Spain’s Economic Measures to Mitigate the Effects of COVID-19

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The global threat posed by the COVID-19 pandemic has led to an unprecedented situation, which raises many legal challenges at both the international and national level. In response to these challenges, the Government of Spain has approved a package of measures consisting in: (1) the *Royal Decree-Law 7/2020 of March 12, adopting urgent measures to respond to the economic impact of COVID-19,* (2) the *Royal Decree 463/2020 of March 14, declaring the state of emergency*, and (3) the *Royal Decree-Law 8/2020 of March 18, implementing extraordinary measures to respond to the economic and social impact of COVID-19*.

These measures form part of the Government’s broader set of actions to protect the health and safety of citizens, as well as to mitigate the social and economic impact of the pandemic.

With this aim in sight, Royal Decree 463/2020 establishes limitations on the freedom of movement, temporary requisitions and mandatory service obligations, as well as containment measures for educational, professional, retail, commercial and recreational activities. Furthermore, certain measures are adopted to strengthen the National Healthcare System, to ensure the supply of goods and services necessary for the protection of public health, to guarantee food, energy supplies and transport services.

In parallel, Royal Decree-Law 7/2020 and 8/2020 supplement the measures already taken with a far-reaching economic and social package that gives priority to the protection of those families, self-employed and companies most directly affected by the COVID-19 crisis, with the aim of avoiding a prolonged economic impact. In essence, these instruments seek to protect the Spanish productive and social fabric in order to ensure that the negative economic effects of the COVID-19 pandemic are only transitory and to prevent a structural impact from taking place in the Spanish economy.

These measures are being constantly monitored and adapted as circumstances develop, given the extraordinary nature and volatility of the present crisis. Their objectives and essential content are summarized hereunder, with special attention to the measures that may particularly affect businesses.

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I. Financial support to affected companies and lenders

A. *Debt moratorium measures*

A **moratorium on mortgage debt** incurred for the purchase of the primary residence is established for those owners who have difficulties in meeting their payments because of their economic vulnerability as a result of the COVID-19 crisis. This measure is intended to prevent owners in a special vulnerable situation from losing their primary residence.

B. *Liquidity measures to sustain economic activity in the face of transitory difficulties resulting from the pandemic situation*

The **net borrowing capacity of the Official Credit Institution** (ICO) was increased by EUR 10 billion to provide additional liquidity to companies.[1] The measure is mainly addressed to SMEs and the self-employed, but it is also available for larger companies. It will be carried out through an ICO Financing Line, with the intermediation of financial institutions, and in accordance with its policy of direct financing for larger companies. The ICO will adopt the necessary measures to make the financing available more flexible and extensive and to improve companies' access to credit. The conditions under which such funding may be accessed are not indicated, as the Royal Decree-Law does not specify the objective or subjective criteria that the ICO should consider when making use of this new limit. It is possible then that the ICO will apply the financing policies already in force, which, for the moment, allow the financing to all companies regardless of their size.

A **guarantee scheme of up to EUR 100 billion** on behalf of the State has been approved, covering loans (existing or new) granted by financial institutions to companies and the self-employed.[2] The guarantee measures aim to limiting the risks associated with issuing operating loans to companies that are severely affected by the economic impact of the coronavirus outbreak. The measures aim to meet certain working capital and liquidity requirements of such companies to help them safeguard jobs and continue their activities. The applicable conditions and requirements to be met, including the maximum term for the application of the guarantee shall be established by Agreement of the Council of Ministers. The Council of Ministers has approved a first tranche amounting to EUR 20 billion, of which 50% will be reserved to guarantee loans to the self-employed and SMEs. The guarantee will cover 80% of new loans and renewals of existing loans requested by the self-employed and SMEs. For the other companies, the guarantee will cover 70% of new loans granted and 60% of the renewals of existing loans. To be eligible for this scheme, (i) the debtor must be a company with a registered office in Spain and be affected by the economic effects of COVID-19, (ii) the relevant credit facility must have been entered into or renewed after March 17, 2020; (iii) the debtor shall not be on the bad credit list held by the Central Bank of Spain´s Risk Information Register (CIRBE) by December 31, 2019 and (iv) the debtor shall not be subject to insolvency proceedings before March 17, 2020. The guarantees cannot be for terms above five years. Interested companies may apply for this guarantee until September 30, 2020[3] by contacting directly any of the credit institutions, financial credit establishments, payment entities or electronic money institutions which have signed the corresponding framework agreement with the Official Credit Institute ("ICO") to participate in the guarantee line. This scheme has been approved by the European Commission under the new State aid Temporary Framework. By Agreement of April 10, 2020, the Council of Ministers has approved a second tranche for another EUR 20 billion, maintaining the

