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STATE OF CALAMITY - EXTRAORDINARY
MEASURES

MAIN ASPECTS OF THE RESOLUTION OF
THE COUNCIL OF MINISTERS NO. 33-
A/2020

5 May 2020

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1. Introduction

On 2 May 2020, the state of emergency that had been in place since 23 March 2020 came to an end. However, this does not mean that all the measures adopted to contain and prevent the spread of the COVID-19 disease were lifted.

In fact, on 30 April 2020, the Portuguese Government approved the Resolution of the Council of Ministers no. 33-A/2020 (“**Resolution**”), through which it declared a **state of calamity** throughout the national territory, under article 19 of the Basic Law of Civil Protection (Law 27/2006, of 3 July 2006, as amended) and article 17 of Law 81/2009, of 21 August 2009, as amended, that approved the public health surveillance system.

This Resolution imposes several extraordinary measures to remain in force during the state of calamity, including measures regarding:

- i. Limiting and restricting the movement of people;
- ii. Limiting and restricting certain economic activities; and
- iii. Setting rules and standards for the organisation of work and the operating of establishments.

In general terms, we can state that the measures imposed for the period from 3 May to 17 May 2020 are less severe than those in force during the state of emergency. Nevertheless, since these measures affect several fundamental rights, we cannot fail to notice that their constitutionality and legality is questionable.

The scope of the Resolution is as follows:

- i. Territorial: the entire national territory.
- ii. Time frame: entered into force on 3 May 2020 and will cease at 23:59 on 17 May 2020, without prejudice to a possible extensions or modifications if necessary.

Through this Resolution, the following measures will be enforced:

2. Measures affecting the freedom of movement

2.1. COMPULSORY CONFINEMENT

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 the threat of prosecution for the crime of disobedience. To this end, health authorities must report to security forces and services on the implementation of the mandatory confinement measures.

2.2. CIVIC DUTY OF HOME CONFINEMENT

Citizens who are not in compulsory confinement should refrain from using public spaces and roads, except for the authorised purposes listed in the Resolution, in particular:

- i. To purchase goods and services;
- ii. To go to facilities, offices or services that are not closed;
- iii. For professional activities, including those of high performance athletes and their coaches; to seek employment or to respond to job offers;
- iv. To participate in social volunteering actions;
- v. For health reasons, including the transportation of people that require healthcare;
- 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 their 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. To visit libraries, archives, zoos, oceanariums, aquariums and similar places, as well as open-air green spaces within museums, monumental sites, palaces and archaeological sites or similar historical sites;

- x. To take physical exercise and practice sport in the open air in accordance with the rules listed below in Section 2.3, as well as for the practice of fishing for leisure purposes;
- xi. To walk pets or provide food for animals;
- xii. To visit veterinary practices or for animal-owners to seek medical-veterinary assistance for their animals;
- xiii. To participate in proceedings before judicial entities or in acts within the jurisdiction of notaries, lawyers, solicitors and registration officers;
- xiv. For people holding a free-transit pass to travel to carry out their functions;
- xv. To return to one's place of residence;
- xvi. Other activities of a similar nature or for *force majeure* or urgent reasons, provided they are duly justified.

All movement must comply with the recommendations and orders determined by the health authorities and security forces.

2.3. PHYSICAL ACTIVITY AND SPORTS

Physical activity and non-competitive and outdoor sports may be practiced in compliance with the following rules:

- i. A minimum distance of two metres is to be maintained between citizens for activities that take place side-by-side and four metres for activities that take place in line;
- ii. The sharing of sports materials and equipment is not permitted, including sessions with personal trainers, as well as access to changing rooms;
- iii. A procedural manual must be complied with in order to protect practitioners and employees.

Physical activity and sports with a maximum of five people with the supervision of a trainer or coach, or the practice of physical activity and recreational sports with a maximum of two people is permitted.

Sports facilities in operation must comply with the rules set out below in Section 3.3.

