

URÍA MENÉNDEZ
PROENÇA DE CARVALHO



COVID-19 NEWSLETTER

Public Law

28 March 2020

1st Edition

INTRODUCTION

To address the public health emergency situation resulting from the spread of the new coronavirus SARS-CoV-2, which causes the disease COVID-19, the Portuguese Government and other public entities have approved several extraordinary measures in order to prevent and contain the outbreak of the virus. These measures have had a huge impact on the market and on the normal activity of the economic agents. With this in mind, we have prepared this Newsletter with the aim of summarising the most important measures that have been implemented, notably:

- (i) **Measures affecting rights, freedoms and guarantees**: a summary of the main measures that have been introduced that impact private economic agents and individuals, namely measures affecting a person's freedom of movement, international movement and economic activities;
- (ii) **Measures affecting relations with the public authorities**: a summary of the main measures taken by the Portuguese government and parliament that affect relations between individuals and the public authorities.

Finally, we will also refer to the official websites of the administrative entities, where new press releases, orders and useful information regarding economic agents' relations with these entities are being published on an almost daily basis.

PART I – MEASURES AFFECTING RIGHTS, FREEDOMS AND GUARANTEES

1. NATIONAL MEASURES

1.1. MEASURES AFFECTING THE FREEDOM OF MOVEMENT

 **Decree of the Council of Ministers no. 2-A/2020, of 20 March 2020**

For further information regarding this Decree, see our note [here](#)

- **Compulsory confinement** of COVID-19 patients and citizens under active surveillance by authorities or other healthcare professionals, in a healthcare establishment or at home, under threat of prosecution for disobedience.
- **Special Duty of Protection**: applies to persons over 70 years old and immunosuppressed and chronically ill persons considered to be at risk by the health authorities (e.g. hypertensive, diabetic and cardio-vascular patients).
- These persons are subject to more restrictive limitations than the general population with regard to their freedom of movement in public spaces, on public roads, or equivalent private spaces.
- **General duty of home confinement**: applies to the general population that is not under compulsory confinement, nor subject to the special duty of protection.

These persons are subject to limitations on their freedom of movement in public spaces and on public roads and may only leave their homes for certain specific purposes.

Time frame: these measures came into force on 22 March 2020 and will remain in force for the duration of the state of emergency decreed on 18 March 2020 by the Portuguese President of the Republic (“**State of Emergency**”).

1.2. MEASURES AFFECTING INTERNATIONAL MOVEMENT

 **Order 3427-A/2020, of 18 March 2020**

- **Prohibition of all flights between Portugal and non-EU countries**, with the exception of:
 - (i) Countries that are part of the Schengen Area (Liechtenstein, Norway, Iceland and Switzerland);
 - (ii) Portuguese-speaking countries, with the exception of Brazil (only flights to and from São Paulo and Rio de Janeiro will be allowed); and

📄 **Resolution of the Council of Ministers 10-B/2020, of 16 March 2020 and**

📄 **Order 3298-C/2020, of 13 March 2020**

(iii) The United Kingdom, the United States of America, Venezuela, Canada and South Africa, given the presence of Portuguese communities in these countries.

– **Exceptions** to the abovementioned prohibition:

- (i) Flights to enable Portuguese nationals or holders of residence permits to return to Portugal;
- (ii) Flights to allow foreign nationals to return to their countries, provided they are authorised by the competent authorities of their respective countries, subject to request, prior agreement and to the principle of reciprocity;
- (iii) Flights for the exclusive transport of cargo and mail and technical stopovers for non-commercial purposes; and
- (iv) Flights for humanitarian or medical emergency purposes.

Time frame: these measures came into force on 18 March 2020 and will remain in force for a period of 30 days.

– **Reintroduction of cross-border controls** for people at land borders, airports and seaports with the States that are part of the convention implementing the Schengen Agreement.

The possibility of introducing sanitary controls and filling out declarations when entering national territory.

