Preparing for the roll-back of Covid-19 emergency legislation: What needs to be done?

The Covid-19 pandemic has led many countries across the world to pass emergency legislation, but is there a danger that this legislation could lead to a permanent loss of civil liberties? **Franklin De Vrieze** *explains what has to be done to prepare for the roll-back of these measures.*

In response to the coronavirus (Covid-19) pandemic, over 100 countries have passed emergency laws or declared states of emergency. By curtailing civil liberties on a massive scale, there is a serious risk of creating an unintentional wave of authoritarianism.

While confronting the coronavirus crisis will take extreme measures, protecting democratic space and civil liberties requires extreme caution. A key risk today is that emergency measures will not be repealed in good time, nor implemented in a proportionate way. This could lead to a permanent shift in power towards the executive. Emergency powers could also be used to suppress human rights and restrict civic space and press freedom. There could also be shifts in power away from devolved authorities towards the centre.

But there are also opportunities to strengthen accountability and transparency. The likelihood that the restrictions on social contact will be prolonged is a powerful incentive to parliaments (and other institutions) to innovate and strengthen oversight. Since most emergency legislation is already passed, parliaments can focus on ensuring accountability when it comes to the scope, budgetary consequences, timespan, implementation methods, and unintended consequences of the legislation. These are the first steps towards the roll-back of emergency legislation.

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Parliaments have the power to oversee the budgetary measures adopted to mitigate the effects of the pandemic. They also have an urgent duty to evaluate increasing public debt and the increased role of the state, leading to state ownership of companies and thus greater centralisation of executive power.

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What is more, it is important that parliamentarians push for time-bound provisions through review clauses or 'sunset' clauses which stipulate how long emergency powers last, when they must be reviewed, and whether they can be renewed. For instance, the Norwegian Parliament has adopted an emergency act which is valid for one month and the government has now asked for an extension with one more month. The federal parliament of Canada adopted emergency legislation which remains valid until the end of September; and the UK's Covid-19 act includes the review clause 98, which foresees six-monthly reporting to and review of the law by parliament. On the other hand, for instance in Hungary, emergency legislation has been adopted without any time limit nor any oversight mechanisms.

In the absence of robust scrutiny during the passage of the emergency legislation, it is even more important to identify any unintended effects and to suggest changes to ensure that harmful provisions are taken off the books. That is why post-legislative scrutiny (PLS) of the emergency legislation which assess its implementation and impact is so important. Many of the emergency powers are enacted through secondary legislation or ministerial decrees. Through PLS, MPs can check if the use of the secondary legislation fits the aims set out under emergency acts.

Through parliamentary PLS inquiries, MPs can insert clauses in emergency legislation that mandate the government to report to parliament on its implementation within a set time period. However, parliaments should not limit their PLS to health and economic emergencies. They must also consider the democratic functioning of society and civil liberties.

For example, in many countries, contact-tracing applications on mobile devices are being tested in order to warn people if they were close to an infectious person. Can such new applications of technology be launched while respecting privacy rights? What will be the long-lasting effects of the growth of surveillance by tracking citizens' movement through mobile-phone data?

The European Parliament has now stipulated that any use of such apps is not obligatory and that the generated data are not to be stored in centralised databases, which are prone to potential risk of abuse and loss of trust. The Parliament also demands that all storage of data be decentralised, that there is full transparency of the (non-EU) commercial interests of developers of these applications, and that clear projections of how the use of contact tracing apps will lead to a significantly lower number of infected people are demonstrated. Interestingly, the European Parliament stresses that authorities must fully comply with data protection and privacy legislation. This is a good example of making sure that emergency legislation won't compromise the right to privacy or lead to unjustified restrictions on other human rights.

As national parliaments attempt to deepen oversight of the implementation and impact of emergency legislation and prepare for future PLS, they can seek to establish cooperation with information and privacy commissions, ombudspersons, human rights commissions, or other independent oversight institutions on how best to protect civil liberties and human rights in times of Covid-19 and beyond. The time to prepare for the roll-back of the emergency powers is now.

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Note: This article gives the views of the author, not the position of EUROPP – European Politics and Policy or the London School of Economics.

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