

POWER AND LEGITIMACY DURING EMERGENCY POLITICS

A DEMOCRATIC AUDIT OF RESPONSES TO THE COVID-19 CRISIS

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REGROUP

REBUILDING GOVERNANCE AND
RESILIENCE OUT OF THE PANDEMIC



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Culminating more than a decade of crisis in Europe, the Covid-19 pandemic has opened an important window of opportunity for institutional and policy change, not only at the “reactive” level of emergency responses, but also to tackle more broadly the many socio-political challenges caused or exacerbated by Covid-19. Building on this premise, the Horizon Europe project REGROUP (*Rebuilding governance and resilience out of the pandemic*) aims to: 1) provide the European Union with a body of actionable advice on how to rebuild post-pandemic governance and public policies in an effective and democratic way; anchored to 2) a map of the socio-political dynamics and consequences of Covid-19; and 3) an empirically-informed normative evaluation of the pandemic.



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Abstract

EU and member-state responses to the Covid-19 pandemic involved emergency politics in a number of domains, including a) lockdowns, border closures and movement restrictions; b) steps towards Health Union; and c) the suspension of the fiscal rules and creation of the Next Generation EU and the Resilience and Recovery Fund. These raised major theoretical questions about legitimacy and the exercise of executive power during emergencies. This paper answers such questions by first considering democratic legitimacy in ordinary times in terms of the quality of governing activities related to output performance, input politics, and throughput procedures, as operationalized in terms of the ‘democratic audit.’ It next discusses the processes and problems of democratic legitimation in the EU with regard to leaders’ discourses of policy coordination and political communication. It then explores the complications for legitimacy and legitimation from emergency politics, and refines the democratic audit to apply to emergency politics. It follows by exploring how the exercise of executive power—coercive, institutional, and ideational/discursive—affects legitimacy and legitimation in emergency politics. Finally, the paper uses these theoretical criteria in a democratic audit of the empirical cases of bordering, health, and fiscal policy through process tracing and discourse analysis. It finds that governing authorities for the most part successfully discursively legitimated their actions on the grounds that positive output performance made up for reductions in political input and procedural throughput.

Keywords: Legitimacy, democratic audit, emergency politics, Covid-19, fiscal rules, discursive institutionalism

Introduction

During the Covid-19 pandemic in Europe, EU member-states and supranational actors took unprecedented measures to respond to the crisis. Member-state governments closed borders from one day to the next to stop the spread of the disease, mostly without alerting neighboring countries or the EU ahead of time, while initially even denying neighbors life-saving medical equipment. Moreover, they for the most part imposed draconian lockdown measures on national populations to save lives, using emergency powers voted by national parliaments which, because they then disbanded to wait out the crisis, generally exercised limited parliamentary oversight. In contrast to the nationally focused crisis responses on borders and lockdowns, responses on combatting the pandemic-related health issues came at the EU level. The member-states very quickly mandated the EU Commission to finance the purchase and distribution of vaccines for the public, despite its original lack of competence in health policy, and they ultimately approved a major increase in EU responsibility in the area. Finally, while the member-states immediately broke the fiscal rules of the Stability and Growth Pact (SGP) of the European Monetary Union (EMU) in order to keep national economies afloat, they hesitated for a time with regard to common financing. After a few months, however, member-states in the Council agreed to an unprecedented abrogation of the ‘no debt’ rule of the Treaties with a massive financing package called the Resilience and Recovery Fund (RRF) as part of the Next Generation EU initiative (NGEU). In the interim, the ECB ratcheted up its already expansive monetary policy to support the Eurozone while the EU Commission both followed the member-states’ lead when it suspended the rules of the SGP and went beyond it when it proposed innovative solutions in the health and fiscal domains, which member-state leaders in the Council and the European Parliament (EP) supported and approved.

These responses raise a number of questions involving legitimacy during the emergency politics of the Covid-19 crisis. They include how to define it, what criteria to use in order to assess it, and how national and EU actors legitimated their actions, in particular regarding the use of power outside the confines of normal democratic practices.

To begin, we distinguish between two kinds of legitimacy: 1) at the most basic level, legitimacy is the authority given to a governing body by public consent; 2) at a more immediate level, legitimacy depends on a governing body’s governance activities. Our focus is on this second, more dynamic level of legitimacy. With regard to emergency politics, while it can be assumed that at the outset both national governments and the EU had the legitimate authority to deploy emergency powers, the legitimacy of their activities in response to the crisis needs to be assessed. Any such assessment—whether in ordinary or extraordinary times—depends largely on three legitimizing mechanisms, which can be briefly summarized as the effectiveness of policy performance (output

legitimacy), the quality of governance procedures (throughput legitimacy), and the political responsiveness to citizens (input legitimacy) (Schmidt 2013 2020a). These can be further operationalized by reference to a ‘democratic audit’ which assesses legitimacy according to certain criteria and indicators as based on citizens’ perceptions (Beetham et al. 2008; Fossum and Lord 2023). Such criteria refer to the normative standards and measures by which citizens ordinarily judge the outcomes, processes, and responsiveness of their governing bodies, grounded in norms such as promoting solidarity and social cohesion, respecting citizens’ rights and equal treatment, ensuring rule of law and accountability. In emergency times, added considerations borrowed from the Council and the UN include input-related indicators on governing authorities’ openness to citizen debate and legislative deliberation throughout the emergency; throughput-related indicators on transparency to citizens, accountability via legislative oversight, and adherence to rule of law during the emergency, with return to normal as soon as possible; and output-related indicators on doing only what is proportionate in terms of restrictions of rights without discrimination while ensuring the public good (Fossum and Lord 2023). A further proportionality principle, from international relations theory, posits that good output performance may make up for a temporary lack of citizen and legislative input and procedural throughput accountability or transparency, so long as they are limited to the emergency period (Kreuder-Sonnen 2019).

But who, then, decides on what is legitimate emergency action using such criteria? In emergency politics, where normal democratic processes may be suspended and expectations shift in the face of an existential crisis, much depends on the legitimation of emergency actions by those in charge. Legitimation is naturally always necessary in democracies. It requires not only citizen engagement in democratic practices but also governing bodies’ provision of information—or better, their communication—about their governing activities in terms of output performance, throughput procedures, and input responsiveness. But in emergency times, such legitimation by executive actors is even more essential, given the suspension of normal democratic practices. Although executive actors have the coercive power to impose their decisions and the institutional power to carry them out, they need the ideational/discursive power to persuade national publics and/or other EU policy actors that their actions are legitimate, else risk contestation or even rejection of their actions as illegitimate. This is why executives’ coordinative discourses of policy construction and communicative discourses of legitimation are central to ensuring legitimacy in all cases, but in particular in the midst of unprecedented emergency politics—as during the Covid-19 pandemic. Complicating matters, moreover, is the presence of the EU, split between national and supranational levels, such that where national executives had coercive and institutional power in addition to ideational/discursive power, the EU initially at least had mainly the latter because it lacked coercive power and had limited institutional power.

