

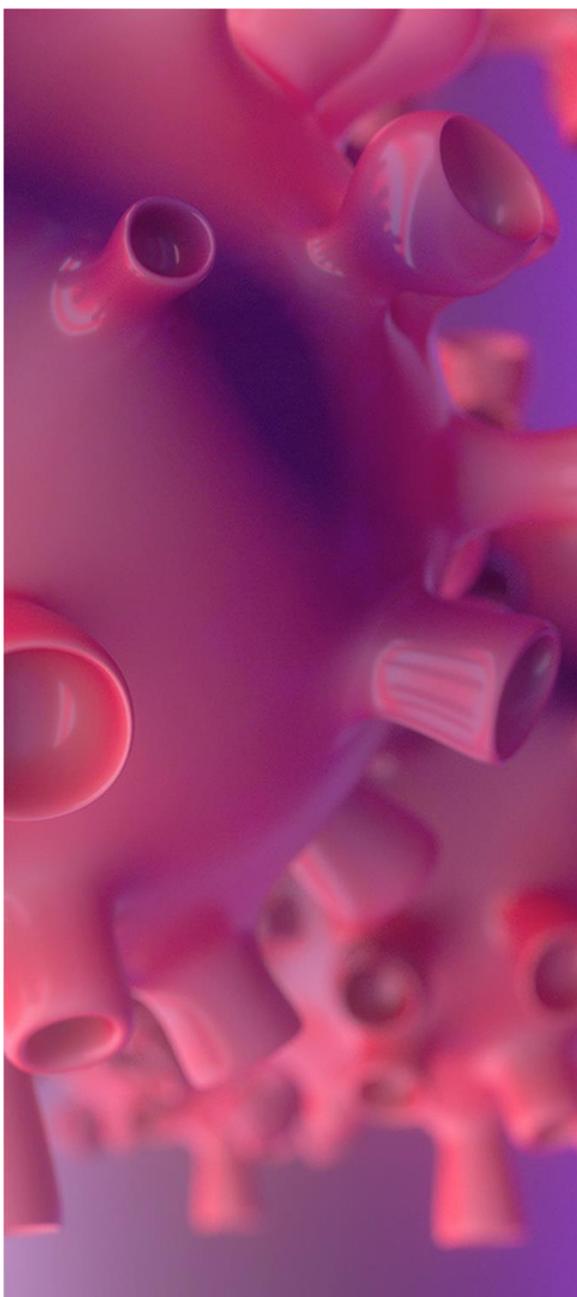
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# COVID-19 (No. 9)

Legal Flash | Portugal

March 22, 2020

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- **State of emergency: measures implemented under Decree 2-A/2020, of March 20**



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## Council of Ministers introduces exceptional measures to be implemented during the state of emergency

A state of emergency was declared in Portugal on March 18, 2020, under Decree of the President of the Republic No. 14-A/2020, of March 18.

Considering the exceptional situation arising from the public health emergency and the increase in recorded COVID-19 cases, declaring the state of emergency was essential to allow, under the Portuguese Constitution, the adoption of restrictive measures affecting the fundamental rights and freedoms of citizens.

These measures must be taken with due regard to the constitutional and legal limits, which means they must (i) be restricted to what is strictly necessary, and (ii) cease to be effective as soon as normality is restored.

Decree 2-A/2020, of March 20, regulates the state of emergency declaration and determines the exceptional measures to be implemented during this period.

Aiming mainly to prevent the transmission of the virus and to contain the pandemic, and also to ensure the supply of essential goods and services to the population, the current measures adopted focus primarily on the rights of freedom of movement and economic freedom.

These measures have been in force since 00:00 on March 22, 2020.