Time frame: border control has been in force since 23:00 on 16 March 2020 and will remain in place until 00:00 on 15 April 2020, subject to re-evaluation every 10 days and the possibility of an extension.

– **Limitations on maritime transport**:

- (i) The mooring of recreational craft and the disembarkation of persons (including cruises) is prohibited;
- (ii) Suspension of the granting of shore leave to crew members of all types of vessels in national ports, subject to occasional exceptions on the advice of health authorities.

– **Prohibition of road traffic across land borders with Spain**, with the exception of:

- (i) International freight transport;
- (ii) Carriage of cross-border workers; and
- (iii) Emergency and rescue vehicles and emergency services.

Authorised crossing points are established at the land border with Spain.

– **Suspension of rail traffic**, with the exception of freight transport;

– **Limitations specifically applicable to movements between Portugal and Spain**:

- (i) Suspension of all flights to and from Spain to or from Portuguese airports or aerodromes, except for:
 - a. Flights transporting cargo and mail and technical stopovers for non-commercial purposes; and

- b. Flights for humanitarian or medical emergency purposes.
- (ii) Suspension of inland waterway transport between Portugal and Spain.
- **The abovementioned traffic constraints do not affect:**
 - (i) The right of entry of nationals and holders of residence permits into their respective countries;
 - (ii) The movement, by way of exception, for the purpose of reuniting spouses or similar and members of their families that are first degree relatives (“1.º grau na linha reta”);
 - (iii) The access to health care facilities under bilateral agreements concerning the provision of health care; and
 - (iv) The right of citizens residing in another country to leave.

Time frame: these measures came into force on 16 March 2020.

1.3. MEASURES AFFECTING ECONOMIC ACTIVITY

 **Decree of the Council of Ministers 2-A/2020, of 20 March 2020**

For further information regarding this decree, see our note [here](#)

- **Closure of establishments and of facilities** in which recreational leisure, entertainment, cultural, artistic, sports, games and betting, catering, as well as bath and spa activities take place.
- **Suspension of retail trade activities**, except:
 - (i) Those that provide goods considered essential in the current situation;
 - (ii) Electronic commerce;
 - (iii) Establishments that intend to sell their goods exclusively for home delivery or where goods may be collected from the door of the premises; and
 - (iv) Retail trade activities located on highways, in airports and in hospitals.
- **Suspension of the rendering of services activities in establishments open to the public**, except:
 - (i) Services considered essential in the current situation;
 - (ii) Services that are provided at a distance, without contact with the public, or that are delivered through an electronic platform; and
 - (iii) Services provided on highways, in airports and in hospitals.
- **Restaurants**: restaurants and similar establishments may continue to operate exclusively to provide takeaway or home delivery services and are exempt from needing a licence to do so. Moreover:
 - (i) Canteens are to continue to operate; and
 - (ii) In tourist establishments, catering services may be provided exclusively for guests.

- **Crime of disobedience**: the failure to close establishments or to suspend activities may lead to prosecution for the crime of disobedience.
- **Rules that establishments open to the public must comply with**:
 - (i) It is forbidden to consume products inside the establishments;
 - (ii) Measures must be adopted to ensure:
 - a. That persons remain inside the establishment for the time strictly necessary for the acquisition of the products; and
 - b. A minimum distance of two metres between persons;
 - (iii) The hygiene and health rules established by the Directorate-General of Health (“*Direção-Geral da Saúde*”) must be followed;
 - (iv) The persons subject to a special duty of protection will be given priority 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 services.
- **Remote working**: the remote working regime is mandatory, regardless of the nature of the employment agreement, whenever compatible with the relevant employment duties.

Time frame: these measures came into force on 22 March 2020 and will remain in force for the duration of the State of Emergency .

1.4. CIVIL REQUISITION (“*REQUISIÇÃO CIVIL*”)

 **Decree of the Council of Ministers 2-A/2020, of 20 March 2020**

For further information regarding this decree, see our note [here](#)

- **Requisition ordered by the Portuguese Minister for Health**: where it is appropriate and indispensable for the protection of public health, the Portuguese Minister for Health may proceed with the temporary requisition of:
 - (i) Facilities and establishments of any nature;
 - (ii) Any goods or services; as well as
 - (iii) Ordering the mandatory carrying out of activities to any entity.
- **Requisition ordered by the health or the civil protection authorities**: these entities 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.

