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ARTICLE

Post-crisis Emergency Legislation Consolidation: Regulatory Quality Principles for Good Times Only?

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Abstract

This article analyses how emergency legislation has affected law-making and regulatory quality principles (RQPs) before, during and after the COVID-19 pandemic (2019–2021) from stakeholders' perspectives. It takes Slovakia as a case study, as this country was considered a high performer in the adoption of RQPs before the crisis, while empirical findings suggest a subsequent decline in their use. We argue that formal RQPs are not deeply embedded and are vulnerable to crises. In doing so, we conceptually distinguish between standard (fully following the RQPs), emergency (modified to accommodate crisis) and non-standard law-making (violating formal rules and the RQPs). In the transition from a crisis to a post-crisis context, the deployment of both emergency and non-standard law-making has become relatively permanent without proper justification having been provided. This reinforces the notion that RQPs and governance legitimacy became less important for the executive than in the pre-crisis period and emergency and non-standard regulatory law-making became institutionalised as new norms of swift law-making. All of these factors prevent stakeholders from being informed and from engaging in deliberation, which jeopardises the legitimacy of post-crisis law-making governance.

Keywords: COVID-19; emergency legislation; governance legitimacy; regulatory quality

I. Introduction

During the COVID-19 pandemic, many national frameworks used emergency legislation in order to react quickly to the public health emergency and introduce necessary measures in public health, economic and social areas. These included such measures as imposed lockdowns, curfews, barriers to freedom of movement and the organisation of working-from-home measures and basic public services, as well as measures to combat the painful economic consequences facing small and medium-sized enterprises. Early in the pandemic, these were logical moves, since there was only limited information available and the spread of the pandemic was rapid.

These efforts, however, rapidly expanded also to areas that are not necessarily critical for emergency legislation, but the window of opportunity created a possibility for policymakers to quickly pass regulations without much scrutiny by external stakeholders or regulatory oversight bodies. Therefore, the extent to which "normal order and rule of law" are or have been reinstated after the end of the emergency is debatable.

A number of studies have looked at the COVID-19 pandemic from the perspectives of crisis governance and management,[1] governance structures providing advice and evidence[2] or the roles of other institutions than the executive shaping the response.[3] Another field of the literature takes the perspective of the rule of law and the legitimacy of regulatory decisions as a focus.[4] However, little is known about the question of transparency and access to law-making from the perspective of external stakeholders during the crisis and in the post-crisis period. Moreover, we know nothing regarding the extent to which emergency law-making has returned during post-crisis times to standard regulatory law-making practices that enable external stakeholders to comment on and participate in these processes. These aspects are important to investigate as the quality of law-making procedure reflects the quality of governance.

In this paper, we want to fill this gap and analyse the law-making procedures through which primary legislation has been followed before, during and after the COVID-19 crisis. We undertake this endeavour through the lenses of governance legitimacy and transparency for external stakeholders and the barriers faced by them when participating in regulatory processes. The aim of this paper is to investigate how the COVID-19 pandemic has affected standard law-making in Slovakia, a country that ranked among the best in the adoption of regulatory quality principles (RQPs) and stakeholder engagement in developing primary laws prior to the COVID-19 crisis (Fig. 1).[5] By showing how the government is willing to exploit the crisis to set aside good regulatory principles, we want to raise sense of an immediate risk of democratic backsliding in a setting not readily associated with such approaches.

Through our research, we want to determine whether emergency legislation was utilised solely for COVID-19-related items during the crisis or whether we can trace any misuse for non-crisis-related legislation as well. Has the crisis become a turning point for reconsideration of the RQPs and the permanence of the "emergency legislation"? The ultimate research question is: to what extent has the post-COVID-19 law-making returned to the pre-crisis benchmark and to what extent has emergency (COVID-19) legislation subverted standard law-making now that the disruptive event is considered over?

To answer our research questions, we take Slovakia as a case study. We focus on this country as it ranked highly in implementing RQPs during pre-pandemic times, such as e-consultation platforms for stakeholders that increase transparency and allow stakeholders to have access to policymaking.[6] During the pandemic, the country invoked emergency law-making procedures, and these enable us to study the degree of adjustment

[1] S Kuhlmann et al, "Opportunity Management of the COVID-19 Pandemic: Testing the Crisis from a Global Perspective" (2021) 87 International Review of Administrative Sciences 497; T Christensen and P Lægreid, "Balancing Governance Capacity and Legitimacy: How the Norwegian Government Handled the COVID-19 Crisis as a High Performer" (2020) 80 Public Administration Review 774; MJ Moon, "Fighting COVID-19 with Agility, Transparency, and Participation: Wicked Policy Problems and New Governance Challenges" (2020) 80 Public Administration Review 651.

[2] O Rubin et al, "The Challenges Facing Evidence-Based Decision Making in the Initial Response to COVID-19" (2021) 49 Scandinavian Journal of Public Health 790; P Cairney, "The UK Government's COVID-19 Policy: Assessing Evidence-Informed Policy Analysis in Real Time" (2021) 16 British Politics 90.

[3] H Kassim, "The European Commission and the COVID-19 Pandemic: A Pluri-institutional Approach" (2023) 30 Journal of European Public Policy 612.

[4] A Alemanno, "Taming COVID-19 by Regulation: An Opportunity for Self-Reflection" (2020) 11 European Journal of Risk Regulation 187; R Cormacain, "Keeping Covid-19 Emergency Legislation Socially Distant from Ordinary Legislation: Principles for the Structure of Emergency Legislation" (2020) 8 The Theory and Practice of Legislation 1.

[5] OECD, "Regulatory Policy in the Slovak Republic: Towards Future-Proof Regulation" (2020).

[6] ibid; M Sloboda, K Staroňová and AP Suchalova, "Enhancing Law-Making Efficiency, Public Value or Both: Case Study of e-Participation Platform in Slovakia" in T Randma-Liiv and V Lember (eds), *Engaging Citizens in Policy Making* (Cheltenham, Edward Elgar Publishing 2022).

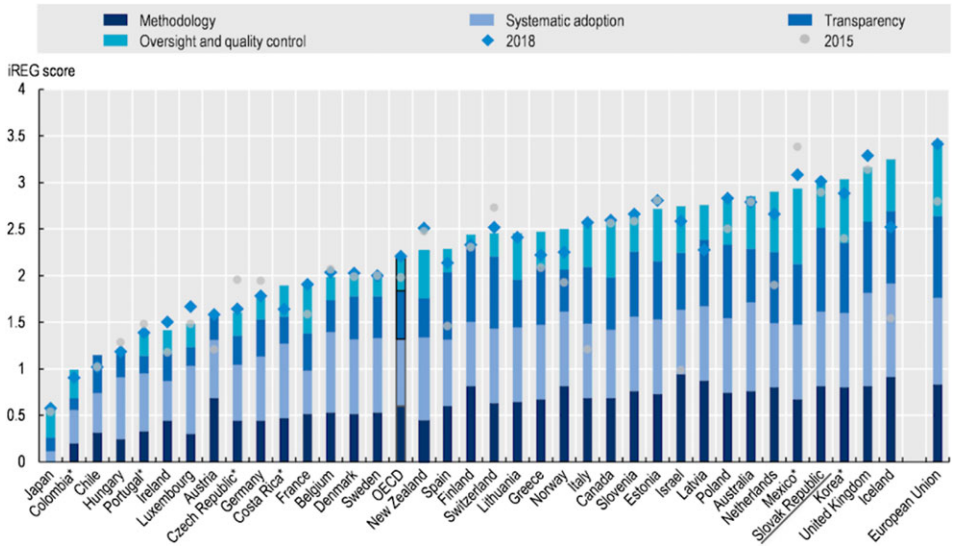

Figure 1. National ranking in terms of regulatory quality principle adoption, 2021 (see online for colour).
Source: OECD Indicators of Regulatory Policy and Governance Surveys (iREG; http://oe.cd/ireg).

to the crisis after the initial shock and the dynamics in returning to standard law-making. The case study enables us to explore variance in applying the RQPs during the emergency and standard law-making procedures prior to, during and after the COVID-19 crisis. It analyses two dimensions of the RQPs: transparency (publication of proposals) and participation (access for external stakeholders) for every single primary legislation passed by the Cabinet between 1 January 2019 and 31 December 2021.