This article thus has a twofold purpose, both theoretical and empirical. First it theorizes legitimacy in situations of emergency politics by considering in turn the nature of democratic legitimacy, the processes of democratic legitimation at national and EU levels, the complications for legitimacy and legitimation from emergency politics, and the way power—coercive, institutional, ideational/discursive—affects legitimacy and legitimation in emergency politics. The article then applies such theorization to the Covid-19 crisis in three critical instances: a) initial emergency measures, including lockdowns, border closures and movement restrictions; b) steps towards Health Union, including the decision to give the European Commission responsibility for buying and distributing vaccines; and c) the suspension of the fiscal rules and creation of the NGEU, and in particular the RRF.

With regard to its substantive theoretical approach, the article uses the scholarly literature focused on legitimacy both in terms of the legitimizing mechanisms of output, throughput, and input and the indicators and measures of the democratic audit to develop criteria to use to analyze the three cases. As for its methodological theory, it uses discursive institutionalism to consider the ideational content and discursive processes through which executives wield persuasive ideational power in discourses of policy construction and political communication to legitimate the coercive and institutional powers through which they impose their emergency policies (Schmidt 2008, 2020b, 2022; Carstensen and Schmidt 2016, 2018a, 2018b).

For the empirical investigation of the three cases, the article uses qualitative methods of process-tracing to elucidate crisis responses in terms of ‘what happened’ and discourse analysis to investigate executives’ persuasive powers of legitimation in terms of ‘who said what to whom.’ In so doing, it considers national and EU actors’ decisions and pronouncements in speeches and press conferences to illustrate the ways in which and the extent to which they persuasively legitimized their policy proposals and actions during the pandemic. Note, however, that because of limitations of space, the cases examined within each of the instances of emergency politics are meant to illustrate major concerns related to power, legitimacy, and legitimation during the Covid-19 crisis, but in no way cover the full range of cases or potential legitimacy issues (for this, see e.g., <https://regroup-horizon.eu/publications/>).

The article contributes both to the burgeoning theoretical literature on legitimacy in emergency politics and the expanding empirical literature on the Covid-19 crisis. With regard to the theorization of legitimacy, the article not only integrates EU Studies theorizations of the legitimizing mechanisms of input, throughput, and output (Scharpf 1999; Schmidt 2013, 2020a; Schmidt and Wood 2019) with the political theory of the democratic audit (Beetham 2005; Beetham et al. 2008; Lord 2004; Fossum and Lord 2023). It also then uses these to add to theorizations of rhetorical power and legitimacy in supranational organizations under conditions of emergency politics (Kreuder-Sonnen

2019; White 2019; Kreuder-Sonnen and White 2022; Schmidt 2022). As for the Covid-19 pandemic, the article provides an added layer of analysis to empirical investigations of executive actions by exploring the persuasive power of executive actors' discursive legitimation strategies. Overall, the paper finds that, with a few exceptions, governing authorities at national and EU level did provide legitimating discourses for actions in which they balanced out reductions in political input and procedural throughput legitimacy with beneficial outcomes related to output performance, and in so doing met most of the criteria expected by a democratic audit of emergency politics.

Democratic Legitimacy

Democratic legitimacy can be understood in two ways: at a foundational level, legitimacy in democratic polities depends on citizens' basic consent to and trust in a governing body's authority, such that they accept its decisions, like them or not (Weber 1978). Such consent also assumes that the polity's practices are grounded in certain democratic principles such as political equality, rule of law, and public acceptance, which are institutionalized at the level of a national polity or even a supranational one such as the EU (e.g., Beetham 2005; Schmidt 2006). Legitimacy in the second sense is established by the governing activities engaged in by governing bodies. These governing activities can be understood in terms of three legitimizing mechanisms: output (performance) legitimacy, based on whether policies are effective and therefore produce good outcomes; throughput (procedural) legitimacy, involving policymakers' accountability, transparency, inclusiveness and openness;¹ and input (political) legitimacy, related to policymakers' responsiveness to citizens with regard to their representation and participation (Schmidt 2013, 2020; Schmidt and Wood 2019). While the first sense of legitimacy is generally passive, with governing authority assumed a given for governing bodies in stable democracies, so long as they act in accordance not only with relevant rules but with the beliefs, values and normative standards that people hold (Beetham 1991, p. 11; Sternberg 2015), the second sense of legitimacy is more dynamic. A governing body's governing activities may serve to increase or decrease legitimacy not only in the second sense involving performance, procedures, and politics but even in the first sense of governing authority (Schmidt 2020).

These legitimizing mechanisms can be usefully operationalized and further refined by considering a range of criteria identified as part of a 'democratic audit' (Beetham et al. 2008; Fossum and Lord 2023). A democratic audit applies reasoned and attainable normative standards encompassing such measures as participation, authorization, representation, accountability, transparency, responsiveness, and solidarity to governing

1. A fifth criterion of throughput legitimacy is 'efficacy' of the procedures. But this is a technical standard rather than a normative one, and therefore not of the essence here.

activities using a number of indicators such as voter participation, support, satisfaction, and trust in democracy to ensure coherence and comprehensiveness to any assessment (Beetham et al 2008: 22—cited in Fossum and Lord 2023). Importantly, however, as Fossum and Lord (2023) suggest, the democratic audit is not just about standards to be applied from the outside, as a “mechanical assessment of a polity by means of a set of indicators each of which obtains a specific score” but rather an “exercise in democracy” in which citizens are expected to participate in the evaluation (Fossum and Lord 2023, p. 24). Any assessment of democratic legitimacy in terms of the democratic audit thus requires an empirical component, to determine how and whether citizens find their governing authorities’ activities legitimate based not only on their conformity to the polity’s normative principles but also on their adherence to its democratic practices, understood in terms of the mechanisms of input politics, throughput procedures, and output performance.

This takes on particular importance in the context of the EU. The EU can be said to have developed increasing governing authority over time in policy area after policy area, as citizens (tacitly) assented to the EU’s growing responsibility with regard to its governing activities, as agreed for example by their national governments as member-states in the Council, by their national courts with regard to EU Court of Justice decisions (including supremacy), and by their national legislatures as they converted EU directives into national laws (Schmidt 2006, 2020a). The normative grounds for such EU expansion were largely about solidarity and social cohesion generated through transnational cooperation in the interest of collective action producing collective public goods (Reinl and Braun 2022; Salviati 2023; Ferrera 2024). But whatever the benefits, the very presence of the EU puts pressure on national democracy (Schmidt 2006) and raises questions about the EU’s own legitimacy deficit (Follesdal 2006).

Legitimacy in the EU and its member-states is complicated by the EU’s ‘split-level’ nature, where political (input) legitimacy is largely situated at the national level, where citizens vote directly for their political representatives and leaders, while output (performance) legitimacy and throughput (procedural) legitimacy are situated at the EU level (Schmidt 2013, 2020a). Such fragmentation weakens the bond between (input) representation and (throughput) accountability (Salvati 2022), while placing greater pressure on EU level (output) performance—with such performance to be evaluated by the EU’s own claims to ensuring solidarity (Salviati 2023). This is not to say that citizens don’t have an indirect but strong EU level political input through their member-state leaders in the Council (as part of the ‘Union system,’ in particular in treaty negotiations) or a direct (but weaker) political input through their elected members of the EP (as part of the ‘Community system’ of co-decision). Rather, it is that the supranational level is relatively remote from citizens (in both union and community systems), and that ‘policy without politics’ long characterized EU governance at the same time that

the increasing shift in the locus of decision-making from the national to the EU level meant that it was more and more subject to ‘politics without policy’ in EU-related areas (Schmidt 2006).