1.5. PUBLIC SERVICES

Decree of the Council of Ministers 2-A/2020, of 20 March 2020

For further information regarding this decree, see our note [here](#)

Decree Law 10-A/2020, of 13 March 2020

- **Essential public services:** their provision will continue, as well as the respective repair and maintenance of these services.

Essential public services are related to: water, electrical energy, 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.

Moreover, the operation of other public services that are considered essential may be ordered.

- **Other public services:**
 - (i) Citizen's bureaus ("Lojas do Cidadão") are closed;
 - (ii) Face-to-face services continue by appointment only at the branch network of the different services; and
 - (iii) The provision of services through digital means is maintained.

- **Limitations on the access to services and public buildings:** the access to services and public buildings may be limited by an order of the member of the Portuguese Government responsible for public administration and for the area to which the service or building concerns.

2. MEASURES DECREED IN OVAR AND TORRES VEDRAS – LESSONS FOR THE FUTURE

In the **current context of legislative and regulatory proliferation, and the corresponding legal uncertainty, it is important to understand the type of emergency measures that may be implemented at any time** in municipalities, at the initiative of local and national authorities, depending on the evolution of the pandemic. By way of example, we look at the measures that have been adopted specifically for the municipalities of Ovar and Torres Vedras.

2.1. OVAR

In Ovar, several orders have been issued, either by local entities or by the members of the Portuguese Government. First of all, during the afternoon of 17 March 2020, an order was issued by the Regional Health Delegate (*“Delegado de Saúde Regional”*), under Decree Law 82/2009, of 2 April 2009 (which sets out the legal regime applicable to health authorities), for:

- (i) The closure of all non-essential business premises and services; and
- (ii) The constraint on the movement of people to and from Ovar.

This order created a situation of huge uncertainty among the population and private undertakings because the adopted measures were so vague.

Secondly, during the evening of 17 March 2020, the Portuguese Prime Minister and the Portuguese Minister for Home Affairs, by way of a joint order issued under the Civil Protection Law (*“Lei da Proteção Civil”*), decided to approve a range of measures to come into force in the municipality of Ovar, notably:

- (i) Restriction on the movement of people in public spaces;
- (ii) The closure of business premises, with the exception of those of the food sector, pharmacies, banks, petrol stations; and
- (iii) The establishment of a municipal health border, severely restricting movements to and from the municipality of Ovar.

Pursuant to this joint order, no industrial establishments were covered by the closure order and as a result creating the conviction that the industries in this municipality could continue to operate.

Thirdly, on 19 March 2020, the Resolution of the Council of Ministers 10-D/2020, of 18 March 2020, was approved, declaring a state of calamity in the municipality of Ovar and approving several measures which went beyond those initially decreed under the joint order of 17 March 2020. As explained below, among the establishments to which the closure order applies, were the industrial establishments, with the exception of those sectors essential for the functioning of day-to-day life.

The situation of Ovar illustrates how, in a very short period of time, the measures approved by the competent authorities may come about and change suddenly.

Resolution of the Council of Ministers 10-D/2020, of 18 March 2020

Declaration of the state of calamity in the municipality of Ovar, on the grounds that the health authority of the municipality of Ovar has recognised that this municipality is facing an **epidemiological situation compatible with active community transmission**.

It should be noted that, in the event of the abovementioned situation occurring in other municipalities of the country, it is also possible for a calamity situation to be declared in these municipalities.