The exploration identifies two types of "misuse": non-COVID-19 issues framed as emergencies and the opportunistic use of the crisis in order not to conduct consultations and not to publish proposals (non-transparency), which we have labelled as non-standard law-making (as it is not anchored in formal guidelines and violates RQPs). Thus, the paper provides a preliminary understanding of the incremental degradation of post-crisis law-making that jeopardises the overall governance legitimacy and democracy in the post-pandemic era.

The article proceeds as follows: in Section II, we briefly sketch the established view of RQPs and their effects on increasing legitimacy and transparency in law-making. Section III discusses how emergency legislation addresses crises. Section IV elaborates on the case study of a high-performing country in terms of the implementation of the RQPs. Section V presents the methodology used and Section VI shows the results obtained. We highlight the most important and relevant findings on the RQPs in the law-making process and briefly discuss the limitations and challenges for further research in Section VII.

II. Increasing law-making legitimacy with regulatory quality principles

A key strategy employed by democratic countries to enhance legitimacy, accountability and transparency is to adopt a set of measures, commonly labelled as RQPs. These enhance stakeholder engagement and participation in executive law-making, promote scientific advice and evidence in decision-making and increase procedural fairness and transparency. The empirical research of regulatory quality so far has primarily focused on the regulatory output and its efficiency rather than on the law-making process. Papadopoulos coined the term "throughput legitimacy" to denote processes that enable

equal access for stakeholders through transparency considerations, allowing them to express their views on draft legislation, which "can enhance the acceptance of decisions, no matter their content [...] or outcome".[7] Thus, governance legitimacy is then understood as input, throughput and output legitimacy.[8]

Both international organisations[9] and academics[10] believe that decisions made with transparency, participation of external stakeholders, use of evidence and under regulatory oversight lead to improved policymaking and law-making processes. These subsequently lead to qualitative change in the output of law-making: namely, more effective and efficient legal regulations that enjoy higher levels of public trust. If there are clearly established RQPs, then citizens know what they can expect from the regulations and regulatory institutions think and act accordingly, which subsequently is reflected in the overall quality of governance.[11] Thus, the RQPs support and enhance the performance and legitimacy of regulatory governance.[12]

Participation is a RQP that enables engaging of stakeholders and citizens so that they interact and exchange views with decision-makers in policymaking.[13] It is crucial that every stakeholder has the same opportunity to access the law-making process in order to avoid conflict of interests, corruption and participation bias,[14] thus increasing throughput legitimacy. In addition, participation serves to allow for gathering information and feedback from stakeholders – aimed at reinforcing input and output legitimacy[15] – thanks to which proposals can be improved and made more acceptable to the public.[16]

Besides public participation, the other RQP is *transparency*, which is widely recognised as a procedural mechanism providing stakeholders with the opportunity to follow and participate in policymaking and law-making. Thus, transparency refers to the degree to which information on regulation and law-making is made accessible by notifying and publishing texts of draft laws.[17] If efficient, transparency serves the interests of the public

[7] Y Papadopoulos, "Cooperative Forms of Governance: Problems of Democratic Accountability in Complex Environments" (2003) 42(4) European Journal of Political Research 484.

[8] V Schmidt and M Wood, "Conceptualizing Throughput Legitimacy: Procedural Mechanisms of Accountability, Transparency, Inclusiveness and Openness in EU Governance" (2019) 97 Public Administration 727.

[9] European Commission, "Completing the Better Regulation Agenda: Better Solutions for Better Results" (2017); OECD, "Indicators of Regulatory Policy and Governance: Design, Methodology and Key Results" (2015); A Bunea and J Chrisp, "Reconciling Participatory and Evidence-Based Policymaking in the EU Better Regulation Policy: Mission (Im)Possible?" (2022) Journal of European Integration 1; Mandelkern Group on Better Regulation, "Final Report" (2001).

[10] Bunea and Chrisp, supra, note 9; S Rose-Ackerman, *Democracy and Executive Power: Policymaking Accountability in the US, the UK, Germany, and France* (New Haven, CT, Yale University Press 2021); C Braun and M Busuioc, "Stakeholder Engagement as a Conduit for Regulatory Legitimacy?" (2020) 27 Journal of European Public Policy 1599; C Koop and M Lodge, "British Economic Regulators in an Age of Politicisation: From the Responsible to the Responsive Regulatory State?" (2020) 27 Journal of European Public Policy 1612; SE Dudley and K Wegrich, "The Role of Transparency in Regulatory Governance: Comparing US and EU Regulatory Systems" (2016) 19 Journal of Risk Research 1141; CM Radaelli and F De Francesco, *Regulatory Quality in Europe: Concepts, Measures and Policy Processes* (Manchester, Manchester University Press 2007).

[11] Dudley and Wegrich, supra, note 10.

[12] Schmidt and Wood, supra, note 8.

[13] A Fung, "Varieties of Participation in Complex Governance" (2006) 66 Public Administration Review 66; Braun and Busuioc, supra, note 10.

[14] M Røed and V Wøien Hansen, "Explaining Participation Bias in the European Commission's Online Consultations: The Struggle for Policy Gain without Too Much Pain" (2018) 56 Journal of Common Market Studies 1446; P Davis and A Flynn, "Explaining SME Participation and Success in Public Procurement Using a Capability-Based Model of Tendering" (2017) 17(3) Journal of Public Procurement 337; Radaelli and De Francesco, supra, note 10.

[15] Fung, supra, note 13; Braun and Busuioc, supra, note 10.

[16] Radaelli and De Francesco, supra, note 10.

[17] G Base, "Notice-and-Comment Rulemaking in Comparative Perspective: Some Conceptual and Practical Implications" (2020) 15 Asian Journal of Comparative Law 95.

rather than just the interests of the bureaucracy or lobby groups. In other words, transparency allows not only citizen engagement through notice-and-comment procedures,[18] but also for the public to control how decisions are made and what evidence is behind any concrete decisions.[19] This division corresponds to the distinction between transparency in process and transparency in rationale suggested by Mansbridge[20] and empirically tested by De Fine Licht et al.[21] In particular, perceptions of transparency and procedural justice are the main sources of throughput legitimacy.[22] Today, modern technology enables transparency and participation via various e-government platforms.[23]

III. Governance legitimacy and law-making in times of crisis: emergency legislation

Governance legitimacy is about credibility and acceptability (ie how the attitudes and actions of a government are perceived by citizens).[24] In times of crisis, citizens evaluate the transparency and trustworthiness of a government's decisions and measures, which can affect its legitimacy. Thus, trust and legitimacy are closely linked, with openness, transparency[25] and participation[26] being found to secure legitimacy of decisions even if information is incomplete, circumstances change quickly and issues are complex. In other words, how much people trust a government (political and administrative institutions), including regulatory procedures and law-making, matters for governance legitimacy.

Public trust in a government and regulatory procedures is also critical in fighting any type of crisis, as was particularly the case for COVID-19. Crises often involve the introduction of emergency legal mechanisms with the aim of improving law-making's capacity to cope with wicked problems efficiently and swiftly. The resulting *emergency legislation* (sometimes also called *crisis legislation*) can either speed draft regulations through each of the required law-making phases or deliberately bypass and avoid stakeholder participation institutionalised in the system in the name of necessity and urgency.

