
The European Parliament in the time of coronavirus

The European Parliament in the COVID-19 crisis. A remote Parliament

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Introduction

The COVID-19 crisis has had a profound effect on European parliamentary practice. It continues to do so, and at the time of writing there is every reason to believe that this situation will continue for a long time to come.

Nevertheless, the European Parliament has been quick to respond to the challenges that the epidemic has posed to its functioning. In two successive decisions on 2 and 9 March 2020, it took several emergency initiatives, the main one being to establish a mechanism for remote debate and voting. These measures have also taken other forms, such as the initiation of a reform of the institution's internal rules of procedure. Based on an executive component and a legislative response, the European Parliament's institutional response reveals the intrinsically *sui generis* nature of European parliamentary democracy: the variety of solutions developed reflects the proportional and consensual nature of its operating methods.

Like other assemblies, these measures aim to respond to the democratic, organisational and health challenges that COVID-19 implies. For the European Parliament, this means ensuring the continuity of its work while preserving the health security of the people involved, i.e. naturally that of the MEPs but also that of the teams ensuring its functioning. These measures of continuity are reflected in the use of remote working methods, which are clearly impacting parliamentary work as a whole.

The European Parliament's response to the crisis can be divided into two types. Firstly, action by the Parliament's executive authorities to ensure immediate institutional continuity. These are the adjustment measures decided upon by the Presidency of the Parliament, its Conference of Presidents (COP), its conference of Committee Chairmen (CCC), its Bureau and Quaestors. Secondly, there is the legislative and regulatory response, which aims to adapt its internal rules and is mainly structured around the working group on the rules of procedure, which was created by the Committee on Constitutional Affairs (AFCO)¹. These two categories deserve separate attention and will therefore

* The scientific contribution defended by the author in this article represents his personal opinion and can in no way express

be the subject of a specific presentation.

I. Regulatory Measures

A. General Measures taken by the Presidency of the European Parliament and its Bureau

The COVID-19 crisis has placed the executives of the Assemblies in a political dilemma: to respect the competences and rights of individual members in times of crisis while at the same time preventing parliamentary activities² from becoming vectors of contagion within the institutions concerned and, ultimately, preventing them from functioning fully.

The European Parliament, through its President and on the basis of the executive competences linked to the function³, provided a response to this dilemma on 2 and 9 March 2020⁴ by means of a decision. Action is based on the executive powers of the President (Rule 22 §5 of the Rules of Procedure (RIPE)), which establishes that the Presidency is responsible for the security and integrity of Parliament's buildings, as well as on an opinion from the medical team. In the present case, it should be recognised that *force majeure* also supports the validity of the measures taken.

It was on the basis of this decision⁵ that as early as March the President took a series of measures deemed necessary to stem the epidemic in the Parliament: the institution closed, trips to and arrivals from contaminated areas were limited and even prohibited. Regarding the parliament the decision committed the Parliament to the digitisation of its work requesting the Secretary General to ensure the digital accessibility of the work of all of the Parliament's services⁶. As a consequence, it was made a rule to wear a mask in all of the Parliament's workstations on 8 May⁷, the obligatory testing of a body temperatures was introduced on 15 June, likewise an internal screening centre in the Parliament⁸. Most of these measures were extended by a Bureau decision on 25 November 2020⁹ until 31 March 2021.

In this context of limited access to workplaces and the mobility of parliamentary personnel, the question of the seat of Parliament once again came to the fore, since in order to limit contagion and to comply with health obligations, it has become difficult for MPs, parliamentary teams and civil

an official position of the European Parliament.

¹ AFCO's competence regarding the interpretation of the Rules of Procedure of the European Parliament (RIPE) is described in Annex 6 RIPE.

² In particular, the fact that Members of the European Parliament generally travel between their constituencies and the Parliament's places of work on a weekly basis, thus considerably increasing the epidemiological risk.

