

Impact of the announcement of a state of emergency on the telecommunications sector

The scale of the health crisis caused by COVID-19¹ has forced the Spanish Government to **invoke a state of emergency by means of Royal Decree 463/2020 of 14 March declaring a state of emergency to manage the health-related crisis triggered by COVID-19**. The Decree was published in Official State Gazette number 67 of 14 March 2020.

Broadly speaking, while there are no specific measures for the communications sector in addition to the general provisions, it is still necessary to assess the impact of the Royal Decree on the sector and any possible actions which may be foreseen in the future in light of the applicable sector legislation.

State of emergency declaration established under the Spanish Constitution

The declaration of a state of emergency **is provided for under Article 116.2 of the Spanish Constitution** of 27 December 1978 and developed under **Constitutional Act 4/1981 of 1 June on states of alarm, emergency and siege**.

It is an **exceptional measure agreed by the Council of Ministers by means of a royal decree relating to the existence of extraordinary circumstances**² such as health crises triggered by an epidemic or widespread contagion, making it impossible to maintain normality. The measure can be put in place for a maximum of 15 days, albeit extensions may be granted if authorised by the Spanish Parliament.

¹ COVID-19 is the infectious disease caused by the recently discovered coronavirus, previously unknown before the outbreak began in Wuhan (China) in December 2019. Its impact in terms of the number of people affected, coupled with its simultaneous emergence in several countries, led the World Health Organisation to declare it a Public Health Emergency of International Concern on 30 January 2020. However, the rapid spread of the virus on a global scale meant that it was subsequently characterised as a pandemic on 11 March 2020.

² A state of emergency has only been declared twice in Spain's recent history, namely this current situation and the invoking by means of Royal Decree 1673/2010 of 4 December declaring a state of emergency for the restoration of the essential public service of air transport, passed on the back of the air traffic controllers' strike in late 2010.

The measures which enable the emergency to be declared, as well as its duration, **are restricted to the actions considered imperative to ensure a return to normal**, which in turn must be drawn up in specific reference to the circumstances at hand, in particular those found under Article 11 of Constitutional Act 4/1981³.

State of emergency declared by means of Royal Decree 463/2020 of 14 March 2020.

Royal Decree 463/2020 of 14 March declaring a state of emergency to manage the health-related crisis triggered by COVID-19 is underpinned by Articles 4.b) and d) of Constitutional Act 4/1981 of 1 June on states of alarm, emergency and siege in relation to health crises and the shortage of basic necessities. **The scope of application of said articles covers Spain's entire domestic territory.**

Pursuant to Article 3, a state of emergency will be put in place for **an initial 15 calendar days**, i.e. the maximum permitted under the Constitution, notwithstanding a **possible extension where approved by Parliament**. In the absence of a specific legal provision on the matter, approval shall be granted by way of simple majority.

The entry into force of the Royal Decree coincided with its publication, i.e. **just before midnight on Saturday 14 March 2020**, and by means of publication in the Official State Gazette.

Restrictions and limitations to movement and personal mobility

During the state of emergency period, **citizens may only use public roads** to carry out the following activities, as set out in Article 7:

- a) To purchase food items, pharmaceutical products and basic necessities.
 - b) To attend health centres, services and facilities.
 - c) **To travel to their place of work to perform work, professional or business activities.**
 - d) To return to their habitual place of residence.
 - e) To visit and care for the elderly, minors, dependants, persons with disabilities or those considered especially vulnerable.
 - f) To visit banks or insurers.
 - g) **Due to force majeure or critical situations.**
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- h) All other similar activities, which must be carried out individually unless accompanying persons with disabilities or for any other justified reason.

Citizens may travel in private vehicles on public roads to perform the permitted activities and to replenish their fuel supply at petrol stations and service stations. Nevertheless, **the Interior Minister may order the closure of roads** on public health, safety or traffic-related grounds.

