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# URÍA MENÉNDEZ PROENÇA DE CARVALHO

STATE OF EMERGENCY -  
EXTRAORDINARY MEASURES

MAIN ASPECTS OF DECREE NO. 2-  
C/2020, OF 17 APRIL 2020

20 of April 2020

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# 1. Introduction

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On 18 March 2020, the state of emergency was declared in Portugal by Decree no. 14-A/2020 of the President of the Republic (“**State of Emergency**”). The Decree empowered the Portuguese Government to implement various extraordinary measures to prevent and contain the spread of the COVID-19 disease.

In this context, the Portuguese Government approved, through the Decree of the Council of Ministers no. 2-A/2020 of 20 March, a number of exceptional measures to be implemented during the State of Emergency (“**Decree 2-A/2020**”).

As the declaration of the State of Emergency can only be in force for 15 days, the President of the Republic extended the State of Emergency for the first time through Decree no. 17-A/2020, of 2 April, giving the Government new powers to introduce exceptional measures.

Following this, by means of Decree no. 2-B/2020, of 2 April 2020, the Government approved exceptional measures to be implemented during the first extension of the State of Emergency (“**Decree 2-B/2020**”).

Upon termination of the State of Emergency’s first extension period, the President of the Republic, through Decree no. 20/2020, of 17 April, extended the State of Emergency for the second time. In this context, the Government, through Decree no. 2-C/2020, of 17 April, approved the exceptional measures to be implemented during the second extension period of the State of Emergency (the “**Decree**”).

This Decree has:

- i. Maintained all the measures already approved by Decree 2-A/2020 and Decree 2-B/2020; and
- ii. Introduced some additional measures, outlined below in [blue](#).

The scope of the Decree is as follows:

- i. Territorial: the entire national territory.
- ii. Time frame: entered into force on 18 April 2020 and will cease when the State of Emergency ends.

The Decree also approves for specific measures to be adopted in the municipality of Ovar, revoking the Resolution of the Council of Ministers No. 18-B/2020, of 2 April – which extended the effects of the ‘state

of the calamity' declared in Ovar – and maintaining the municipal commission for civil protection and the respective municipal emergency plan for civil protection which are already in operation.

The Decree does not affect measures already adopted aimed at combating the spread of the COVID-19 disease.

Through this Decree, the following measures will be enforced.

## 2. Measures affecting the freedom of movement

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### 2.1. COMPULSORY CONFINEMENT

Compulsory confinement is mandatory for COVID-19 patients and citizens under active surveillance by health authorities or other healthcare professionals in a healthcare establishment, at home, or in another location to be defined by the health authorities, under threat of prosecution for the crime of disobedience.

### 2.2. GENERAL DUTY OF HOME CONFINEMENT

Citizens who are not in compulsory confinement may only use public spaces and roads for the purposes listed in the Decree, in particular:

- i. To purchase goods and services;
- ii. To go to banks, insurance agencies, post offices and post boxes;
- iii. For non-group physical exercise or to walk pets;
- iv. For health reasons, including transporting persons that require healthcare;
- v. For veterinary visits or for animal-owners to seek medical-veterinary assistance for their animals;
- vi. To assist vulnerable or disabled people, children, parents, the elderly, other dependents or for imperative family reasons, such as to fulfil shared parental responsibilities;
- vii. To visit, when authorised, or to supply essential goods to, disabled people or people deprived of freedom of movement;
- viii. To accompany minors:
  - a. On short walks to enjoy the outdoors; and
  - b. To school or day-care centres open for the children or dependent minors of essential services workers.
- ix. For professional activities, to seek employment or to respond to job offers;
- x. To participate in the judicial process;
- xi. To participate in social volunteering actions;
- xii. For people holding a free-transit pass to move to carry out their functions;
- xiii. To return to one's place of residence;

- xiv. To participate in activities relating to the official Labour Day celebrations organised by the security forces and services in connection with the trade unions, in accordance with the recommendations of the health authorities; and
- xv. Other activities of a similar nature or for force majeure or urgent reasons, provided they are duly justified.