### MEASURES APPLICABLE TO PERSONS

Different measures are established according to three types of situations:

- a) Patients with COVID-19 and infected with SARS-Cov2 and citizens the health authority or other health professionals have placed under active surveillance, who are subject to **compulsory confinement**, at a health facility or at home.
- b) Risk groups, namely citizens over 70 years of age and citizens that are immunocompromised or suffer from a chronic disease, who are subject to a **special duty of protection** and must observe **prophylactic isolation** requirements.
- c) The remaining citizens, who are subject to **restrictions on movement, namely regarding the use of public roads**.



## Persons subject to compulsory confinement

- These citizens are obliged to stay in a health establishment or at home and are not allowed to travel on public roads.
- Violation of the compulsory confinement requirement constitutes a crime of disobedience.

## Persons belonging to risk groups

- This group includes the following citizens, who are subject to a special duty of protection:
  - Those over 70 years of age.
  - Immunocompromised patients and those suffering from a chronic disease who, according to the health authority's guidelines, should be considered at risk, namely those suffering from high blood pressure, diabetes, cardiovascular diseases, chronic respiratory diseases and cancer.
- They must observe prophylactic isolation requirements and can only use public spaces or roads for the following purposes:
  - Purchase of goods and services.
  - Travel for health reasons (to seek health care).
  - Travel to post offices, banks and insurance brokers or insurers.
  - Short trips for the purposes of physical activity (collective physical activity is strictly forbidden).
  - Short walks for pets.
  - Other similar activities, or other reasons of *force majeure* or unavoidable necessity, if duly justified.
- Even if they belong to a risk group, health professionals and civil protection agents, public office holders, magistrates and leaders of the social partners are not subject to this restriction.
- Citizens who are immunocompromised or suffer from a chronic illness may also circulate within the scope of their professional activity, if they are not on sick leave.

## Persons not included in the above categories

- Persons not included in the above categories are subject to a **general duty of home confinement**.
- This means that, as a rule, they must not leave their homes or **travel on public roads except to carry out essential tasks and functions**, including the following:



- Purchase of goods and services.
  - Performance of professional or equivalent activities (e.g., high-performance athletes and their coaches).
  - Job seeking or responding to a job offer.
  - Travel for health reasons, particularly to seek health care, to accompany persons requiring health care, or to donate blood.
  - Travel where there is a need for emergency care of victims of domestic violence or human trafficking, as well as children at risk.
  - Travel for family reasons, to assist vulnerable people, the disabled, children, parents, the elderly or other dependents.
  - Travel to accompany minors on short trips, for the purposes of enjoying the outdoors or attending school establishments (in the case of children of essential workers).
  - Travel for other imperative family reasons, particularly to comply with shared parental responsibilities, as determined by an agreement reached between the parents or by the competent court.
  - Travel for visits, when authorized, or for the delivery of essential goods to people who are disabled or deprived of their freedom of movement.
  - Trips to banks and insurance brokers or insurers.
  - Short trips for the purposes of physical activity (collective physical activity is strictly forbidden).
  - Short walks for pets and pet feeding.
  - Travel by veterinarians or animal keepers to provide veterinary medical assistance.
  - Travel to participate in volunteering and social actions.
  - Participation in proceedings involving judicial entities.
  - Travel by people with a permit issued under the law, in the performance of their duties or because of them.
  - Travel by staff of diplomatic and consular missions and of international organizations located in Portugal, if related to the performance of official duties.
  - Travel required to exercise press freedom.
  - Return to primary residence.
  - Other similar activities, or other reasons of force majeure or unavoidable necessity, if duly justified.
- **Rules applicable to the use of public roads:** mandatory compliance with the recommendations and orders issued by the health authority, and security forces and services (regarding the distance to be kept between people).
- **Private vehicles:** The use of private vehicles is permitted in the situations listed above and for refueling at gas stations.



- **Teleworking:** The teleworking regime is mandatory, regardless of the employment relationship, where the functions of the employee allow so.
- **Religious celebrations:** All religious celebrations and events of worship involving the gathering of people are prohibited. As for funerals, a maximum attendance limit should be set, to be determined by the competent authority for the management of the cemetery in question.

