
URÍA MENÉNDEZ

PROENÇA DE CARVALHO

State of Calamity - Extraordinary Measures

Main aspects of the Resolution of the
Council of Ministers no. 43-B/2020

17 June 2020

Contents

1.	Introduction	4
2.	Measures affecting the freedom of movement.....	6
2.1.	Compulsory confinement.....	6
2.2.	Visiting Residents at Care Facilities	6
2.3.	Physical activity and sports	6
2.4.	Passenger Capacity limits In private vehicles.....	7
3.	Measures affecting establishments and activities.....	8
3.1.	Closure of establishments and suspension of activities	8
3.2.	Establishments open to the public and activities allowed	9
A)	<i>Restaurants</i>	9
B)	<i>Fairs and markets</i>	9
C)	<i>Museums, monuments, palaces, archaeological sites and similar</i>	9
D)	<i>Cultural events</i>	10
E)	<i>Gambling establishments, casinos, bingos or similar establishments</i>	10
F)	<i>Personal care and aesthetics</i>	11
3.3.	Rules for establishments open to the public.....	11
A)	<i>Physical distancing</i>	11
B)	<i>Hygiene</i>	11
C)	<i>Hours of service</i>	12
D)	<i>Priority service</i>	12
E)	<i>Duty to provide information</i>	13
F)	<i>Other rules</i>	13
4.	Public services	14
5.	Labour measures	15

5.1. Remote working	15
5.2. Catering establishments.....	16
6. Religious celebrations and funerals.....	17
7. Monitoring of the Resolution.....	18
8. Additional effects of the state of calamity	19
8.1. Free access to property and use of private natural or energy resources by civil protection agents.....	19
8.2. Civil requisition	19
8.3. Municipalities' pre-emption rights	19
8.4. Public procurement	20
Contact lawyers.....	21

1. Introduction

On 30 April 2020, the Portuguese Government approved the Resolution of the Council of Ministers no. 33-A/2020 (“**RCM 33-A/2020**”), declaring the **state of calamity** throughout the national territory. 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 the state of calamity would end at 23:59 hrs on 17 May 2020 (as per RCM 33-A/2020), the Government approved Resolution of the Council of Ministers no. 38/2020 of 17 May (“**RCM 38/2020**”), extending the state of calamity.

Since RCM 38/2020 established that the state of calamity would end at 23:59 hrs on 31 May 2020, the Government extended it once again with Resolution of the Council of Ministers no. 40-A/2020 of 29 May (the “**Resolution**”).

The Resolution significantly reduced the containment and confinement measures that had been in force until then. Indeed, with the entry into force of the Resolution, the following measures ceased to be in force:

- i. Civic duty of home confinement;
- ii. Suspension of retail and service activities to the public;
- iii. Remote working obligations;
- iv. Prohibition of events.

Additionally, the list of establishments and facilities that are to remain closed was significantly reduced. The following establishments can therefore reopen:

- i. Auditoriums, cinemas, theatres and concert halls;
- ii. Shopping centres;
- iii. Several buildings, facilities and indoor and outdoor venues for sports purposes.

Considering the recent outbreaks of COVID-19 located in the Lisbon Metropolitan Area, some exceptional measures were maintained in that territory.

Finally, through Resolution of the Council of Ministers 43-B/2020 of 12 June ("**RCM 43-B/2020**"), the Government amended the Resolution and extended its effects until 23:59 hrs on 28 June. Of the changes made by RCM 43-B/2020 to the Resolution the following are noteworthy:

- i. The lifting of measures specifically applicable to the Lisbon Metropolitan Area;
- ii. The possibility of reopening language schools and tutoring centres;
- iii. The possibility of reopening other establishments, provided that specific guidelines are issued by the Directorate General of Health; and
- iv. Imposing passenger capacity limits on private vehicles;

Despite the progressive lifting of the containment and confinement measures, since some of the measures in force affect several fundamental rights (e.g. compulsory confinement), we cannot ignore the fact that their constitutionality and legality are questionable.

The scope of the Resolution is the following:

- i. Territorial scope: the entire national territory.
- ii. Temporal scope:
 - a. Entry into force: at 00:00 hrs on 15 June 2020;
 - b. Termination of effects: at 23:59 hrs on 28 June 2020, notwithstanding any necessary extensions or modifications in view of the epidemic's evolution.

The Resolution implements the following measures:

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. 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.

2.3. PHYSICAL ACTIVITY AND SPORTS

Individual physical activity and individual sports are allowed in a non-competitive context (i.e. all sports other than handball, basketball, korfbal, football, hockey, skating, rugby or volleyball).

In a competitive context, (i) individual sport competitions without physical contact and (ii) the 1st Division Professional Football League (*1ª Liga de Futebol Profissional*) are allowed, provided that:

- i. They are held outdoors;
- ii. Behind closed doors; and
- iii. In compliance with the DGS specific guidelines.