While such ‘politics without policy’ may not have been very problematic in early years characterized by the ‘permissive consensus’ on European integration, in recent years it has led to the politicization of EU decision-making (de Wilde and Zürn 2012; Hooghe and Marks 2009, 2019; Hutter et al. 2016; Salviati 2023). As crises have multiplied since the 2010s, threatening both legitimacy and ‘polity maintenance’ (Ferrera et al. 2021), politicization has translated into the rise of populist anti-system challenger parties (Hopkin 2020; Mudde 2017; Schmidt 2020a, Ch. 10) and increasing ‘politics *against* policy’ at the national level, accompanied by growing ‘policy *with* politics’ at the EU level (Schmidt 2020a). In other words, politicization ‘at the bottom’ through the polarization of domestic politics has had a ‘bottom up’ effect on decision-making in the Council, which has in turn led to more politicization ‘at the top’ between political actors in the Council and technical actors in EU institutions like the Commission and the ECB (Schmidt 2019, 2020a). Although such politicization has often been seen as a ‘bad thing’ for output legitimacy, since increasing contestation complicates EU decision-making in ways that can make it harder to reach agreements, it could alternatively be seen as a ‘good thing’ for input and throughput legitimacy. It indicates increasing citizen involvement in debate and deliberation along with contestation about EU policies and polity, which in turn demand more accountability and transparency as well as responsiveness from national and EU governing authorities (Schmidt 2018, 2019). But this takes us from questions of legitimacy to questions of legitimation.

Democratic Legitimation

Beyond such definitional issues regarding legitimacy is the question: Who decides what is legitimate in terms of governing activities, whether with regard to output performance, throughput procedures, or political input? Here, the democratic audit answers that citizens are the ones, in particular because democracy itself is a social construction that depends on citizens’ own interpretations of events, to be debated and deliberated as much as contested (Fossum and Lord 2023). But how do citizens decide about legitimacy? This involves a wide range of interactive processes, including not only citizens’ engagement in the political process via participation (e.g., through voting, interest group activity, or grass-roots mobilization) and representation (by legislative representatives) but also the provision of information and of convincing arguments about governance policies and practices. One of the most important sources of such information and argument is political actors’ communicative discourse to the general public. This includes their pronouncements through speeches and press conferences as

reported on and ‘mediated’ by the traditional and social media, opinionmakers, and informed publics more generally in dialogue with and among the citizens (Schmidt 2006, 2008). Discussion, deliberation, and contestation in the public sphere are all essential to discourses and practices of democratic legitimation (Habermas 1996). The public sphere has two readily identifiable spaces however. In addition to the communicative discourse with the public in the political sphere is the coordinative discourse of policy construction in the policy sphere. This latter sphere is the space in which policy actors develop the cognitive justifications along with the normative legitimation of the policies that they then translate into language accessible to the general public in their communicative discourse in the political sphere (Schmidt 2006, 2008).

In short, any actions, in order to be deemed legitimate, require legitimation. This means that what is perceived as legitimate depends not just on some formal standards of legitimacy related to institutional representation and political participation but equally upon how what is done is legitimized, meaning communicated as legitimate. This, then, is equally about the construction of legitimacy through legitimizing discourses that serve to convince citizens and policymakers alike that what is being (considered to be) done is legitimate because it, for example, provides beneficial outcomes for all (output), employs accountable, transparent, open and inclusive procedures (throughput), and is responsive to citizens’ needs and demands (input). Such legitimation regularly occurs at the national level in many different ways through political leaders’ communicative discourses to the public which are then discussed, deliberated, and/or contested, including by candidates and parties in the electoral contests which outline their political visions about what is to be done and by sitting governments detailing what they are doing or have done.

But what about the EU? Here, legitimation occurs first of all in the coordinative discourses of policy construction among and between EU political authorities (member-states in the Council, representatives in the European Parliament) and EU technical authorities (the Commission, the ECB, other regulatory agencies) along with informed social actors (e.g., networks of experts, lobbies, and public interest groups). As for the communicative discourse, this is often as much if not more the domain of member-state political authorities as they speak with their national publics than of EU level authorities, who find it much more difficult to be heard. For a very long time, the problem was that national leaders found it easy to blame the EU for unpopular policies and take the credit for the popular ones, which undermined not only considerations of EU governing activities but also the EU’s very authority. Such blame-shifting and credit-taking increasingly backfired, by fueling Euroskepticism and feeding populist anti-system parties (Schmidt 2006), with Brexit arguably the most extreme result. But EU level officials in the Commission and the ECB in particular have increasingly found their own voices, recognizing the importance of their own communicative discourse to the public in legitimizing their

actions (e.g., Asmussen 2012; Moschella et al. 2020; Rauh 2022).

Legitimacy and Legitimation in Emergency Politics

Emergency politics complicates this general account of democratic legitimacy in ordinary times, since in extraordinary times governing authorities often have to take actions that may violate regular democratic procedures and practices, with uncertain outcomes. Almost by definition, emergency politics tends to suspend the traditional democratic processes of citizen representation and even parliamentary consultation expected for political (input) legitimacy while generally reducing procedural (throughput) quality in terms of accountability, transparency, inclusiveness and openness, all in the name of effective policy (output) performance. Accountability and transparency are likely to be in short supply as executives take quick decisions to implement policies without much consultation with parliaments or interaction with the general public. Policy outcomes may also be in question, often as trial and error characterize initial emergency measures. Equally problematic is that the regular exercise of democracy—say, through elections, parliamentary debates, and citizen deliberation or contestation—may be limited by such measures. This is where discourses of legitimation are of the essence.

More specifically, then, in emergency politics our second sense of legitimacy as governing activities may be subject to scrutiny, whether in terms of governing authorities' policy performance during (and after) the crisis, their procedures as they respond to the crisis, or their responsiveness to citizens in crisis decision-making. And these activities, if problematic, may in turn raise questions about the legitimacy of governing bodies' governing authority. Such questions are even more pronounced with regard to the EU, which is more unsettled as a polity, and its authority therefore more readily called into question. These potential problems of legitimacy are why governing authorities in emergency actions at both levels generally seek to legitimate their actions on a continuing basis, through discourses of legitimation.

But what, then, are the criteria by which governing authorities seek to legitimize their actions in emergency politics? And how would this enable citizens to conduct a democratic audit?

