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# URÍA MENÉNDEZ

## PROENÇA DE CARVALHO

STATE OF CALAMITY - EXTRAORDINARY  
MEASURES

MAIN ASPECTS OF THE RESOLUTION OF  
THE COUNCIL OF MINISTERS NO.  
38/2020

20 May 2020

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# 1. Introduction

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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 (“**RCM 33-A/2020**”), through which it declared the **state of calamity** throughout the national territory, under article 19 of the Basic Law of Civil Protection (Law 27/2006 of 3 July, as amended) and article 17 of Law 81/2009 of 21 August, as amended, that approved the public health surveillance system. RCM 33-A/2020 provided for a number of containment and confinement measures that are more limited in scope than those in force during the state of emergency.

Given that according to RCM 33-A/2020, the state of calamity would end at 23:59 on 17 May 2020, the Government approved the Resolution of the Council of Ministers no. 38/2020 of 17 May (“**Resolution**”), which (i) extended the state of calamity and (ii) reduced the containment and confinement measures that had been in force until then.

Despite the progressive lifting of the containment and confinement measures, since some of the measures in force affect several fundamental rights, we cannot ignore the fact 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 18 May 2020 and will cease at 23:59 on 31 May 2020, without prejudice to a possible extensions or modifications if necessary.

Through this Resolution, the following measures will be implemented:

## 2. Measures affecting the freedom of movement

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### 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 and should remain at home, 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 or national team 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 get some fresh air by going to parks, promenades, walkways, beaches, where bathing and other similar activities are also allowed;
- ix. For minors and their accompanying adults to get to school or day-care centres;
- x. For training purposes and to sit tests and exams;
- xi. For those with disabilities to visit occupational centres;

- xii. To visit libraries, archives, zoos, oceanariums, aquariums and similar places, museums, monumental sites, palaces and archaeological sites or similar historical sites, as well as green and outdoor spaces within these cultural spaces;
- xiii. To take physical exercise and play sports outside in accordance with the rules listed below in Section 2.4, as well as recreational fishing and hunting;
- xiv. To walk pets or provide food for animals;
- xv. To visit veterinary practices or for animal-owners to seek medical-veterinary assistance for their animals;
- xvi. To participate in proceedings before judicial entities or in acts within the jurisdiction of notaries, lawyers, solicitors and registration officers;
- xvii. For people holding a free-transit pass to travel to carry out their functions;
- xviii. To return to one's place of residence;
- xix. 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. VISITING RESIDENTS AT CARE FACILITIES**

Visiting residents of care homes, long-term care homes and other facilities dedicated to the elderly, as well as care facilities for infants, children, young people and those with disabilities are permitted, provided that the rules defined by the Directorate General for Health ("DGS") are complied with.

Upon assessing the specific epidemiological situation, the DGS, in coordination with the local health authority and the Minister for Health, may suspend visits to any the aforementioned facilities for a limited time.

### **2.4. PHYSICAL ACTIVITY AND SPORTS**

Physical activity and non-competitive and outdoor sports are permitted 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.

The abovementioned rules do not apply to professional or high-performance athletes or national team athletes, as long as their respective competitions have not been cancelled.

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

Finally, recreational boating courses have resumed, provided that the conditions listed in article 24 of the Resolution are met.

## 3. Measures affecting establishments and activities

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### 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, indoor sports and leisure facilities or similar;
- ii. Cultural and artistic activities: auditoriums, cinemas, museums, theatres, concert halls, national, regional and municipal caves, bullrings and all indoor or outdoor cultural venues;
- iii. Sports activities (except for professional or high-performance athletes):
  - (a) Indoor venues (e.g. firing ranges, ice skating rinks, ice hockey rinks, permanent motor-racing tracks, auto and other racing tracks including track and field; indoor sports halls, venues for futsal, basketball, handball, volleyball, roller hockey, track fields, tennis and padel courts and the like);
  - (b) Enclosures for contact sports or sports that involve the sharing of materials and equipment (e.g. swimming pools, boxing rings, martial arts establishments, gymnasiums 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. Food and beverage serving activities: bars, clubs and food courts;
- vii. Thermal baths, spas, solariums, tattoo services and similar establishments; and
- viii. Language schools and tutoring centres, except to sit tests and exams.

