pandemic

<b>Datasets</b>	<b>Variables</b>	<b>Indicators</b>
<p><b>Pandemic Backsliding Project</b></p>	<p><b>Non-derogable rights</b> (ndrights)</p> <p>Question: During this quarter, have any of the emergency measures derogated from non-derogable rights as defined by the ICCPR</p> <p>Clarification: Non-derogable rights include:</p> <ul style="list-style-type: none"> <li>– Right to life (Article 6).</li> <li>– Freedom from torture and cruel/inhuman treatment (Article 7).</li> <li>– Prohibition of slavery and servitude (Article 8, I &amp; II).</li> <li>– Prohibition of imprisonment due to inability to fulfill a contractual obligation (Article 11).</li> </ul>	<p>0: No; 1: Yes</p>



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	<ul style="list-style-type: none"> <li>– No conviction for a crime which was not a crime at the time of commitment (Article 15).</li> <li>– Right as a person before the law (Article 16).</li> <li>– Freedom of thought, conscience and religion (Article 18)</li> </ul>	
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Table A8. Datasets assessing discrimination and social equality during the Covid-19 pandemic

<b>Datasets</b>	<b>Variables</b>	<b>Indicators</b>
<b>Pandemic Backsliding Project</b>	<b>Discrimination</b> (discrim)	0: No, not at all; 1: Not de-jure, but minor de-facto discrimination; 2: Minor de-jure discrimination ; 3: Yes, major, systematic de-jure or de-facto discrimination.
<b>IDEA's Global Monitor</b>	<b>Basic Welfare</b> - Has the government taken measures to improve Basic Welfare, i.e., education, (and access to health and mental health)? - How has access to education being affected? - Has the government taken steps to reduce the social/economic impact of the pandemic?	Not concerning: No evidence that access to education has been affected Potentially concerning: Indications that basic welfare conditions, particularly with regards to access to education have been affected during the pandemic with schools closing at some point since the start of the outbreak Concerning: Given the various dimensions covered under basic welfare and the difficulty in establishing adequate thresholds to measure the level of concern of this aspect, this dimension does not differentiate between developments to watch and of concern
	<b>Social Group Equality</b> - How have minorities and marginalized groups fared during the crisis? - Have minorities and marginalized groups being accused of spreading COVID-19? - Have minorities and marginalized groups being target attacks related with COVID-19?	Not concerning: No evidence that ethnic, religious or sexual minorities have been negatively affected by measures Potentially concerning: Minorities and marginalized groups have been affected by measures, although this may not be the result of intended policies Concerning: Proactive steps have been taken to further marginalize minorities or indications of severe repression or discrimination of minorities in the name of fighting the pandemic



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	<ul style="list-style-type: none"> <li>- Have minorities and marginalized groups being disproportionately affected by COVID-19?</li> <li>- Is government action ignoring minorities?</li> </ul>	
	<p><b>Gender Equality</b></p> <ul style="list-style-type: none"> <li>- How has gender equality or gender rights been affected by the pandemic?</li> <li>- Has domestic violence increased?</li> <li>- Is the government putting measures in place to support victims?</li> <li>- Have LGTB+ groups suffer disproportionately the effects of COVID-19?</li> </ul>	<p>Not concerning: No evidence that gender equality has been affected by the measures</p> <p>Potentially concerning: Indications that gender rights and equality have somewhat been affected by the measures, for example increase in domestic violence or increased work burden for women or low participation of women in COVID-19 decision or advisory bodies</p> <p>Concerning: Gender rights severely affected by the measures, i.e., women absent from COVID-19 decision or advisory bodies</p>

Table A19. Datasets assessing subnational crisis governance during the Covid-19 pandemic

<b>Datasets</b>	<b>Variables</b>	<b>Indicators</b>
<b>Pandemic Backsliding Project</b>	<p><b>Sub-national variation</b> (subvar)</p> <p>Question: During this quarter, to what extent have the emergency measures referring to Covid-19 varied de jure at the sub-national level</p>	<p>0: Almost no variation. The emergency measures are uniform or nearly uniform throughout the country.</p> <p>1: A little. There are a few sub-national areas where the emergency measures differ.</p> <p>2: Somewhat. There are some sub-national areas where the emergency measures differ.</p> <p>3: Almost completely. The emergency measures vary across all or almost all of the subnational areas of the country.</p>
<b>Ginsburg and Versteeg (2021)</b>	<p><b>COVID-19 measures primarily taken at the sub-national level</b> (subnational_decision-making)</p>	<p>0: No</p> <p>1: Some measures, but not primarily</p> <p>2: Primarily subnational</p>
	<p><b>Subnational units involved in national decision-making</b> (subnational involved)</p>	<p>0: No</p> <p>1: Yes</p> <p>2: Specifically, implementation</p>



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	<p><b>Conflict with subnational level</b> (subnational conflict)</p>	<p>0: No 1: Some resistance/criticism, but no real action 2: Major resistance, including open defiance</p>
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