The regular tools of democracy are insufficient as indicators for a democratic audit in emergency politics. Instead, as Fossum and Lord (2023) suggest, the standards for the use of emergency powers introduced by the Council of Europe and the UN can provide a starting point for the democratic audit of emergency politics. These involve ensuring that the rule of law continues to prevail, that emergency powers are legally autho-

rized, that relevant bodies are notified of the derogations under emergency powers, that the emergency actions are only those strictly necessary, that proportionality be ensured such that restrictions of rights are the minimal necessary, that there be clear time limitations to authorization of emergency measures, that those measures should not discriminate on grounds of ethnicity, gender, etc., that the legal rules be clear and accessible to all, that they be open to legal challenge and remedy, that some rights cannot be subject to derogation, that legislative oversight be maintained, and that emergency actions be subject to deliberation and debate by legislatures and civil society. Categorized in terms of our three legitimizing mechanisms, Fossum and Lord (2023) divide these criteria into input indicators on the receptiveness of governing authorities to the voices of citizens, elected bodies, civil society and public opinion formed through media debate; throughput indicators on governing activities being transparent, based on public justification, accountable to voters and/or their representatives, governed by rule of law, and returned as soon as feasible to normal; and output indicators on governing activities being consistent with democratic rights, equal treatment of citizens, citizens' trust and solidarity, and the provision of public goods adequate to control the pandemic.

Timing also matters in terms of the audit, in particular to establish legitimacy in emergency politics. Three periods need to be taken into account (Fossum and Lord 2023): the period prior to the audit, to establish the *status quo ante*; the period of the crisis, to consider policy performance (output), governance procedures (throughput), and political responsiveness (input) during the crisis; and the period after crisis, to establish whether certain crisis-related policies are legitimately normalized or rolled back.

Power, Legitimacy, and Legitimation in Emergency Politics

One element has been missing from our discussion so far, which is essential for politics in normal times as much as in emergencies: power. As Max Weber (1978) famously argued in *Politics as a Vocation*, states are the only ones with the legitimate authority for the use of force, and have a monopoly on the means of legitimate coercion. But states not only have coercive power, they also have the institutional power to ensure that their authoritative judgments are implemented even without the exercise of force, because of what Weber has called their legal-rational authority.² But for Weber (1978), although the acceptance of authority may originate in motives like self-interest, habit (tradition) or even submission to coercion, to be stable in the long run the power related to authority is in need of legitimation.

2. The other two forms of legitimate authority identified by Weber are traditional authority and charismatic authority.

For Jürgen Habermas, any such legitimation follows from the communicative power that serves to legitimize the exercise of Weberian coercive and institutional power. As Habermas insists in *Between Facts and Norms*, the administrative power of states cannot rely on coercive power or the law alone. Rather, “a jurisgenerative communicative power must underlie the administrative power of the government,” which has its source in the “undeformed public spheres” of deliberation in civil society (1996, p. 147). Put more simply, although states have the legitimate authority to deploy coercive and administrative power, they also need communicative power such that their actions may be legitimized in the opinion formation process of the public sphere.

In discursive institutionalism, these three kinds of power are conceptualized as coercive, institutional, and ideational/discursive (Carstensen and Schmidt 2016).³ Legitimate power involves more than simply imposing a particular course of action (as in coercive power) or following a set of institutionalized rules (as in institutional power). Legitimacy by definition requires *legitimation*, which demands a different kind of power—the power of ideas and discourse (or in Habermasian terms, communicative power). Such power can be defined as the capacity of actors (whether individual or collective) to influence other actors’ normative and cognitive beliefs discursively, through the use of ideational elements. This, then, is about the ideational/discursive power of persuasion *through* ideas via discourse, which involves actors and groups seeking to convince others of the validity of their preferred interpretation of what is legitimate (Carstensen and Schmidt 2016, 2018b). Such persuasive power may come through Habermas’ communicative action via deliberation or even through Chantal Mouffe’s (2005) discursive contestation via ‘agonism.’ But whether through deliberative consensus-seeking or agonistic struggle between and among political elites and the public, the resulting multi-faceted discursive interactions contrast with the singular focus on top-down interaction that generally characterizes the coercive and institutional understandings of power (Carstensen and Schmidt 2016, 321-22).

Notably, legitimation via the persuasive power of ideas and discourse can even encompass the other non-ideational approaches to power, by convincing citizens that actors with coercive power based on material resources or institutional position may be right (or wrong) to impose their views; and that particular institutional rules ought to be followed (or not) simply because historically established.⁴ This is particularly relevant for

3. Although structural power is also of importance (see Carstensen and Schmidt 2016), it is not essential to our discussion here, so it is left out to maintain the flow of the argument.

4. Note that a further refinement of the theory of ideational/discursive power considers not only persuasive power *through* ideas via discourse but also coercive power *over* ideas and discourse, characterized as domination by some peoples’ ideas and discourse over others, like it or not, and the institutional/structural power *in* ideas and discourse, which structures people’s thoughts by blinding them to alternative ideas and discourse, as in Foucault, or by embedding ideas in the rules, as in historical institutional analysis (see Carstensen and Schmidt 2016, 2018a, 2018b). We don’t use these here for lack of space and in order not to complicate the argument unduly. But for their comparative application to the Eurozone and Covid-19 crises, see Schmidt 2022; Carstensen and Schmidt 2018b).

periods of emergency politics.

In emergency times, when the normal functions of democracy may be abrogated, national governing authorities' exercise of political power may be even more coercive, since it may go beyond the bounds of what was accepted by citizens as legitimate in ordinary times. Here, therefore, legitimation through the persuasive power of ideas via discourse is even more necessary, given that it is needed to legitimize the exercise of coercive and institutional powers outside normal democratic practice. This kind of legitimizing discourse tends to mirror the criteria developed for the democratic audit in emergencies, by emphasizing for example that the suspension of rights is temporary, the rule of law is maintained, that what is done is proportionate to the crisis, that the outcomes will be beneficial, that the parliament is kept informed and will be reconvened as soon as possible, that citizens' concerns are being addressed, and so on.

At the supranational level, emergency politics is even more complicated, because supranational organizations generally lack both the coercive and institutional powers of national governments. They therefore rely on the exercise of ideational/discursive power to legitimize actions that may violate democratic norms and procedures (input and throughput) in pursuit of positive remedies to the emergency (output). In international relations theories on legitimacy in emergency times, Jonathan White and Christian Kreuder-Sonnen both argue that supranational executives in the midst of emergency politics make up for what they lack in traditional coercive state powers with their rhetorical power to legitimize their actions during times of emergency in terms of necessity and temporariness (White 2019, pp. 18-26) and to normalize or roll back their actions afterwards (Kreuder-Sonnen 2019). To assess the legitimacy of such actions, we could add to the criteria developed in the democratic audit of emergency politics the normative principle of proportionality as developed by Kreuder-Sonnen (2019, 199-202), whereby the ends may justify the means in cases with a positive cost-benefit calculation, whether by necessity (can't do without it) or functionality (it works) (Schmidt 2022). In other words, a temporary lack of representation and participation (input legitimacy) or transparency and accountability (throughput legitimacy) may be balanced out by positive outcomes (output legitimacy) so long as they are limited in time to the emergency period and either rolled back or normalized depending upon citizen response and impact on ordinary democratic norms and practices.⁵

5. Note that trade-offs may exist between output and input, whereby more of the one may make up for less of the other. But there are no trade-offs between output or input and throughput, since throughput largely sits between output and input, ensuring a more seamless movement from input to output. Moreover, while positive throughput (because accountable, transparent, inclusive and open) tends to be invisible to the general public, negative throughput (because oppressive, biased, or incompetent) tends to undermine both input and output legitimacy. (Schmidt 2013, 2020a; Schmidt and Wood 2019).

