



## **ADMINISTRATIVE MEASURES ADOPTED BY ROYAL DECREE - LAW 8/2020 OF MARCH 17, ON EXTRAORDINARY URGENT MEASURES TO DEAL WITH THE ECONOMIC AND SOCIAL IMPACT OF COVID-19**

March 18, 2020

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Royal Decree-Law 8/2020, of March 17, on urgent extraordinary measures to deal with the economic and social impact of COVID-19, hereinafter referred to as the "Royal Decree-Law", includes a range of far-reaching measures in the regulated sectors as well as in the area of public procurement in order, firstly, to make available the necessary means to stem the pandemic and also to alleviate the economic effects that the alarm state is already having on the business and social fabric of this country.

Within the framework of regulatory law, public law, urban planning and competition, the sectors particularly affected by the regulations contained in the Royal Decree Law are telecommunications, economic activity and public contracting, without prejudice to those rules that have been issued to give coherence to the situation created by the alarm state. All of them are analyzed below.

- **Measures in the field of telecommunications.**

This package of measures, contained in **Articles 18 to 20 of the Royal Decree-Law**, aims to ensure the provision of all telecommunications services at a time when they are of vital importance given the guidelines for teleworking.

Specifically:

- - Undertakings providing electronic communications services shall maintain the provision of electronic communications services

without being able to suspend or terminate them for reasons other than the integrity and security of the communications networks and services.

- - The provider designated for the provision of universal service for telecommunications is obliged to ensure the provision of the elements of that service.
- - Fixed and mobile telephone portability operations that are not on-going are suspended, except in exceptional cases of force majeure.
- - Electronic communications service providers shall not carry out extraordinary commercial campaigns to contract electronic communications services that require number portability.

- **Measures to ensure liquidity to sustain economic activity in the face of transitory difficulties resulting from the alarm state.**

These are essentially two measures contained in **Articles 29 and 30 of the Royal Decree-Law**:

1.- Issuance of guarantees by the Ministry of Economic Affairs and Digital Transformation for financing granted by credit institutions and similar to companies and the self-employed to meet their needs arising from their liquidity requirements. The maximum amount for the granting of these guarantees is 100,000 million euros and the requirements for their granting are pending specification by the Council of Ministers.



2.- Extension of the ICO net debt limit by 100 billion euros in order to increase the ICO lines of financing for companies and the self-employed.

- **Measures in the field of public procurement.**

The Council of Ministers has approved a set of measures contained in **Article 34 of the Royal Decree-Law**, under the title "Measures in the field of public procurement to alleviate the consequences of COVID-19", differentiating the type of public sector contracts and the needs of the emergency situation caused by COVID-19 in order to establish more or less aggressive measures.

In this sense, the following differ:

a) **Public service and supply contracts for successive services, the execution of which becomes impossible as a result of the alarm state.**

Contracts in this situation are subject to the following measures:

- They are **automatically suspended** as soon as the factual situation that prevents their provision occurs and until such time as the provision can be resumed, with the contracting authority being notified of the end of the suspension.
- The **impossibility of executing** the contract must be assessed by the contracting authority, **at the request of the contractor** and within 5 calendar days from the time the contractor has assessed the impossibility of execution. The expiry of the period indicated without notification of the express decision must be understood as rejection.
- The contracting authority must pay the contractor the damages and losses actually suffered by the latter during the period of suspension, upon request and with proof of their reality, effectiveness and amount by the contractor.
- The **damages** that can be compensated are limited to:
  1. The salary expenses that the contractor would have actually paid to the personnel assigned on March 14, 2020 to the ordinary execution of the contract, during the period of suspension.
  2. Expenses for the maintenance of the definitive guarantee, in relation to the period of suspension of the contract.
  3. Expenses for rental or maintenance costs of machinery, installations and equipment relating to the period of

suspension of the contract, directly assigned to the execution of the contract, provided that the contractor accredits that these means could not be used for other purposes during the suspension of the contract.

4. The expenses corresponding to the insurance policies foreseen in the specifications and linked to the object of the contract that have been taken out by the contractor and are in force at the time of the suspension of the contract.

- This legal regime does not apply to suspensions of contracts provided for in the contractual regulations.
- If these contracts expire while the alarm condition is in force, they may be extended until the new contract begins, for a maximum period of nine months.
- Suspension of the contract in these circumstances does not constitute grounds for termination.

b) **Public service and supply contracts for successive services, the execution of which is not rendered impossible as a result of the alarm state.**

In the event of a possible delay, if the contractor offers to comply with his commitments by extending the deadline or the current extension, **the contracting authority is obliged to grant the necessary extension**, following a report from the project manager determining that the delay is not attributable to the contractor but is the result of COVID-19. In such cases, **no penalty will be imposed on the contractor and the contract will not be terminated.**

Contractors will be entitled to payment of any additional salary costs actually incurred as a result of time lost as a result of COVID-19, up to a maximum of 10 per cent of the initial contract price, upon request and with reliable proof.

c) **Public works contracts whose continued execution becomes impossible as a result of the alarm state.**

Contracts in this situation are subject to the following measures:

- **The contractor may request the suspension of the contract** from the time when the situation that prevents its performance arises and until such time as the performance can be resumed, the contracting authority being required to notify the end of the suspension.
- **The impossibility of executing the**

**contract must be assessed by the contracting authority, at the request of the contractor and within 5 calendar days from the time the contractor has assessed the impossibility of executing the contract.** The expiry of the period indicated without notification of the express decision must be understood as rejection.