Within the framework of the declaration of the state of calamity, the following exceptional measures have been adopted:

- **Prohibition of movement of people in public spaces**, except for necessary and urgent movements, namely:
 - (i) Purchase food, hygiene or pharmaceutical goods;
 - (ii) Access to health care units;
 - (iii) Access to the workplace, located in the municipality; and
 - (iv) Care and assistance to the elderly, minors, dependants and especially vulnerable persons.
- **Imposition of the closure of:**
 - (i) **All public services**, of the local or central administration, except hospitals and health centres, security forces and services, rescue services, communications, water and energy supply and waste collection and treatment;
 - (ii) **Business premises and services establishments**, except those for the retail sale of food, health and hygiene goods, pharmacies, banks, petrol stations, sale of newspapers, vehicle maintenance, repair establishments, computer equipment and funeral activities;
 - (iii) **Industrial establishments**, with the exception of sectors essential for day-to-day life to function, such as food and its packaging and human and animal health, and;
 - (iv) **Other establishments**, in cases of force majeure and under conditions approved by the public health authorities, duly authorised by the Portuguese Government.
- **Establishment of a municipal sanitary border**, with the prohibition of movements to and from the municipality of Ovar, except:
 - (i) For health and veterinary professionals, members of the armed forces and security forces and services, rescue services and private security undertakings;
 - (ii) For people to return to their place of habitual residence;
 - (iii) For the supply of food, pharmaceuticals, fuel and other essential goods and the transport of goods needed for the functioning of the undertakings that continue to operate;
 - (iv) For the supply of cash terminals;
 - (v) For the repair and maintenance of communications, sewage, water electricity, gas and similar facilities; and
 - (vi) Other grounds include, for reasons of urgency, duly substantiated, or in cases of force majeure or for public health.
- **Prohibition of the picking up and setting down of passengers from rail transport stops in the municipality of Ovar.**

Time frame: such measures came into force on 18 March 2020 and will remain in force until 2 April 2020.

2.2. TORRES VEDRAS

The Civil Protection of Torres Vedras (**PCTV**) approved a set of extraordinary measures, in anticipation of the measures that would be approved for the national territory, through (i) two statements issued on 13 March, (i) a statement of 14 March and, finally, (iii) a statement of 21 March 2020.

As will become clear, the measures decreed were sometimes more severe than the measures that the Portuguese government eventually approved on 20 March 2020, through Decree of the Council of Ministers No. 2-A/2020, which led the PCTV, on 21 March 2020, to reverse some of the measures that had been decreed in that municipality. Among the measures reversed, the following are noteworthy:

- (i) The reopening of hotels and local accommodation establishments, which had been ordered to close by the PCTV on 13 March 2020;
- (ii) The reopening of medical practices, dental and physiotherapy clinics and other health and well-being facilities, which had been ordered to close by the PCTV on 14 March 2020.

The case of Torres Vedras shows how, in an attempt to contain the propagation of COVID-19, local authorities can at times approve extraordinary measures of questionable legality, which they can be forced to reverse at a later stage.

 **Statement no. 05/2020 of the Municipal Civil Protection Service, of 13 March 2020**

Following the approval of the Municipal Emergency Plan on 12 March 2020, the PCTV established, among others, the following prevention measures for the municipality of Torres Vedras:

- (i) Closure of cinemas, gymnasiums, swimming pools, dining and drinking establishments with dance floors and playgrounds;
- (ii) Suspension of all masses and other worship services and limiting the attendance at funerals and wakes to a maximum of ten people; and
- (iii) The capacity of catering and drinking establishments to be reduced by two thirds.

 **Statement no. 06/2020 of the Municipal Civil Protection Service, of 13 March 2020**

On the same day that the aforementioned statement No. 05/2020 was issued, the **PCTV issued a second statement**, through which it adopted more severe preventive measures for the Torres Vedras municipality than those previously announced:

- (i) Closure of the Santa Cruz Youth Hostel, the Santa Cruz Camping and Caravan Park and the FÍSICA Camping Park;
- (ii) **Closure of all hotels and local accommodation units**; and
- (iii) Limiting the attendance at weddings to a maximum of 10 people.