³ Article 22 par. 5 RIPE : « Le Président est responsable de la sécurité et de l'inviolabilité des bâtiments du Parlement européen. »

⁴ This decision was renewed unchanged by decision on 26 March, 29 April, 28 May and 24 June.

⁵ In practice, this decision, politically validated by the Conference of Presidents, is updated every month and on that occasion amended if necessary to add new features.

⁶ Last introductory paragraph: "IT tools should, as far as possible, replace physical meetings and thus contribute to enabling the Parliament to carry out its essential functions" Reference: DV1202751 EN

⁷ Document PE644.381/QUEST

⁸ Document PE657.899/BUR

⁹ Document PE660.654/BUR

servants to travel between Belgium and France. Thus, since March 2020, it has not been possible to hold any sessions in Strasbourg even though the treaties provide for 12 plenary sessions per year in the Alsatian capital.

Although the MEPs are not linked to Brussels (even though some of them remain in residence there), almost all of the administrative and political players in the Parliament are Belgian residents and have therefore been subject over this period either to a travel ban or to quarantine on the outward and return journeys (which is in effect a form of travel ban or at least a very strong incentive to comply). Moreover, beyond issues related to the mobility of people, the introduction of mechanism for distance voting¹⁰, which enabled and recommended teleworking, the official organisation of the session in Strasbourg would certainly have resulted in significant absenteeism and thus the weakening of the legitimacy of the Alsatian capital as the seat of the institution.

In this regard, the Bureau of the Parliament tried to reinstate the place of sessions in Strasbourg in a communication of 13 July 2020¹¹. The latter presented a mechanism to allow a return to Strasbourg and aimed to reduce the risks of contagion by prescribing, in particular, a limit on the number of staff present on site and the services. It followed France's diplomatic protests and preceded the French President's letter of 27 September 2020 recalling the role of the Strasbourg headquarters. Although we are not in a position to judge the intention of this communication, it seems to be a diplomatic response to an exceptionally complex situation in which the organisation of plenary sessions in Brussels contravenes the European treaties. However, it appears also that as long as voting operations can be carried out remotely, the movement of MEPs to Strasbourg is largely compromised. This is an insoluble problem, since as long as the health situation has not stabilised in all EU Member States, the distance voting system is likely to continue to apply and make their presence in the Alsatian capital discretionary.

However, a certain decline in the epidemic suggested that the measures taken by Parliament might be relaxed. However, the second wave finally led to a strengthening of the measures in force, as shown for example by the President's decision on 29 October 2020.¹² The physical presence of MEPs was banned¹³, with the exception of some trilogues and certain representatives such as the Presidents of the Commission. Moreover, all physical meetings in the Parliament's buildings were banned. This decision also resulted in the closure of the membership register until 23 November, while the rest of these measures were in force until 1 December.

B. Measures to adapt legislative work: guidelines for implementation by the Conference of Committee Chairmen

¹⁰ Distance voting which implies that all voting operations are carried out digitally, is also referred to as a hybrid voting mechanism as it also allows physical participation in certain limited cases.

¹¹ Document PE653.525/BUR

¹² Document PE660.561/BUR

¹³ Document PE 654.720

The European Parliament's work focuses a great deal on the work undertaken by the parliamentary committees. Now 27¹⁴, these committees prepare the legislative documents that are submitted to the vote in the plenary session of the European Parliament. The implementation of the decision taken by the President of the Parliament, which generally and indeterminately concerns the Parliament as a whole, must nevertheless proceed from a separate act, in particular to move forward regarding the precise details of the voting arrangements, which is central to parliamentary activity. This is the purpose of the guidelines for implementation of the decision by the Conference of Committee Chairs (CCC)¹⁵.

The document dated 8 April 2020 supports the decision of the Bureau of Parliament on the modification of the voting modalities in the plenary session (amendment of 20 March 2020 modifying the Bureau's decision of 3 May 2004 concerning the voting modalities) in preparation for the plenary session of 26 March 2020. Non-binding guidelines, it does not, however, constitute a legal basis for operations in parliamentary committees, but rather a series of indications, which the committee secretariats are then responsible for implementing according to their own practices, which often tend to differ. Nevertheless, the general elements presented below certainly form the basis of parliamentary practice over the period.