Legitimacy, Legitimation, and Power in Covid-19 Emergency Politics

In the Covid-19 crisis, governing authorities largely governed by executive decree after initial parliamentary votes on emergency powers. This necessarily limited parliamentary involvement in emergency decisions and reduced citizen access to decision-making (input and throughput) on a pandemic about which governing authorities had minimal knowledge and, therefore, risked initial mistakes and uncertain results (output). But as they instituted their emergency measures using their coercive and institutional powers, most authorities deployed their persuasive powers of communication to legitimize their actions to their citizens. Moreover, while in some cases the member-states in the Council formally empowered EU technical actors to take unprecedented actions, such as endowing the Commission with greater institutional power in health policy, in other cases EU institutional actors themselves used their rhetorical power to legitimize actions that informally institutionally empowered themselves, such as the ECB's expansive monetary policy. In what follows, we assess three instances of emergency politics—bordering and lockdowns, health policies, and fiscal policies—in terms of the legitimizing mechanisms of output, input, and throughput and the standards and criteria of democratic audits as elucidated above. The methodology involves a mix of process-tracing, which details the events and actions taken as they unfolded, and of discursive analysis, in which the coordinative and communicative discourses of agents with governing authority seek to legitimate their policies and practices in the name of output performance as well as, as the case may be, of input politics and throughput procedures..

Overall, the initial period of emergency politics saw problems of legitimacy related to the lack of coordination between member-states and EU institutions in all three instances of emergency politics, given the hesitations that represented a lack of solidarity with regard to the imperative to protect human life (Forman and Mossialos 2021). Subsequently, however, legitimacy improved with increasing coordination and solidarity on bordering and lockdowns, health measures, and fiscal policies. That said, each of these instances faced their own special legitimacy problems not only in terms of outcomes, processes, or responsiveness but also with regard to the uses of coercive and institutional power (especially at the national level), with ideational /discursive power at both EU and national levels generally key to generating more legitimate remedies.

Bordering and Lockdown Policies

In the initial response to the Covid-19 pandemic with regard to border controls and freedom of movement, the member-states closed borders precipitously without informing neighboring countries, in breach of the Schengen rules; engaged in domestic emer-

gency politics (Kreuder-Sonnen and White 2022) by abrogating citizens' rights to free circulation; reduced parliamentary oversight as parliaments disbanded following the initial votes of emergency powers; and renationalized policy without coordination or regard for prior EU agreements and rules-based practices (Van Schaik, Jørgensen, and Van de Pas 2020). This rapid re-entrenchment of the nation-state was a 'sovereignist reflex' reflected in a rhetoric of national warfare and a general appeal to a rallying around the flag (Benoît and Hay 2022). And as they legitimized reintroducing border controls, member-states' discourse mainly focused on the international security frame (Wolff, Ripoll Servent, and Piquet 2020).

This national reflex only slowly shifted, as EU institutional actors pushed for greater solidarity, and engaged in various mitigating actions. The Commission, for one, managed to exercise some institutional power as it closed the EU's external borders, which it legitimized with discourses that invoked an international security frame, and introduced 'green lanes' to facilitate the 'free flow' of goods and transport as well as of essential workers, healthcare professionals and patients, which it legitimized using an identity frame about all being members of the Single Market (Wolff, Ripoll Servent, and Piquet 2020). Notably, as testimony to the success of EU level action through the influence of its soft recommendations and horizontal coordination (Freudlsperger et al. 2024), during the second wave of contagion beginning in October 2020, reimposition of country-wide or regional lockdowns did not involve border closures in most Schengen countries and member-states, suggesting EU output and throughput legitimacy.

But in any event, with regard to bordering and lockdowns, the ball was largely in the national capitals' court. National governments had the coercive and institutional powers to respond quickly with emergency actions, and did so using their ideational/discursive powers to legitimize their actions. Our question here is therefore to what extent could national authorities be seen as having engaged in legitimate emergency politics in terms of the democratic audit.

In the case of the national lockdowns, the national emergency actions can certainly be legitimated in terms of the principle of proportionality, given the output effectiveness of stopping the death toll rising from the spread of the virus even though this meant limiting parliamentary participation in decision-making and oversight (input and throughput). Notably, the throughput procedural requirement of going back to normal as soon as possible was the general rule, as rolling lockdowns came in response to upticks in the pandemic in all countries concerned, with stay-at-home mandates ending as soon as rates of contagion declined. Moreover, generally speaking, citizens' rights were respected within the limits of the lockdowns (throughput), with proportionality exercised. For example, with regard to vaccine mandates, while member-states did not force anyone to be vaccinated against their will, which would have been a gross violation of individual rights (output), they limited cross-border air travel to those without

proof of vaccination, required masks on public transport and public institutions, and forbade non-vaccinated healthcare workers from tending to sick patients in hospitals for fear of spreading the virus (output).

But there were nonetheless exceptions involving crisis exploitation. In Hungary and Poland, governments took advantage of the crisis for their own political purposes, for example, by restricting access to abortions and limiting freedom of the press (violations of input and output). Somewhat less egregious but also problematic in terms of legitimacy were violations of emergency measures in the UK. At a time when the rest of the country was forbidden to move, members of the government broke their own lockdown rules on fraternizing and free movement (throughput violations). The Prime Minister himself, Boris Johnson, repeatedly held parties for staff (and then lied about it) while his closest advisor, Dominic Cummings, drove out of London over a weekend while infected with Covid (and also lied about it). Both were held to account, though—Johnson was condemned for his actions by a parliamentary commission and Cummings was forced to resign his position (making for throughput legitimacy).

However, even without crisis exploitation, countries' responses in terms of lockdowns suggest different criteria used by national authorities in engaging in what they saw as legitimate use of coercive and institutional powers. Cases in point are the very different emergency actions of Denmark and Sweden, despite great similarities in terms of population, geography, and political system. In the first period of contagion Denmark was much more coercive in enforcing stay-at-home mandates, closing its borders, and shutting down the economy when infection rates spiked than Sweden, where people were largely free to decide for themselves what to do, and the economy was never shutdown (Nielsen and Lindvall 2021).