3. Measures affecting establishments and activities

3.1. CLOSURE OF ESTABLISHMENTS AND SUSPENSION OF ACTIVITIES

A) Closed Establishments

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

- i. Recreational, leisure and entertainment activities: party or dancing halls, recreational or amusement parks, sports and leisure facilities or similar;
- ii. Cultural and artistic activities: auditoriums, cinemas, museums, theatres, concert halls, monuments, art galleries and exhibition halls, congress halls or similar, without prejudice to access to the green open-air spaces within these places;
- iii. Sports activities (except for high-performance athletes):
 - (a) Venues where sports involving more than five people can be practiced (e.g. football and rugby fields, futsal, basketball, handball, volleyball, roller hockey, multi-sport pavilions, stadiums and the like);
 - (b) Enclosures involving the practice of contact sports or the sharing of materials and equipment (e.g. boxing rings or martial arts, gymnasiums and the like);
 - (c) Covered venues (e.g. firing ranges, skating rinks, ice hockey rinks, permanent motorcycle circuits, racetracks, track and field tracks and the like).
- iv. Activities in open spaces and public streets: nautical and aeronautical competitions and exhibitions, popular festivities or similar;
- v. Gambling and betting activities: casinos, bingo halls or similar;
- vi. Catering activities: restaurants, bars, terraces, cafeterias, vending machines;
- vii. Thermal baths, spas, solariums, tattoo services and similar establishments; and
- viii. Language schools and tutoring centres.

B) Suspension of retail and service activities

Activities in retail and service establishments open to the public are also suspended if they:

- i. Have a sales or service area of more than 200 m²;
- ii. Are located in commercial centres (e.g. shopping centres) unless they have a separate entrance.

C) Crime of disobedience

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

3.2. ESTABLISHMENTS OPEN TO THE PUBLIC AND ACTIVITIES ALLOWED

Establishments and services that are not included in the previous section 3.1 may open or can be provided. Furthermore, even if they are included in such section, establishments and services mentioned below may open or be provided.

A) Retail trade

Establishments listed in annex II of the Resolution will continue to operate, including::

- i. Minimarkets, supermarkets, hypermarkets, greengrocers, butchers, fishmongers, fish markets, bakeries or markets (in the latter case, to the extent that food is sold);
- ii. Stationery shops; tobacconists and shops that sell games (e.g. board games);
- iii. Establishments selling cosmetics, hygiene products, pharmaceuticals, medical, orthopaedic, optical, natural and dietetic products, including pharmacies;
- iv. Pet shops or shops that sell pet food or pet pharmaceuticals;
- v. Shops selling flowers, plants, seeds and fertiliser, as well as products to protect plants and biocides;
- vi. Hardware stores and DIY stores;
- vii. Establishments selling vehicles (e.g. bicycles, cars, boats), tractors and agricultural machinery, as well as parts, accessories or fuel for these vehicles and equipment;
- viii. Establishments selling household appliances, computer and communication equipment; and
- ix. Book shops and music shops.

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

- i. They maintain their activity exclusively for home delivery; 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 listed in annex II of the Resolution will continue to operate, including:

- 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 vehicles (e.g. bicycles, cars, boats), tractors, agricultural machinery, 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;
- vii. Hairdressing salons, barbers and beauty salons, by appointment only;
- viii. Real estate service-providers;
- ix. Washing and dry cleaning services for textiles and leather.

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.

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

C) Restaurants

Canteens, as well as other collective catering units whose catering services are provided under a performance contract for a continuous duration can 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) Self-drive car hire

Passenger car hire is permitted in the following cases:

- i. For journeys authorised under the Resolution;
- ii. To carry out retail trade activities or render services authorised under the Resolution;
- iii. For roadside assistance, recovery or replacement of the vehicle;
- iv. When the vehicles are to be used to provide essential public services.

Hiring goods vehicles is also permitted.

F) Retail trade in wholesale food distribution establishments

The owners of wholesale food distribution establishments are allowed to sell their products directly to the public, thus engaging in retail trade, while the Resolution is in effect.

To engage in retail trade, the establishment where wholesale trade is carried out must observe the following rules:

- i. The common applicable to establishments open to the public (see section 3.3. below);
- ii. The goods destined for retail sale must display the sale price and the goods must be available for retail sale in single units;
- iii. Measures must be taken to ensure that the quantities made available for each consumer to purchase are limited in order to avoid hoarding.

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

In all establishments open to the public, the rules set out in articles 10 to 15 of the Resolution must be observed, including the following rules

A) Physical distancing rules

- i. Maximum limit of 0.05 customers per m² of area for the public (e.g. 5 people per 100 m²);
- 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. Waiting for assistance inside service establishments is prohibited and appointments must be made in advance;
- iv. Identify, whenever possible, entry and exit mechanisms by separate doors.