- This legal regime is not applicable to the suspensions of contracts foreseen in the contractual regulations.
- In the case of those contracts for which the end of the execution period was foreseen during the validity of the alarm state, **the contractor may request the extension of the final delivery period.**
- Once the suspension or extension of the period has been agreed, only the following **items will be compensated:**
  1. The salary expenses actually paid by the contractor to the personnel assigned to the ordinary execution of the contract, during the period of suspension and in accordance with the agreement.
  2. Expenses for maintenance of the final guarantee, relating to the period of suspension of the contract.
  3. The cost of renting or maintaining machinery, installations and equipment, after certifying the impossibility of using them for other purposes and if the amount is less than the cost of terminating the rental or maintenance contracts.
  4. Expenses corresponding to the insurance policies provided for in the specifications and linked to the object of the contract that have been taken out by the contractor and are in force at the time of the suspension of the contract.

In order for the right to compensation and damages to be recognized, the main contractor must: **a) be up to date with the fulfillment of its labor and social obligations** and provide evidence of this date, March 14, 2020 (the main contractor, subcontractors, suppliers and providers must comply with this condition); **b) be up to date with the fulfillment of its payment obligations to subcontractors and providers.**

**d) Public contracts for works and service concessions, the execution of which becomes impossible as a result of the alarm state**

The concessionaire shall be entitled to restore the economic equilibrium of the contract by extending its

initial duration by a maximum of 15 per cent or by amending the clauses of economic content included in the contract, at his request and with proof of the circumstances contained in the request, provided that the contracting authority finds it impossible to perform the contract.

These measures are also applicable to contracts entered into under Law 31/2007, of October 30, on procurement procedures in the water, energy, transport and postal services sectors or Book I of Royal Decree Law 3/2020, of February 4, on urgent measures transposing various European Union directives into Spanish law in the field of public procurement in certain sectors; private insurance; pension plans and funds; taxation and tax litigation.

**They will not apply in any case to the following contracts:**

- a) Contracts for health, pharmaceutical or other services or supplies, the object of which is linked to the health crisis caused by COVID-19
- b) Contracts for security services, cleaning or maintenance of computer systems.
- c) Contracts for services or supplies necessary to ensure the mobility and security of transport infrastructures and services.
- d) Contracts awarded by public entities that are listed on official markets and do not receive income from the General State Budget.

The Minister of Transport, Mobility and the Urban Agenda, as the competent authority designated in Article 4 of Royal Decree 463/2020, may adopt additional measures to guarantee the necessary services for the protection of persons, goods and places.

In addition, **the Sixth Final Provision** provides that all contracts to be entered into by the General State Administration or its public bodies and public law entities to meet the needs arising from the protection of persons and other measures adopted by the Council of Ministers to deal with COVID-19 **shall be subject to emergency processing.**

**Measures regarding the conclusion of agreements adopted by the Public Administrations.**

In order to speed up as much as possible the conclusion of agreements necessary to stop the expansion of COVID-19, it has been agreed to ease certain formal requirements, which in normal situations are mandatory.

In fact, **article 39 of the Royal Decree-Law** provides that agreements signed in the field of health emergencies caused by COVID-19 do not need to be accompanied by the report justifying them, as provided for in article 50.1 of Law 40/2015, of October 1, on the Legal System for the Public Sector. Nor will the following be required: a) a report from the legal service; b) any other mandatory report established by the applicable regulations; c) prior authorization from the Ministry of Finance; d) the existence of credit in the corresponding budgets; and e) referral to the Senate.

Nor will their registration in the State Electronic Register of Cooperation Organs and Instruments of the State public sector and their publication in the State Official Gazette be required for them to be effective without prejudice to the subsequent fulfilment of these procedures.

- **Additional measures.**

In addition, the Royal Decree-Law agrees:

- - The exclusion of the application of Royal Decree 307/2005, of March 18, which regulates subsidies for certain needs arising from emergency situations or of a catastrophic nature, to the damage caused by the current health crisis. **(Fifth additional provision)**
- - The non-application of administrative deadlines from Royal Decree 463/2020 to this Royal Decree-Law. **(Ninth additional provision)**
- - The modification of the composition of the Government's Delegate Commission for Intelligence Affairs so that, from now on, it will be chaired by the Vice President of the Government appointed by its President, and composed of the Vice Presidents appointed by the President of the Government, the Ministers of Foreign Affairs, European Union and Cooperation, and Defense, the Minister of the Interior and the Minister of Economic Affairs and Digital Transformation, as well as the Director of the Cabinet of the Presidency of the Government, the Secretary of State for Security and the Secretary of State Director of the National Intelligence Centre, who will act as Secretary. **(Second final provision)**
- - To authorize the Government and the heads of ministerial departments, within the scope of their powers, to issue any provisions that may be necessary for the development and execution of the provisions of this Royal Decree-Law. **(Seventh final provision).**



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