

Measures adopted in relation to COVID-19 with an impact on public law.

Royal Decree Law 7/2020, of 12 March, adopting urgent measures to respond to the economic impact of COVID-19 – amended by the second final provision of Royal Decree Law 9/2020, of 27 March, which adopts complementary measures, in the field of employment, to mitigate the effects of COVID-19.

Emergency processing of contracting files and other provisions.

The aforementioned precept states that the adoption of any type of direct or indirect measures by public sector entities to deal with COVID-19 will justify the need for immediate action, and that article 120 of Law 9/2017, of 8 November, on Public Sector Contracts, which regulates emergency processing, is applicable to all contracts to be entered into for this purpose.

In these cases, if advance payments are required for preparatory actions to be carried out by the contractor, the provisions regarding guarantees in the aforementioned Law 9/2017 will not be applicable, and the contracting body will determine this circumstance based on the nature of the service to be contracted and the possibility of satisfying the need by other means. The justification of the decision taken must be recorded in the file. Article 16 of the Royal Decree Law adds that the release of the funds necessary to meet the costs generated by the adoption of measures to protect people's health may be justified.

When the contracting to address these needs has to take place abroad, because the contracts are formalised or executed fully or partially abroad, the formalisation of the contracts will lie with the Head of Mission or Permanent Representation, subject to the conditions freely agreed by the Administration with the foreign contractor, when the intervention of the latter is absolutely indispensable for the execution of the contract, because it is required to address the needs concerning the protection of people and other measures adopted by the Council of Ministers to deal with COVID-19, and this is certified in the file. However, this competence may be taken over by the head of the ministerial department responsible for the matter. The contracts must be formalised in writing and will be subject to the conditions agreed upon by the Administration with the foreign contractor.

Invoices issued by non-national suppliers based abroad that correspond to the cases referred to in this article are excluded from the electronic invoicing obligation established in Law 25/2013, of 27 December, since this Royal Decree Law came into force.

Royal Decree 463/2020, of 14 March, declaring the state of alarm for the management of the health crisis situation caused by COVID-19.

Article 4 states that, for the purposes of the state of alarm, the competent authority will be the Government, identifying as the delegated competent authorities, under the leadership of the President of the Government, a) The Minister of Defence. b) The Minister of the Interior. c) The Minister of Transport, Mobility and Urban Agenda. d) The Minister of Health. Point 2 *in fine* adds that, in areas of responsibility that do not fall within the remit of any of the ministers listed in paragraphs a), b) or c), the Minister of Health shall be the competent delegated authority.

Suspension of administrative deadlines.

The third additional provision of Royal Decree 463/2020, later amended by Royal Decree 465/2020, of 17 March – the sole article point four amends point 4 of the third additional provision of Royal Decree 463/2020 and adds two new points 5 and 6 -, suspends the terms and interrupts the periods for processing the procedures of all Public Sector entities (defined in Law 39/2015, of 1 October, on the Common Administrative Procedure of Public Administrations), stating that the calculation of the periods will be resumed when the Royal Decree or its extensions are no longer in force.

However, the competent body may, by means of a reasoned decision, agree to the measures of organisation and instruction strictly necessary to avoid serious damage to the rights and interests of the party involved in the procedure provided that the party in question agrees, or when the party in question agrees that the deadline should not be suspended.

Points 4 to 6, resulting from the reform implemented by Royal Decree 465/2020, allow public sector entities to agree, giving their reasons, to continue administrative procedures that refer to situations closely linked to the facts that justify the state of alarm, or that are indispensable for the protection of the general interest or for the basic functioning of services; excluding from the general rule of suspending the terms and interrupting the processing deadlines for administrative procedures: those that occur in areas of social security registration, settlements and contributions and tax deadlines, subject to special regulations, in particular, the deadlines for submitting tax returns and self-assessments.

Suspension of statute of limitation and expiration periods.

The fourth additional provision establishes that the statute of limitation and expiration periods of any actions and rights will be suspended while the state of alarm is in force and, if applicable, any extensions that may be adopted.

Royal Decree Law 8/2020, of 17 March, on urgent extraordinary measure to deal with the economic and social impact of COVID-19

Electrical energy, natural gas, water supply and liquefied petroleum gas.

Article 5 of the Royal Decree Law prevents the interruption of the supply of electrical energy, natural gas and water with regards those consumers who are considered to be vulnerable, severely vulnerable or at risk of social exclusion. The same precept automatically extends the income-based subsidised rate until 15 September 2020 for those beneficiaries whose two-year period of validity under the current regulations is about to expire; and suspends the review, for the following 6 months, of the maximum pre-tax retail prices of liquefied petroleum gases, in order to avoid a price rise.

Telecommunications.