B) Rules of Hygiene

Economic operators must:

- i. Promote cleaning and disinfection:
 - (a) This must be done daily and periodically for spaces, equipment, objects and surfaces with which there is an intensive contact;
 - (b) After each use of equipment, objects, surfaces products and utensils in direct contact with the clients (e.g. automatic payment terminals, scales in supermarkets); and
 - (c) In relation to products that are exchanged and returned, before they are made available for sale again, except when this is not possible or compromises the quality of the products;
- ii. Limit direct contact with products or equipment, as well as unpackaged items, by workers and customers as far as possible;
- iii. Control access to fitting rooms – in clothing and similar retail establishments – ensuring that displays, clothing supports and hangers are disinfected after each use; and
- iv. Ensure liquid alcohol-based solutions are available for workers and customers

C) Hours of service

- i. The opening hours of the establishments may be adjusted by the economic operators or by the Minister of State, Economy and Digital Transition;
- ii. Establishments that will only resume their activity after the Resolution comes into force may not open before 10 a.m.; and
- iii. Establishments may close during certain periods of the day to carry out cleaning operations and for the disinfection of employees, products or areas open to the public.

D) Priority service

Establishments that maintain their activity must give priority to health professionals, members of the security services and forces, protection and rescue personnel, armed forces personnel and social support services.

E) Duty to provide information

Establishments in operation must clearly and visibly inform customers about the new rules of operation, access, priority, care, hygiene, safety and other relevant rules applicable to each establishment.

F) Other rules

Establishments in operation must also comply with:

- i. The rules defined by the Directorate General of Health;
- ii. The rules set out in codes of conduct approved for certain business sectors or establishments, as long as they do not contradict the provisions of the Resolution.

4. Public services

The provision of essential public services will continue, as well as the respective repair and maintenance of these services. 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.

The remaining public services will resume face-to-face service by appointment only from 4 May 2020.

Citizen's bureaus (*Lojas do Cidadão*) will remain closed to the general public, with face-to-face services being provided through appointment only, in locations where there are no decentralised offices.

The provision of services through digital media and contact centres with citizens and companies is maintained.

5. Labour measures

5.1. REMOTE WORKING

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

5.2. CATERING ESTABLISHMENTS

Catering establishments (e.g. restaurants) may require their workers, with their consent, 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. Religious celebrations and funerals

Celebrations (including religious ones) and other events involving a crowd of more than ten people are not allowed. Only in the event that that the Minister of the Interior and the Minister of Health jointly authorise celebrations and events with a larger number of people can these take place.

The holding of funerals is subject to the organisational measures that may be implemented by the local authority that manages the respective cemetery. The rules imposed may not restrict the presence at the funeral of a spouse or de facto cohabitant, ascendants, descendants or other relatives.

7. Monitoring of the Resolution

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

- i. Monitor compliance with the Resolution;
- ii. Order the closure of establishments and prevent the operation of activities provided for in annex I of the Resolution;
- iii. Issue orders (namely to return home) and report the crimes of disobedience set out in the Resolution;
- iv. Recommend that people do not gather in public streets and advise all citizens to comply with the civic duty of home confinement, as well as avoiding gatherings of more than ten people.

Disobedience and resistance to the legitimate orders of competent authorities, when issued under the Resolution, are sanctioned under criminal law and the respective minimum and maximum limits of the penalties are increased by one-third, pursuant to paragraph 4 of article 6 of Law no. 27/2006 of 3 July 2006.

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

8. Additional effects of the state of calamity

Under the Basic Law of Civil Protection, the declaration of the state of calamity also entails the following:

8.1. FREE ACCESS TO PROPERTY AND USE OF PRIVATE NATURAL OR ENERGY RESOURCES BY CIVIL PROTECTION AGENTS

Civil protection agents are permitted to access private property, as well as to use private natural or energy resources, to the extent strictly necessary to restore normal living conditions.

8.2. CIVIL REQUISITION

Goods or services may be requisitioned on a temporary basis, in particular because of the urgency and public and national interest at stake that justify the requisition.

The requisition of goods or services is determined by order of the Ministers of Internal Administration and Finance, which establishes the object of the requisition, the foreseeable duration, the beneficiary and the entity responsible for paying compensation for losses resulting from the requisition.

In relation to the compensation due for the requisition, the rules regarding the compensation for the temporary requisition of real estate contained in the Expropriations Code will apply, with the necessary adaptations.

8.3. MUNICIPALITIES' PRE-EMPTION RIGHTS

Municipalities are granted pre-emption rights regarding onerous transactions/transfers of land and buildings between private parties, for a period of two years.

Private individuals wishing to sell real estate must notify the mayor of the respective municipality of the intended transaction/transfer in order to allow the municipality to exercise the pre-emption right.

8.4. PUBLIC PROCUREMENT

The contracting of public works contracts and the supply of goods and acquisition of services with a view to urgently preventing or responding to situations arising from the events that led to the declaration of the state of calamity:

- i. May be carried out by direct award procedure, according to the list of entities authorised to adopt this procedure, approved by order of the Minister of Internal Administration and Finance;
- ii. Are exempt from the prior approval of the Court of Auditors.

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