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Public Administration: Responding to the COVID-19 Pandemic

***Mapping the EU member states' public administration responses to the COVID-19 pandemic
(for EU Enlargement and Neighbourhood countries)***

1-7 April 2020

This informal mapping exercise was prepared by internal and external SIGMA experts, following a discussion with the European Commission, using publicly available information and some informal insights (collected between 1 and 7 April 2020). It provides a summary of how EU member states and selected OECD countries have managed the COVID-19 crisis initial stage with regard to the functioning of the government and the public administration. The mapping has been compiled as a source of information and inspiration for decision-making and decision implementation by policymakers in EU Enlargement and Neighbourhood countries.

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PURPOSE AND SCOPE OF THE MAPPING

The outbreak of the coronavirus pandemic was an event so unprecedented that governments, with few exceptions, had no benchmark or previous experience to rely on. It required a quick and multi-faceted response. First and foremost, governments had to introduce measures to contain the spread of the virus, flatten the curve of the number of the infected and make sure that health care facilities would not be overwhelmed. The measures that governments took led to more or less intensive lockdown of the economies and produced massive, negative, micro and macroeconomic effects. Consequently, in the second wave of policy responses, governments tried to alleviate the imminent economic crisis and mitigate the impact of the crisis on the economic wellbeing of citizens. These policy responses have been presented and shared in many OECD documents.

Apart from safety, health care and economic measures, countries also needed to adjust the functioning of their public governance systems. This document provides a summary of how EU member states and selected OECD countries have managed the initial stage of the COVID-19 crisis with regard to the functioning of the government and the public administration. It is the result of an informal mapping exercise that was carried out by internal and external SIGMA experts, following a discussion with the European Commission, using publicly available information and some informal insights (collected between 1-7 April 2020). The mapping has been compiled - in line with the SIGMA mandate - as a source of information and inspiration for decision-making and decision implementation by policymakers in EU Enlargement and Neighbourhood countries. It is structured around the areas encompassed in the Principles of Public Administration: policy development and co-ordination, public service and human resource management, public service delivery, accountability and public financial management.

The document describes how ministries and agencies switched massively to teleworking as the new *modus operandi* and how governments (councils of ministers) reorganised their way of meeting and making decisions. Parliaments continued to function but the focus of their work was shifted to crisis-related issues, and the method of parliamentary work was adjusted, including introducing online meetings (particularly for the committees). In many countries, the parliaments transferred additional powers and discretion to the executive, safeguarding the important checks-and-balances mechanisms. New co-ordination structures were set up or activated in centres of government to manage the emergency. Public service delivery continued, but was often limited to urgent needs of citizens and businesses and very much reliant on the capacities of digital government. New administrative simplifications were introduced to make the interaction between agencies and citizens easier. The judicial systems reacted similarly to public administration; in some countries, they radically reduced handling of cases to urgent ones only; in other countries, the decrease in the level of activity was less radical.

In the public financial management area, a very flexible approach had to be adopted to enable governments to reallocate resources to the areas with urgent needs and to support businesses and citizens. While internal controls essentially continue to operate as before, the urgent support measures need to strike a balance between controls and efficiency; to prevent fraud, some authorities have announced the need to develop a defence against fraudulent payouts. The *ex-post* scrutiny and oversight role of supreme audit institutions will remain as important as ever. Strict procedural rules of public procurement were suspended; nonetheless, even in simplified procedures the principles of transparency, efficiency and equal treatment have to be observed. (For details, please see <http://www.sigmaweb.org/publications/Public-procurement-COVID-19-crisis-SIGMA-April-2020.pdf>)

Apart from the above-stated purpose, this overview might serve in the future as a source of inspiration for studying the transformative effects of the COVID-19 crisis. Namely, many of the lessons learned and practices established could be preserved once the crisis is over, as they will contribute to efficiency, effectiveness and better service delivery. It is very likely that we will not return to usual business, but to a new “normal”.

FUNCTIONING OF THE GOVERNMENT, POLICY CO-ORDINATION AND THE DECISION-MAKING PROCESS

Introduction

The Council of Ministers (the Cabinet), as the highest, collective decision-making body of the executive branch, may need to meet more frequently during national emergencies in order to discuss and make urgent decisions in response to the crisis. The administration has to ensure that all decisions and actions taken are legally compliant and transparent. They have to be clear and easy to understand by the public, so that the potential impacts are maximised and minimal enforcement needed.

The centre of government (CoG), which is the body directly supporting the head of the executive to ensure the smooth running of the government, has a particularly important role to play during emergencies. The CoG has to provide all necessary support to the head of the government in managing the crisis and ensuring the co-ordination of policy responses and the actions of different institutions. External communication has to be strongly co-ordinated and led by the centre, in order to provide accurate, consistent and clear messages to the public.

Most of the government decisions during national emergencies are primarily aimed at addressing the immediate threats and the risks to public health ('firefighting'). Even in those situations, adequate efforts have to be made to ensure all actions and decisions taken are based on the best available data and professional advice, including through targeted consultations with specialists. Naturally, many rules and procedures, including those requiring internal and external consultations and analysis of impacts, are relaxed during emergencies to allow governments to act quickly. Nevertheless, it is important that governments initiate adequate analysis and consultation on any major policies that are likely to have significant impacts on the medium/longer term.

Overview of the EU/OECD country responses

Ensuring continuity in political decision-making during the crisis

Most EU/OECD countries reviewed do have the necessary legal and technological capabilities to organise remote meetings of governments through video or teleconferencing. Some of them organised such virtual sessions even before the current crisis (e.g. Croatia, Latvia, Slovenia). In other countries, the COVID-19 crisis prompted governments to establish the necessary systems and capabilities to be able to hold meetings virtually as and when needed (e.g. Lithuania, Spain and UK).

Despite having the necessary technological capabilities, **most EU/OECD countries reviewed still prefer holding government meetings in person** (e.g. Italy, Korea, Romania, Slovak Republic, Sweden). The CoGs, who support the organisation of such meetings, normally take additional precautionary measures to minimise the risk of transmission during regular meetings (e.g. ministers wearing face masks, using bigger meeting rooms, maintaining a minimum distance of two metres between seats, external experts joining the meetings via a video link, etc.). Some countries also try to minimise the need for frequent government meetings at all, and even suspend all non-emergency legislative initiatives and measures (e.g. Denmark).

Several EU/OECD countries (e.g. Austria) do appear to be reviewing/debating the **legal basis of holding virtual meetings** since the regulations stipulate "physical presence for ensuring quorum". Other countries, like Croatia, already had in place the necessary legal basis of holding virtual government sessions with the possibility of recording the actual voting by telephone or e-mail. Latvia and Estonia had a special software (e-sessions) in place, which allows organisation of remote government sessions. Regulations of some countries allow the government to take decisions related to emergencies by a smaller group of ministers (Croatia).