From a general point of view the document recalls that the plenary session procedure in exceptional circumstances¹⁶ is the benchmark for parliamentary committee procedures. The principle guiding voting is to have a separate vote on amendments to legislation and a final vote after the vote on the amendments¹⁷.

The principles relating to participation in the vote are as follows: all votes, whether by members physically present (this was always possible except during the second wave) or virtually, must be cast by e-mail; deputy members must be notified in advance of the vote and thus receive in advance the ballot papers relating to a voting session organised in a parliamentary committee; the checking of the quorums is carried out at the beginning of the session on the basis of the members who are present and voting.¹⁸

With regard to the establishment of voting lists, the document is extremely technical. It recalls the usual principles for the constitution of voting lists, prohibiting separate voting on compromise amendments¹⁹, as well as oral amendments on the basis of the *lex specialis* provided for in RIPE²⁰.

It should also be remembered that these voting lists take on a particular dimension in debates in the European Parliament. Firstly, in the context of the often-fluctuating majorities due to

¹⁴ 23 ordinary parliamentary committees (AFET having two sub-committees) and 4 special parliamentary committees whose work began under the 2019-2024 mandate.

¹⁵ Guidelines of the Conference of Chairs of the Parliamentary Committees 8 April 2020, PE639.592v03

¹⁶ The term "exceptional circumstances" refers to the name adopted by the Working Group on the Rules of Procedure in preparation for its reform.

¹⁷ Point 1 and 2 CCC Guidelines 8 April 2020

¹⁸ Point 3,4,5,6 CCC Guidelines

¹⁹ Point 7.4 Guidelines)

²⁰ Article 180 par. 6 RIPE

proportional representation, group discipline plays less of a role than in the national parliaments and, consequently, the voting lists are studied by each parliamentary office. Secondly, the fact that voting does not take place with MEPs being physically present means that they cannot rely on visual messages of the sitting (thumbs up, thumbs down by the rapporteurs of each group indicating voting instructions). The voting list is therefore studied and worked on individually by the parliamentary offices.

The voting procedure in exceptional circumstances, as described in the guidelines, is representative of the practice for all votes that have taken place in this period. It is, of course, suitable for votes in plenary session, since it is not the parliamentary committee secretariats but the plenary session services that ensure the reception, validation and recounting of votes in this case.

The new voting procedure takes place by e-mail only²¹. All votes are taken by roll-call, i.e. the vote on each amendment is public and the results of individual votes on each item on the voting list are made public²². This differs from traditional plenary votes, which are, as a general rule, only roll-call votes if a group of MEPs so requests.

At the opening of the vote, the MEPs whose names have been communicated to the secretariat of the parliamentary committee by the referring political groups, receive a voting list that is to be completed and returned from the MEP's address by e-mail to the secretariat of the parliamentary committee responsible for the final tally. This voting list corresponds to a single text and these are voted on in two voting sessions, first the amendments and then the final vote. There is an important difference here with the plenary session votes. While an identical voting procedure was introduced in the first weeks of spring 2020, a dedicated page on the European Parliament's intranet prevents attachments from being sent by e-mail and provides for voting on a dedicated secure portal, where MEPs fill in their voting list directly. In plenary sessions, votes are not cast on a single text per voting session but on a set or "batch", which the plenary session offices make up according to the total number of votes to be cast during the week of the session. The logical sequence, i.e. the vote on amendments and the final vote, is of course maintained.

II. Legislative measures: adaptation of the Parliament's rules of procedure

Following the vote in plenary session on 26 March 2020, with the introduction of electronic voting for the first time, at the beginning of April the European Parliament instructed its "working group dedicated to the rules of procedure" to work on possible reforms to adapt its functioning to exceptional circumstances which would prevent it from functioning normally.