People over 70 years old, the immunosuppressed and chronically ill people considered to be at risk by the health authorities (e.g. hypertensive, diabetic, cardio-vascular patients, patients with chronic respiratory disease and cancer patients) are under a special duty of protection. They may only use public spaces and streets for the purposes described in paragraphs *i.* to *iv.* and *xiv.* above, unless they are healthcare professionals, national health service workers and social support workers, civil protection workers, political appointees, judges, public prosecutors, social partnership leaders, security forces and services personnel, military, militarised and civilian personnel of the Armed Forces and inspectors of the Economic and Food Safety Authority ("**Special Activities Personnel**"). Finally, immunosuppressed and chronically ill people considered to be at risk who are not on medical leave may still leave their homes for professional activities.

### 2.3. FREE MOVEMENT OF GOODS

Movement restrictions, including in those municipalities where a health-related border (*cerca sanitária*) has been imposed, do not prevent the free movement of goods.

## 3. Measures affecting establishments and activities

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### 3.1. CLOSURE OF ESTABLISHMENTS AND SUSPENSION OF ACTIVITIES

The establishments and facilities in which the following activities take place are closed:

- i. Recreational, leisure and entertainment activities: nightclubs, bars, recreational or amusement parks, sports and leisure facilities or similar;
- ii. Cultural and artistic activities: auditoriums, cinemas, museums, theatres, concert halls, monuments, libraries, archives, art galleries and exhibition halls, congress halls or similar;
- iii. Sports activities (except those for high-performance athletes): fields, stadiums or pavilions where any sport is practiced, swimming pools, hippodromes, velodromes, gymnasiums, athletics tracks or similar;
- iv. Activities in open spaces and public streets: cycle tracks, motorcycling, car racing, nautical and aeronautical competitions (except those for high-performance athletes), popular festivities or similar;
- v. Gambling and betting activities: casinos, bingo halls or similar;
- vi. Catering activities: restaurants, bars, terraces, cafeterias, vending machines; and
- vii. Thermal baths, spas and similar establishments.

The following activities are further suspended:

- i. Retail trade activities;
- ii. The rendering of services in establishments open to the public.

Failure to close establishments or suspend activities, as provided for in the Decree, may lead to prosecution for the crime of disobedience.

The closure of facilities and establishments under the Decree may not be relied upon as grounds for the termination or cancellation of lease contracts or other forms of real estate exploitation, nor as grounds for the obligation to vacate property.



### 3.2. ESTABLISHMENTS OPEN TO THE PUBLIC AND ACTIVITIES ALLOWED

Without prejudice to the previous section, the following establishments will remain open and the services listed below may be provided to the public.

#### A) Retail trade

Establishments that provide goods of basic necessity or that are considered essential in the present situation, as listed in annex II of the Decree and below, will continue to operate:

- i. Minimarkets, supermarkets, hypermarkets, greengrocers, butchers, fishmongers, fish markets, bakeries or markets (in the latter's case, to the extent that food is sold);
- ii. Stationery shops and tobacconists (newspapers, tobacco);
- iii. Establishments selling cosmetics, hygiene products, pharmaceuticals, medical, orthopaedic or optical products;
- iv. Pet shops or shops that sell pet food;
- v. Flowers, plants, seeds and fertiliser shops;
- vi. Hardware stores and DIY stores;
- vii. Establishments selling parts, accessories or fuel for motor vehicles;
- viii. Establishments selling household appliances, computer and communication equipment.

Other retail establishments may also remain in operation, provided that:

- i. They maintain their activity exclusively for home delivery or e-commerce purposes; or
- ii. They make the goods available at the door or gate of the premises, as all public access to the inside of the premises is prohibited.

#### B) Rendering of services

Establishments that render services of basic necessity or that are considered essential in the present situation, as listed in annex II of the Decree and below, will continue to operate:

- i. Facilities providing banking, financial and insurance services;
- ii. Establishments providing medical, veterinary and social-support services;
- iii. Establishments that provide maintenance and repair services for motor vehicles, domestic appliances, IT and communications equipment;
- iv. Establishments that carry out funerary and related activities;
- v. Tourist establishments, except camping sites;

- vi. Student housing facilities.