To ensure governance legitimacy, the distinct nature of emergency law-making must be emphasised[27] and be clear from the outset, and its functions must be time- and topic-bound and only applied in relation to the specific emergency (in Cormacain's words: "socially distant" from standard law-making). In other words, emergency law-making

[18] ibid.

[19] Dudley and Wegrich, supra, note 10; A Bianculli, J Jordana and X Fernández-i-Marín, *Accountability and Regulatory Governance: Audiences, Controls and Responsibilities in the Politics of Regulation* (London, Palgrave Macmillan 2015).

[20] J Mansbridge, "A 'Selection Model' of Political Representation" (2009) 17(4) Journal of Political Philosophy 369–98.

[21] J De Fine Licht, D Naurin, P Esaiasson and M Gilljam, "When Does Transparency Generate Legitimacy? Experimenting on a Context-Bound Relationship" (2014) 27(1) Governance 111–34.

[22] T Risse and E Stollenwerk, "Legitimacy in Areas of Limited Statehood" (2018) 21 Annual Review of Political Science 403.

[23] C Coglianese, "The Internet and Citizen Participation in Rulemaking" (2005) 1 Journal of Law & Policy for the Information Society 33; Sloboda et al, supra, note 6.

[24] T Christensen, P Lægreid and LH Rykkja, "Organizing for Crisis Management: Building Governance Capacity and Legitimacy" (2016) 76 Public Administration Review 887.

[25] De Fine Licht et al, supra, note 21.

[26] JS Dryzek and A Tucker, "Deliberative Innovation to Different Effect: Consensus Conferences in Denmark, France, and the United States" (2008) 68 Public Administration Review 864; SG Grimmelikhuijsen, "Transparency of Public Decision-Making: Towards Trust in Local Government?" (2010) 2 Policy & Internet 5; G Porumbescu, "Linking Transparency to Trust in Government and Voice" (2017) 47 The American Review of Public Administration 520.

[27] Cormacain, supra, note 4.

should be utilised for a limited time and with the need to fulfil a specific goal. Some countries have introduced "temporary clauses", which provide that emergency legislation will only be in force for a limited period – the duration of the emergency[28] – and then re-evaluated once the immediate threat is over. However, studies show[29] that some illiberal democracies, such as Hungary, Poland, Serbia and Slovenia, have used the pandemic as a cover to shift economic interventions towards greater authoritarianism.

Another contributing factor that hampers legitimacy and accountability is that emergency legislation is usually adopted after a lower level of fact-finding and weighing and balancing of alternatives, as well as with a lower degree of intervention justification. In fact, early studies in the COVID-19 context showed that political executives supplied little or no information about the evidence upon which their regulations were designed.[30] During the COVID-19 crisis, formal scrutiny and oversight of policymaking were also weakened, and this situation was particularly exploited by populist and illiberal governments.[31] In fact, Central and Eastern European (CEE) countries that already had weakened formal scrutiny by the judiciary, media, opposition parties or civil society prior to the pandemic were more prone to increasing authoritarianism during the crisis, since there were strong incentives (international resources) for interfering in the economy by using discretionary powers.[32] In Poland and Hungary, researchers found that the governments passed without deliberation or evidence so-called "trojan measures": legislative changes on highly controversial issues that would normally trigger protests.[33]

During the extraordinary conditions created by the COVID-19 crisis, most of the countries passed their emergency legislation under expedited procedures, such as fast-tracking, extended sittings or agreed shortening of debates.[34] This, together with decreased use of institutionalised RQPs, has challenged open, transparent and evidence-based policymaking throughout European Union (EU) countries and elsewhere.[35] Both international organisations[36] and academics stress that maintaining (throughput) legitimacy throughout an emergency process helps to preserve governance legitimacy.

However, the risks associated with emergency legislation adopted over much shorter time periods than is typical (fast-tracking procedures), at the expense of stakeholder engagement and without proper scrutiny, bring the legitimacy of law-making into question. It is difficult to reconcile such legislation with the requirements for regulatory quality, and this brings up the question of whether, once an emergency or exceptional situation has passed, the equilibrium between the standard regulatory process, oversight and use of the RQPs would be restored to pre-emergency levels of legitimacy, or whether we would gradually lose the essence of democracy.

[28] Alemanno, supra, note 4; OECD, "Regulatory Quality and COVID-19: The Use of Regulatory Management Tools in a Time of Crisis" (2020).

[29] D Bohle et al, "Riding the Covid Waves: Authoritarian Socio-economic Responses of East Central Europe's Anti-liberal Governments" (2022) 38 East European Politics 662.

[30] Alemanno, supra, note 4; Rubin et al, supra, note 3.

[31] N Bolleyer and O Salát, "Parliaments in Times of Crisis: COVID-19, Populism and Executive Dominance" (2021) 44 West European Politics 1103; Bohle et al, supra, note 29.

[32] Bohle et al, supra, note 29.

[33] K Jonski and W Rogowski, "Evidence-Based Policymaking during the COVID-19 Crisis: Regulatory Impact Assessments and the Polish COVID-19 Restrictions" (2023) 14(1) European Journal of Risk Regulation 65–77; G Hajnal, I Jeziorska and É Kovács, "Understanding drivers of illiberal entrenchment at critical junctures: institutional responses to COVID-19 in Hungary and Poland" (2021) 87(3) International Review of Administrative Sciences 612.

[34] E Griglio, "Parliamentary Oversight under the Covid-19 Emergency: Striving against Executive Dominance" (2020) 8 The Theory and Practice of Legislation 49.

[35] Alemanno, supra, note 4; Cormacain, supra, note 4.

[36] OECD, supra, note 28.

IV. Context of the case study: emergency legislation in Slovakia

Responses to the COVID-19 pandemic were influenced by domestic decision-making rather than by following EU trends. Slovakia was the first country to conduct "population-wide antigen testing" on 31 October 2020.[37] The procedural legitimacy of its response in domestic decision-making had two facets: (1) independent scientific advice via the Central Crisis Committee for the Prime Minister,[38] which was responsible for coordinating crisis management and combatting the health and economic effects of the pandemic; and (2) the pre-pandemic, well-established law-making process of issuing draft legislation, including regulatory impact assessments (RIAs), inter-ministerial review processes and stakeholder consultations within the "Better Regulation" scheme. In this paper, we focus on the latter facet.

On 16 March 2020, the Slovak government invoked a state of emergency according to the constitutional Act (No. 227/2002), which enhances the executive's ability to act quickly and decisively in a crisis. The Act creates "legislative conditions for guaranteeing state security"[39] during unspecified emergencies by authorising the Slovak government to utilise several mechanisms that supplement standard law-making. The emergency creates room for expedited procedures, namely the fast-track legislative procedure (FTL) and the fast-track consultation procedure (FTC). In both types of fast-tracking of legislation, the government is required to provide a statement of justification outlining the reasons for the fast-tracking procedure (as stated by the Constitution). Nevertheless, while most of the emergency legislation relates to the emergencies recognised in the Constitution, the laws become permanent and not "socially distant"[40] pieces of legislation (ie they do not contain any sunset clauses or time or issue differentiations).

The first category of emergency legislation operates via the FTL, which is an expedited procedure in both executive and legislative parts of law-making. To achieve this, the parliament has to approve this fast-tracking. This gives the parliament a de jure and de facto power of oversight, although there is still a danger of the government operating unchecked. At the executive level, the expedited draft legislation entirely skips consultation with internal and external stakeholders, including public participation. Moreover, if fast-tracking is utilised, no legal document obliges the government to notify any oversight bodies (such as the Legislative Council of the Government or the RIA Committee), and thus such emergency legislation circumvents much of the thorough scrutiny we would expect to see in standard law-making. At the same time, fast-tracking lacks any accompanying evidence documents (eg impact assessments, evidence from stakeholder involvement) that would allow external control and informed decision-making. Similarly, at the parliamentary level, fast-tracking reduces the time allocated for discussion and thus for the amending power of parliamentary forces to potentially be exercised. In practice, this means that emergency legislation can be passed within three days, as often turned out to be the case.