 **Statement no. 10/2020 of the Municipal Civil Protection Service, of 13 March 2020**

 **Statement “Adaptation of Local Measures to the State of National Emergency”, of 21 March 2020**

The day after the abovementioned statements were issued, a **new statement** was issued by the PCTV in which further preventive measures were implemented in the municipality of Torres Vedras, including:

- (i) Closure of the City Council's services open to the public, municipal water and sanitation services, parish councils of Torres Vedras and the Torres Vedras and the Citizen's bureau (“*Loja do Cidadão*”); and
- (ii) Closure to the public of medical offices, dental clinics, physiotherapy and other health and well-being facilities, including non-conventional therapies.

Following the declaration of the State of Emergency, the PCTV issued a new **statement adapting the measures implemented**, seeking to harmonise them with the extraordinary measures provided for in the Decree of the Council of Ministers No. 2-A/2020 of 20 March:

- In this context, **several measures that had been adopted were revoked as they were more restrictive** than those implemented at a national level, namely
 - (i) Hotels and local accommodation establishments were allowed to reopen;
 - (ii) Medical practices, dental and physiotherapy clinics, and other health and well-being facilities were allowed to reopen.

Similarly, several measures were revoked in order to implement the most severe national measures.

PART II - MEASURES AFFECTING RELATIONS WITH THE PUBLIC AUTHORITIES

1. PUBLIC PROCUREMENT

Decree Law no. 10-A/2020, of 13 March 2020

- In order to facilitate the use of the direct award procedure, a **number of exceptions to the provisions of the Public Procurement Code (CCP)** are provided for:
 - (i) **It is recognised that the COVID-19 epidemic is an unforeseeable event**, and therefore all contracting authorities are allowed to use the direct award procedure for the execution of public works contracts, contracts for the lease or purchase of movable property and contracts for the purchase of services , to the extent strictly necessary and for reasons of extreme urgency;
 - (ii) Contracts concluded by direct award may be fully effective immediately after the award of the contract, without prejudice to the obligation to publish those contracts afterwards;
 - (iii) Contracting authorities may resort to **simplified direct award** procedures (awarded upon signing of invoice) to conclude contracts for the purchase or lease of movable property and the purchase of services not exceeding the amount of EUR 20,000.00;
 - (iv) The restrictions on the choice of invited entities set out in article 113(2) to (5) of the CCP will not apply to the procedures covered by this Decree-Law;
 - (v) The contracts executed under this Decree-Law will not be subject to the prior consultation procedure, as provided for in article 27-A of the CCP.
- Contracting authorities are allowed to make **advance payments**:
 - i. Whenever it is a question of guaranteeing the provision by the economic operator of the goods and services;
 - ii. Without the need to ascertain the assumptions set out in article 292 of the CCP.
- The entities covered by the National Public Procurement System are also exempt from obtaining prior authorisation for centralised purchases of goods or services covered by a framework agreement and made under the terms of this Decree-Law.

Time frame: this measure came into force on 13 March, 2020.

2. PRIOR APPROVAL OF THE COURT OF AUDITORS

 **Law no. 1-A/2020, of 19 March 2020**

- The following contracts concluded under this law will be **exempt from prior approval of the Court of Auditors**:
 - (i) Public works contracts, contracts for the lease or purchase of movable property and contracts for the purchase of services entered into by direct award procedure under the exceptional public procurement regime provided for in Decree-Law no. 10-A/2020 of 13 March 2020, referred to above; and
 - (ii) Contracts entered into by entities of the Ministry for Health, the General Directorate of Reinsertion and Prison Services, the National Institute of Forensic Medicine and Forensic Sciences, the Hospital of the Armed Forces, the Military Laboratory of Chemical and Pharmaceutical Products and the Institute of Social Action of the Armed Forces.
- The deadlines for pending preliminary examination proceedings or for proceedings that do not fall within the abovementioned exception **are not suspended**.

Time frame: this exemption regime has been in effect since 12 March.