After establishing the preamble of Royal Decree Law 8/2020 the increasingly essential and strategic nature of electronic communications networks and services, and to ensure that citizens can continue to access such services and that they continue to be provided under the same conditions as they are currently, articles 18 to 20:

- Establish that companies providing electronic communications services shall maintain the provision of publicly available electronic communications services contracted by their customers on the date the state of alarm was first applied, meaning they may not suspend these services or interrupt them for reasons other than the integrity and security of the electronic communications networks and services, as defined in article 44 of Law 9/2014, of 9 May, the General Telecommunications Law, even if this possibility is stated in the service contracts signed by consumers;
- Make the electronic communications service provider designated to provide the universal telecommunications service responsible for guaranteeing the provision of the elements that make up the universal telecommunications service by maintaining, as a minimum, all of the current beneficiaries and the quality of the provision of all the services that form part of this universal service (article 25 Law 9/2014); and
- Suspend all landline and mobile number portability operations that are not already in progress, except in exceptional cases of force majeure.

Contracts.

Article 34 (chapter III), establishes several measures aimed at mitigating the effects that the suspension of public contracts may have on employment and business activity, among others, it establishes the following with regards contracts in force at the time the Royal Decree Law

came into effect. entered into by public sector entities under the terms expressed in article 3 of Law 9/2017:

- For public service and supply contracts for the successive provision of services, the execution of which becomes impossible as a result of COVID-19 or the measures adopted by the State, the Autonomous Communities or the local administration intended to combat it, it provides for automatic suspension from the moment the situation that prevents the provision of such services arises and until such time as the provision of such services can be resumed. For such cases, compensation for certain damages and loss is provided, as long as they can be proved and the contracting authority has assessed the impossibility of executing the contract (at the request, therefore, of the contractor).
- For public service and supply contracts other than those above, provided that their purpose remains valid and there has been a delay in meeting the deadlines as a result of COVID-19 or the measures adopted to deal with it, the deadline for complying with the contract may be extended without any penalties being imposed, even providing for the right of contractors to payment for the additional salary costs incurred, up to a maximum of 10 per cent of the initial contract price and always upon request and providing proof of the reality, effectiveness and amount.
- In public works contracts, provided that they have not lost their purpose as a result of the de facto situation created by COVID-19 or the measures adopted, and when this situation makes it impossible to continue with the execution of the contract, the contractor may request the suspension or extension of the deadline, as appropriate, with certain items being compensated, provided that the requisites set out in the precept are met and certified.
- In public works and services concession contracts, the de facto situation created by COVID-19 and the measures adopted by the local public authorities to combat it will entitle the concessionaire to restore economic balance of the contract by extending its initial duration by up to 15 per cent, as appropriate, or by amending the clauses of economic content included in the contract.
- Specific exclusions: point 6 of article 34 expressly excludes from its application contracts for health, pharmaceutical or other services or supplies, whose purpose is linked to the health crisis caused by COVID-19, contracts for security, cleaning or computer system maintenance services, contracts for services or supplies necessary to guarantee the mobility and security of transport infrastructures and services, and contracts awarded by public entities listed on official markets that do not obtain revenue from the General State Budget.

Agreements.

Article 39 (chapter V) establishes a special regime for the signing of agreements, declaring the provisions contained in points 1 and 2 in letters a), b) and c) of article 50 of Law 40/2015, of 1 October, on the Legal Regime of the Public Sector, as well as in the Agreement of the Council of Ministers of 15 December 2017, approving the instructions for the processing of agreements, not to be applicable in the administrative processing and signing of agreements in the field of management of the health emergency caused by the COVID-19 coronavirus.

Such agreements shall also be excluded from the provisions of point 8 of article 48 of Law 40/2015, and shall be perfected and made effective by the consent of the parties, without prejudice to their subsequent registration on the State Electronic Register of Cooperation Bodies and Instruments of the state public sector and their publication in the Official State Gazette.

Royal Decree Law 10/2020, of 29 March, regulating recoverable paid leave for employees who do not provide essential services, in order to reduce population mobility in the context of the fight against COVID-19.

The fourth additional provision, relating to the continuation of activity, provides that activities not included in the annex that have been contracted through the procedure set out in article 120 of Law 9/2017, of 8 November, on Public Sector Contracts may be continued.

In turn, the fifth additional provision, under the heading “personnel of companies awarded public sector contracts” establishes that the recoverable paid leave regulated in this Royal Decree Law will not be applicable to workers of companies awarded contracts for public sector works, services and supplies that are indispensable for the maintenance and security of buildings and the adequate provision of public services, including the provision of these services in a non-face-to-face manner, all without prejudice to the provision of article 34 of Royal Decree Law 8/2020, of 17 March, on urgent extraordinary measure to deal with the economic and social impact of COVID-19.



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