The following services may also be rendered to the public:

- i. Maintenance and repairs at home;
- ii. Security or surveillance at home;
- iii. Cleaning, disinfecting, pest control and similar;
- iv. Home delivery.

In addition, there is no suspension of services provided at a distance, without contact with the public or that are delivered through electronic platforms.

#### **C) Restaurants**

Canteens are to continue to operate.

In tourist establishments, catering and drinks services may be provided exclusively for guests at these establishments.

Finally, restaurants and similar establishments may continue to operate exclusively to provide take-away or home-delivery services. These establishments are exempt from the requirement to hold take-away or home-delivery licences.

#### **D) Activities on highways, in airports and in hospitals**

Retail activities and service activities along the highway network, in airports and in hospitals are not suspended.

#### **E) Travelling sales jobs**

Travelling salespersons will be allowed to sell goods that are considered essential in the present circumstances in localities where it is necessary to guarantee the population access to essential goods. The localities where this activity will be allowed are set out by each municipality, after obtaining a favourable opinion from the local health authority.

#### **F) Self-drive car hire**

Self-drive car hire is permitted in the following cases:

- i. For journeys authorised under the Decree;
- ii. To carry out retail trade activities or render services authorised under the Decree;

- iii. For roadside assistance, recovery or replacement of the vehicle;
- iv. When the vehicles are to be used to provide essential public services.

#### **G) Retail trade in wholesale food distribution establishments**

Wholesale food distribution establishments are allowed to sell their products directly to the public for the duration of the Decree.

For that purpose, the following rules must be complied with:

- i. The rules on access, safety, hygiene and priority service that are currently applicable to all establishments open to the public;
- ii. The goods for retail sale must display the selling price;
- iii. The goods for retail sale must be displayed and be available to purchase individually;
- iv. Measures must be taken to ensure that a specified quantity of the goods is made available to each consumer to purchase in order to prevent hoarding.

### **3.3. RULES THAT ESTABLISHMENTS OPEN TO THE PUBLIC MUST COMPLY WITH**

In establishments open to the public:

- i. The consumption of products inside the establishments is prohibited;
- ii. Measures must be adopted to ensure that:
  - a. Persons remain inside the establishment only for the amount of time strictly necessary to purchase the required products; and
  - b. A minimum distance of two metres is kept between persons;
- iii. The hygiene and health rules established by the Directorate-General of Health (*Direção-Geral da Saúde*), as well as the rules of access and assignment set out in Ministerial Order no. 71/2020 of 15 March 2020, namely the rule according to which the maximum capacity in establishments open to the public is of 0.04 people per square meter of area, must be complied with.

The establishments that maintain their activity must prioritise serving those persons subject to a special duty of protection, as well as health professionals, members of the security, protection and rescue forces and services, personnel of the armed forces and those providing social support. Those responsible for

the establishments must clearly and visibly inform their customers about these persons' priority right and adopt measures to ensure that this priority rule is provided in an organised manner.

In addition, all activities that remain in business or in operation must comply with the recommendations of the health authorities, particularly with regard to hygiene and distances between people.

In cases where the activity involves constant contact with objects or surfaces, those responsible for the establishment must ensure the periodic disinfection of such objects or surfaces, except when food safety reasons dictate otherwise.

Finally, while the State of Emergency is in force, the obligations to (i) provide immediately the complaint book to consumers or users and (ii) comply with the deadline for sending the original complaint forms are suspended, as established in Decree-Law 156/2005, of 15 September.

#### **3.4. RESTRICTIONS APPLICABLE TO WHOLESALE TRADE ESTABLISHMENTS AND MARKETS**

The maximum occupancy rule of 0.04 people per square meter of area, provided for in article 1 of Ministerial Order no. 71/2020, of 15 March 2020, is applicable to wholesale trade establishments and any markets and fish markets authorised to continue to operate.

#### **3.5. EXCEPTIONAL OPENING OF SOCIAL SUPPORT ESTABLISHMENTS**

During the State of Emergency, social support establishments that are ready to be put into service may open even if the operation licence was not yet granted.