Both countries used persuasive power of ideas *through* discourses to legitimate their policies in transparent and accountable ways (throughput), by going to parliaments for original authorizations, and appearing responsive to citizen sentiment (input) (Knagård and Triantafyllou 2024). But not only were the policies very different, so was who decided on the policies and who spoke to their legitimacy. In Sweden, the policies and their legitimation were largely the domain of experts in the public health ministry who framed their actions legally in terms of following existing laws and medically in terms of following a logic of 'herd immunity' (throughput legitimation); in Denmark, the policies and their legitimation were generated by political leaders who framed their policies in terms of emergency politics in order to safeguard the public from infection (output legitimation). Sweden's policies in the first wave of Covid-19 (March to June 2020) appeared to have led to a first-year death rate exponentially greater than in Denmark (by four or five times) (Nielsen and Lindvall 2021, p. 1181), suggesting lower output performance—although the numbers appeared to even out by the second year, and questions have been raised about the accuracy of the data for all the Nordic countries (Kepp et

al. 2022). In Denmark, the only problematic moment in terms of all three kinds of legitimizing mechanisms was the cull of minks, which was an instance of coercive power in the face of widespread public opposition (and a failure of output legitimacy). And yet, in both countries, parliamentary input remained high (Knaggård and Triantafillou 2024). In contrast, throughput legitimacy was mainly in question in Sweden, where an Inquiry Commission criticized the government's decision to shift responsibility for pandemic policies to one individual, the Director-General of the Public Health Agency, suggesting that 'governance informed by experts is preferable to governance by experts' (Christensen and Laegreid 2024). Finally, and arguably most importantly for an assessment of public views of these countries' governing activities were the marked differences in public trust in governing authorities during this first period of emergency politics, with citizens consistently trusting their government significantly more in Denmark than Sweden (Nielsen and Lindvall 2021).

For Europe as a whole, the legitimacy of the lockdowns should also be assessed in terms of overall public reactions, which were largely positive. Trust in both national governments and the EU increased overall in this first period, suggesting that input legitimacy in governing activities reinforced governing authority (e.g., Edelman Trust Barometer Spring Update, May 2020;⁶ Pew Survey, August 2020). And across Europe, populism was for the most part held at bay, as mainstream governments in power retained public approval, suggesting their continued input legitimacy, in contrast to populist governments (in Poland and Hungary). That said, not all the people were happy. Anti-system populist parties in many member-states decried their government leaders, either blaming them for being too late and lax on lock-down measures, or too harsh on mask-wearing rules and lockdowns (e.g., Martínez Fuentes and Natera 2024). There were also sporadic protest marches in many European cities against mandates to wear masks, to get vaccinations, and later to use health passes to get into restaurants and theaters or even to places of employment. But input legitimacy remained not only because protests were for the most part tolerated within the limits of the law but also because the vast majority of Europeans seemed to have accepted the emergency measures to keep people safe.

The border closings were another matter. In many countries, mainstream government leaders publicly criticized fellow leaders not only for their country-level actions, such as closing borders without warning, but also for their EU level actions. But these complaints were mainly focused on other aspects of the Covid-19 emergency actions, in particular with regard to the lack of solidarity on health measures and fiscal policies in the first months of the crisis. For the most part, the bordering and lockdown measures, despite differences in country responses, were generally seen as proportionate to the

6. <https://www.edelman.com/sites/g/files/aatuss191/files/2020-05/2020%20Edelman%20Trust%20Barometer%20Spring%20Update.pdf>

threats posed by the Covid-19 pandemic, and therefore legitimate. This was not the case for health policies, in particular initially.

Health Policies

At the inception of the pandemic, the border closings and lockdowns were accompanied by export bans on medical protective equipment, ventilators, and pharmaceutical supplies, all of which appeared to violate the spirit of the single market as well as European solidarity (Scholz 2021). For example, Germany initially refused to allow any medical equipment, PPE (protective equipment such as masks and gloves) as well as ventilators, to be sent out of country, despite the desperate requests of Italy, which was the first European country to be hit by the pandemic, and where doctors in Lombardy at the center of the pandemic had announced that because of a lack of ventilators, anyone over 50 years of age should stay home, since they would not/could not be treated. Assessed following the criteria of the emergency democratic audit, this initial refusal to share medical equipment was a gross violation of everything the EU stood for in terms of normative standards of solidarity and equal treatment (and thus output legitimacy).

Very quickly, however, EU institutional actors stepped up to the plate, as did the member-states. There were symbolic acts, such as patients from Italy and France transferred to German hospitals. But these were mainly symbolic, as member-states largely had to deal with the challenges on their own, in particular in the first year. Even the European Council on Foreign Relations (ECFR), although producing a ‘European Solidarity Tracker dataset (EST) which presented a positive view of EU actions (Busse et al. 2020), noted that “actors at all levels—in Brussels, national capitals, countries, and regions—could have reacted more quickly and more comprehensively,” while “not every measure sold under the label ‘solidarity’ should be considered positive” (Loss and Pugherin 2020). Despite this, EU institutional actors sought to use their ideational/discursive powers of persuasion to give the impression that the EU was a model of solidarity (and therefore output legitimate). Thus, the European Council (2021) stated that “dealing with the consequences of the crisis at home, member states have come to each other’s aid, bringing help where it was needed most,” while European Commission President Ursula von der Leyen (Von der Leyen 2020) insisted that “Europe has become the world’s beating heart of solidarity ... we have seen every piece of equipment go in every direction across Europe.”

It is important to put the EU health response in perspective, however. The EU had very little institutional power or capacity in the health arena compared to the member-states, having been limited by design to having minimal competences prior to the Covid-19 pandemic (Vollard and Martinson 2017). Moreover, its pre-existing agencies showed mixed performance. For example, the European Center for Disease Prevention

and Control (ECDC) largely fulfilled its mandate by providing useful information to the member-states in a timely (throughput legitimate) fashion (Brooks and Geyer 2020), but only after an initial failure to warn the member-states about the scale of the danger or to provide adequate statistical information about the evolution of the pandemic in the early months (European Ombudsman 2021). This said, the Commission demonstrated its persuasive discursive power through the innovative ideas it proposed regarding a new health program, EU4Health (European Commission 2020). When it came to vaccine policies, moreover, the Commission played a fundamental role in coordinating member-state responses, although here questions can be raised about its support for international versus European efforts (Van Schaik et al. 2020). This said, there are those who critiqued the EU for its lack of (output) effectiveness and (throughput) efficiency in vaccine procurement, in particular as compared to the US and the UK, which had greater institutional power and capacity to fund vaccine development, to negotiate prices with vaccine manufacturers, and to ensure a fast vaccine roll out. But be this as it may, the EU met other important emergency audit criteria related to output legitimacy, by ensuring all member-states adequate supply of the vaccine on an equal footing, thereby avoiding winner-take-all bidding wars in which the bigger, richer member-states would necessarily outbid the smaller member-states.

In the end, the EU gained new institutional power with the new European Health Union (EHU), including the extension of the European Medicines agency and the ECDC as well as the establishment of the Health Emergency Preparedness and Response Authority (Brooks et al. 2023). Moreover, the administrative structure of the EHU involved a new kind of joint control of health governance through ‘expansive unification’, in which intergovernmental actors (member-state ministers in the Council) shared decision-making with supranational actors (Commission health officials) (Ferrera et al. 2024). Such an innovative structure is likely to ensure better (output) effectiveness and (throughout) accountability at both EU and national levels in the event of another health-related crisis.