Collective sports by federated athletes is also allowed, provided that the DGS specific guidelines are complied with.

Physical activity and outdoor sports or in gyms and fitness centres is only permitted when the DGS guidelines are complied with. The sports facilities in operation must comply with the rules set out in section 3.3.

2.4. PASSENGER CAPACITY LIMITS IN PRIVATE VEHICLES

The passenger limit for private vehicles with a capacity of more than five people is reduced to two thirds of that capacity, unless the occupants are all from the same household.

In addition, the occupants must wear a mask or a protective visor, unless:

- i. They are under ten years of age;
- ii. They hold a Multipurpose Medical Certificate of Disability or, for those persons with cognitive or developmental disabilities, a medical certificate certifying their psychiatric disorder; or
- iii. They hold a medical certificate certifying that they should not use masks or visors given their medical condition.

3. Measures affecting establishments and activities

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: party or dancing halls, recreational or amusement parks for children and other similar premises or facilities;
- ii. Cultural and artistic activities: national, regional and municipal caves, public or private and bullrings;
- iii. Sports activities (except for federated athletes' training):
 - (a) Indoor venues or arenas (except for individual sports with no physical contact), indoor sports halls or venues for futsal, basketball, handball, volleyball, roller hockey and similar venues, indoor venues for ice skating, ice hockey, and similar premises, as well as indoor athletics tracks;
 - (b) Enclosures for contact sports (e.g. boxing rings, martial arts establishments and similar premises);
- iv. Activities in open spaces and public streets: parades, popular festivities, folklore shows and similar events;
- v. Gambling and betting activities: arcades and recreation halls;
- vi. Beverage serving activities: beverage establishments, with or without dancefloors (e.g. bars, discos), unless they are part of tourist or accommodation establishments, to provide an exclusive service for their guests;
- vii. Thermal baths, spas and similar establishments; and
- viii. Language schools (except to sit tests and exams) and tutoring centres.

Failure to close the establishments listed above, as set out in the Resolution, may lead to prosecution for the crime of disobedience.

However, the abovementioned establishments may reopen, provided that the DGS issues specific guidelines or technical opinions regarding their operation.

3.2. ESTABLISHMENTS OPEN TO THE PUBLIC AND ACTIVITIES ALLOWED

Establishments, services and activities not included in section 3.1 may open and operate.

However, a number of restrictions and limitations remain in place as regards the establishments, services and activities mentioned below:

A) Restaurants

Restaurants and similar establishments may operate provided that:

- i. The DGS guidelines are complied with;
- ii. Occupancy levels:
 - a. Do not exceed 50% of the maximum capacity; or
 - b. Waterproof physical barriers are used to separate customers facing each other and a 1.5 metres' distance is kept between tables;
- iii. No new clients are allowed in after 23:00 hrs; and
- iv. A table-booking system is used.

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

Food courts must follow the DGS guidelines for the restaurant sector, with the necessary adaptations, and avoid crowds.

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

B) Fairs and markets

Fairs and markets are permitted, 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 section 3.3), as well as the DGS guidelines, and establish procedures to prevent and control spreading.

C) Museums, monuments, palaces, archaeological sites and similar

Museums, monuments, palaces, archaeological sites and other similar locations may remain open provided they comply with the rules set out in article 17 of the Resolution, among which the following are worth noting:

- i. Compliance with the DGS guidelines; and
- ii. A guarantee that each visitor has at least a 20 m² grid around them and that members of different households keep a safe distance (2 m) from other visitors;

D) Cultural events

The operation of concert halls, theatres, cinemas and similar venues, as well as cultural events to be held outdoors are permitted, provided that the following rules are observed:

- i. Those set out in sections 3.3 A) and 3.3 B) below;
- ii. In concert halls, theatres and cinemas:
 - a. A vacant seat must be kept between spectators that do not live together and the seats must be mismatched in relation to the next row;
 - b. If there is a stage, a minimum distance of two meters must be kept between the stage and the front row;
- iii. In outdoor venues:
 - a. Seats must be identified in advance, with a physical distance between spectators of one and a half meters;
 - b. If there is a stage, a minimum distance of two meters must be kept between the stage and the front row;
- iv. Service stations should preferably be equipped with protective barriers;
- v. Advance purchase of tickets by electronic means and payments by contactless means, bank card or similar methods are preferred;
- vi. Whenever applicable, ventilation systems should be maintained and operate without recirculating air;
- vii. Wherever possible, live scenes and performances should be adapted to minimise physical contact between those involved and to maintain the recommended safety distance;
- viii. In the areas of food and beverage services in these cultural events, the guidelines of the DGS for the restaurant sector should be respected.