#### B) Suspension of retail and service activities

Activities in retail and service establishments open to the public are also suspended (with the exceptions below) if they:

- i. Have a sales or service area of more than 400 m<sup>2</sup>;

- ii. Are located in commercial centres (e.g. shopping centres) unless they have a separate street access and a surface area equal to or less than 400 m<sup>2</sup>.

### **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) General**

Despite the rule referred to in section 3.1. B, establishments with a surface area of more than 400 m<sup>2</sup> may still open for business if:

- i. They have an authorisation from the competent municipality; and
- ii. They limit their sales or service area to 400 m<sup>2</sup>.

### **B) 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, markets (in the latter case, to the extent that food is sold) and fairs (as provided for in H below);
- 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.

### **C) 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 and local lodgings;
- 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;
- x. Restaurants and similar food establishments, cafeterias, tea rooms and similar places, as provided for in section D below;

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 deliveries.

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

#### **D) Restaurants**

Restaurants and similar establishments can now open provided that:

- i. They comply with the DGS' guidelines;
- ii. Occupancy levels do not exceed 50%;
- iii. No new clients are permitted after 11pm; and
- iv. They use a table-booking system.

Restaurants may open up their terraces to customers, provided that the DGS' guidelines are adhered to.

Establishments that intend to continue offering, on a permanent or part-time basis, take-away or home-deliveries, are exempt from having to obtain take-away or home-delivery licences.

#### **E) Activities on highways, in airports, railway stations, ports and in hospitals**

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

#### **F) 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.

#### **G) 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. Ensure compliance with the standard applicable rules 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. If considered necessary, measures to ensure that the quantities made available for each consumer are adequate in order to avoid hoarding.

#### **H) Fairs and Markets**

The Resolution also allows fairs and markets to be held, provided that a contingency plan for COVID-19 has been prepared or approved by the competent local authority. The contingency plan must comply with the rules in force for retail establishments (see 3.3 below), as well as the DGS' guidelines, and thus provide for a set of procedures to prevent and control infection.

#### **I) Camping and caravan sites**

Camping and caravan sites may reopen as long as they do not surpass two-thirds of their campsite or caravan capacity.

#### **J) Museums, monuments, palaces, archaeological sites and similar**

Museums, monuments, palaces, archaeological sites and other similar locations may reopen provided they comply with the rules set out in article 21 of the Resolution, of which the following are worth noting:

- i. Compliance with the DGS' guidelines; and
- ii. A guarantee that each visitor has at least a 20 m<sup>2</sup> grid around them and that members of different households keep a safe distance (2 m) from other visitors at all times;

### **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 m<sup>2</sup> of area for the public (e.g. 5 people per 100 m<sup>2</sup>). This rule is not applicable to services establishments;
- 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 appropriate disinfection 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 only resumed their activity after RCM 33-A/2020 entered into force or that only resume their activity after the Resolution comes into force may not open before 10:00;
- iii. Establishments for which normal opening hours have changed as a result of the preceding paragraph may postpone their closing hours for an equivalent period;
- iv. 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.

The provisions set out in paragraphs ii. and iii. above do not apply to hair salons, barbers', beauty parlours, restaurants and similar establishments, cafeterias, tea rooms and similar places.

**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, maximum capacity, 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 DGS;
- 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

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Public services will resume face-to-face services by appointment.

Citizen's bureaus (*Lojas do Cidadão*) will remain closed to the general public until 1 June 2020. Face-to-face services are currently being provided by appointment only, in locations where there are no decentralised offices.

The rules set out in section 3.3 above apply to public services offering face-to-face services.

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

## 5. Labour measures

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### 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.

Where the position in question does not allow remote working, daily or week-long shifts must be established with different entry and exit times, within the limits provided for by the applicable law or labour regulations.

### 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

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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

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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, unless they are from the same household.

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

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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.

## Contact lawyers

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