The second category of emergency legislation operates via the FTC, which shortens the inter-ministerial review process, although the usual arrangements for participation occur during this process. This involves a proposing ministry limiting the time for debate on legislation for both internal and external stakeholders at the executive level of law-making, but all other RQPs are followed.

[37] The effectiveness of this nationwide testing is analysed in M Pavelka, "The Effectiveness of Population-Wide, Rapid Antigen Test-Based Screening in Reducing SARS-CoV-2 Infection Prevalence in Slovakia" (2021) 372(6542) Science 635–41.

[38] R Hudec, "Policy Advisory Systems in Times of Crisis: A Case Study of Slovak Advisory Committees during Covid-19" (2023) 16(1) NISPAcee Journal of Public Administration and Policy 58–80.

[39] Legislative Rules of the Government of the Slovak republic (2020) <https://www.vlada.gov.sk/data/files/7912_uplne-znenie-legpravvladysr-v-zneni-uzn-vlsr-z-15-jula-2020-c-466.pdf?csrt=5798801020757838 2>.

[40] Cormacain, supra, note 4.

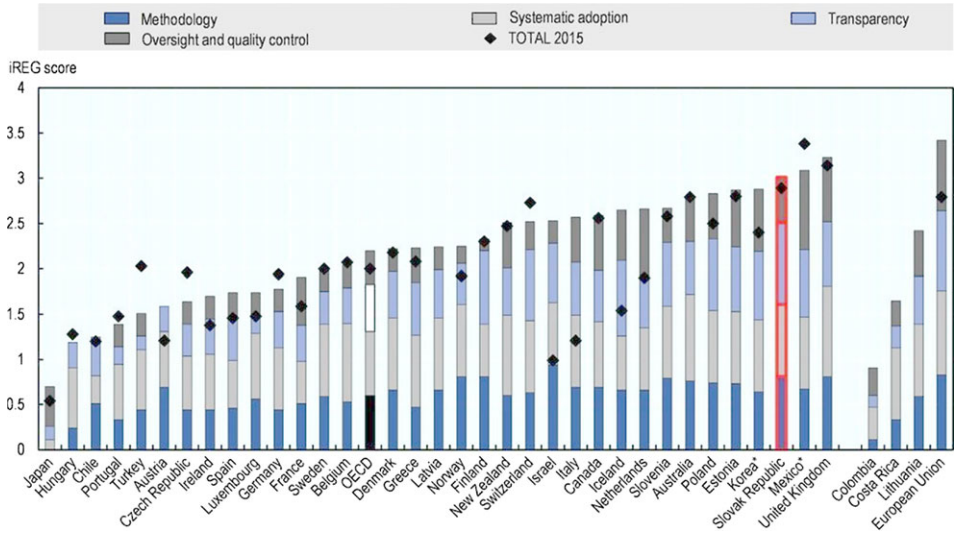

Figure 2. Composite indicators: Stakeholder Engagement in Developing Primary Laws, 2018 (see online for colour).
Source: OECD Indicators of Regulatory Policy and Governance Surveys (iREG; http://oe.cd/ireg).

V. Methodology

The purpose of this paper is to examine the law-making processes (ie variance in the use of emergency and standard law-making prior to, during and after the COVID-19 crisis) when responding to both COVID-19-related and non-COVID-19-related issues from the perspectives of external stakeholders. We aim to empirically assess the extent to which the RQPs of transparency and stakeholder participation in law-making have returned to pre-pandemic "business-as-usual" levels. To achieve this, we analyse the law-making processes (referred to as "throughput legitimacy") through which the COVID-19 and non-COVID-19 measures were adopted, with a focus on determining the extent to which post-pandemic law-making has returned to pre-crisis utilisation of the RQPs.

We take Slovakia as a case study as it introduced a broad set of important reforms in 2016 that strengthened regulatory quality,[41] such as the launching of an e-legislative platform (Slov-lex), aiming to increase opportunities for the general public to participate in standard law-making, and the introduction of the Action Plan for the Initiative for the Open Government to increase transparency. The Organisation for Economic Co-operation and Development (OECD) also recognised how these reforms and their implementation increased governance legitimacy: "Slovakia has, unlike most OECD countries, formalised procedures for early-stage consultations and engagement, especially with businesses."[42] Consequently, Slovakia ranked among the top countries in Indicators of Regulatory Policy and Governance (iREG; see Fig. 1) and in Stakeholder Engagement in Developing Primary Laws (see Fig. 2) immediately prior to the crisis. The OECD index is a composite indicator that measures key RQPs: stakeholder engagement, transparency, RIAs and methodology. Thus, we know the principles of better regulation that are frequently monitored, but we do not know the extent to which these principles and criteria were met prior to the COVID-19 crisis, during the crisis and immediately after the crisis. This research is

[41] For a detailed discussion of these reforms, see K Staroňová, "Regulatory Impact Assessment in Slovakia: Performance and Procedural Reform" (2016) 34 Impact Assessment and Project Appraisal 1; Sloboda et al, supra, note 6.

[42] OECD, supra, note 5.

process-orientated, aiming at measuring the quality of law-making processes as expressed by transparency (publishing of proposals) and participation (access to law-making).

1. Data

We created an original database of primary legislation by running a search in the Slovak e-legislative platforms Slov-lex and Open Government Portal. These platforms are the government's ultimate authorities for both internal and external stakeholders to formally access and participate in law-making at the executive level. We used these two data sources separately because each platform provides a different level of detail about law-making. Data from Open Government Portal were used to investigate transparency (publication) of draft proposals. Data collected from the e-legislation platform Slov-lex were used to analyse participation (access of external stakeholders).

We excluded proposals by members of the Parliament, secondary/delegated legislation and non-legislative documents, such as reports and notes. In sum, we analysed all primary legislation, consisting of legislative drafts, legislative amendments and governmental regulations discussed at Cabinet meetings from 1 January 2019 to 31 December 2021. We use the term "legislative draft" to refer to the unit of analysis that undergoes individual phases of law-making.

We have applied data-cleaning procedures to remove two kinds of duplicates. The first kind are legislative drafts with duplicate values (legislative IDs) due to their withdrawal from government session for any type of reason and their later resubmission with an identical ID (containing identical information on the law-making procedure they went through). We found thirty such cases and kept only those that were approved by the Cabinet. The second kind are emergency legislation drafts that utilise a specific type of expediated procedure – FTL – and need Parliamentary approval. These legislative drafts appear twice: the first time only with the title of the legislative draft and the request for approval in the Parliament and second time as a legislative draft with substance. We have matched these two items to collect information on regulatory procedure. After this matching process, we removed the "proposals" (FTL proposals to the Parliament) from our final database to avoid redundancies. We found 106 such cases. Our final database contains all of the legislative drafts passed by the government in the observed period, representing a total of 536 items. These were coded by the authors according to the codebook provided in Table 1.

The focus is on five time periods, against which emergency legislation is reviewed:

- Pre-crisis period that constitutes the baseline for observation: 1 January 2019–15 March 2020 (n = 151);
- Crisis – first COVID-19 wave (declared state of emergency): 16 March 2020–13 June 2020 (n = 69);
- Adjustment period (no state of emergency): 14 June 2020–29 September 2020 (n = 76);
- Crisis – second COVID-19 wave (declared state of emergency): 30 September 2020–14 May 2021 (n = 112);
- Early post-crisis: 15 May 2021–31 December 2021[43] (n = 128).

