

Analysis of Royal Decree 463/2020 of 14 March - Declaration of a state of emergency

COVID-19 is the infectious disease caused by the recently discovered coronavirus, previously unknown before the outbreak began in Wuhan (China) in December 2019.¹

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**.

The scale of the health crisis caused by COVID-19 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.

General notion of a state of emergency

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** 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.

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

¹ World Health Organisation <https://www.who.int/es/emergencies/diseases/novel-coronavirus-2019/advice-for-public/q-a-coronaviruses>

in turn must be drawn up in specific reference to the circumstances at hand, in particular those found under Article 11 of Constitutional Act 4/1981.²

A failure to follow the adopted measures or orders from the relevant authority may be penalised before the courts or through administrative means, as the case may be.

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.

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.

A) ² Restricting travel or persons or vehicles remaining in certain places during certain hours, or subjecting them to specific requirements. In other words, restricting movement does not have to be absolute and indiscriminate, nor does it have to affect the entire domestic territory.

B) Temporary seizures of all types of assets and imposing mandatory citizens' services.

C) Temporarily intervening in and controlling industries, factories, workshops, production facilities or premises of any type, excluding private residences.

D) Restricting or rationing the use of services or consumption of basic necessities.

E) Issuing the necessary orders to ensure market supply and the functioning of facilities where such basic necessities are produced.

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

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.**
- 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.

Containment measures are also provided for, most notably in the areas of education and training, commercial activities, cultural facilities and establishments, leisure activities, hotels and restaurants, among others, as well as in terms of the freedom of worship and celebration of events. **Almost all of these measures involve the closure of premises** or putting restrictions in place such as a distance of one metre between individuals at religious services.

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 of one metre between employees (and consumers)** (Article 10.2).

Moreover, the Decree allows commercial outlets selling food, drinks and basic necessities, hair salons, tobacconists, stationery shops and dry cleaners, 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.

There are no restrictions on the supply and activity of public transport services or the gathering of any number of people within the working environment.

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.

Guarantee of the supply of goods and services required to protect public health.

The Ministry of Health is authorised **to issue the necessary orders** to ensure **market supply** and the operation of production facilities as necessary to protect **public health**, as well as the **temporary intervention and control of privately-owned industries, factories, health facilities and pharmaceutical establishments.**

Guarantee of energy supply

Upholding the guarantee to supply electricity and petroleum and natural gas-based products is also foreseen, enabling the relevant authorities to implement the measures set out under sector regulations in situations of risk to the security of supply.

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

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

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.

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 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.**

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.