Countries use different IT platforms for organising videoconferences (primarily Skype, Zoom, Cisco WebEx, Citrix). In some countries, there were concerns raised about the **privacy and confidentiality of virtual online meetings** (e.g. the UK's first virtual Cabinet meeting on Zoom).

Crisis management and co-ordination and the role of the centre of government

There are two broad approaches to crisis management: one is largely **reactive** (how existing resources should be mobilised to respond to a crisis once it arises) and the second is **anticipatory**, which also includes an element of foresight and preparedness. The latter implies dedicated resources and specialised staff, as well as the pre-existence of certain mechanisms and plans for co-ordinating government response during emergencies (e.g. Belgium, Denmark). Several countries, including France, Germany and the UK, had **strategies and national plans for fighting influenza pandemics** in place well before the COVID-19 outbreak, which was used to inform the current response.

The **legal framework for crisis management is usually a law and/or rules of procedure of government** that set out the roles and responsibilities of line departments and agencies in the event of a crisis and specify a central co-ordinating body (inter-ministerial council or committee) that takes the lead in managing a crisis. Some countries have special guidance, which establishes the roles and responsibilities of the CoG and other ministries and institutions during emergencies (e.g. France, Belgium, UK).

Special committees and task forces were established in several countries, with the relevant CoGs providing the necessary organisational and co-ordination support (e.g. Estonia, Italy, Finland, Hungary). These committees, in addition to officials, include specialists, scientists and doctors to ensure comprehensive advice is provided to the Prime Minister and ministers for them to make informed decisions.

The central co-ordinating body for crisis management is located, for a majority of countries, in the CoG or otherwise in the Ministry of the Interior, with the Ministry of Health leading on health-related emergencies, and with Defence and Finance often cited as key members of the co-ordinating body.

In the case of the COVID-19 crisis, the breadth of the threat posed by the virus has led the **heads of government to take direct control of management of the crisis in most countries**, notably chairing the crisis management council/committee directly and holding regular media briefings. In this scenario, the CoG acts as the secretariat for the body and liaises with relevant line ministries and agencies to bring in expertise (in the case of COVID-19, this has often meant the Chief Medical Officer, centre for disease control, etc.).

Given the prominent role of the Head of Government in most responses to the COVID-19 crisis, **communication is usually co-ordinated by a communications team located in the CoG**. The main channels include traditional press briefings, led by the Prime Minister or a senior Minister, often on a daily basis, with efforts to use social media to spread key government messages. Many governments have also established central websites to provide regular and clear information about the crisis and government responses (e.g. Estonia, Hungary).

Consultations, legitimacy and transparency of government decision-making

Several EU/OECD countries have **adopted new laws and/or activated the relevant provisions of existing emergency laws** (e.g. through additional voting in Parliaments) that provide the Government with additional temporary powers to introduce restrictions and limitations on activities and public life. They have also allowed a more streamlined and shortened process for decision-making during the crisis, including giving (some of) the legislative authority of parliament to the executive under strictly defined circumstances and areas that help address the crisis (e.g. Belgium, France, Hungary, Italy).

Arrangements that aim to streamline and **accelerate the decision-making process within the government** include **setting up or activating special councils or bodies that have the authority to issue decisions addressing the crisis** (e.g. in Croatia, the central co-ordination body led by the Minister of Interior and

composed of representatives of numerous institutions responsible for crisis management -ministries, public health institution, firefighting institution etc. has issued regulations about containment measures). Some countries, like Spain and the Czech Republic, have empowered the relevant line ministries to take *ad hoc* decisions in order to enforce the government decisions related to emergency provisions.

Several countries have **delegated the government decision-making authority** to ministries to be more effective and rapid in emergency responses. For example, the Czech Ministry of Interior developed a taxonomy of 'international transport and critical infrastructure workers' who are exempt from the travel restrictions. In Spain, the Ministers of Health, Interior, Transport and Defence, under supervision of the Prime Minister, take all the decisions related to COVID-19.

Several countries, including Estonia, Germany, Lithuania and Slovenia, have simply activated the relevant provisions of emergency legislation or regulation that **allow for accelerated and streamlined decision-making processes** during the crisis. This has allowed countries to relax certain internal checks and controls, including those requiring public consultations and impact assessments.

At the same time, COVID-19 has raised the importance of consultations with specialists and using expert advice to inform policy decisions. Countries have actively involved medical doctors and scientists to analyse the impact of various policy options and measures to inform the government decision-making, including through the establishment of special consultative bodies. For example in Ireland, the Stakeholder Forum is chaired by the Department of the Taoiseach and comprises of around 120 bodies from a wide variety of sectors (business, education, health, childcare and social services, sport, tourism etc.). Some countries (e.g. Denmark) have tried to accelerate the legislative and decision-making processes through strict prioritisation, which ensures that only critical legislative measures that address the current crisis are processed.

Key Messages and Conclusions

- Countries may wish to **review and update the relevant legislation/regulations** to establish a legal basis for organisation of **remote meetings of government**. They can also consider developing the necessary IT infrastructure and software, with the right security protocols, to allow smooth organisation and running of government sessions online, using video or teleconferencing.
- Current technology allows effective organisation of virtual meetings of government and these can be easily adopted and used in various country circumstances. However, most countries still prefer having traditional government session, i.e. meetings in person. Additional precautionary measures are being taken to minimise the risk of transmission of disease during these regular meetings.
- Organisation of government sessions remotely can help secure participation of all ministers, hence contributing to discussions that are more fruitful and achieving more informed decisions. This is particularly important considering that the time and resources available for preparation of government decisions, including for inter-ministerial consultations, is very limited during emergencies.
- Many countries have introduced new laws and additional mechanisms to better co-ordinate and manage the crisis. The CoGs play a central role in ensuring the smooth functioning of the government and crisis management and co-ordination structures.
- Having a whole-of-government approach/strategy and pre-existing mechanisms for crisis management and external communication during emergencies can help countries achieve better results. Some countries have a permanent sub-unit of the CoG tasked with preparing for and managing emergencies and staffed with crisis management professionals, including crisis communication specialists. Preparedness of countries to respond to crisis situations varies.
- The head of government leads external communication in a crisis. This mainly involves regular press briefings and televised addresses, which can also be broadcast on social media. Social media

can help speed up crisis communication but also brings new challenges and risks related to trust, such as online data manipulation, which can create unnecessary panic.

- Emergency rules introduced in many countries allow for more streamlined internal policy deliberation and decision-making processes that do not always require adherence to various mandatory procedures and checks, including those needed for internal and external consultation and impact analysis. At the same time, the current crisis and the ongoing debates on health policy options and scenario analysis for the pandemic have given additional significance to using reliable and accurate information and evidence, including from medical doctors, before making policy decisions.
- Various co-ordination and consultative bodies were established with the involvement of external experts and stakeholders (business organisations, relevant civil society organisations, etc.). These new mechanisms have helped secure input from specialists and experts to inform final policy choices and government decisions.