The aim of this group was to produce by the summer of 2020 proposals for amendments that could form the basis of a parliamentary report amending the RIPE. The working group's discussions

²¹ And this even if during the period, with the exception of weeks 44 and 48, the presence of intervening MPs was permitted.

²² Except for secret votes which are organised according to a special procedure.

were organised around several subjects and on the chosen methodology. Should the RIPE be amended article by article or, on the contrary, should a particular article be dedicated to exceptional circumstances, even if this means giving it a transversal application? In the end, the latter approach was favoured and made it possible to address various questions, such as, for example, the definition of exceptional circumstances, their impact on the normal rules of operation, or the central democratic issue of the reform, namely the modalities of control of the acts of the parliamentary executive over the period.

The report finally attributed to Gabriele Bischoff (S&D, DE) was presented to the AFCO committee on 10 July and voted on 12 October 2020 in the parliamentary committee. Its vote in plenary session is scheduled for December. It adds a new Article 237 to the RIPE, which is divided into three parts. Article 237 a, entitled "Exceptional measures", applies to situations in which the European Parliament cannot operate in a conventional manner or meet its obligations and must temporarily derogate from its conventional modes of operation so that it can continue its activities. However, this is only possible subject to the conditions of validity of the criteria of *force majeure* (i.e. the external nature of the event, its unforeseeable and unstoppable nature). Moreover, it is the President of the European Parliament who implements this article if he or she considers that there is a definite danger or that it is impossible for the institution to meet in accordance with its normal working methods.

The measures taken by the President are then subject to increased scrutiny by the Conference of Presidents (which brings together the executives of the political groups) and by the MEPs themselves, who may, by means of an average threshold (10% of the MEPs), obtain a vote at the opening of the next plenary session on the approval of the measure (and not its revocation or annulment). The *de facto* annulment of a Presidency decision takes effect only at the end of the plenary session. This is to prevent, among other things, the annulment of decisions affecting the session during which the vote is held.

Article 237b is entitled "*disturbance of the political balance within the Parliament*" and allows the President to arrange for the remote participation of certain members belonging either to the same political group or possibly to the same geographical group if their involuntary absence disturbs the political balance within the Parliament on a lasting basis.

Article 237b allows for the introduction of the system of remote participation as provided for in the new Article 237c. This system is largely based on the experience of the first few months of the distance procedure and guarantees in particular the individual nature of the vote and respect for the capacity of Members to express themselves freely in plenary sessions. It provides that the President of Parliament permit the distance participation arrangements, thus enabling all Members to exercise some of their rights through the use of remote connection tools. The article nevertheless provides that rights that cannot be exercised in this way are subject to arrangements for which the Presidency is planning a specific measure. Article 237d, the last article of the reform, provides that, for the purposes of the respect for the physical distance between Members present in Parliament, all rooms used for

the plenary session shall be considered as collectively forming part of the hemicycle.

If a favourable opinion had to be given regarding adaptation, the European Parliament would certainly get one. The rapid response of the executive authority, the establishment within a matter of days of structure for distance voting and participation, all in agreement with the main political groups, are all points to be added to efficient management both in terms of short-term regulation and the legislative perspective given by the reform of the rules of procedure introduced by the Bischoff report.

However, other elements that unfortunately could not be studied in greater depth in this article will have to be examined in more detail. The measures that Parliament has introduced and its executive and legislative response raise a large number of fundamental questions as to the legality of the arrangements that have been provisionally made, specifically as regards their adequacy to the fundamental principles of parliamentary democracy, namely respect for the individual competences of Members of Parliament, who are elected by European citizens. These questions, such as the study of the proportionality of the measures, the legal basis for amending the Rules of Procedure in times of crisis, the numerical independence of voting procedures, in particular through the obligation to internalise the tools, and compliance with transparency obligations as laid down in the code of conduct for Members of Parliament during dematerialised working meetings, will need to be studied more closely to complement the factual presentation of the adaptation tools as carried out in this analysis.