Finally, in health policy much as with bordering and lockdowns, if we leave aside the initial period, the EU also does well with regard to the democratic audit in terms of political (input) legitimacy, especially if we remember that at the outset of the crisis it had little institutional power in the health domain, highly constraining economic rules, and limited fiscal capacities—which were at least temporarily remedied during the crisis, as discussed below. Evidence for positive input-related results can be seen in general citizen support for enhancing the EU’s powers in the domain and their dissatisfaction with the initial lack of solidarity. A Eurobarometer poll (June 2020)⁷ carried out between 23 April and 1 May 2020, found that a majority of respondents (57%) were dissatisfied with the solidarity shown between EU member-states, while close to two-

7. <https://www.europarl.europa.eu/at-your-service/en/be-heard/eurobarometer/public-opinion-in-the-eu-in-time-of-coronavirus-crisis>

thirds (69%) wanted the EU to “have more competences to deal with crises such as the Coronavirus pandemic.” Survey experiments in Germany additionally discovered that citizens were more open to solidarity when their perceptions, as reinforced by leaders’ communicative discourses, emphasized community norms of reciprocity while framing the problems as bad luck rather than irresponsibility (Heermann et al. 2023).

Fiscal Policies

The EU’s fiscal policies in response to the Covid-19 pandemic, much as in the cases of health and bordering/lockdowns, were initially highly problematic in terms of the emergency democratic audit, but subsequently passed the test. However, whereas the two other instances of emergency politics had no antecedent emergency politics, in the fiscal domain the member-states had had a previous experience with the Eurozone crisis, which had imposed budgetary austerity and stringent structural reform policies on countries in trouble. Although the Eurozone policies of 2010 to 2012 had largely been eased by the time of the pandemic, the ‘governing by rules and ruling by numbers’ of the Eurozone’s SGP continued, with the suboptimal ‘stability’ rules overseen by the Commission through the European Semester remaining as constraints on investment, in particular for countries with higher levels of deficits and debts (Schmidt 2020a). Only with the onset of the pandemic, after an initial period of hesitation that seemed like a *déjà vu* of the Eurozone crisis or worse, were major changes instituted, making for a marked contrast with the past (Ladi and Tsarouhas 2020; Schmidt 2020b). Most important were the suspension of the stability rules accompanied by the creation of the Next Generation EU (NGEU) focused on the green transition, the digital transformation, and addressing inequality, together with a major investment fund, the Recovery and Resilience Facility (RRF) of approximately 750 billion euros in grants and loans.

To assess legitimacy here, contrasting fiscal policy during Covid from the *status quo ante* of the Eurozone crisis is revealing. During the Eurozone crisis, as Peter Mair (2013) argued, there was a growing gap between responsibility with regard to governing bodies’ adherence to supranational rules or governance structures and their responsiveness to national constituencies, such that the ‘primacy of responsibility’ (Laffan 2014) fueled a growing democratic deficit (Lefkofridi and Nezi 2020; Rose 2014). Put in terms of legitimacy, EU actors assumed a trade-off between output and input such that the expected economic benefits (output) of following the (throughput) rules of austerity and structural reform outweighed responsiveness to citizens’ views (input). The result was Europe’s ‘crisis of legitimacy,’ because following the (throughput) rules led to deteriorating economic (output) performance which in turn led to increasingly toxic (input) politics (Schmidt 2020a). During the Covid-19 crisis, in contrast, the meaning of (output) responsibility shifted in ways that brought it closer to (input) responsiveness

(Crespy et al. 2024). In place of stability came solidarity through the NGEU and the RRF which in turn ensured greater responsiveness to citizens. As a result, the gap between output and input legitimacy identified by Mair (2013) during the Eurozone crisis narrowed, suggesting the construction of a new ‘responsive responsibility’ during the Covid-19 pandemic (Crespy et al. 2024).

But while legitimacy overall therefore seems to have been ensured, it is essential to evaluate the various governing bodies’ actions and discourses of legitimation across the period of the crisis in order to conduct an adequate democratic audit during emergency times. And here too, much as with health and bordering/lockdown measures, different actions raised different questions about legitimacy, in particular during an initial period.

In immediate response to the pandemic, the member states without consultation with fellow member-states or the EU abandoned compliance with the SGP deficit and debt rules as they provided massive infusions of money to sustain businesses, protect jobs, and support individuals and families. Although this breach of the legal rules suggested a failure of throughput accountability as per the democratic audit, it could be considered nonetheless legitimate in legal/normative terms given the escape clause in the Treaties, which the EU Commission invoked as it quickly suspended the SGP rules. In this case, the member-states exercised their national coercive and institutional powers to impose the change, without consideration of the EU. But they used their persuasive discursive power to legitimate such action (in output terms) as in the interests of ensuring that their economies and households would survive during the lockdowns and thrive thereafter.

More problematic was the member-states’ initial failure to reach agreement at the EU level on what to do together in response to the crisis, as seen already in the case of border closings. During the first few months from March to mid May, the Council did little, and as such was low on output performance and throughput accountability. There were those who saw this crisis, much as in the Eurozone crisis, as an asymmetric shock to be dealt with on their own by the member-states in trouble, whereas others felt from the beginning that it was a symmetric shock, and that solidarity was required (Ferrara and Kriesi 2022). The same splits as in the Eurozone crisis between so-called ‘creditors’ and ‘debtors’ (Matthijs and McNamara 2015) reemerged, looking like a replay of Northern Europeans’ coercive power to impose their interests on Southern European countries in trouble. The ‘frugal coalition’ of Northern Europeans led by Germany resisted solidarity while the ‘solidarity coalition’ of Southern Europeans led by France pushed for quick action (Fabbrini 2023), as the informal meeting of EU’s heads of state on March 26th turned into a ‘shouting match’ (Tooze 2021, p. 181) and the assumptions, positions and divisions that undergird them, leave us ill prepared for the next crisis.”—Robert Rubin, *The New York Times Book Review* Deftly weaving finance, politics, business, and

the global human experience into one tight narrative, a tour-de-force account of 2020, the year that changed everything--from the acclaimed author of *Crashed*. The shocks of 2020 have been great and small, disrupting the world economy, international relations and the daily lives of virtually everyone on the planet. Never before has the entire world economy contracted by 20 percent in a matter of weeks nor in the historic record of modern capitalism has there been a moment in which 95 percent of the world's economies were suffering all at the same time. Across the world hundreds of millions have lost their jobs. And over it all looms the specter of pandemic, and death. Adam Tooze, whose last book was universally lauded for guiding us coherently through the chaos of the 2008 crash, now brings his bravura analytical and narrative skills to a panoramic and synthetic overview of our current crisis. By focusing on finance and business, he sets the pandemic story in a frame that casts a sobering new light on how unprepared the world was to fight the crisis, and how deep the ruptures in our way of living and doing business are. The virus has attacked the economy with as much ferocity as it has our health, and there is no vaccine arriving to address that. Tooze's special gift is to show how social organization, political interests, and economic policy interact with devastating human consequences, from your local hospital to the World Bank. He moves fluidly from the impact of currency fluctuations to the decimation of institutions--such as health-care systems, schools, and social services--in the name of efficiency. He starkly analyzes what happened when the pandemic collided with domestic politics (China's party conferences; the American elections).