The Decree exclusively allows certain commercial outlets selling food, drinks and basic necessities, as well as technology and telecommunications equipment, among others, to remain open, albeit restricting the freedom of movement to the activities listed in Article 7, which may raise practical issues given a lack of sufficient coordination between these provisions.

No restrictions or limitations are expected to be imposed from an employment perspective and employers will not be forced to implement additional measures beyond a potentially-extensive application of the terms relating to keeping a minimum distance between individuals of one metre.

Against this backdrop, all employees working for telecommunications providers are obliged to continue rendering services and are therefore not subject to any mobility restrictions. This does not prevent companies being able to adopt any measures they deem pertinent and which comply with health-related objectives, provided that they do not entail a decline in the respective service.

Possible effects on telecommunications networks and services

Despite **outlining measures** to ensure the supply of goods and services to protect public health, food, electricity and petroleum and natural gas-based products, the Royal Decree **does not mention any measures relating to electronic communications networks and services.**

Nevertheless, **the wording of the Decree does point towards the importance of such telecommunications services by enabling mobility for their provision.** The exclusion of specific measures may be because Constitutional Act 4/1981 only provides for measures to intervene in communications in the event of a state of emergency, albeit this appears to be more of a defect in the regulation itself.

In fact, Article 4 of the **General Telecommunications Act 9/2014 of 9 May** prescribes the **intervention in telecommunications services in matters of national defence, public security, road safety and civil protection**.

Section 6 of said ⁴Article 4 **authorises the government to mandate – on an exceptional and temporary basis – the General State Administration to directly oversee or intervene in electronic communications services and networks in certain exceptional events** which may impact public order, safety and national security.

Such temporary and exceptional powers to directly oversee or intervene could affect any infrastructure, resource, element or layer of the network or service required to preserve or restore public order, public safety and national security.

Thus, while measures must be temporary and exceptional, there are no further restrictions other than the existence of the indicated grounds.

Also, on a temporary and exceptional basis, where network operators or service providers **breach their public service obligations** and following a mandatory report issued by the Spanish Competition Authority, the government is authorised to mandate the **General State Administration to directly oversee or intervene** in the corresponding services and network operations.

Clearly, any measures adopted under a state of emergency mechanism do not stipulate that the procedural requirements set out in the regulation must be met.

The above is notwithstanding the **government's power to impose further public service obligations on operators other than the universal service provisions** under Article 28 of the General Telecommunications Act on the grounds of national defence, public security, road safety or services which affect the safety of individuals or civil protection.

Critical infrastructure

The providers of key services who manage critical infrastructure must adopt the necessary measures to ensure that said services remain in place. This includes

⁴ This section was amended by Royal Decree-law 14/2019 of 31 October adopting urgent measures for digital administration, public procurement and telecommunications on the grounds of public safety, which incidentally has been appealed before the Constitutional Court.

companies and providers which although not considered critical, **must guarantee supply to the population** or the rendering of such key services.

Act 8/2011 of 28 April establishing **measures for the protection of critical infrastructure** lists the IT and communications sectors among the so-called strategic sectors (Annex I) and sets out a series of obligations and coordination mechanisms which **significantly reduce the likelihood of energy companies and their employees' activities being restricted**.

To the extent they are required to render such key services, **these companies and their employees must continue their activity**, with health-related measures being the only restrictions imposed.

Seizures and mandatory citizens' services

The Decree enables the authorities to temporarily seize all types of assets required to control the pandemic and, in particular, to provide critical and key security and operators' services. What's more, mandatory and essential citizens' services may be imposed **in order to achieve the aims of the Royal Decree**.

The above means that all public and private assets deemed necessary by the authorities are to be made available in the fight to control the virus. **Obligations may also be imposed on citizens who are not civil servants** to provide a specific service with a significant impact on the health and pharmaceutical sectors. However, such obligations must comply with the **principle of proportionality to the objective pursued** and may be subject to remuneration or compensation.