Functioning of the government, policy co-ordination and the decision-making process responses

PUBLIC SERVICE AND HUMAN RESOURCE MANAGEMENT

Ensuring smooth and essential functioning of the government institutions and public administration when normal working arrangements cannot continue, introducing or generalising telework or applying flexible working practices, to respond more effectively to the crisis.

Introduction

The unprecedented situation of confinement and social distancing triggered by the COVID-19 epidemic has renewed the importance of adequate employee policies. Public administrations across the EU/OECD undertook various measures to protect their employees and, simultaneously, to ensure provision of essential services to citizens and businesses and the continued functioning of the state.

Moreover, public servants are often at the front line of the fight against the epidemic, and others participate in the elaboration and implementation of measures related to health, economic and social consequences of the crisis. They see their workload increased and need to adjust to new ways of delivering results.

This chapter presents how EU/OECD countries responded to the challenges in the area of human resource management. They all moved to teleworking, which became a default solution for all civil servants, unless the nature of their work did not allow it or other reasons prevailed. The way countries approach those public servants who cannot telework, but are not authorised to commute to their office, is also explored. This is followed by a description of the application of new working arrangements to better adapt work and remuneration to new challenges, for those who need to work more (overtime), less (part time, mandatory leave) or differently (flexible hours). Finally, initial austerity measures undertaken or announced in relation to public administration in order to create a necessary fiscal space are presented.

Overview of the EU/OECD country responses

All administrations in selected EU/OECD countries moved to **teleworking** in order to minimise the exposure of public servants to the virus and to ensure the continuity of the public service. There is still limited physical presence in work premises, when required by the nature of tasks or when work processes that cannot be suspended are not digitalised (e.g. courts). The sudden shift to massive teleworking was less of a challenge for administrations with established experience in offering home working possibilities to their staff, as the technical infrastructure and the relevant work culture was already in place. However, even these countries needed to modify their legal framework to introduce mandatory teleworking (previously, it was generally used at the request of public servants). In most cases, it is the responsibility of line managers to ensure that their subordinates work efficiently. To support them and their staff in the new environment, guidelines and manuals on teleworking were widely deployed.

In countries with total confinement measures, most civil servants are expected to telework. However, this is not possible in all cases: some perform non-essential functions that have been suspended for the duration of the crisis, others do not have the physical capacities to telework (lack of infrastructure) or the nature of their duties does not allow it. Countries have different approaches to dealing with such situations, but most of them are lenient towards such employees. An overwhelming majority of countries assume that all civil servants requested to telework are able to operate in this mode and therefore are fully paid. It is left to their managers to ensure they have work to do, and that they do work. In several countries (Belgium, France, Latvia, Portugal) there are special legal provisions and if civil servants cannot perform their tasks, they can be formally exempted from service, placed on a special leave of absence or be considered in justified absence and maintain all rights, including their salary. Slovenia is the only country where a special instrument, “waiting for work”, applies to civil servants who cannot telework by their manager’s decision: they receive 80% of their average salary for the preceding three months.

Another tool used, when teleworking is not possible or the workload has decreased, is **mandatory leave**. The huge majority of countries have not obliged their civil servants to take mandatory leave during the lockdown. However, some countries encourage public employees to use their annual leave, without making it a formal obligation. For example, Austria requested its civil servants to use leftover 2019 vacation days whenever possible, while Slovenia recommended that its civil servants use the remaining leave days from 2019 and also two weeks of 2020 annual leave, as they might not be able to take it when they want once the crisis is over. The Danish Government agreed with trade unions that large parts of non-essential public employees would use five days of annual leave during the lockdown period.

Remote work does not address all challenges public organisations face during the crisis; on the contrary, it also creates problems. For instance, if they are also parents, public servants often need to take care of their children during the school closure. Either with central guidance or in a decentralised manner, public institutions adopt **flexible working arrangements**. The countries use, to a greater extent, flexible working arrangements already present in their legislation. Among them, part-time work is used for positions with less workload, and transferring part time to full time for positions with increased workload. While flexible distribution of hours seems common, both during the day and over the week, some countries (e.g. Austria) require civil servants to telework during normal business hours. Staggered work schedules are introduced for work that requires physical presence in work premises to avoid commuting in peak hours. In some institutions, a rotation system was introduced – combining one week of teleworking and one week of work in the office.

The COVID-19 epidemic has impacted the quantity of some civil servants' work. While for some the workload has decreased, as some non-essential services were scaled down, others need to make additional efforts. In most countries, legislation related to **overtime** in place prior to the crisis was adequate and did not require modification. Austria, which allows for up to 72 hours of working time per week for health personnel (within the average of 17 weeks – this period can be further extended), is a good example. The rules related to overtime can be even more flexible in strategic sectors (for example, as regards activities related to critical infrastructure in France and Poland) or when countries introduced the state of emergency. In Latvia, the state of emergency legislation allowed certain institutions to increase the normal working hours to up to 60 hours per week. A relatively small group of countries (Hungary, Slovenia) introduced special rules on overtime in legislation related directly to the COVID-19 epidemic, which increased the amount of overtime work allowed. An interesting example comes from Italy and Slovenia, where a weekly reporting system was introduced for those teleworking to allow monitoring of working hours.

Based on the rules established by the European Social Charter¹ the overtime work, as a rule, should be compensated by increased remuneration or increased leave. A number of countries introduced special arrangements to compensate employees who are at the forefront in the fight against COVID-19, which sometimes go beyond increased compensation for overtime. Some countries have increased salaries (Hungary, Latvia) or consider this work as performed in dangerous conditions, which warrants a special allowance (in Slovenia, this type of allowance was increased from 45% to 100% for hours worked in dangerous conditions). Others pay extra rewards/bonuses to medical staff (Belgium, Netherlands).

The current epidemic creates additional pressure for state budgets and requires reprioritisation of public expenditures. Although employment in general government represents 18% of the total employment in OECD countries, the majority of countries have yet not undertaken any austerity measures related to public service employment. Some (Belgium, Croatia) froze their recruitments (with exceptions for strategic areas), while Korea introduced significant pay cuts for their senior civil servants (this measure could be extended to the entire civil service) on voluntary basis. Salary cuts for ministers and members of parliament in Slovenia amount to 30%. Italy not only did not announce any austerity measures related to public service employment, but also suspended any dismissal procedures on any ground, including economic/financial grounds.

¹ Art. 4(2) of the Revised European Social Charter from 1996, Council of Europe (<https://www.coe.int/en/web/european-social-charter/charter-texts>). Five Western Balkan countries have ratified the revised Charter.