### MEASURES APPLIED TO COMMERCIAL ACTIVITIES

In the same way as the measures restricting the freedom of movement of persons, the current measures restricting the freedom of economic initiative were defined taking into account the constitutional and legal limits of adequacy and proportionality. Thus, they are restricted to what is strictly necessary to achieve the aims pursued in the declaration of the state of emergency, and to fulfill the imperative need to contain the transmission of the virus and the spread of the disease.

Thus, considering that the virus is easily spread and highly contagious between people, and that it may also spread from contact with contaminated surfaces or objects, **restrictive measures of economic freedom have been taken, essentially to safeguard and minimize any contact between people and physical goods or structures.**

- The measures can be grouped into two broad categories:
  - the closure of facilities and establishments, and the suspension of activities that encourage the movement or gathering of a large number of people; and
  - the closure of commercial and service establishments serving the public, except for those selling basic goods or providing essential services.
- Within the first category, facilities and establishments offering the following activities are required to close:
  - **Leisure and recreational activities:** Nightclubs and dance halls, bars, circuses, amusement parks and the like, zoos, any venues where leisure sports are practiced, and any similar venues or facilities.
  - **Cultural and artistic activities:** auditoriums, cinemas, theaters, concert halls, museums, monuments, and similar facilities, whether public or private; libraries, archives, bullring, exhibition halls, multipurpose pavilions, and any similar venues or facilities.
  - **Sports activities** (except those intended for the performance of high-performance athletes): football, rugby and similar fields; pavilions or indoor spaces; tennis courts; paddle courts and similar venues; swimming pools; multi-sports pavilions; gyms; athletics tracks and stadiums, among others.



- **Activities in open spaces and on public roads:** cycling tracks, motorcycling, motor racing and similar circuits (except those intended for the activity of high-performance athletes); nautical events and exhibitions; aeronautical events and exhibitions; parades and popular parties or folkloric events; or other activities of any kind.
  - **Gambling and betting activities:** casinos; gambling establishments, such as bingos; gambling halls, and recreational halls
  - **Catering activities:** restaurants and the like, coffee shops, tea houses and the like, bars and the like, hotel bars and restaurants (except for delivering meals to guests), terraces and vending machines.
  - **Spas and similar establishments.**
- Within the second category, all **retail and service activities in establishments open to the public are suspended, except the following establishments and facilities:**
- Mini-markets, supermarkets, hypermarkets.
  - Fruit shops, butchers, fishmongers, bakeries.
  - Markets selling food products.
  - Agri-food production and distribution.
  - Fish markets.
  - Catering and drinks providers dedicated exclusively to production to be consumed outside the establishment (take-away) or for home delivery.
  - Caterers of take-away meals.
  - Medical services, and other health and social support services.
  - Pharmacies and establishments selling medicines not subject to medical prescription.
  - Establishments selling medical and orthopedic products.
  - Opticians.
  - Establishments selling cosmetic and hygiene products.
  - Establishments selling natural and dietary products.
  - Essential public services and related repair and maintenance services (water, electricity, natural gas and piped liquefied petroleum gases, electronic communications, postal services, wastewater collection and treatment services, urban solid waste management and urban hygiene services), and passenger transport services.
  - Stationers and tobacconists (newspapers, tobacco).
  - Games of chance and gambling (“jogos sociais”).
  - Veterinary clinics.
  - Pet and pet food establishments.
  - Establishments selling flowers, plants, seeds and fertilizers.
  - Textile and fur washing and dry-cleaning establishments.
  - Drugstores.
  - Hardware stores and outlets selling DIY supplies.
  - Gas stations.