[43] From 25 November 2021 until 22 February 2022, a third state of emergency was declared. However, we treat this period as early post-crisis, as we align with Rosenthal et al's understanding of the crisis, which denotes a crisis period as one of perceived threat that requires urgent remedial action under conditions of high uncertainty: U Rosenthal, MT Charles and P 't Hart, "The world of crises and crisis management" in U Rosenthal, MT Charles and P 't Hart (eds), *Coping with Crises* (Springfield, IL, Charles C. Thomas 1989). One and a half years into the pandemic and after third round of vaccination, we posit that a shift of focus from crisis mobilisation to stabilisation occurred, leading to a new set of more enduring, more strategic goals that required societal deliberation.

Table 1. Codebook – a list of variables, their description and their values.

	Variables	Description	Values
Regulatory quality principles	Transparency: publication of information on each unit of analysis = draft proposal of primary legislation	Information and notification about (1) Each unit of analysis (draft proposal): what type of law-making it undergoes + documents; (2) "Notice-and-comment" (consultation) dates Source: Open Government Portal	• Information on both proposal *and* consultation dates exists = standard procedure (1) • Information on proposal exists - *and* consultation dates, the latter being shortened (FTL) = emergency procedure (2) - *no* information on consultation dates (without justification) = non-standard procedure (3) • *Neither* information on proposal *nor* consultation (without justification) exists = non-standard procedure (3)
	Participation	External stakeholder access for engagement and participation via official the e-government portal Slov-lex Source: Slov-lex portal	• Access to law-making (1) • No access to law-making (0)
Other variables	Time period	(Non-)crisis-related periods over three years (2019–2021)	• Pre-crisis period (baseline) (1) • Crisis – first COVID-19 wave (2) • Adjustment period (no state of emergency) (3) • Crisis – second COVID-19 wave (4) • Early post-crisis (5)
	COVID-19 response	Measures in response to COVID-19 Self-reported by Ministry	COVID-19 measure (1) Non-COVID-19 measure (0)
	Date of approval	Date on which the legislation draft was approved by the Cabinet	Days
	Law-making	Types of law-making applied in all phases that adhere to or violate formal guidelines	Standard (1) Emergency (FTL) (2) Emergency (FTC) (2) Non-standard (deviation from formal law-making) (3)

Source: the authors.
FTC = fast-track consultation procedure; FTL = fast-track legislative procedure.

Table 2. Law-making types.

Types of law-making	Regulatory quality principles	Description
Standard	Anchored in the Constitution and formal guidelines, following the regulatory quality principles	Standard law-making ensuring transparency in Slov-lex (notice-and-comment possibilities) and standard length of participation for external stakeholders
Emergency	Anchored in the Constitution – to be used in emergencies only (as stated in the formal rules), with some degree of regulatory quality principles being followed	Two types of emergency law-making are recognised: • Fast-track legislative procedure (absence of notice-and-comment for external stakeholders) • Fast-track consultation procedure (notice-and-comment for external stakeholders is expediated and shortened)
Non-standard	Deviations from standard types of law-making, not recognised by the Constitution and/or formal guidelines, in violation of the regulatory quality principles	Two types of non-standard law-making are identified: • Absence of "notice-and-comment" (consultation) without justification • Absence of any information on proposals

Source: the authors.

2. *Dimensions*

We focus our analysis of the RQPs on two dimensions, which correspond to external stakeholder expectations (as identified by Base[44]). The first dimension relates to the transparency of publications of proposals, and the second dimension relates to the possibility of stakeholders participating in law-making (by accessing the e-government platform Slov-lex). It is the e-government platform Slov-lex where draft laws are centrally published and made available for consultation.

The Constitution and relevant guidelines recognise and outline two formal law-making procedures: *standard* and *emergency* (see Table 2). Any deviation from these formal law-making procedures are labelled as "non-standard" and they violate the RQPs. One can expect a more transparent and deliberation-orientated law-making process with standard law-making, which follows the RQPs, as has been reported and acknowledged by several observers.[45] Emergency law-making, which allows for two types of fast-tracking, is less transparent as it expediates law-making, with only limited information being provided to the stakeholders and limited participation allowed, if any. In our research, however, we have also identified opportunistic behaviour depriving external stakeholders of information on the publication of proposals and consultations, in violation of formal rules and the RQPs. We labelled such items as following "non-standard" law-making. We identified two types of non-standard law-making: absence of the notice-and-comment possibility (consultation) and absence of any information on the proposal. Such non-standard law-making is particularly concerning as it is not formally regulated, and thus no scrutiny is applied, which means that it goes under the radar of oversight bodies and external stakeholders.

Our first expectation was that we would find emergency legislation to have been passed during the two waves of COVID-19 when states of emergency were declared, but this would

[44] Base, supra, note 17.
[45] OECD, supra, note 5.

return to insignificant pre-COVID-19 levels afterwards. We assumed that particularly the first wave, representing the initial shock of the emergence of this unknown, rapidly spreading virus, would require prompt responses in the form of fast-tracked emergency legislation. The amount of emergency legislation was expected then to decline with time to return to pre-crisis levels, with the dominance of standard rather than emergency legislation. Any deviations from formal types of law-making, either standard or emergency, should not be present at all.

The second expectation related to the type of response: namely, we expected emergency legislation to be strictly applied to COVID-19 measures only rather than standard legislation (to be "socially distant"[46]). That would be the ideal case. However, since the experience in other CEE countries showed misuse of emergency legislation, we expected such cases to occur in Slovakia as well. To measure this, we distinguished between COVID-19 response and non-COVID-19 response legislation. Here, we relied on self-reported purposes of the draft legislation proposal – COVID-19 – as stated in the formal justification report by the proposing Ministry. We did not fact-check the draft legislation for its contents, meaning that there might be additional cases of COVID-19 draft legislations that are in reality not related to the pandemic and that went unnoticed. Thus, we report the minimum amount of such cases.

The third expectation related to the adherence to the RQPs during and after the COVID-19 crisis. Standard law-making must be transparent and provide access for engagement and participation, otherwise stakeholder participation is not possible. We measured these two dimensions of transparency and participation of external stakeholders as publishing the "notice-and-comment" section in proposals and access to the e-government platform Slov-lex. Thus, the transparency variable has two main values (proposal publication and consultation time "notice-and-comment" information) and three categories (publication of both proposal and consultation time exists, publication of proposal only due to the emergency and no information on proposal publication nor consultation). The participation variable has two categories: either access to the e-government platform Slov-lex exists or it does not.

All statistical analyses and data-cleaning procedures were performed using the *R* program (R Studio) and the packages *gmodels*, *vcd* and *DescTools*. All figures are based on cross-tables (see Supplementary Material). Group comparisons were performed using:

- Chi-square tests (to determine whether there is a statistically significant difference between the expected frequencies and the observed frequencies);
- Cramér's V (to investigate the strength of association between categorical variables).

VI. Results: law-making processes and regulatory quality principles in times of crisis

Emergency legislation accelerates the law-making process and shortens the time between approval by the Cabinet and approval in Parliament. In 2020, the median number of days to approve legislation that underwent the emergency procedure ($n = 63$) in the Parliament was five days (mean = 10.1, standard deviation = 18.68). There were also cases in which draft legislation was approved by the Cabinet and discussed in Parliament in just one day, such as the amendments to the Law on Education and Law on Social Insurance. Additionally, some issues unrelated to the pandemic were also expediated, such as the

[46] Cormacain, supra, note 4.