Key Messages and Conclusions

- Public employees are expected to continue to deliver during the COVID-19 crisis, whether they are teleworking or are allowed to attend work premises. Remote work requires not only technical infrastructure (hardware, internet connection, access to IT systems and paperless workflows), but also adjusted management skills, oversight arrangements and collaborative tools. Countries with extensive prior experience in teleworking and adequate legislative frameworks swiftly moved to this manner of working. This is not yet the case for all EU/OECD administrations.
- Civil servants have largely experienced increased workloads, and to cope with this challenge, EU/OECD countries deploy a range of solutions. The most common are making use of existing provisions related to overtime, or introducing new provisions, which allow for more flexibility. Some countries make use of other human resource management tools to improve the situation – they simplify recruitment procedures to be able to employ new staff much faster, enhance mobility between public bodies and use volunteering to support the work of public services. They also try to decrease the workload by postponing some regular processes, like performance appraisal or training (online training sessions have become the only option).
- Countries use a large spectrum of financial incentives, including increased payment for overtime, salary increases or special bonuses, to reward public servants who are on the front line in the fight against COVID-19.
- Governments also face an unprecedented situation when some public employees, when confined, are unable to work as efficiently as expected. Those employees who cannot perform their duties are rarely forced to take annual leave. Instead, various options, favourable to civil servants, are used to justify payment of their salaries.
- This, however, may not be sustainable if the confinement measures continue. Some countries have already announced austerity measures in relation to the public administration in order to respond to the crisis.

Public service and human resource management responses

ACCOUNTABILITY

The functioning of the parliament and the institutions ensuring oversight of the government administration, often vested with extraordinary powers during the crisis, by administrative justice and the Ombudsman.

Introduction

Emergencies, such as the current COVID-19 pandemic, require extraordinary measures for the protection of citizens' lives, safety and health. Such measures inevitably lead to situations that depart from the normal functioning of the state. With the aim of providing the most efficient and effective response possible, parliaments authorise governments to act with more discretion and the measures taken often, inevitably, encroach on human rights and fundamental freedoms. In situations where clear and present danger threatens human lives, the state reacts with policies and individual decisions that would in normal situations fall short of the standards of democracy, human rights and the rule of law.

However, even in such extraordinary situations, governments must not have a *carte blanche* to do whatever they consider appropriate to cope with the danger. As the Council of Europe put it, "we should not let the virus destroy our core values and free societies"². Although governments may be entrusted with an additional margin of appreciation and flexibility in decision-making, parliaments should continue to operate and exercise democratic oversight. Regulations may impose restrictions to human rights and freedoms, such as freedom of assembly, freedom of movement and freedom of economic activity, but these restrictions must be proportionate and limited to the scope necessary for the protection of said values. They must also be established in such way as to guarantee the predictability of the public administrations' actions.

This overview presents the responses of the EU member states and selected other OECD member countries to the COVID-19 crisis in the area of accountability of governments and public administrations. It encompasses the functioning of national parliaments, ombudsman institutions and administrative justice in the context of a pandemic, as well as a general question on whether (or which) measures, imposed to protect the life and health of citizens, have triggered public debates as to necessity and proportionality.

Overview of the EU/OECD country responses

Functioning of **national parliaments** has not been suspended. It must be noted that many national legislations had envisaged broad, discretionary prerogatives of governments to introduce measures to cope with emergencies even before this sanitary crisis. The emergence of the COVID-19 pandemic only triggered the application of these prerogatives. In some cases, the unprecedented scope of the pandemic even required additional prerogatives. In Hungary, the Parliament granted authority to the Government to introduce extraordinary measures by decree, suspend the application of certain laws and derogate from the provisions of laws. However, strict limitations of government powers have been established (e.g. necessity and proportionality of measures, continuous functioning of the Parliament, which can at any time withdraw the extraordinary powers of the Government, control by the constitutional court etc.). Hungary is not the only example of broad discretionary powers being transferred to introduce the necessary measures to the executive. A similar empowerment of the King and the Government took place in Belgium. On the other hand, a similar initiative was withdrawn in the Czech Republic after public outcry.

² Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis, A toolkit for member states, SG/Inf(2020)11, 7 April 2020

Parliaments have adjusted to the situation by introducing practices that respect health protection measures such as physical distancing. This includes, for example, prohibiting access to parliament buildings to persons not essential to its work, teleworking for parliamentary staff, limiting the number of Members of Parliament present at sessions in line with the agreed proportions for each party. During the pandemic, parliaments are cutting their agendas in order to focus on key legislative and budgetary measures to cope with its effects on the health of the population and the national economy.

As regards legislative procedures, in most cases parliamentary rules of procedure had already envisaged the fast-tracking of urgent legislation. In Germany, for example, the federal minister announced an anti-corona legislative package on 23 March. The entire procedure at government and parliamentary level, including official publication of the laws, was finished only four days later and in the following day the laws largely came into force - all this fully in line with the provisions of the Constitution (*Grundgesetz*) and the rules of procedure.

Online meetings have been largely used for committee sessions, but in only a few cases has this possibility been put in place for plenaries. (For example in Spain, this option has existed since 2012 for extraordinary situations. It has now been introduced in Poland and Slovenia, but a similar initiative has been rejected in Lithuania. It has been under consideration in Latvia). It appears that parliamentarians are quite reluctant to introduce online plenary sessions. In the few cases where this is possible, it is strictly limited to exceptional circumstances (as opposed to government sessions where this had been a more regular practice even before the pandemic).

As regards **ombudsman institutions**, they have remained operational. However, personal visits to premises are generally not possible during the pandemic, and ombudsman institutions asked the citizens to communicate their complaints without physically coming to the office – via e-mail and telephone. Staff members are mostly teleworking while field visits (for example in prisons) and contacts with representatives of public institutions are generally avoided and dealing with such cases postponed. Many ombudsman institutions witness an increased number of questions and complaints related to government health protection, economic and social measures, as well as to delays in procedures before public bodies due to the pandemic; some of them have called for understanding and patience. The Irish ombudsman, for example, has asked citizens to think about whether they really need to make complaints about health care and social support services, both of which are currently under huge strain. Ombudspersons are actively involved in discussions on emergency measures and their effect on human rights and freedoms. They are issuing statements stressing the importance of observance of human rights and freedoms even in the state of emergency (pandemic), and calls for special protection of vulnerable groups. In Portugal, the ombudsman institution is “in permanent session” to protect democracy, legality and human rights in line with the law on the regime of the state of emergency.

Administrative justice, responsible for performing judicial review of decisions and actions of public administration, is sharing the fate of the whole of the judiciary during the pandemic. Courts in most countries continue to function in a more or less limited way. In some countries, the activity of the courts is significantly diminished (Italy), while in others the reduction in activity is less significant (for example, in the Netherlands, media reported on 2 April that in the previous week judges had ruled in 20% fewer cases than usual). Measures of physical distance dominate the regime of court functioning. Access to court buildings is restricted. As in public administration institutions, most judges and judicial staff telework, while only a limited number of judges and court staff attend work premises.

Appeals and other documents can be filed via regular mail or via electronic portals. There are cases of simplification of electronic communication during the pandemic (in Croatia, documents may be filed by simple e-mail communication without electronic signature. Simplified access to case files in an electronic file system is provided to parties).

