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# State of emergency in Spain: legal consequences for businesses

## Legal Flash

Updated on March 20, 2020

Last week, the Spanish Council of Ministers approved Royal Decree 463/2020, of March 14, declaring the state of emergency for the management of the health crisis situation caused by Covid-19 (“RD 463/2020”), which came into effect on March 14 and has been amended as a result of Royal Decree 465/2020, of March 17.



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The state of emergency is an extraordinary regime, allowing the government to take exceptional measures that will replace the ordinary regime applicable. These measures include limiting or conditioning the freedom of movement; temporarily seizing goods; taking over and temporarily occupying industries, holdings or premises; and limiting the use of services.

This document analyzes the main consequences for businesses arising from the set of measures approved owing to this health crisis, among which we highlight the following:

- › Restriction of movement
- › The potential temporary seizure of goods, and takeover of businesses and services
- › Containment measures affecting commercial activity and transport
- › Measures to ensure the supply of goods and services
- › The suspension of procedural, civil and administrative deadlines, with some exceptions

This document does not analyze private or public-service contractual relations. In this regard, many key issues have arisen that will require a case-by-case analysis.



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## State of emergency: scope and regulation

- **Concept:** The state of emergency is an extraordinary regime provided in situations causing (i) serious disruptions to normality, including health crises, epidemics and situations of serious contamination; and (ii) the risk of shortage of essential products, both of which are provided for under RD 463/2020. Declaring the state of emergency allows the government to take temporary measures having a major impact on citizens and businesses, which include limiting or conditioning the freedom of movement; temporarily seizing goods; taking over and temporarily occupying industries, holdings or premises; and limiting the use of services.
- **Regulation:** This is regulated under article 116.2 of the [Spanish Constitution](#) and under Spanish act 4/1981, of June 1, on states of emergency, exception and siege ("[LOAES](#)").
- **Competent authority:** For the purposes of the state of emergency, the competent authority is the Spanish government, who will take command of all civil authorities of the public administration, all members of the police forces in charge of the autonomous regions and local corporations, as well as all public officials and other employees working for them. The appointed delegated competent authorities are the Ministers of the Interior, Defense, Transport, and Health, who are authorized to any issue orders, resolutions, provisions and interpretative guidelines they consider necessary to ensure the provision of services, whether ordinary or extraordinary, to protect people, goods and places, without having to conduct any administrative procedure. Each administration retains the powers conferred on it under applicable law for the ordinary management of its services to adopt any measures it considers necessary in the framework of carrying out direct orders from the competent authority.
- **Territorial scope and duration:** The declaration of the state of emergency affects the whole national territory. It will last 15 days (i.e., until March 29, 2020, included). It may be extended with the authorization of the Congress of Deputies, which would then establish the scope and conditions laid down during the extension period.
- **Entry into force:** RD 463/2020 came into effect from its publication in the Official Gazette of the Spanish State (the evening of March 14, 2020).
- **The autonomous regions and local entities ratify the measures adopted:** Over the last days, several local and regional authorities had implemented a series of provisions and measure in accordance with Spanish act 3/1986, on Special Measures in Matters of Public Health in an attempt to prevent the spread of Covid-19. These provisions and measures have been ratified, and will remain in force and will have the effects provided in them as



long as they are compatible with RD 463/2020. This requires a case-by-case analysis in accordance with the powers of intervention used by local and regional authorities.

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## Obligation to cooperate with the competent authority, takeover of businesses and seizure of goods.

### Compensation regime

- **Duty of cooperation:** Business are obliged to cooperate with the competent authorities. Non-compliance or resistance to carry out orders from authorities may be penalized by law, as provided under article 10 of the LOAES, resulting in potential administrative or criminal penalties.
- **Takeover of businesses and services:** The competent authority is entitled to temporarily take over and occupy industries, factories, workshops, enterprises or premises of any kind, including privately owned health centers, services and establishments, as well as those that carry out their activity in the pharmaceutical sector, to ensure the provision of goods and services necessary to protect public health. Also, within the framework of the state of emergency, it is possible to take over businesses and services to guarantee food supplies.
- **Guarantee of supplies and essential services:** The competent authorities are granted powers to issue any orders and take any measures necessary to ensure the supply of goods and basic services necessary for public health, and food and energy supplies. Specifically, measures may be adopted to guarantee the supply of electrical energy, petroleum products and natural gas in accordance with the [Electricity Sector Act](#), and the [Hydrocarbon Sector Act](#). Also, operators providing essential services that manage key infrastructures must take the necessary measures to ensure they can provide these services. This requirement also applies to companies and suppliers that, despite not being considered key operators, are crucial to ensure the supply to the population and the provision of essential services.
- **Seizure of goods and mandatory provisions:** The state of emergency allows agreements to be reached on temporary seizures of any goods that may necessary to fulfill the purposes of RD 463/2020, particularly to provide security services and services offered by key and essential suppliers, and in cases where this may be necessary to adequately protect public health. The fulfillment of essential mandatory personal services may also be imposed. Handing over goods is not subject to any formalities, although it would be advisable to place on record or use any other means to register the nature, state and quantity of the goods, products or service being offered to later be able to recover costs or seek compensation for damages.