#### **3.6. SPECIAL CASES**

The Minister of State, Economy and Digital Transition can:

- i. Allow the opening of facilities or establishments that were ordered to close under the Decree;
- ii. Authorise or impose retail trade activities or services, when this is essential, namely, to maintain product distribution chains or to supply essential goods;
- iii. Limit or suspend allowed retail trade activities or services in the event that they are proven unnecessary or undesirable in order to address the spread and transmission of the virus.

## 4. Public services

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The provision of essential public services will continue, as well as the respective repair and maintenance of these services<sup>1</sup>. Moreover, the operation of other public services that are considered essential may be ordered.

Citizen's bureaus (*Lojas do Cidadão*) are closed. Face-to-face services continue to be provided by appointment only at the branches of the different services and services provided through digital means are maintained.

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<sup>1</sup> Essential public services are those related to: water, electricity, natural gas and liquefied petroleum piped gases, electronic communications, postal services, wastewater and effluent collection and treatment, urban solid waste management and urban hygiene and passenger transport.

## 5. Civil requisition (*Requisição Civil*) and other impositions

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The Minister of Health may:

- i. Issue the necessary orders to guarantee the supply of goods and services in production centres affected by the shortage of products necessary to protect public health;
- ii. Proceed with the temporary requisition of facilities and establishments of any nature, as well as any goods or services and impose mandatory services on any entity, where appropriate and indispensable for the protection of public health.

Health or civil protection authorities may request any services to be provided by any legal persons and may requisition goods that are in stock or to be produced (e.g. health equipment, ventilators and masks), which are considered necessary to address the spread of COVID-19.

## 6. Labour measures

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### 6.1. REMOTE WORKING

The remote working regime is mandatory, regardless of the nature of the employment agreement, whenever compatible with the relevant employment duties.

### 6.2. CATERING ESTABLISHMENTS

Catering establishments (e.g. restaurants) may require their workers to carry out activities necessary for the operation of take-away or home-delivery services, even if these activities are not stipulated in their employment contracts.

### 6.3. POWERS OF THE AUTHORITY FOR WORK CONDITIONS

During the term of the Decree, if a labour inspectorate finds evidence of a dismissal that is in violation of the Labour Code, he or she must prepare a report and notify the employer so that the employer can rectify the situation.

During the period between the employer receiving notification from the labour inspectorate and until the worker's situation is regularised or a judicial decision has become final and binding, the employment contract in question will remain in force along with all of the rights of the parties.

### 6.4. EXCEPTIONAL SUSPENSION OF EMPLOYMENT CONTRACT TERMINATIONS

During the State of Emergency, the possibility of terminating, by any means, either at the worker's or the employer's initiative, employment contracts of health professionals forming part of the National Health Service ("**NHS**"), [as well as other bodies, agencies, services and entities of the Ministry of Health, is suspended](#), except where exceptional situations exist, which are duly justified and authorised by the hospital's governing body.

In addition, during the State of Emergency, the possibility of terminating [service agreements](#) with the entities mentioned in the previous paragraph is suspended, except in situations that are duly justified and authorised by the governing body.

#### **6.5. THE OBLIGATION TO PUBLISH LEGISLATIVE ACTS IN THE LABOUR AND EMPLOYMENT BULLETIN IS SUSPENDED**

The publication of legislative acts to be approved by the Government in relation to labour legislation in the Labour and Employment Journal is suspended, to the extent that the publication may cause delays in the entry into force of the urgent legislative measures to combat the pandemic.

Whenever the legislative acts are not published, the Government will promote direct consultation with the social partners through electronic means, with the latter having a 24-hour deadline to issue their opinion.



## 7. Religious celebrations and funerals

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Religious celebrations involving gatherings of people are prohibited. Funerals can only be held if certain organisational measures imposed by the local authority that manages the cemetery in question are adhered to.

## 8. Administrative acts and regulations

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Licences, authorisations and other administrative acts remain valid for as long as the State of Emergency is in force, regardless of their stated validity period.