The possibility of handling cases depends on the system of judicial review – in particular on the existence of the obligation to hold public hearings. In some systems (Germany), second-instance court cases are often handled without a hearing, and even in first-instance cases, hearings can be excluded. As regards court sessions without hearings, in many countries they are now held remotely, via videoconference. For

instance, the French *Conseil d'Etat* continues its advisory function to the Government and regularly sits in online sessions. Similarly, in Lithuania courts continue normally all proceedings that are held in writing only. In some countries, hearings can be replaced by proceedings in writing with the consent of the parties. In Estonia, for instance, during the COVID-19 pandemic, cases are handled in writing to the extent possible.

As regards hearings, they are limited to high-priority (urgent) cases (such as criminal cases where the defendant is in detention, or cases where grave violations of human rights are claimed) in all countries. In many countries administrative cases can, under certain conditions, be considered as urgent. Consequently, the majority of hearings has been postponed. In some countries (Estonia, France, a pilot project in Belgium), hearings in urgent cases are being held remotely (via videoconference) when possible. It must be noted that remotely-organised hearings are not common practice even in the most technologically-advanced countries, they remain exceptional (similar to plenary sessions of parliaments, see above).

In some countries deadlines have been legally suspended (e.g. Austria, Slovenia, Portugal, Spain).

Public discussion on the **proportionality of adopted and proposed measures** is taking place in almost all countries, which is a feature inherent to free democratic societies. Many measures have temporarily changed the relations between the legislative and the executive branch, or encroached on human rights and freedoms (particularly freedom of movement and economic activity, as well as data privacy), regardless of whether the state of emergency has been proclaimed or not. Nevertheless, information from many countries (Czech Republic, Estonia, Germany, Italy, Netherlands, Portugal³, Slovenia) shows that the majority of the general public supports the measures for preventing the spread of the virus. The measures mainly pertain to limitation of movement within the territory of the country (in terms of purpose and distance), restrictions as regards entering the country (ban for some cases, mandatory quarantine for others), and the temporary suspension of many economic activities etc.

Key Messages and Conclusions

Examples of the EU and selected OECD member countries show that:

- Parliaments continue to operate and are adjusting their agendas to focus on the measures needed to cope with the threat. They are also adjusting working methods by introducing protective measures, such as restriction of access to work premises, staff teleworking and reduced numbers of MPs at sessions to ensure physical distance. It is important that all this be done in line with the agreed proportions for each party. Online meetings are broadly used for committee sessions, whereas online plenary sessions are only practiced in some countries, and even there as exceptions.
- Governments are assuming (based on existing legislation or through new pieces of legislation) unusually broad discretionary power to introduce measures by decree. In some cases, governments may even derogate the provisions of laws enacted by the parliament by virtue of decree. However, it is extremely important that these powers are limited and significant safeguards are kept, and that parliamentary oversight and oversight by constitutional courts remains fully in place.
- Ombudsman institutions continue to work but with significant changes to working methods. They remain active in terms of issuing statements and calls for observing the importance of human rights and fundamental freedoms.
- Administrative justice continues to work but with modified working methods and at a much slower pace. Approaches vary from country to country. Approaches that help to keep continuity in functioning as much as possible are, for instance,

³ <https://www.europarl.europa.eu/at-your-service/files/be-heard/eurobarometer/2020/covid19/en-public-opinion-in-the-time-of-COVID19-03042020.pdf>

- a) teleworking of judges and judicial staff on open cases (studying files, drafting judgements etc.);
- b) exploring the possibility to perform proceedings in writing and without hearings (if hearings are not necessary or the parties agree with proceedings in writing);
- c) introducing the possibility of online hearings (in agreement with the parties);
- d) digitalisation of files so that they can be accessible remotely to both judges and judicial staff and the parties;
- e) digitalisation and simplification of communication between the parties and the court.

It should be highlighted that the effective functioning of administrative justice is of the utmost importance to protect human rights when public administration is assuming extraordinary powers.

Lively discussions are unfolding in all countries on the proportionality of the measures introduced and their impact on human rights and fundamental freedoms (freedom of movement, freedom of assembly, freedom of economic activity, data privacy). It is premature at this stage to make any conclusions on constitutionality and legality. For such an assessment, the decisions of constitutional, administrative and other courts relating to these measures will have to be examined at a later stage. Nevertheless, it is important to highlight the need to observe proportionality and predictability as principles of both constitutional law and good public administration.

[Accountability responses](#)

SERVICE DELIVERY

Public administration providing services to citizens and businesses during the unprecedented crisis. Modifications, simplifications and alternative tools used to respond to the new circumstances.

Introduction

In the public administration domain, the disruption in the delivery of services is the first area where the results of a crisis are felt by society as a whole, not just public institutions. This analysis focuses on the administrative services instead of broader public services like education or health where the consequences of the crisis can be even more tangible. Nevertheless, most businesses and many people also feel the consequences of the disruption in the administrative services very quickly. It has a direct impact on the obligations of the administration towards citizens/businesses and the other way around. Even during these difficult times, governments have to provide social benefits, issue permits or documents, collect taxes and also distribute huge financial assistance to businesses etc. Similarly, citizens or businesses have their obligations towards governments to be able to perform their daily activities. In addition to this, the crisis itself may have initiated an introduction of new services and administrative procedures, or suspension of others, while the conditions of providing services have drastically changed with confinement and physical distancing. This chapter summarises how the selected EU and OECD countries responded to these challenges to ensure the continued delivery of administrative services. The main focus is on what types of administrative services were affected the most and how the crisis affected the ways these services are delivered.

Overview of the EU/OECD country responses

Which services are being delivered (all, some, only the essential)?

There was no conclusive overview of the services that are delivered or suspended in any of the countries studied when the data was collected in the initial phase of the crisis. The institutions had to adjust their ways of working quickly and in many cases, there were no central instructions in place.

Governments try to maintain the delivery of most services, although often with limited access.

Due to the confinement measures that pushed the public servants into teleworking mode, the preferred option of service delivery is electronic channels (e-mails, websites, e-registries, phones etc.). Where this option is not possible and physical presence is needed, the services are usually either suspended or available upon pre-appointment with limited availability.

In some countries, more centralised measures are used to guide the organisations on service provisions. For instance:

- Portugal: methodological guidance on organisation of service provision is provided through the Guidelines on Organisation of Work, Pay and Client Service in Public Administration Institutions during the Emergency. The Agency for Administrative Modernisation (AMA) is co-ordinating a communication system (including municipalities) and providing guidelines for the administration. Services must report daily information about the service points opened and closed to the AMA.
- Italy: the decree #Curaitalia specifies which services are to be considered as urgent and essential.
- Latvia: the Law on Functioning of Institutions during an Emergency, in connection with COVID-19, requires public institutions to ensure their functions and tasks as foreseen by the legal acts to the extent possible. The institutions are expected to co-ordinate, co-operate and avoid legal formalism. Operational methods should be fine-tuned according to particular circumstances dictated by the emergency (e.g. limiting direct interaction, teleworking, broader electronic operations).

- Czech Republic: the Director-General for the Civil Service recommended that public sector organisations should restrict all activities not related to the emergency measures or to the daily lives of citizens. Service organisations were encouraged to reduce opening hours and telephone access times in order to free up resources to deal with the crisis responses.