3. ADMINISTRATIVE PRACTICES AND REGULATIONS

 **Decree no. 2-A/2020 of the Council of Ministers, of 20 March 2020**

For further information regarding this Decree, see our note [here](#)

- **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 mere notification to the addressee, electronically or otherwise. Notification is considered to have taken place through the publication of regulations or administrative acts on the website of the respective competent authorities.

Time frame: these measures came force on 22 March 2020 and will remain in force for the duration of the State of Emergency lasts.

4. ADMINISTRATIVE DEADLINES

 **Law no. 1-A/2020, of 19 March, 2020**

 **Decree Law no. 10-A/2020, of 13 March 2020**

Code of Administrative Procedure

- **Suspension of administrative deadlines in favour of individuals and companies.**

This provision raises no doubts about the suspension of deadlines in administrative procedures.

However, it is not clear whether the **non-procedural deadlines set out in administrative legislation or in administrative regulations and acts** (e.g. deadline for compliance with a suspensive or resolutive condition set out in an administrative act), should be considered *administrative deadlines* for the purpose of their possible suspension.

In these cases, the possible suspension should be confirmed with the respective public authority.

- **Suspension of the deadlines by which the authorities tacitly grant authorisations and licences** required by individuals and companies or even if not required, within the scope an environmental impact assessment.

Time frame: deadlines are considered suspended as of 12 March 2020.

- If a deadline falls on a day on which the respective administrative service is not open to the public, or does not operate during the normal period, the term will be transferred to the following working day.
- Therefore, in the case of the **administrative offices being closed**, even if the deadlines were not suspended, the deadline is transferred to the following working day, that is, the day the office is open again to the public.

5. DEADLINES IN ADMINISTRATIVE OFFENCES, SANCTIONING AND DISCIPLINARY PROCEEDINGS

 **Law no. 1-A/2020, of 19 March, 2020**

- **Suspension of deadlines in administrative offences, sanctioning and disciplinary proceedings** and respective acts and procedural steps that take place in administrative services (direct, indirect, regional and local) and other administrative entities, including independent authorities such as the Bank of Portugal and the Securities and Exchange Commission.

Relevant Official Links

PORTUGUESE GOVERNMENT

 **PORTUGUESE GOVERNMENT**

This website publishes all the initiatives of the Portuguese Government and measures announced to address the public health emergency caused by COVID-19.

 **NÃO PARAMOS, ESTAMOS ON**

Website that summarises all relevant information, measures adopted and essential contact details in the context of the Portuguese Government's response to the public health emergency caused by COVID-19.

OTHER ENTITIES

 **GENERAL DIRECTORATE OF HEALTH**

This website covers all communications from the Directorate General for Health in the context of the public health emergency caused by COVID-19.

 **SUPERIOR COUNCIL OF THE MAGISTRACY**

Page of the Superior Council of the Magistracy that provides relevant information regarding Covid-19.

 **INSTITUTE FOR MOBILITY
AND TRANSPORTATION**

Website of the Institute for Mobility and Transportation that displays the various statements issued by this entity regarding Covid-19.

 **DIRECTORATE GENERAL
FOR ENERGY AND
GEOLOGY**

Official website of the Directorate General for Energy and Geology where the measures taken by this entity for the energy sector within the framework of the COVID-19 can be found.

 **ENERGEY SERVICES
REGULATORY ENTITY**

Official webpage of the Energy Services Regulatory Entity where the measures taken by this entity for the energy sector within the framework of the COVID-19 can be found.

CONTACTS



Bernardo Ayala

Partner

+351 919 608 575

bernardo.ayala@uria.com



Afonso Choon

Senior Associate

+351 916 188 851

afonso.choon@uria.com



Tomás Cabral Anunciação

Associate

+351 961 093 097

tomas.anunciacao@uria.com

BARCELONA
BILBAO
LISBOA
MADRID
PORTO
VALENCIA
BRUXELLES
LONDON
NEW YORK
BOGOTÁ
CIUDAD DE MÉXICO
LIMA
SANTIAGO DE CHILE
BEIJING

www.uria.com

This newsletter provides general information and does not constitute legal advice.