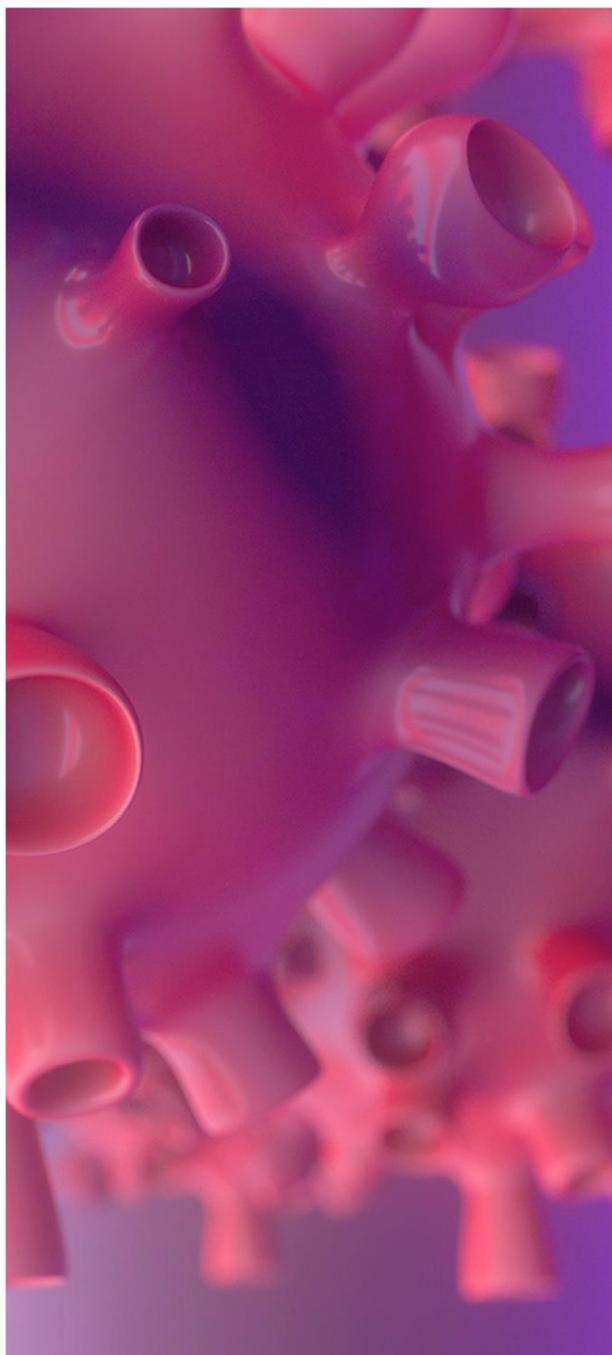

COVID-19 (No. 11)

Legal Flash | Portugal

Updated on August 10, 2020



- > **COVID-19 – Urgent measures on electronic communications**



I. COVID-19 – Urgent measures on electronic communications

In response to the COVID-19 pandemic, on March 23, 2020, Decree-Law 10-D/2020 was published, providing exceptional, temporary measures for the electronic communications sector.

In the context of the state of emergency, there was a need to (i) identify the essential electronic communications services and priority customers and (ii) define the exceptional, urgent measures that companies providing network and electronic communications services should have adopted to ensure continuity of services.

It was also essential to ensure that electronic communication services continued to be available to priority customers such as healthcare providers, security forces, and public administration services.

However, on August 7, Decree-Law 51/2020 was published, entirely repealing Decree-Law 10-D/2020, of March 23, previously analyzed in this legal flash.

We recall some of the simplification measures and the suspension of certain obligations whose fulfilment could have made the achievement of these objectives difficult or impossible.

Essential electronic communication services

- › Companies offering public communication networks or publicly available electronic communication services should have given priority to providing essential services, namely:
 - voice and short message (SMS) supported on fixed and mobile networks;
 - uninterrupted access to emergency services, including caller location and uninterrupted broadcasting of news to the population;
 - data supported on fixed and mobile networks under conditions that ensured access to the set of services defined in the annex to this decree-law; and
 - distribution of online television and digital terrestrial television signals.

- › Priority customers:
 - The services, agencies and departments of the Ministry of Health, the entities providing healthcare as part of the National Health Service network and the entities responsible for managing, operating and maintaining the Emergency Integrated System and Security Networks in Portugal.
 - The Ministry of Internal Security, regarding the operation of the National Internal Security Network and the National Emergency and Civil Protection Authority.