Regulations and administrative acts implementing the State of Emergency will be effective by notification to the addressee, electronically or otherwise. Notification is considered to have taken place through the publication of regulations or administrative acts on the websites of the respective authorities.

## 9. Monitoring of the decree

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It is the responsibility of the security forces and services to:

- i. Monitor compliance with the Decree;
- ii. Order the closure of establishments and prevent the operation of activities provided for in annex I of the Decree;
- iii. Issue orders and report the crimes of disobedience set out in the Decree;
- iv. Recommend that people do not gather in public streets and that all citizens comply with the general duty of home confinement.

Disobedience and resistance to the legitimate orders of competent authorities, when issued under the Decree, are sanctioned under criminal law and the respective minimum and maximum limits of the penalties are increased by one-third.

The security forces and services must report the level of public compliance with the Decree, so that the Portuguese Government may assess the situation and the need to approve a sanctioning framework for breaches of the special duty of protection or the general duty of home confinement.

## 10. Additional measures

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Extensive powers are granted to the members of the Portuguese Government to implement additional measures within the scope of the State of Emergency.

Among the powers granted, the following are highlighted:

- i. The Prime Minister will appoint the authorities to coordinate the implementation of the State of Emergency at a local level;
- ii. The Minister of Health will determine:
  - a. The exceptional measures for the NHS's establishments to coordinate with healthcare establishments of the private and social sector;
  - b. The necessary, adequate and indispensable measures to guarantee normal conditions in the production, transportation, distribution and supply of goods and services essential to the functioning of the health sector;
  - c. The necessary exceptional measures regarding the pharmaceutical and medical devices supply chain, as well as other health products, namely in manufacturing, distribution, trading, importation, acquisition, exemption and prescription, aimed at ensuring the supply, availability of and access to the necessary products for health units, patients and other users;
  - d. The measures to contain and limit the market, to set maximum prices, to centrally monitor stock and quantities produced and to exempt economic operators acting in emergency situations from paying fees;
- iii. The Minister of Internal Affairs:
  - a. May order the suspension of road and rail traffic or the restriction on the movement of certain types of vehicles;
  - b. Determines, together with the Minister of Health, the countries or territories from which incoming people are to be subjected to health checks or surveillance for the purpose of compulsory confinement;
- iv. The Minister of Defence shall ensure there is coordination with the other governmental departments in order to guarantee the provision of people, means, goods and services by the National Defence Forces to fulfil the measures set out in the Decree;
- v. The Minister of Justice, together with the Officers of the Courts Superior Councils and the Attorney General's Office may take steps necessary to enforce access to the law and to the courts and to safeguard the rights, freedoms and guarantees that have been infringed or threatened;

- vi. The Minister of Agriculture determines the measures and acts necessary to guarantee that the production, transport, distribution and supply of agricultural and livestock-related goods and services and those essential to the agricultural and food-sector supply chain continue as normal;
- vii. The Minister of Maritime Affairs will determine the measures and acts necessary to guarantee that the production, transportation, distribution and supply of fisheries, aquaculture and food processing continues as normal;
- viii. The Minister of the Environment and Climate Action determines the measures necessary to ensure the urban supply of water, electricity, gas, petroleum-based products and natural gas and the collection and treatment of solid waste and may approve temporary exemptions from the general waste management regime;
- ix. The members of the Portuguese Government responsible for transport will be entrusted with the following duties:
  - a. To take the necessary and appropriate action to guarantee mobility services, as well as the maintenance and functioning of transport infrastructure;
  - b. To approve the rules for the civil aeronautics sector, such as measures for screening in and organising airports and making their management more flexible, as well as for providing the minimum essential services;
  - c. To approve the terms and conditions under which the transport of goods in the national territory should take place, in order to guarantee supplies;
  - d. To determine the reduction of the maximum number of passengers per journey, including in air transport, to one-third of the maximum number of seats available;
  - e. Approve the necessary measures to ensure the participation of Portugal's flag carrier airline in operations to return Portuguese citizens to national territory.

## Contact lawyers

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