- **Cost recovery and compensation regime:** Anyone suffering loss or damages as a result of the acts or provisions implemented while the state of emergency is in force will be entitled to compensation as established by law. Under the [Obligatory Expropriation Act](#), compensation can be claimed in cases of destruction, effective damage or seizure of individuals' goods or rights. All claims will require proof of the amount of damages, which must be submitted by those suffering the damages.

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## Economic activities affected

### Commercial activity, restaurants, catering and other activities

- **Measures to contain commercial activity:** Strict contention measures apply to commercial activity, including, under the amendment introduced by [RD 465/2020](#) modifying RD 463/2020, the closure of retail establishments and premises, with the exception of retail establishments selling food, beverages, basic and essential goods; pharmacies, health facilities, veterinary clinics, opticians and establishments selling orthopedic products and sanitary products; newsagents; stationery shops; petrol stations; tobacconists; providers of technological and telecommunications equipment, pet food suppliers; internet commerce, telephone and mailing services; dry cleaners and laundries; and mobile hairdressing services. Moreover, it will only be possible to stay in the retail establishments listed above for the time strictly necessary.
- **Measures affecting the restaurants and catering sector:** All restaurants and catering activities are suspended, except home-delivery services.
- **Measures affecting tourist accommodation establishments:** [Order SND/257/2020, of March 19](#), has announced nationwide closure to the public of hotels and similar accommodation establishments, tourism establishments and other short-stay accommodation establishments, camp sites, caravan parks and similar establishments. On an exceptional basis, security, surveillance and maintenance services may still be carried out in these establishments. Tourism establishments allowed to remain open to the public are those accommodating customers that, at the time the state of emergency was declared, were staying at one of them for a long term, as long as these establishments offer sufficient infrastructure to carry out basic activities of daily living in the terms provided under RD 463/2020. However, they cannot accept any new clients until the suspension has been lifted. The closure of tourism accommodation establishments will take place when they no longer have any customers staying in them and, in any case, within seven days from the entry into force of Orden SND/257/2020, i.e., March 26, 2020.



- **Facilities and activities open to the public:** The Annex to RD 463/2020 lists the activities open to the public that must be suspended. Based on the restrictions affecting the freedom of movement of people that have been agreed and the exceptions provided under article 7 of RD 463/2020, it may be necessary to analyze the particular situation of establishments open to the public that carry out an activity that has not been expressly suspended.
- **Other measures:** The competent authority can suspend any other activity or close any establishment it considers may present a risk of infection.

### Transport

- **Transport measures:** The Minister of Transport is empowered to impose any conditions affecting mobility services, whether ordinary or extraordinary, to protect people, goods and places. The delegated competent authorities can adopt any further measures necessary to restrict the flow of collective passenger transport that they consider necessary and proportional to protect public health.
- **Reduction in the total offer of operations:** In the case of public transport services by road, rail, air or sea that are not subject to a public contract or public service obligations (“PSO”), transport operators will reduce the total supply of operations by at least 50%. This percentage may be modified if approved by ministerial resolution. State-owned services that are subject to public contract or PSO must reduce their total offer of operations by at least 50%, except commuter rail services, which will offer usual services. No changes will be made to transport services run by regional or local authorities and that are subject to a public contract or PSO, or are publicly owned.
- **Freight transport:** By resolution of the Minister of Transport, the necessary conditions will be set out to enable the transport of goods throughout the national territory to guarantee their supply and, as provided in the amendment introduced by RD 465/2020, the delivery of products acquired online, over the phone or by any form of correspondence.

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## Measures and consequences for the workplace

### Travel and movement

- **Workplace.** The movements permitted under article 7 of RD 463/2020 include traveling to the workplace to fulfill any work, professional or business obligations, and returning to one’s place of habitual residence. Therefore, workers can still go to their workplace, as long as the business activity is not subject to the restrictions provided under article 10. For this purpose, businesses are advised to issue certificates so that employees can provide evidence to this effect if so required by the state security forces and bodies.



- **Remote working and flexible hours.** The Spanish government has recommended that companies carrying out activities that have not been suspended should foster remote working where possible. Also, companies may receive requests from employees seeking to adapt their working hours to reconcile their private and professional life. Therefore, companies must be prepared to take a more flexible approach to working hours.