E) Gambling establishments, casinos, bingos or similar establishments

Gambling establishments, casinos, bingos or the like are allowed to operate as long as they:

- i. Comply with the guidelines and instructions laid down specifically for that purpose by the DGS;
- ii. Have a specific protocol for cleaning and sanitising gambling areas;

- iii. Privilege the execution of transactions by TPA;
- iv. Do not allow people who do not intend to gamble, eat or drink inside the establishments.

F) Personal care and aesthetics

Hairdressing salons, barbershops, beauty parlours, tattoo and body piercing establishments or studios are allowed to operate by appointment.

Massages are also permitted in beauty parlours, gyms or similar establishments.

These establishments must comply with the DGS guidelines.

3.3. RULES FOR ESTABLISHMENTS OPEN TO THE PUBLIC

In all establishments, facilities and premises open to the public, the rules set out in articles 6 to 11 of the Resolution must be observed. The following is a summary of the main rules:

A) Physical distancing

- i. Maximum limit of 0.05 customers per m² of area for the public (e.g. 5 people per 100 m²). 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, unless otherwise specifically provided for or directed by the DGS;
- iii. Waiting for assistance inside service establishments is prohibited and an appointment system must be preferably provided;
- iv. Identify, whenever possible, entry and exit mechanisms through separate doors.

B) Hygiene

Economic operators must:

- i. Carry out cleaning and disinfection:
 - (a) On a daily and periodic basis in spaces, equipment, objects and surfaces with which there is an intensive contact;

- (b) After each use as regards equipment, objects, surfaces products and utensils in direct contact with clients (e.g. automatic payment terminals, scales in supermarkets); and
 - (c) As regards 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 as much as possible of workers and customers with products, equipment and unpackaged items;
- 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, inside the establishments and in all the entrance and exit doors.

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 or RCM 38/2020 entered into force or that only resume their activity after the Resolution comes into force may not open before 10h.;
- 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 workers, products or areas open to the public.

The provisions set out in paragraphs ii. and iii. above do not apply to hairdressing salons, barbershops, beauty parlours, restaurants and similar establishments, cafeterias, tea rooms and similar premises, driving schools, technical inspection centres of vehicles, gyms and fitness centres.

D) Priority service

Retail or service establishments 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

Public services will resume face-to-face services by appointment, maintaining the provision of services through digital media and contact centres with citizens and companies

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

5. Labour measures

5.1. REMOTE WORKING

The employer must provide the worker with adequate safety and health conditions for the prevention of infection risks arising from the COVID-19 pandemic, and may in particular adopt the remote working regime, under the terms of the Labour Code.

When the remote working regime is not adopted, measures for the prevention and mitigation of risks arising from the pandemic may also be implemented, within the maximum limits of the normal working periods and respecting the right to daily and weekly rest provided for in the law or in the applicable collective bargaining instrument, namely:

- i. Implement daily or weekly schedules between remote workers and workers attending the work place;
- ii. Different entry and exit times;
- iii. Different breaks and meal times.

To this end, the employer may change the working times under the relevant management team, provided that the procedure set out in the applicable legislation is followed.

The remote working regime is mandatory in the following situations, regardless of the employment relationship and whenever the functions in question allow it:

- i. When the worker so requests and:
 - (a) The worker is covered by the exceptional protection regime for immunosuppressed and chronically ill people, under the terms of article 25-A of Decree-Law no. 10-A/2020, of March 10 and provides a medical certificate as evidence;
 - (b) The worker is a disabled worker, with a recognised disability of 60% or more;
 - (c) The worker has one or more children or other dependants under the age of 12, or, regardless of age, dependants with a disability or chronic illness and for as long as the suspension of teaching and non-teaching activities in schools or social equipment to support early childhood or disability is maintained, outside of the school year breaks. The obligation only applies to one of the parents, regardless of the number of children or other dependants.
- ii. Where the physical spaces and the work organisation do not permit compliance with the guidelines of the DGS and of the Authority for Working Conditions on the matter.

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 and other events involving a crowd of more than 20 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 DGS defines the specific guidelines for the following events:

- i. Religious ceremonies, including community celebrations;
- ii. Family events, including weddings and baptisms, both for civil and religious ceremonies and for other commemorative events;
- iii. Corporate events held in appropriate venues (e.g. congress halls, tourist establishments, venues suitable for trade fairs and outdoor spaces).

In the absence of these guidelines, the organisers of the events must observe the rules mentioned in A) and B) of section 3.3 above, as well as the rules mentioned in B) of section 3.2 above regarding catering establishments, and participants must wear a mask or visor in the enclosed spaces.

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 disperse gatherings of more than 20 people, unless they live in 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

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



Bernardo Ayala

Partner

+351 919 608 575

bernardo.ayala@uria.com



Afonso Choon

Associate

+351 916 188 851

afonso.choon@uria.com

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

www.uria.com