- Establishments selling fuels for domestic use.
  - Establishments for the maintenance and repair of motor vehicles and motorcycles, tractors and agricultural machinery, as well as retailers of motor parts and accessories, and towing services.
  - Establishments for the sale and repair of home appliances, computer and communications equipment.
  - Banking, financial and insurance services.
  - Funeral and related activities.
  - Home maintenance and repair services.
  - Security or home surveillance services.
  - Cleaning, disinfection, pest control and similar activities.
  - Home delivery services.
  - Tourism establishments (except campsites), which can provide food and beverage services at the establishment exclusively for their respective guests.
  - Services that guarantee student accommodation.
  - Activities and establishments listed above, even if located at shopping malls.
- Catering or similar establishments that maintain their activity for the exclusive purpose of preparing food intended for consumption outside the establishment or for home delivery are exempted from obtaining a license for this activity and may request that their workers participate in the respective activities, even if not provided under the workers' employment contracts.
- The closure or suspension measures **do not affect the following establishments:**
- **Wholesale trade** establishments.
  - Establishments that intend to maintain their activity exclusively for the purpose of **home delivery or to sell goods at the establishment's door or through transaction windows**, in which case access to the inside of the establishment by the public is prohibited.
  - Catering activities carried out in **canteens or cafeterias** that are in regular operation, and in other collective catering units whose catering services are provided under a contract of continuous execution.
  - **E-commerce activities**, services provided remotely, without contact with the public, or businesses that perform their activity **through an electronic platform**.
  - Retail activities or motorway services (**petrol stations**), and those offered **at airports and in hospitals**.
- Retail and service establishments serving the public that remain in operation must observe the following **safety and hygiene rules:**
- **Priority is given** to persons subject to a special duty of protection, health professionals, members of the security forces and services, protection and



relief workers, members of the armed forces, and social support service workers.

- Indoor venues must adopt measures to ensure a **minimum distance of two meters between people**, who are obliged to **remain in these establishments only for the time strictly necessary** to purchase products and are **prohibited from consuming any products inside them**, while strictly complying with the applicable rules of access.

### MEASURES APPLICABLE TO LEASE AGREEMENTS

- > **Landlords cannot invoke the closure of establishments and premises** while the state of emergency is effective to resolve or terminate in any way the lease of non-residential premises or other similar real estate agreements.
- > The closure of establishments and facilities is not considered grounds to oblige the eviction of the premises in which these establishments or facilities are installed.

### MEASURES APPLICABLE TO PUBLIC SERVICES

- > **“Lojas do cidadão” have been closed, although face-to-face services are still available, by appointment, at the network of counters of the different offices.** Also, these services are provided to citizens and businesses through digital means and contact centers.
- > **Essential public services** can be ordered to be provided, under terms yet to be defined.
- > **The requisition of goods or services** belonging to private or public legal persons may be ordered by health or civil protection authorities to combat COVID-19, under terms yet to be defined.

### LICENSES AND AUTHORIZATIONS

- > During the state of emergency, licenses, authorizations or other administrative permits will remain valid, regardless of their term.

### EFFECTIVENESS OF IMPLEMENTING REGULATIONS AND ACTS

- > The regulations and administrative acts provided under this decree **are effective by mere notification to the addressee**, whether electronically or otherwise (e.g., by publishing them on the website of the competent authorities to adopt the regulations or impose the performance of the acts), thus waiving other applicable formalities.



## SUPERVISION AND GENERAL DUTY OF COOPERATION

- **The security forces and services are empowered to monitor compliance with this decree, and they may:**
  - close establishments and cease activities;
  - report crimes of disobedience related to the breach of requirements concerning the closure of establishments or compulsory confinement, and escort people to their homes;
  - advise against people gathering on public streets; and
  - instruct all citizens to fulfill the general duty of home confinement.

During the state of emergency, citizens and other entities have a **duty of collaboration** and must promptly follow any orders and instructions given by the bodies and agents responsible for security, civil protection and public health, which are justifiably made by the competent authorities to implement the measures of this decree.

Finally, the decree under review grants any members of the government responsible for the areas of health, public administration, internal administration, national defense, justice, transport, agriculture, sea, energy and environment, the necessary competence to achieve, with any additional measures, compliance with this decree.



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