### Activities affected and temporary redundancy plans

- **Greater flexibility of procedures.** The Spanish government has approved Royal Decree-Law 8/2020, of March 17 (“**RDL 8/2020**”), which came into force on March 18 and provides greater flexibility to process temporary redundancy plans, regulated under article 47 of the Workers Statute (known as “**ERTE**”). This measure is made available to businesses affected by Covid-19, whether due to *force majeure* or based on production, organizational or economic grounds (see [Legal Flash](#)).
- **ERTE effects.** While the ERTE is in force to suspend or reduce employee's working hours, employees cannot offer services (whether totally or partially), although they maintain their basic employment rights and may request extraordinary unemployment benefits approved by the Spanish government, while the company will not have to pay their salaries, without prejudice to the obligation to pay social security contributions (unless they apply for the exemption provided under RDL 8/2020 in the case of ERTes resulting from *force majeure*).

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## Effects on deadlines

### Procedural deadlines

- **Suspension of deadlines.** Under the second additional provision of RD 463/2020, “*terms are suspended*” and “*the periods*” provided for in procedural laws “*are suspended and interrupted*” in all courts of law. With regard to its effects, this provision establishes that terms will resume once RD 463/2020 or its extensions cease to be in force, which means that the term will not start again once the suspension has been lifted, but will be resumed from the time that has already passed.
- As published on the webpage of Spain’s General Council of the Judiciary on March 18, 2020, this entity agreed to extend the scope of the suspension of procedural deadlines provided under RD 463/2020, in general, to deadlines legally set to fulfill legal obligations of procedural relevance and, particularly, those imposed to file for insolvency, as provided under article 43.1 of RDL 8/2020.
- **Deadlines that have not been suspended.** The Royal Decree also includes several procedures that will not be subject to suspension: the protection of fundamental rights



(art. 114 *et seq.* [LJCA](#)), collective disputes and the protection of fundamental rights and public freedoms (arts.153 *et seq.* and 177 *et seq.* [LRJS](#)), judicial authorization for involuntary placement in psychiatric facilities (art. 736 *y et seq.* [LEC](#)) and measures and provisions protecting minors (art. 158 [CC](#)).

- In the case of criminal courts, the suspension and interruption will not apply to *habeas corpus* procedures, procedures entrusted to the services of duty courts, procedures involving a detainee, protection orders, and urgent actions concerning prison supervision and any other interim measures to stop violence against women and minors. Also, during the pre-trial stage, the competent court or judge may decide to carry out any actions that, owing to their urgent nature, cannot be postponed.
- **Urgent court proceedings.** Despite the suspension, the judge or court may decide to take any judicial actions necessary to prevent irreparable damage to the legitimate rights and interests of the parties to the proceedings. Although RD 463/2020 does not include a list of “essential services,” the [Spain’s General Council of the Judiciary](#) has provided a list of these services in [agreements](#) it has adopted in the context of this extraordinary situation, as specified on its website. Also, in another [agreement](#), the General Council of the Judiciary has set out, among other matters, that in labor courts, the suspension of court proceedings will not apply to claims and appeals considered unpostponable, such as those involving collective disputes, the protection of fundamental rights, collective redundancies, ERTes, interim measures and implementation processes arising from declaring the state of emergency.
- **Submission of documents: only by electronic means.** The General Council of the Judiciary has informed that it has adopted an [agreement](#) under which it is only possible to file urgent and unpostponable documents, and only through electronic means.

### Administrative deadlines

- The terms and deadlines to file procedures related to public-sector entities have been suspended or postponed, except procedures and resolutions referring to situations that are closely related to events justifying the state of emergency. The above suspension or interruption of terms applies to the whole public sector defined under Act 39/2015.
- The calculation of terms will resume once RD 463/2020 or its extensions cease to be in force.
- Public-sector entities can decide to continue with any procedures and resolutions referring to situations that are closely related to events justifying the state of alarm, or that are necessary for the sake of the public interest or for the basic operation of services.



- The suspension of deadlines and interruption of terms will not apply to (i) administrative procedures involving registration with, or payments and contributions to the social security, or (ii) tax deadlines.
- Also concerning taxation, the pre-existing terms have been extended, but only to procedures established in article 33 of RDL 8/2020, and until the date specified.

## Periods of prescription or limitation

- The periods of prescription or limitation of any claims and rights will be suspended while the state of emergency is in force and, if applicable, any extensions that may be approved. We believe that this provision is unlikely to affect time limits to exercise rights already set out in agreements, which would, therefore, not be interrupted or suspended.
- As far as taxation is concerned, this means suspending the calculation of prescription periods applicable to the tax authorities' right to settle payments, reassess, check, apply penalties and levy taxes, or those of the taxpayer to request and receive tax refunds.

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