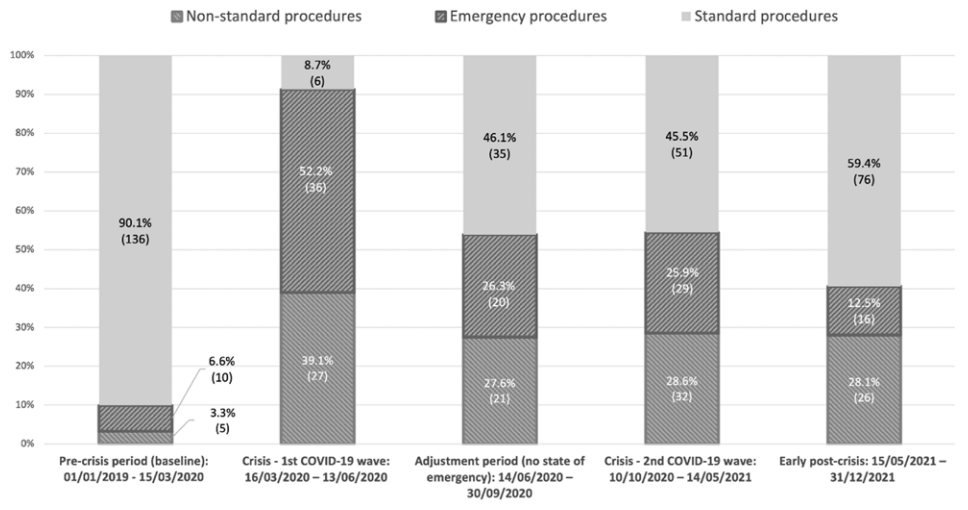

Figure 3. Publication (transparency) by different time periods.
Note: n = 536. A chi-square test of independence was performed to examine the relationship between transparency (standard, emergency, non-standard procedures) and COVID-19 waves/non-emergency periods. The relationship between these variables was significant ($\chi^2(8, n = 536) = 153.63$, $p < 0.0001$). To measure association between variables, we used Cramér's V statistic, and the association was moderate (Cramér's V = 0.38).
Source: the authors, data from Open Government Portal.

amendment to the Law on the Organisation of Government Activities and State Administration, which passed in fewer than two days. This "emergency" amendment brought about politicisation by allowing the firing of civil servants without any justification. In comparison, standard law-making takes at least three or more months before being sent for approval in Parliament, according to the RIA Committee.[47]

1. Transparency (publication of proposals)

Initially, we examined the publication of proposals across the standard and emergency types of law-making within different time periods (see Fig. 3). Standard law-making refers to the publication of proposals (and "notice-and-comment" time) according to the RQPs.

In the pre-crisis period, 90% of draft laws were enacted in line with the RQPs, with only 6% undergoing emergency procedures. However, during the first wave of the COVID-19 pandemic, there was a significant departure from this pattern, with 52% of draft laws being fast-tracked due to the emergency. While we anticipated emergency legislation during this period, given the urgent need for swift action in response to an unprecedented crisis (and thus modified or no times for consultation), we were surprised to find that 39% of draft laws deviated from formally established rules, either by lacking information on draft proposals or by not providing any information on consultation procedures. We referred to these cases as "non-standard procedures". In effect, this meant that external stakeholders were unaware of the vast majority (90%) of proposed draft laws during the first wave of the pandemic and were deprived of any opportunity for obtaining information and deliberation.

[47] RIA Committee, *Methodological Guide for Training Purposes* (Bratislava, Ministry of Economy of the Slovak Republic 2022).

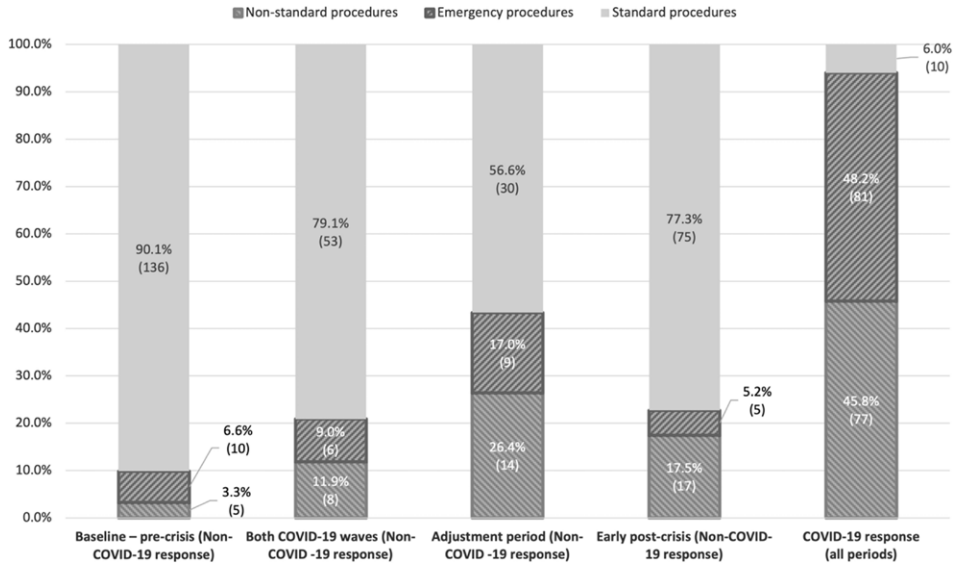

Figure 4. Publication (transparency) as a response to COVID-19 issues.
Note: n = 536, only legislative drafts from the government. A chi-square test of independence was performed to examine the relation between transparency (standard, emergency, non-standard procedures) and COVID-19 response legislation. The relationship between these variables was significant ($\chi^2(8, n = 536) = 286.41$, $p < 0.0001$). To measure the association between variables we used Cramér's V statistic, and the association was moderate (Cramér's V = 0.517).
Source: the authors, data from Open Government Portal.

The second wave of the COVID-19 pandemic showed improvement; evidently, the initial shock was over. Interestingly, the adjustment period and the second wave show very similar patterns: the standard procedure of providing information on both proposals and consultation increased to 45% and emergency legislation dropped to 26%, which is a significant decrease compared to the first wave. However, non-standard law-making (no information on proposals and consultation) still accounted for almost a third of all draft laws passed, indicating that the government did not fully return to more transparent law-making procedures.

In the post-crisis period, the government did not fully revert to the praised transparent standard law-making approach. Only 60% of draft laws were passed using standard procedures, while emergency legislation dropped to 12.5% – still twice as high as before the crisis, but considerably less than during the first two years of the pandemic. However, more than one in four (28.1%) draft laws still lacked any information on the type of law-making or did not provide any information on consultation without any justification, effectively not allowing access to them. In fact, the share of draft laws undergoing non-standard procedures remained at same level as in the second COVID-19 wave.

Figure 4 shows how the justification of responding to COVID-19 affects the publication of information about subsequent phases of law-making in relation to standard, emergency and non-standard procedures. In the pre-crisis period, 90% of legislation followed the standard procedure without any reference to the pandemic. During the pandemic, as was expected, 48% of draft laws referring to COVID-19 were fast-tracked, skipping entirely or shortening the debate regarding the legislation (depending on the type of fast-tracking procedure). In addition, 46% of draft laws referring to COVID-19 were processed through non-standard procedures, completely bypassing the RQPs. Only in 6% of COVID-19-related legislation followed standard law-making procedures. While emergency procedures are legitimate for COVID-19-related legislation, it is difficult to justify their use for cases that