- The National Security Office, regarding the operation of the National Cybersecurity Center.
- The Media Supervisory Authority, the Bank of Portugal, and independent administrative entities listed in item 3 of article 3 of Law 67/2013, of August 28, in its current wording.
- The operators of essential services identified in Law 46/2018, of August 13, which establishes the legal framework for cyberspace security regarding essential services, among others.

Continuity of service: Exceptional measures

- › To prioritize the continuity of essential services, companies could, when necessary, implement exceptional network and traffic management measures, including reserving capacity on the mobile network and prioritizing the resolution of malfunctions and disturbances in electronic communications networks and services.

As such, during the state of emergency, and only if strictly necessary, essential service providers were able to throttle the network, increasing and decreasing bandwidth according to the nature and priority of the traffic.

- › To preserve the integrity and security of electronic communication networks, companies should, whenever strictly necessary, prioritize the routing of certain categories of traffic, whether mobile or fixed networks, as well as limit or inhibit certain functionalities, namely non-linear audiovisual services such as video and on-demand TV, access to online video game services, and point-to-point (P2P) connections.
- › Companies were also authorized to carry out other measures such as blocking, slowing down, altering or restricting content, or degrading its quality on specific applications or services or their categories. They were also authorized to reserve network capacity and resources on mobile networks for voice and SMS services.

Procedures for exceptional measures

- › Companies could only adopt the network and traffic management measures provided in this decree-law to meet the objectives referred to in paragraph 1, and they must have communicated them to the government and the National Communications Authority (ANACOM) before implementing them. If the urgency of the measure did not allow for this communication, companies must have informed the government within 24 hours.
- › Companies offering public communication networks and publicly available electronic communications services had to keep a comprehensive, up-to-date, transparent and auditable register, identifying entities, dates and geographic areas of each case in which these limitations and occurrences were implemented.



Suspension of market obligations and adaptation of legal rules

- › To ensure essential services continued to be provided, the following specific obligations applicable to the electronic communications sector were suspended:
 - Compliance with the quality of service parameters provided in the annex to Law 5/2004, of February 10, in its current wording.
 - Compliance with deadlines for responding to complaints from end users submitted through the complaints book in physical or electronic format, under the terms provided in Decree-Law 156/2005, of September 15, in its current wording.
 - Compliance with the following deadlines established in the resolutions of March 21, 2014, and November 21, 2019, under Regulation 560 -A/2011, of October 19 (all from ANACOM):
 - Periods of six and nine months to ensure compliance with the coverage obligations according to the revised reference speeds, keeping the previously established reference speeds in force.
 - Deadline for submitting to ANACOM the information regarding the setting and review of the reference speeds associated with the coverage obligations in the 800 MHz frequency band.
 - Compliance with the portability obligation whenever it meant technicians must be sent out, and the extension of the deadline to five business days when it could only be performed onsite.
 - Compliance with the deadlines provided for in the transitional regime set out in article 35, paragraph 2 d), as well as the provisions of article 36, of Regulation 303/2019, of April 1 (ANACOM).
 - Compliance with deadlines for pending consultation of ANACOM's draft regulations, which must have been submitted to the government for decision.
 - Compliance with other deadlines proven incompatible with the performance of the obligations provided in this decree-law, and ANACOM must have accepted these cases.
- › The presence of police forces was waived when (i) replacing essential services; (ii) ensuring priority customers' special requests were answered; (iii) installing temporary infrastructures to increase capacity or extending service networks to important locations, except when owners did not allow it; and (iv) temporarily licensing a station or radiocommunications network to support the mobile network and provide services to priority customers, as established in article 13 of Decree-Law 151 -A / 2000, of July 20, in its current wording.
- › Also, to guarantee essential services continued to be provided and priority customers' needs were met, workers and agents whose work involved managing or operating the security and



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integrity of networks and services were authorized to move freely throughout the country, including restricted access areas.

Decree-Law 10-D/2020 was in force from March 24, 2020 to August 8, 2020.



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Cuatrecasas has set up a Coronavirus Task Force, a multidisciplinary team that constantly analyses the situation emerging from the COVID-19 pandemic. For additional information, please contact our Task Force by email TFcoronavirusPT@cuatrecasas.com or through your usual contact at Cuatrecasas. You can read our publications or attend our webinars on our [website](#).

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