1 Royal Decree-Law 8/2020, Art. 30.

2 Royal Decree-Law 8/2020, Art. 29.

3 Royal Decree-Law 8/2020, Final Disposition nº 10 foresees that the measures which have a specific time limit shall be subject to it instead. That is the case for the guarantee scheme as, in accordance with Article 29(2), the maximum time limit to apply for the guarantee shall be established by agreement of the Council of Ministers. On March 24, 2020, the Council of Ministers agreed that interested companies may apply for the guarantee until September 30, 2020.

abovementioned conditions, which has been reserved for SMEs and the self-employed.

The **insurance coverage line** of the Spanish Export Credit Agency (CESCE), through the Internationalisation Risk Reserve Fund, has been increased in EUR 2 billion for companies facing a liquidity crisis or without access to finance due to the COVID-19 crisis. Coverage will not only focus on working capital loans related to international contracts, but may also cover domestic operations provided they are carried out by companies operating internationally or in the process of operating internationally, that meet certain criteria and require new financing due to circumstances arising from the COVID-19 crisis and not to previous circumstances. The extraordinary coverage facility will have a duration of six months from the entry into force of the Royal Decree-Law. SMEs and larger companies may benefit from this facility, but it does not apply to listed companies nor to companies in an insolvency situation.[4]

C. *Support measures targeted at sectors directly affected by the COVID-19 crisis*

A series of financial measures are established to support the **tourism sector**. Most importantly, a specific **ICO financing line of up to EUR 400 million has been created**, with a partial guarantee of 50% from the Ministry of Industry, Trade and Tourism, to meet the liquidity needs of SMEs and the self-employed in the tourism sector, as well as related activities that are affected by the COVID-19 crisis.[5]

II. Employment measures

Teleworking is highly encouraged for all organizations, whenever feasible, as opposed to temporary layoff or reduction of activity.[6]

An **extraordinary severance payment** is provided to self-employed persons whose activities have been suspended or significantly reduced as a result of the COVID-19 crisis.[7]

Furthermore, a series of measures are established to make the **mechanisms for the temporary adjustment of activities** more flexible in order to avoid permanent redundancies.[8] In particular, temporary layoff schemes and reductions in working hours directly caused by activity losses resulting from the COVID-19 crisis will be deemed to be the consequence of a *force majeure* event ("force majeure ERTEs"), provided that the causal link is duly accredited, and a special procedure will be applied to them. In these cases, companies with less than 50 workers will be exempt from paying the company contribution provided for in article 273.2 of the Social Security Law (contribution during the unemployment situation), as well as the contributions for joint collection items, for the duration of the layoff or reduction in working hours period. For companies with more than 50 employees, a reduction of 75% will be applied.

In addition, the **right to contributory unemployment benefit** is recognized to those employees affected by a force majeure layoff scheme, even if they do not have the minimum period of contributory employment necessary to obtain it. In this respect, the time during which the unemployment benefit is received will not be included for the purposes of determining the completion of the maximum periods established for receiving benefits.

These particularities will only apply to those temporary layoffs that have been initiated or communicated after the entry into force of the Royal Decree-Law 8/2020 and which are based on the causes foreseen therein. In contrast, the measures regarding social security contributions and unemployment benefits will also apply to employees affected by temporary layoffs notified, authorized or commenced prior to the entry into force of the Royal Decree-Law, provided that they are directly caused by the COVID-19 crisis.

4 Royal Decree-Law 8/2020, Art. 31.
5 Royal Decree-Law 7/2020, Art. 13.
6 Royal Decree-Law 8/2020, Art. 5.
7 Royal Decree-Law 8/2020, Art. 17.
8 Royal Decree-Law 8/2020, Arts. 22-28.

III. Corporate measures

A. *Shareholders meetings*

Companies will be allowed to hold **meetings** of their governing and management bodies through **videoconference** even if this is not provided for in their bylaws. Voting of decisions by these bodies shall be done in writing and without holding a meeting even if not expressly provided for in their bylaws. Furthermore, the **deadline for the filing of the annual accounts** has been suspended and the term has been extended. For listed companies, the time limit to publish and submit the annual financial report and the audit report has been extended, as well as for the interim management statement and semi-annual financial report. Finally, the term during which the ordinary shareholders meeting may be held has been extended.[9]

B. *Insolvency measures*

The **obligation to declare voluntary bankruptcy** for debtors who are in a state of insolvency is suspended for the duration of the state of emergency. The aim of this measure is to avoid an excessive amount of bankruptcy declarations due to a temporary situation. In addition, insolvency judges will not admit the applications for involuntary insolvency proceedings submitted by third parties during the state of emergency and until two months after its end.[10] After this two month period, insolvency courts will give preference to declarations for voluntary insolvency presented by debtors, rather than to those of involuntary insolvency filed by creditors, even if they are submitted at a later date.