Over the next couple of months, however, the creditor-debtor cleavage was progressively diluted by a discourse on 'solidarity' which increasingly resonated amongst European governing elites and publics alike (Crespy et al. 2023). Moreover, by mid-May the discourse shifted dramatically to one of solidarity, as France and Germany came out publicly recommending a major grant-based recovery fund which broke the 'no-bailout' rule of the Treaties. They legitimated this as a matter of collective responsibility (and therefore output legitimacy), declaring that: "In France and Germany, we are fully determined to shoulder our *responsibilities* towards the European Union and we will help open the way to moving on from the crisis (Macron and Merkel 2020--see Crespy et al. 2024). The breakthrough came as the culmination of France's persuasive power *through* ideas via discourse with Germany (Schmidt 2022), as it argued (in output terms) in the name of Europe for solidarity in a health crisis in which all countries were equally at risk of contagion, but some had been hit harder than others and did not have the wherewithal to recover economically without support (Crespy and Schramm 2021). But the shift was itself the culmination of a coordinative discourse over a period of months between French President Emmanuel Macron and Chancellor Merkel, backed up by discursive coordination deep into the executive bureaucracies of both countries, as well as with the Commission (Crespy and Schramm 2021).

In contrast with the persuasive power exercised during Germany's shift to supporting solidarity through the mutual risk-sharing of the RRF fund, the multilateral negotiations in the run-up to the Council agreement of July 2020 were more an exercise in coercive power through bargaining. The result was a compromise in which the remaining so-called 'Frugal Four' countries unsuccessfully pushed to scuttle the recovery fund but nonetheless altered the ratio of grants to loans while the 'Sovereignty coalition' consisting of Poland, Hungary, and other Central and Eastern European countries first vetoed robust rule of law conditionality linked to the disbursement of RRF funds and then agreed to a compromise that greatly watered down such conditionality (Fabbrini 2021).

Notably, however, the EP, which had had little impact initially during the pandemic, managed during the budget negotiations to reinsert more robust rule of law conditionality into the final agreement (along with more money for EU4Health), thus ensuring greater throughput legitimacy to the disbursement process and transnational solidarity—although it failed to ensure an oversight (throughput) role for itself in the RRF process (Gianna 2021).

When all is said and done with regard to political actors' (Council and EP) fiscal policies in response to the pandemic, using the proportionality principle suggests that overall output performance in economic policy during the coronavirus crisis was generally assured along with input responsiveness, even if throughput procedures came into question (Schmidt 2022). The Commission and the ECB did arguably better.

The Commission took more rapid action than the member-states, making for both quality procedural throughput and effective policy output. It immediately suspended the fiscal rules of the SGP to allow for unlimited government spending; it cleared the way for member states to rescue failing companies by suspending the state aid rules (Meunier and Mickus 2020); and it put into place the European instrument for temporary Support to mitigate Unemployment Risks in an Emergency (SURE), a €100bn fund to help maintain employment, among other initiatives. Equally importantly, the Commission overhauled the European Semester by abandoning its roles of enforcer and then moderator in the Eurozone crisis to become the promoter of the new industrial strategy initiatives through more bottom-up oversight in the NGEU and the National Resilience and Recovery Plans (NRRPs) (Schmidt 2020b 2022), in order to ensure both better output performance and throughput procedural quality.

The ECB was similarly output and throughput legitimate. But this came only after the President of the ECB made up for her *faux pas* in which she claimed it was not within the ECB's mandate to deal with spreads between German and Italian bonds (which triggered an increase in the spreads for Italian bonds), by in a matter of days thereafter announcing a new major purchasing program (PPEP). This went way beyond its 2015 quantitative easing program, came without the *quid-pro-quo* demands for austerity

and structural reforms of the Eurozone crisis or the Eurocrisis ratio of bond-buying that had limited its ability to target its bond purchases to countries under greatest threat of market attack. Here, the ECB again consciously deployed its persuasive rhetorical power *through* ideas to legitimate its actions with a discourse that was largely welcomed without challenge—with the exception of the German Constitutional Court (Terpan and Saurugger 2020). Here, we can talk about different ideas about what was throughput legitimate, with in the end the Court of Justice of the EU ruling in the ECB’s favor and against the German Constitutional Court’s view (Kinski et al. 2023), and thereby validating the ECB’s throughput legitimacy.

Conclusion

As we have seen, democratic legitimacy involves both a governing body’s underlying authority and its governing activities, with the latter capable of reinforcing or undermining the former. Establishing the legitimacy of such governing activities depends on three legitimizing mechanisms, involving effective performance (output), procedural quality (throughput), and political responsiveness (input). These mechanisms can be further elucidated through a ‘democratic audit’ involving a range of criteria and indicators based on citizens’ everyday expectations of legitimate governance. In the case of emergency politics, when governing authorities engage in activities that may fall outside citizens’ everyday expectations and democratic practices, legitimacy may be in question. This is when legitimation is essential to ensuring legitimacy, with governing authorities’ legitimizing discourse in dialogue with other policymakers and citizens key to ensuring the legitimacy (or not) of emergency actions. Here, different forms of power are ever present, including governing authorities’ coercive power to impose certain actions and the institutional power to carry them out. But without the persuasive power of ideas via discourse to legitimize such actions, legitimacy may be at risk, in particular in emergency politics. In the multilevel EU, such legitimation and, indeed, legitimacy itself is further complicated by the presence of governing authorities at national and EU level, with overlapping competences and activities which can reinforce or undermine legitimacy and legitimation at either level. And in the EU, as in any supranational organization, in the absence of coercive power (the exclusive purview of the member-states) and with limited institutional power, the ‘rhetorical’ or persuasive power of ideas and discourse is of the essence—as in the case of the Covid-19 pandemic.

During the pandemic, after a moment of hesitation reminiscent of the Eurozone crisis, the member-states and EU institutional actors responded with emergency actions that were largely legitimate in output terms, despite proportionate limitations in throughput and input legitimacy. Moreover, they legitimized actions that deployed coercive and institutional powers through their persuasive powers *through* ideas via discourse. With

regard to border controls and lockdowns, member-states used their coercive and institutional power to close borders and lock down their citizens in ways that for the most part were proportionate to the risks (thereby ensuring output and throughput legitimacy) while using persuasive powers of legitimation that at the same time built citizen trust in and acceptance of the measures (ensuring input legitimacy). On health policy, after a few weeks of failing to exercise output solidarity with regard to sharing of medical equipment, the member-states engaged in symbolic acts of solidarity while granting the Commission the institutional power to ensure collective responsibility on vaccines, making for output and throughput legitimacy which also built citizen trust (thereby promoting input legitimacy). With regard to the fiscal rules, after a few months of failing to exercise output solidarity, throughput legitimate suspension of the rules and numbers was accompanied by an output legitimate NGEU with an unprecedented European recovery fund focused on greening economies, digitalizing societies, and addressing inequalities. Legitimacy, so much at risk during the Eurozone crisis, improved as a result of this new EU-level solidarity. In contrast with previous emergency politics, then, greater cooperation and ‘deliberative consensus-seeking’ seemed to prevail in place of the ‘agonistic contestation’ that had characterized the Eurozone crisis response; and where there was contestation, as in fiscal policy, the compromises overall nonetheless produced good results.

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