Against this backdrop, Article 120 of the Spanish Compulsory Purchase Order Act of 16 December 1954 **stipulates an entitlement to compensation when due to the consequences** of serious detriment to public order or safety, **epidemics**, floods or other catastrophes, the authorities are forced to adopt measures which involve the destruction, effective damage or **seizure of individuals' assets or rights without following the formal procedures** set out for the numerous forms of expropriation required under the Act.

In such cases, **the affected individual will be entitled to compensation** in accordance with the regulations on damage from the temporary occupation of properties and the fair

value of personal property, **with the corresponding procedure to be initiated at the damaged party's request and pursuant to such regulations.**

Relevant authorities

For the purpose of a state of emergency, the government is appointed as the **relevant authority**, with the defence, interior, transport and health ministers recognised as such under the leadership of the President.

These authorities are able to issue any orders, resolutions, provisions and instructions deemed necessary under their specific remit to guarantee the rendering of all ordinary and extraordinary services designed to protect people, assets and locations. **No administrative procedures will need to be followed for the above to occur.**

All members of State **law enforcement authorities**, regional police forces and local authorities **will report directly to the Interior Minister**, who may also issue instructions on matters of private security.

As a means of preventing a breach of the restrictions in place, **officers may carry out checks on people, assets, vehicles, premises and establishments** as necessary to verify and, as the case may be, **put a stop to the rendering of suspended services and activities.**

This includes being able to issue order and bans, as well as suspending the activities or services being performed. However, the officers of each agency fall under a specific scope of application of the adopted measures and must observe them accordingly.

In view of the above, and given the restrictions on the use of public roads (albeit travel for work purposes and the opening of establishments selling technology and telecommunications equipment are permitted under Article 7 of the Royal Decree), **telecommunications enterprises must assess whether to provide their employees with a certificate specifying that they are performing their professional duties.** Such

certificate, whether to be present at a store or to perform work on the networks, guarantees the provision of such services.

In addition, **citizens are imposed the duty of collaboration and must not obstruct the work of officers** while carrying out their duties.

Sanctions

A breach or failure to fulfil an order from the relevant authorities will be penalised as prescribed by law. **Where** such acts **are committed by civil servants**, the authorities **may suspend them** immediately. **Where committed by the authorities, the powers** granted to them to observe the measures agreed under the state of emergency **may be afforded to the government**.

All breaches of the provisions, interpretations and orders issued by the relevant authorities will be penalised either before the courts or on an administrative basis pursuant to the applicable legislation and its particular features.

We must bear in mind that **in terms of the telecommunications sector**, under the specific provisions of the General Telecommunications Act, not to mention the act protecting critical infrastructure, a breach of obligations would be **punished in accordance with the sanctions corresponding to the infringed regulation**.

Freezing of time frames

The Royal Decree freezes all procedural time frames across all jurisdictions, as well as administrative deadlines, expiry dates and the statute of limitations for the exercise of rights and demand to fulfil obligations. All of the above will resume when the Royal Decree is no longer in force, which in principle will fall within **15 days** from approval if Parliament does not pass an extension.

Amendment of measures

The adopted measures may be amended by means of subsequent royal decrees which modify or extend them and which the government will have to present before Parliament.

Thus, **new measures may be adopted** over the next 15 days – prior to the extension of the state of emergency –, or indeed **amended**. Clearly, it is a question of adapting the

Decree to the requirements needed to deal with the crisis that these extraordinary measures intend to overcome.

Challenge and compensation

All actions and provisions adopted by the public authorities in application of the Royal Decree **may be contested before the courts** in accordance with law, in which case any administrative deadlines would not be subject to suspension.

Moreover, those who **suffer damages or losses for conduct not attributed to them** as a consequence of the actions and provisions adopted during the state of emergency – whether directly, personally or to rights or assets – **will be entitled to compensation** as prescribed by law.