IV. Judicial and administrative proceedings

All **procedural terms and time limits** are suspended for all jurisdictional orders.[11] In addition, the General Council of the Judiciary (CGPJ) has suspended all judicial proceedings throughout the national territory, guaranteeing only essential services.[12] All **administrative terms and time limits** are equally suspended in relation to all administrative proceedings with public authorities, except for tax proceedings and social security proceedings.[13] Finally, **limitation and expiration periods** of all actions and rights are suspended for the duration of the state of emergency.[14]

V. Tax

In view of the difficulties that the exceptional situation generated by COVID-19 may entail for taxpayers to comply with certain tax obligations and requirements in tax proceedings, **deadlines have been generally made more flexible**. In particular, the deposit of tax debts arising from all returns-assessments or self-assessment whose deadline ends between the 13 March to 30 May 2020 may be deferred without providing any guarantee if they are: (i) for a sum lower than EUR 30,000 and (ii) held by individuals or companies with a turnover lower than approximately EUR 6 million in 2019.

Although deadlines of administrative proceedings have been suspended, this does not affect **deadlines for submitting tax forms** and tax payers must continue to submit their tax forms and pay any tax according to the applicable deadlines. In addition, the statute of limitation and expiry terms of legal actions and tax rights is suspended from 18 March to 30 April 2020. This period will not be taken into account for the purposes of calculating the maximum time period during which national tax authorities are to initiate tax inspections or penalty proceedings, and the time period to file economic- administrative and administrative appeals will also not be initiated during those dates.

VI. Public procurement

In order to avoid the negative effects on employment and business viability resulting from the termination of public contracts, all contracts that may no longer be

9 Royal Decree-Law 8/2020, Arts. 40-41.
10 Royal Decree-Law 8/2020, Art. 43.
11 Royal Decree 463/2020, Additional Disposition nº 2.
12 General Council of the Judiciary, Agreement of March 14, 2020.
13 Royal Decree 463/2020, Additional Disposition nº 3.
14 Royal Decree 463/2020, Additional Disposition nº 4.

performed due to the COVID-19 crisis will be automatically suspended until performance can be resumed.[15]

In order to mitigate the damage suffered, compensation by the contracting authorities has been made available for contractors, under request, to cover certain concepts. In particular, available compensations are established to cover wage and salary costs, rent, maintenance costs for installations, machinery and equipment, as well as those relating to insurance policies, when duly accredited by the contractors. On the other hand, for contracts whose performance has not become impossible as a result of COVID-19, but that have experienced delays, **the period for performance may be extended**.

VII. FDI

The Spanish government has suspended the liberalized regime for certain foreign direct investments, which will now require an ***ex-ante*** **authorization**. An initial package of measures was issued on March 17, 2020[16] and subsequent rules are in force since April 2, 2020.[17] Although adopted in the context of the COVID-19 pandemic, this measure is expected to remain in force in the long term.

For the purposes of this new provision, **foreign direct investment** is considered to be any investment where a foreign investor will hold at least a 10% stake of the share capital of a Spanish company, or when as a result of the corporate investment, it will effectively participate in the management or control of a Spanish company.[18] The new regime considers a **foreign investor** to be both non- EU or non-EFTA residents as well as those EU or EFTA residents who are owned by non-EU and non-EFTA residents (that is, whenever these possess—directly or indirectly—more than 25% of the share capital or voting rights of the EU or EFTA investor, or otherwise exercise control over it).[19]

An *ex-ante* authorization will now be necessary for any foreign direct investment (as defined above) made in certain sectors or made by certain foreign investors, regardless of the business of the target. The **sectors** covered by the new screening mechanism are, among others: critical infrastructures (energy, transport, water, health, communications, media, data processing or storage, aerospace, defense, electoral or financial infrastructures, sensitive facilities), critical technologies and dual-use items (including artificial intelligence, robotics, semiconductors, cyber security etc.), supply of fundamental inputs (energy, raw materials) or food safety, sectors with access to sensitive information (in particular personal data), the media sector as well as any other sector that may be designated in the future by the Spanish government, if it affects public security, public order or public health.