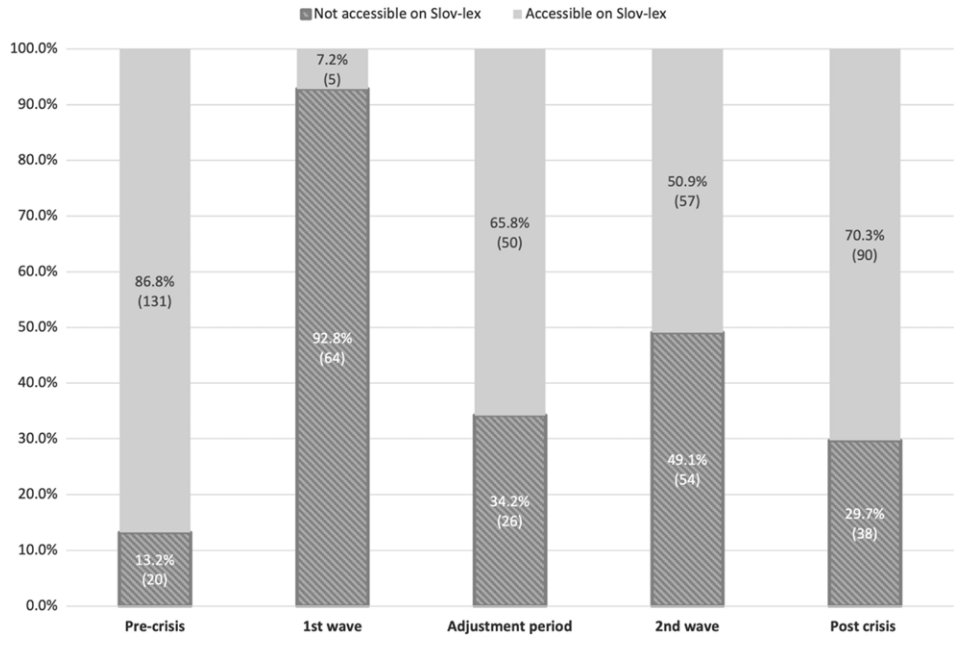

Figure 5. Participation (accessible on the governmental e-platform Slov-lex).
Note: n = 536. A chi-square test of independence was performed to examine the relationship between access to law-making on the e-platform Slov-lex and COVID-19 crisis/post-crisis periods. The relationship between these variables was significant ($\chi^2(4, n = 536) = 137.33$, $p < 0.0001$). To measure association between variables, we used Cramér's V statistic, and the association was moderate (Cramér's V = 0.506).
Source: the authors, data from the Slov-lex platform.

do not directly relate to the pandemic. During both waves of the pandemic, 8% of draft laws went through emergency legislation, and, in addition, one in eight draft laws (11.9%) went through non-standard procedures.

When we compare non-COVID-19 response legislation in the pre-crisis and post-crisis periods, we can see that regulatory quality did not fully return to "business as usual". Approximately one in six legislative drafts (17.5%) still went through non-standard procedures, which is more than five times the amount seen in the pre-crisis period. Non-standard procedures prevent oversight and often provide no information regarding the regulatory procedure, which significantly reduces citizen and expert engagement. Therefore, the legitimacy of the law-making in the post-crisis period can be called into question, as standard law-making procedures have only returned to 77.3% of cases.

2. *External stakeholder participation (access to law-making on the e-platform Slov-lex)*

Access to law-making and consultation was significantly reduced during the first wave of COVID-19 (see Fig. 5). In practice, this meant that more than 90% of all draft legislation was not accessible on the government's official e- platform, Slov-lex, denying external stakeholders the opportunity to engage in policymaking during this period. Although the situation improved during the second COVID-19 wave, approximately half (49.1%) of all legislative drafts remained inaccessible online. Furthermore, in the adjustment period, the level of accessibility of legislative drafts on Slov-lex did not return to pre-crisis levels, with one in three legislative drafts (34.2%) remaining inaccessible to external stakeholders.

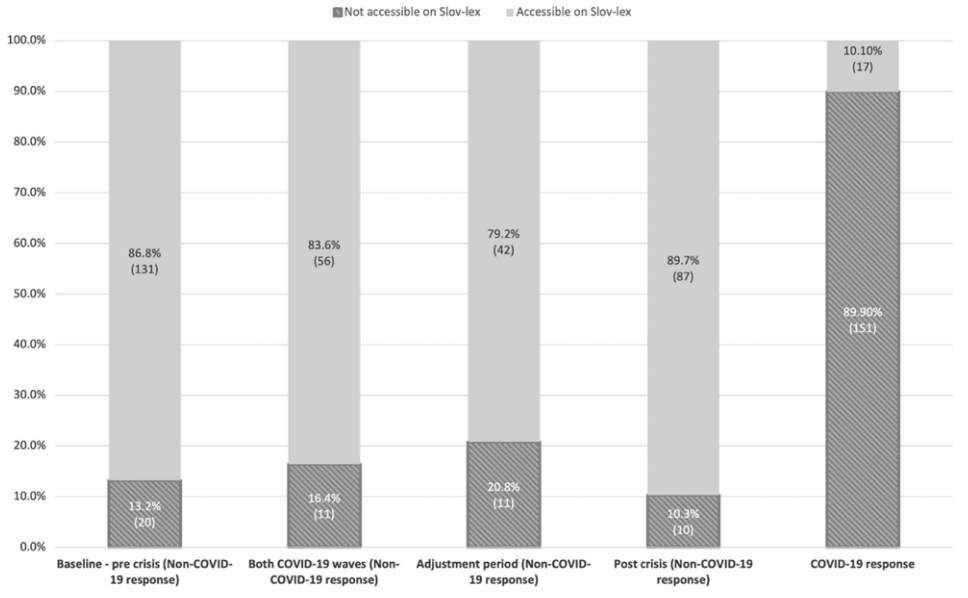

Figure 6. Participation for COVID-19 items (accessible on the governmental e-platform Slov-lex).
Note: n = 536, only legislative drafts from the government. A chi-square test of independence was performed to examine the relation between access to law-making and COVID-19-related legislation. The relationship between these variables was significant ($\chi^2(4, n = 536) = 283.07$, $p < 0.0001$). To measure the association between the variables we used Cramér's V statistic (both variables are nominal scale, Cramér's V = 0.731, which indicates a strong association).
Source: the authors, data from the Slov-lex platform.

Surprisingly, post-crisis access to law-making failed to return to the pre-crisis baseline, with more than one in four (29.7%) legislative drafts being unavailable on Slov-lex.

Figure 6 highlights a remarkable finding regarding legislative drafts addressing pandemic issues as COVID-19 responses (as self-reported pandemic measures). It shows that such drafts were mostly absent from the official government e-platform Slov-lex in all time periods (89.9%). This aligns with our previous findings that access to law-making was lowest during both COVID-19 waves, during which a substantial share of COVID-19 response legislation was passed. On the other hand, for non-COVID-19 response legislation, on average nine out of ten legislative drafts were accessible for external stakeholders on Slov-lex, a number that is similar to that in the pre-crisis period. However, in the adjustment period, we observe lower access to law-making for non-COVID-19 response legislation than during both COVID-19 waves. This suggests that the processes did not automatically return to normal during the adjustment period.

VII. Discussion and conclusion

Threats and crises, such as the COVID-19 pandemic, are often characterised by low predictability, uncertainty, urgency and potential high human costs in case of policy failures.[48] Such events force governments to make trade-offs between responding quickly to the emergency and following the standards of open and transparent governance, which can impact public trust and governance legitimacy. It is commonly assumed that once the initial shock of an event is over, the equilibrium between standard law-making and the use of the RQPs is restored to pre-pandemic levels of legitimacy. In this paper, we scrutinise

[48] Bolleyer and Salát, supra, note 31.

this assumption by empirically analysing emergency legislation before, during and after the pandemic in Slovakia, a country with high pre-crisis levels of following the RQPs.[49] In doing so, we conceptually distinguish between standard (fully following the RQPs), emergency (modified to accommodate crisis) and non-standard law-making (violating formal rules and the RQPs).

We argue that governance legitimacy, once achieved by adopting the RQPs, is not embedded in practice, and the use of transparency and deliberation can be easily bypassed not only during emergencies, but also for non-COVID-19-related items and in post-crisis times. In the light of this, our empirical analysis of the executive's law-making in Slovakia (a country ranking high in terms of pre-crisis levels of following the RQPs) has produced several important findings in the context of post-crisis governance legitimacy.

The results acknowledged the pre-eminence of the emergency legislation (fast-tracked) during the COVID-19 pandemic, particularly in the first wave, when it constituted approximately 52% of all draft legislation passed. This is consistent with the general consensus that the emergency legislation response was due to the shock of COVID-19, a pandemic that was not expected and required a swift global reaction. As expected, the emergency legislation reduced the space for stakeholders to be consulted and evidence to be considered, when arguably the interest in well-functioning and swift law-making might temporarily outweigh the interest in transparency.