Often, managers are given discretion to undertake an exhaustive inventory of their public services to determine which services they are still in a position to deliver and which need to be adjusted or suspended.

Are there any modifications done to the obligations of the administrations towards citizens/businesses or citizens/businesses towards public administrations?

The responses vary greatly by country. For instance, in some countries the deadline of tax declarations has been postponed, in others, it has not.

The most common modifications are related to either the declaration or payment of different taxes both for physical and legal entities. The modifications can go both ways – extending the deadlines set for the administration to reply to citizens’/businesses’ requests or vice versa, the latter paying or declaring taxes. Sometimes the deadlines of tax reporting are formally kept but with a grace period (e.g. Czech Republic). In Portugal, the situation of infection or preventative isolation of taxpayers and their accountants, declared by health authorities, will be considered reasonable cause for a delay to the fulfilment of tax reporting obligations.

Another widely-used measure is the extension of the expiry dates of documents, permits, technical inspections etc.

Some countries (e.g. Austria, France, Slovenia, Spain) have introduced ‘blanket’ provision temporarily suspending the deadlines of administrative procedures (for both public administration bodies and other stakeholders). Provided that these modifications do not breach peoples’ rights or safeguard of interests in an emergency.

For some services, delivery has to be made faster. For example, the UK Government is attempting to accelerate benefit payments. New measures were announced to support eligible people on low income including an increase of the level of benefits.

Hungary has suspended all evictions, and extended childcare benefit payments for those whose benefits would normally have expired during this period.

New types of administrative sanctions have also been introduced; e.g., Lithuania established liability in the Code of Administrative Offences related to civil protection (e.g. infringements causing the spread of virus, failure to enforce decisions of municipalities, or comply with the statutory instructions of civil servants).

Has the crisis initiated any simplifications or enhanced the use of alternative tools: in the internal procedures of the government and in the administrative procedures with citizens and businesses?

In all countries, there is an increasing reliance on IT tools and use of e-mail, social networks, and videoconferencing for meetings, discussions and exchange of information. Telephone conferences are also widely used for internal crisis management.

In Germany, instead of paper versions, it is now accepted that internal consultations can take place by e-mail. Signatures normally required on paper for internal consultation procedures can be announced by e-mail but have to be added later, once printing of the document is possible. Many staff still attend work premises once a week to organise these print outs and issue necessary signatures.

In Romania, applications and supporting documents submitted for social assistance benefits such as state allowances for children and unemployment may be submitted by post or by e-mail. Similarly, in Slovenia electronic communication between citizens and the public administration is simplified, so that for applications and other types of communication electronic signature is not required (for example a simple e-mail would be sufficient or, if the responsible civil servants had doubts about the identity of the party, a

scanned copy of a document with handwritten signature). Germany has simplified several requests for state aid or other state support (support for students, unemployment, housing, etc.) This translates in most cases into the simplification of evidence required or documents that need to be provided, with deadlines extended for the applicant. A similar practice has also been put in place in Poland – without changing the legislation but allowing documents that must normally be delivered in paper form to be scanned and sent electronically, with paper versions being delivered to the Social Insurance Institute in paper form later.

In Spain, the administrative agreements related to COVID-19 are immediately effective, without requiring the procedures included in the Law on the Juridical Regime of the Public Sector.

Spain has also introduced a provision that online sessions of governing bodies of all businesses and other organisations under private law are valid, even if not foreseen in their internal regulations.

Key Messages and Conclusions

- The countries with more developed digital government systems were better prepared for the crisis. Their service delivery was less affected by the disruption as citizens and businesses were already accustomed to the use of digital tools. However, even the more digitally advanced countries needed to reorganise services that required physical presence and also rely more on remote working practices, which may not have been the case earlier.
- The crisis may have a positive effect on the countries with less-developed digital government systems. They had to adjust their work procedures quickly and accept the use of electronic means even if they were not fully prepared for this. These responses could have a lasting effect or at least give administrations a taste of digital tools and the option to test alternative ways of working.
- The situation has also pushed governments to be inventive and look for ways of simplifying some procedures or making them more flexible. Hopefully, these experiences will also be synthesised after the crisis and at least some of them maintained.
- Countries have been rather responsive in either slowing down in the case of some services (e.g. extending deadlines or expiry dates) or mobilising themselves to accelerate or extend other services (e.g. social services).

[Service delivery responses](#)

PUBLIC FINANCIAL MANAGEMENT

Fiscal and Budget Impact of Response Measures

COVID-19 Response measures introduced within the general escape clause of the EU Fiscal Framework

Introduction

On 22 March, the European Council announced that the Ministers of Finance of the Member States had agreed with the assessment of the Commission, as set out in a Communication two days previously, that the conditions for the use of the general escape clause of the EU fiscal framework – a severe economic downturn in the euro area or the Union as a whole – had been fulfilled. It also was announced that Ministers remained fully committed to respecting the Stability and Growth Pact but that the general escape clause would allow the Commission and the Council to undertake the necessary policy co-ordination measures within the framework of the Pact, while departing from the budgetary requirements that would normally apply. This was to tackle the economic consequences of the pandemic.

This statement reflected the reality that most member states had already taken action in response to the economic fallout from the virus. Nevertheless, it was an important statement in that it allowed Member State governments to take the actions that they considered necessary, safe within the knowledge that these response measures were fully within the terms of the Pact. Of course, in most cases, this will mean that the budget deficit for 2020 will be considerably in excess of 3% of GDP although some members, e.g., the Netherlands, announced that they would remain within the 3% reference limit, while others, e.g., Belgium, announced that the measures were one-off in general and therefore would not affect the structural budget deficit.

It is clear that the measures introduced have several common characteristics:

1. The measures announced are those considered vital in order to save the economy and support it to the maximum extent so that it can recover as quickly as possible when the crisis eventually ends
2. All countries provide a package of supports to sectors, firms and employees that have been most affected by the economic lockdown
 - a) Grants and loans to firms that are basically sound but are now struggling to meet liabilities on account of the lockdown.
 - b) Credit guarantees in respect of firms that wish to borrow from their bank in certain circumstances.
 - c) Deferral of taxes for companies and small businesses.
 - d) Paying a very high percentage of actual salary for employees on condition that they are retained on the company payroll.
 - e) Increasing the budget of the social security sector so that payments can be made to the increased number who are unemployed.
 - f) Increasing the budget of the health sector in order to meet the pressures of buying necessary equipment, additional recruitment etc.
3. Most countries have costed or are in the process of costing the measures and their effect on the annual budget but have made it clear that a definitive figure is difficult to calculate since it is not known for how long the support measures will be required.
4. There is very little emphasis on cost-saving measures in other areas of the public administration at this stage, although Croatia and to a lesser extent Slovenia are exceptions. It is probably inevitable that this will happen in the other EU member states eventually but there is no possibility that offsetting savings can counter the fiscal impact of the COVID-19 measures.