An *ex-ante* **authorization will also be necessary if**: (i) the investor is controlled by the government of a non-EU/EFTA state (including state bodies, armed forces or sovereign wealth funds) , (ii) the investor has already invested in sectors affecting public security, public order and public health in another EU member state or (iii) administrative or judicial proceedings have been instituted against the investor for criminal or illegal activities.

The performance of any transaction without the necessary authorization, as well as its implementation without fulfilling the conditions in the authorization or prior to obtaining it, constitute a very serious infringement. **Gun-jumping** would render the transaction invalid and without legal effect until the necessary authorization is obtained and fines up to the transaction value may be imposed.

Further regulations to develop this mechanism are expected to be issued by the Spanish Government, in particular, to set the ***de minimis*** **amount** under which foreign investment would be exempt from screening. Until such regulation is approved, that amount is EUR

15 Royal Decree-Law 8/2020, Art. 34.

16 Royal Decree-Law 8/2020, Final Disposition nº 4.

17 Royal Decree-Law 11/2020.

18 Royal Decree-Law 8/2020, Final Disposition nº 4.

19 Royal Decree-Law 11/2020, Final Disposition nº 3.

1 million. Furthermore, on this transitional stage before the mechanism is further developed, the Royal Decree-Law foresees an **accelerated procedure** where authorizations will be issued by the General Directorate for International Trade and Investments within 30 days, for investments that were agreed but not closed before March 17, 2020 or that are below EUR 5 million.[20]

It is worth noting these measures reflect a European trend and align part of the Spanish FDI regime with Regulation (EU) 2019/452 of 19 March 2019 establishing a framework for the screening of foreign direct investments into the European Union as well as with the guidance issued by the European Commission on March 25, 2020, on the screening of foreign direct investment in the context of the COVID-19 pandemic. However, such Regulation will not be in force until October 11, 2020, when further adjustment to the Spanish FDI regime might be necessary to fully comply with it.

VIII. Consumer protection

Electricity, natural gas and water suppliers are prevented from ceasing the supply to consumers in a vulnerable situation during the month following the entry into force of the Royal Decree-Law.[21] The discount electricity rate (*bono social*) has also been automatically extended until September 15, 2020. The last-resort rate for natural gas will not be updated in the next two quarters. Prices for bottled LPG will not be updated for the next three two-month periods. **Telecom operators** designated with the provision of public service obligations shall also guarantee the provision of their services during the emergency period.

Time limits for the return of products are interrupted for the duration of the state of emergency, regardless of whether the products were purchased in person or online.[22]

IX. Operations

Until recently, **closures** had only affected the commercial activities of the retail sector and, in particular, of those establishments that are open to the public.[23] However, on March 29, 2020, the Government passed the Royal Decree-Law 10/2020 by which it decided **to limit the operation of activities to those which are deemed essential** between March 30 and April 9, 2020.[24] On April 14, 2020 non-essential activities have been resumed.[25]

The Minister of Health has been granted the power to issue orders (i) to ensure the supply of the markets and the operation of the services affected by the shortage; (ii) to intervene or temporarily occupy industries, factories or premises of any kind; (iii) to carry out temporary requisitions of all types of goods and impose personal service obligations when necessary. These measures may be adopted and imposed directly, without the need to articulate them through public contracts in accordance with the public procurement legislation.[26] Furthermore, Royal-Decree Law 7/2020 empowers the Government to regulate the prices of certain products for the protection of health and, in exceptional circumstances, the Inter-ministerial Committee on the Price of Medicines **may fix maximum prices** for certain medicines and products.[27]

Finally, **customs formalities are streamlined for imports in the industrial sector** (and to a lesser extent, for exports) to prevent that the supply chain of goods from third countries are affected or paralyzed.[28]

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20 Royal Decree-Law 11/2020, Transitory Disposition nº 2.
21 Royal Decree-Law 8/2020, Art. 4.
22 Royal Decree-Law 8/2020, Art. 21.
23 Royal Decree 463/2020, Art. 10.
24 Royal Decree-Law 10/2020, Art. 1. The Annex contains the list of activities deemed as essential.
25 April 10 and 13 are public holidays in Spain.
26 Royal Decree 463/2020, Arts. 8 and 13; Royal Decree-Law 7/2020, Art. 16; Royal Decree-Law, Final Disposition nº 6.
27 Royal Decree-Law 7/2020, Art. 7.
28 Royal Decree-Law 8/2020, Art. 32.