This research identified two types of "misuse": the use of emergency law-making for non-COVID-19-related legislation and the opportunistic use of the crisis (and post-crisis) in order not to conduct consultations and not to publish proposals. This paper also reveals that non-COVID-19-related drafts were framed as issues of expediency twice as often than in the pre-crisis period and also in the post-crisis period. This is a conservative estimate, and the real number of cases in which politicians might have used the external crisis to further self-serving agendas without the checks and balances of law-making institutions might be higher, as we did not fact-check the contents of the legislative drafts self-reported as COVID-19 responses by ministries. Invoking the emergency for non-related issues and times damaged the legitimacy of the democratic institutions of law-making. Similarly, this paper focused exclusively on the executive level – legislative drafts proposed by the Cabinet. An analysis of legislative drafts by Members of Parliament (MPs) might reveal other relevant patterns in law-making, as a pre-crisis analysis of law-making participation highlighted a loophole of submitting executive drafts as MP proposals to avoid deliberation and scrutiny.[50] The case of Slovakia thus displays some features of opportunism and crisis misuse also found in other Central European countries' COVID-19 experiences,[51] which may lead to gradual democracy erosion.

An important finding is the use of what we called *non-standard procedures*, which are not anchored in any formal documents or guidelines. These not only violate the established RQPs by being non-transparent (no publication of proposals) and not providing information on consultation to external stakeholders, but also they do not offer any justification or allow any oversight or scrutiny. During both COVID-19 waves, one in three legislative drafts underwent such non-standard procedures, which were essentially non-existent in pre-pandemic times. Thus, the pandemic has disrupted *standard law-making* not only with *emergency* law-making, which is legitimate when coping with a health crisis, but

[49] OECD, supra, note 5.

[50] S Farkašová, "Občianska Participácia v Slovenskom Legislatívnom Procese" (2020) 8 Mladá veda 79.

[51] V Anghel and E Jones, "Riders on the Storm: The Politics of Disruption in European Member States during the COVID-19 Pandemic" (2022) 38 East European Politics 551; Bohle et al, supra, note 29; T Drinóczi and A Bień-Kacała, "COVID-19 in Hungary and Poland: Extraordinary Situation and Illiberal Constitutionalism" (2020) 8 The Theory and Practice of Legislation 171.

also with *non-standard* law-making, which violates the RQPs. Coupled with the lack or insufficiency of oversight mechanisms, the resulting situation provides ample opportunities for further increases in *informal lobbying*, which has challenged established democratic regulatory procedures even prior to the pandemic crisis.[52] As a result, the whole governance process becomes paralysed, providing space for non-transparent, behind-the-scenes negotiations of politicians/bureaucrats with selected stakeholders, leading to unequal access to participation[53] and favouring power asymmetries between stakeholders. More research on this is needed, but it seems that informal practices aiming at avoiding the RQPs provide nuance to the picture of overall governance legitimacy.

Such deviations from the RQPs of transparency and deliberation prevent the public from performing their watchdog function. In addition, the practices could point to possible malfunctions in the oversight bodies as they did not formally react to such abuse of law-making procedures. Thus, the results clearly point towards a need for institutional strengthening of their oversight function. The abuse of this process has also been pointed out by external thinktanks and mainstream media outlets. Recently, the Constitutional Court came to a decision that the conditions for emergency fast-tracking are not met when the legislation draft introduces systematic and long-term changes requiring substantial amounts of financial resources in the future rather than one-time and targeted assistance as a response to an extraordinary event or circumstance. The Constitutional Court decision clearly indicates that emergency legislation was also used for non-COVID-19-related issues after the end of the pandemic crisis to avoid having to follow the standard RQPs.

In the transition from a crisis to a post-crisis context, the deployment of both emergency and non-standard procedures has become seemingly permanent without proper justification having been provided. In fact, one in three legislation drafts now follows non-standard transparency procedures in this post-crisis period. This reinforces the notion that the RQPs have become less important for the executive than in the pre-crisis period, and emergency and non-standard law-making have become institutionalised as the new norms. The two described situations (emergency procedures for non-COVID-19-related measures and non-standard procedures) that persist even in this post-crisis period together with decreased roles for oversight bodies in transparency have strengthened pre-existing deficiencies in law-making.

The findings suggest that, overall, the crisis and emergency legislation crowded out the law-making process regarding RQPs such as transparency and deliberations even in post-pandemic times. If transparency and participation help with building throughput legitimacy,[54] then their bypassing prevents the government from being perceived by external stakeholders as responsive and legitimate.

While our findings help to chart post-crisis developments, the paper stops short of providing explanations for these developments. Emergency legislation and the crisis might have created an environment that further legitimises institutional possibilities for bypassing the RQPs. The question that arises from this discussion is whether the above developments could weaken the "appeal" of the previously praised use of the RQPs in Slovakia and transparency practices in the long run, and whether they will provide further ammunition for decreasing governance legitimacy, as has been observed in illiberal democracies.[55] Therefore, interpreting the use of emergency legislation in times of crisis merely as a coping mechanism for tackling wicked problems is, at best, a failure to

[52] M Klíma, *Informal Politics in Post-Communist Europe: Political Parties, Clientelism and State Capture* (London, Routledge 2019); Sloboda et al, supra, note 6.

[53] Røed and Wøien Hansen, supra, note 14.

[54] Schmidt and Wood, supra, note 8.

[55] Bohle et al, supra, note 29; Drinóczi and Bień-Kacała, supra, note 51; Jonski and Rogowski, supra, note 33; Hajnal and others, supra, note 33.

understand how in some countries – Slovakia included – state officials can seize windows of opportunity to institutionalise non-transparency, which could potentially lead to "democratic backsliding". From a governance perspective, these tendencies are problematic; they challenge not only transparency and deliberation, but also democratic legitimacy.[56] The investigation of these aspects is a challenge for further research.

However, there is also an alternative explanation for these observations. the recent rise of populist political parties and the decline in electoral gains of mainstream parties[57] also apply to Slovakia, as the start of the pandemic coincided with elections and a change in the government in early 2020. Out of the four political parties that formed the new coalition Cabinet during the crisis, only one non-dominant party had experience in governance and had appointed a minister before. Most of the appointed ministers were political newcomers and none of them had previous experience in executive politics. Therefore, lack of experience, knowledge and appreciation of the RQPs and law-making procedures could have had an impact on law-making during this period.

By documenting the abuse of emergency law-making and use of non-standard law-making during the COVID-19 pandemic and its persistence in the post-crisis period in the case of Slovakia, we hope to have contributed to the debate on the resilience of the RQPs and regimes to withstand the shocks of crisis law-making. This discussion is very much grounded in the Slovak case that displays some features found in other, mostly illiberal EU countries' COVID-19 experiences, in which crisis developments weakened the governance legitimacy of law-making and consequently overall trust in governments.[58] It has been pointed out that low levels of trust in political institutions are to be blamed for the rise of "anti-system" parties and movements, including populist leaders.[59]

Supplementary material. To view supplementary material for this article, please visit https://doi.org/10.1017/err.2023.69.

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Competing interests. The authors declare none.

[56] A Boin, M Lodge and M Luesink, "Learning from the COVID-19 Crisis: An Initial Analysis of National Responses" (2020) 3 Policy Design and Practice 189.

[57] JE Grindheim, "Why Right-Leaning Populism Has Grown in the Most Advanced Liberal Democracies of Europe" (2019) 90 The Political Quarterly 757.

[58] Anghel and Jones, supra, note 51; Bohle et al, supra, note 29; Drinóczi and Bień-Kacała, supra, note 51.

[59] S Dodsworth and N Cheeseman, *Political Trust: The Glue That Keeps Democracies Together* (London, Westminster Foundation for Democracy 2023).

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