While costs may be difficult to quantify, monitoring and publishing evolving costs is important

In general, the costs are being published but with a caveat that they cannot be definitive since, as stated above, there is no certainty as to how long the crisis will continue. Furthermore, since budgetary aggregates are usually expressed as a percentage of GDP, there can be no certainty about the eventual 2020 GDP figure, as the enormous economic downturn cannot be quantified at this stage. Therefore, not only are the actual costs difficult to quantify in absolute terms but they are even more difficult to calculate as a percentage of GDP.

The most important thing is to take the appropriate action as quickly as possible in order to minimise the socio-economic damages wrought by the virus, with the approval of the parliament. As the IMF has stated “governments need to ensure that their systems are equipped to meet the new requirements and challenges” and “PFM systems should be capable of supporting fiscal objectives whether finding offsetting savings for increased COVID-19 related spending, or preparing and delivering fiscal response packages to support economic activity”.

Public financial management systems should ensure liquidity and facilitate reprioritisation of expenditures. As reprioritisation is not enough in the current context, government debt and cash managers should start planning for increased financing and liquidity needs at the earliest opportunity. This is vital to ensure that surprise shortfalls do not result in essential payments not being made etc.

Once that is ensured, it is important to track the expenditures and taxes foregone – and publish them transparently. It is important to set up transparent mechanisms for tracking, accounting, and reporting of emergency measures to ensure that comprehensive and timely information is available to policymakers and the public. Only in this way can policymakers make informed decisions and take timely corrective actions, as needed, based on the measures’ immediate impact and projected medium-term impact on economic growth, as well as anticipated fiscal costs and risks.

Internal control systems

Not much detailed information is available on the **operation of internal control systems during the crisis**. In most countries, internal controls seem to continue to operate as before the crisis, especially in those countries that have mostly electronic systems in place and have not had to change any specific procedures or processes. In some countries where this is not (yet) the case, required physical signatures, for example, have been replaced by e-mail approvals or similar (interim) solutions. Sometimes these will need to be replaced retrospectively with the original signatures once civil servants will be allowed back in the offices.

In light of the measures taken by governments to support the economy, one of the most important things is to ensure timely disbursement of funds. Clearly articulated and well understood procedures for priority disbursements will ensure timely budget releases and processing of claims. For internal (financial) control systems, the idea should be not to bypass established controls but create a stream for handling priority items and fast track expenditure authorisations. There has to be a balance between controls and efficiency; some calculated risks may be necessary in order to achieve efficiency enhancements. For example,

- Adopt a risk-based approach to controls. For example, high-risk payments should be subjected to *ex-ante* controls, while relatively less risky payments can be subjected to *ex-post* audit;
- Where feasible, consider greater delegation of financial authority—both for reallocation of funds and payment approvals—to frontline ministries, such as the health ministry.

The biggest challenge is likely to be the beneficiary authentication and fraud prevention. In one of the German Laender, for example, the authorities had to momentarily put on hold the disbursement of urgent support payments to businesses and self-employed, after defrauders had created fake websites and thus got hold of applicants’ data, with which they applied for government support. Beneficiary identification/registration processes need to be carefully designed to make use of all available information, with an acceptable degree of risk. An interesting example arises in the case of the United Kingdom, where the head of Her Majesty’s Revenue and Customs recently informed a parliamentary treasury committee

that the Government's coronavirus job retention scheme was likely to be targeted by organised crime. This was due to the huge pay-outs involved. He said that the authorities had devised a four-piece defence against fraud:

- employees must have been on company's books in February so fake employees could not be included;
- the on-line claims system requires verification with existing on-line pay-as-you-earn systems;
- the authorities will encourage whistleblowing;
- there will be selective checks in high-risk areas after the money is paid out.

While in many countries, ministries and individual administrations are required to have a general risk management strategy in place as part of their internal control system; this does not mean that **risk management strategies for emergency measures in response to a sudden crisis** are in place everywhere. In those countries that have faced specific risks in the recent past (terrorist attacks, earthquakes) the risk strategies have already been strengthened in the past. However, a lock down of the scale required by the COVID-19 crisis has not been foreseen by any of those strategies, even in countries where specific risk strategies for the case of a pandemic exist.

Some countries have reacted immediately and established individual institutional risk management plans – usually based on the general COVID-19 risk management strategy of their governments - to ensure that public services can continue to be realised with less or no staff present in the public offices. All countries have limited access to public administration venues, balancing staff and customer safety against the need to continue delivering services. Digital and telephone solutions have been encouraged to avoid physical presence. Where required, social distancing has been practiced.

In times of the COVID-19 crisis, the risk plans and scenarios made to assure business continuity are proving their added value. At the same time, clear and well-known internal processes, responsibilities and delegation of decision-making, including representation plans for the case of absence for health reasons, help to ensure that core functions and services can continue to be carried out by each individual public administration.

External Audit

What measures have Supreme Audit Institutions implemented to continue operating, report on their work and address the issues related to COVID-19?

The SAIs have generally implemented working from home and teleworking. In most cases, only essential staff still attend work premises, such as key managerial, support and IT staff, to ensure the effective continuation of operations and implement solutions to support teleworking. In a few instances, SAIs still allow staff to attend work premises if they wish, although on a more restricted basis. Where staff attend work premises, measures have been introduced to protect their health, including rotation of staff attending and requirements for effective social distancing. The SAIs have generally cancelled or postponed all non-essential meetings, events and professional training or conducted them by videoconference.

In many cases, the SAIs indicated that they already had effective arrangements in place before the current emergency to support staff in working from home.

Audits are generally continuing for the moment but with little or no face-to-face contact with audited entities. The continuity of audit work is being ensured through videoconferencing and other IT tools. Staff are able to effectively access most files and audit materials. However, it has been indicated that this may become more problematic in the longer term.

In terms of reporting and publishing the results of audits, this will continue to evolve as the situation develops, the SAIs were generally continuing to publish their reports, although some indicated that they have or may postpone issuance/publication of some audit reports depending on the topic and its appropriateness in the current circumstances. In a few instances, the publication of all reports has been

postponed. With respect to the related communication activities, many SAIs are adapting their communication approaches to the situation, focusing on using e-mail, videoconferencing and other electronic means to communicate. Face-to-face activities, such as press briefings, have generally been postponed

The SAIs indicated that they are monitoring the measures that their governments and the EU are introducing to address the crisis, and some indicated that they are already conducting some work to provide information on the measures or starting related audits. The SAIs also indicated that they are looking to develop audits that relate to the current situation and are revising their work plans to take account of the situation.

Key messages and conclusions

General Fiscal and Budget Response

- Actions taken are within the general escape clause of the EU fiscal framework.
- Members are allowed to do whatever it takes to support business and employees; there is an assumption that these measures will be within reason.
- The measures generally comprise grants and loans to business, credit guarantees, deferral of taxes, as well as increased appropriations for health and social security budgets.
- It is difficult to cost some of these measures as the COVID-19 crisis is open-ended so far but tracking and publishing costs is expected because timely information underpins policy-making.
- Offsetting savings will not be sufficient to cover the additional costs so liquidity and debt managers must plan to fund these costs.
- Countries with soundest public finances are in the strongest position to provide supports.

Internal Control

- Internal controls essentially continue to operate as before and electronic systems reduce the need for adjustments.
- Urgent support measures need a balance between controls and efficiency: some calculated risks may be necessary in order to achieve efficiency enhancements.
- For beneficiary authentication and fraud prevention, the authorities need to develop an adapted defence against fraud for pay-outs.
- Risk plans and scenarios made to ensure business continuity are proving their added value in times of crisis.
- Clear internal processes, responsibilities and delegation of decision-making help to ensure that core functions and services can continue to be carried out during the crisis.

External Audit

- SAIs to continue to operate, implementing teleworking arrangements.
- Audits continue to be conducted through IT solutions and minimal face to face contact.
- Reports continue to be published in most cases, but as the situation continues to evolve, the issuance and publication of reports may or will be delayed.
- Communication activities continue but now rely on electronic methods.
- SAIs are already beginning to focus on audit work that they can conduct on topics related to COVID-19.

Public financial management responses

PUBLIC PROCUREMENT

Introduction

Nothing in the public procurement regulations should prevent the use or enforcement of measures necessary to protect health and human life.

The analysis provided below is based on provisions of the EU Public Procurement Directives and the Government Procurement Agreement (GPA), as well as legislation and recent practice in EU member states.

When events that can be characterised as being a *force majeure* occur, such as natural disasters or outbreaks of epidemics, there are provisions that may be used in order to make the purchasing process faster and less formal. For example, suspending the use of competitive and time-consuming procurement procedures and using non-competitive procedures (direct award) instead, or applying shorter time limits in competitive procedures.

Article 32 of the EU Public Procurement Directive regulates the use of the negotiated procedure without prior publication of a contract notice (i.e. in practice direct award of a contract to the chosen economic operator). Similar provisions are provided by the GPA. Contracting authorities facing extremely urgent, unforeseeable needs can either carry out a negotiated procedure with limited competition on the basis of direct approaches to a potential contractor or contractors, or directly award a contract to a specific supplier without any competition.

Several of the usual provisions of the Public Procurement Directive do not apply to negotiated procedure without prior publication:

- there is no need to publish a contract notice (invitation to tender),
- contract terms can be negotiated with only one economic operator,
- formal requirements regarding the conduct of the procurement process do not apply,
- EU member states are allowed to waive mandatory exclusion of economic operators, on an exceptional basis, for overriding reasons, including public health (provided such an option is provided for in national legislation)
- minimum time limits do not apply,
- provisions on a stand-still period do not apply (the contract can be concluded immediately, without any delay).

However, the negotiated procedure without prior publication is not completely exempt from the procurement regime: the general principles of the Treaty on the Functioning of the European Union (TFEU) on non-discrimination and equal treatment do apply. Further, some provisions of the Public Procurement Directive still apply: for example, the need to publish a contract award notice and provide statistical information as well as to keep a copy of a contract, at least for its duration, if its value reaches EUR 1 million for supplies or services and EUR 10 million for works.

Article 27 of the of the Public Procurement Directive, related to the open procedure, allows contracting authorities to set a shorter time limit for receipt of tenders, although this should be no less than 15 days counted from the date on which the contract notice was sent “*where a state of urgency duly substantiated by the contracting authority renders impracticable the time limit laid down in the second subparagraph of paragraph 1*” (i.e. the standard period for receipt of tenders in this procedure). Equivalent provisions are also found with regard to the restricted procedure in Article 28 (6) and allow, in the same circumstances, the shortening of the period for receipt of requests to participate to 15 days, and for receipt of tenders to 10 days.

Other instruments, such as framework agreements, are also a useful way to ensure adequate competition in public procurement in the context of rapidly rising demand, as in the case of the response to the COVID-19 pandemic, at least for as long as the participating suppliers are able to accelerate deliveries as needed. In health sector procurement, it is in the very nature of the demand that it may often be unpredictable in volume over time, for example as a function of the development of cases of seasonal flu, where fluctuations from year to year are not unusual. As a routine measure, it may therefore be advantageous to have a framework agreement, or several agreements, running in parallel, and overlapping in duration when renewed, for any items where needs are difficult to predict with precision and it is important not to run out of supplies if unexpected developments occur.

It is also important to highlight that, even during the epidemic, economic operators are not deprived of their right to challenge decisions of contracting authorities adopted with breach of public procurement provisions, as regulated by the Remedies Directive. The COVID-19 epidemic may affect the functioning of the procurement review bodies, due to the special sanitary measures adopted that might limit personal direct access to all public institutions. However, practical restrictions should not affect the right of economic operators to protect their lawful interests and prevent irregularities.

The European Commission issued *Guidance on using the public procurement framework in the emergency situation related to the COVID-19 crisis* (2020/C 108 I/01)⁴. The Commission underlines that COVID-19 is a health crisis that requires swift and astute solutions and agility in dealing with an immense increase of demand for similar goods and services while certain supply chains are disrupted. In the opinion of the Commission, contracting authorities can rely on the EU public procurement framework, which provides ways to accommodate severe emergencies such as the COVID-19 pandemic. More specifically, there are several options to consider:

- in cases of urgency contracting authorities can substantially reduce the deadlines to accelerate open or restricted procedures;
- if that is not sufficient, a negotiated procedure without publication can be envisaged - in accordance with Article 32(2)(c) of the Directive 2014/24/EU contracting authorities may award public contracts by a negotiated procedure without publication
- contracting authorities should also consider looking at alternative solutions and engaging with the market: to satisfy their needs, public buyers may have to look for alternative and possibly innovative solutions, which might already be available on the market or could be capable of being deployed at (very) short notice.

Responding to the outbreak of COVID-19, EU countries have adopted measures concerning the application of public procurement provisions consisting of (1) specific legal provisions and/or (2) interpretation (guidance) provided to contracting authorities concerning application of legal provisions.

Key messages and conclusions

- Nothing in the public procurement regulations should prevent the use or enforcement of measures necessary to protect health and human life.
- Both the EU Public Procurement Directives and the Government Procurement Agreement (GPA), and subsequent legislation in EU member states, provide provisions that allow adjustment of the purchasing process to be faster and less formal in case of a force majeure, such as natural disasters or outbreaks of epidemics.
- Contracting authorities facing extremely urgent, unforeseeable needs can conduct a negotiated procedure without prior publication (directly award a contract to a specific supplier) or organise a competitive procedure with shorter time limits.

⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:C:2020:108:FULL>

- The general principles of non-discrimination, equal treatment and transparency (even if limited to ex-post transparency) still apply. Even during the epidemic, economic operators are not deprived of their right to challenge decisions of contracting authorities adopted in breach of public procurement provisions, to protect their lawful interests and prevent irregularities.

Public Procurement document