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Madrid, 18 March 2020

In view of the emergency situation caused by COVID-19, various public bodies have published numerous measures and recommendations in the last few days, aimed at minimising the impact of the spread of this disease and ensuring the continuity of the public services they are entrusted to provide. This Information Briefing includes a collection of the most relevant communications from the following authorities, as well as a brief analysis thereof:

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1. Ministry of Home Affairs

On 16 March, Order INT/239/2020 was published, reintroducing controls at internal land borders.

This order enables the possibility of restricting the movement of people who will not be able to maintain continuity.

The measure contained in this order, concerning the reintroduction of internal border controls, is regulated as follows:

“1. The temporary reintroduction of checks at internal borders shall apply from 00:00 on 17 March 2020 until 24:00 on 26 March 2020 and shall affect internal land borders.

2. Only the following persons shall be allowed to enter national territory by land:

- a) Spanish citizens.
- b) Residents in Spain.
- c) Cross-border workers.
- d) Those who can provide documents proving force majeure or a situation of necessity.

3. Foreign personnel accredited as members of diplomatic missions, consular offices and international organisations located in Spain are exempt from these restrictions, provided that they are travelling on official business.

4. In order to ensure the continuity of economic activity and to preserve the supply chain, these measures are not applicable to the transport of goods.”

2. Directorate-General for Legal Security and Public Trust

In order to guarantee the provision of public notary and registry services during the state of alarm caused by COVID-19, the Directorate-General of Legal Security and Public Trust, operating under the Ministry of Justice, published the following on 15 March 2020:

(i) Instruction on the adoption of measures to ensure the adequate provision of the public notary service

This instruction states that the public notary service is a public service of general interest whose provision must be guaranteed throughout the national territory, and the notary may not close the notarial office since it is a public office.

The aforementioned instruction establishes that as long as the state of alarm in Spain lasts, the notary will only attend to urgent matters, and may reject any matter that is not deemed urgent.

In the event of an urgent matter, the provision of the public notary service will be subject to the following:

- Access to the notary's office will not be granted to anyone other than the party concerned;
- The notary's office will be the only place where the notary will carry out notarial work;
- The party concerned will attend the notary's office on the day and time indicated by the notary;
- The notary and the personnel of the notary's office will adopt social distancing measures; and
- The notary will establish shifts for employees.

(ii) Resolution agreeing measures following the declaration of the state of alarm

This resolution is issued in order to adopt measures that guarantee the adequate provision of public registry services, since land, commercial and movable property registries are public services of general interest that must remain open. The measures established are

the following:

- The suspension of the periods of prescription and expiration of any actions and rights during the duration of the state of alarm and, where appropriate, any extensions adopted;
- The Registrars must devote at least two hours a day, within office hours, to informing the public on matters related to the Registry, with this attention to the public being provided exclusively by e-mail or telephone;
- Requests for land registry reports (*notas simples*) and certifications must be made exclusively through the website and must demonstrate a legitimate interest; and
- The opening hours are to be reduced to Monday to Friday from 9:00 to 14:00.

3. National Securities Market Commission

The National Securities Market Commission (“CNMV”) has published the following:

(i) **Communication of 16 March 2020 on the prohibition of the creation or increase of net short positions**

The CNMV has agreed to prohibit, for one month, operations on securities and financial instruments that involve the creation or increase of net short positions on shares admitted to trading in the Spanish trading centres (stock exchanges and the alternative stock market, MAB) for which the CNMV is the competent authority.

The ban has effect from today, 17 March, until 17 April 2020 inclusive, and may be extended for additional periods not exceeding 3 months if the circumstances which led to the ban persist, in accordance with article 24 of Regulation (EU) No 236/2012, or may be lifted at any time before the deadline, if deemed necessary.

The decision, which ESMA has been notified of as provided in the aforementioned Regulation, has been taken because of the extreme volatility of the European and Spanish securities markets, its evolution in the context of the situation created by the COVID-19 virus and the risk that in the next few weeks unordered price movements may occur. Another factor that was considered were the implications of the declaration of the state of alarm in Spain on Saturday 14 March.

The ban applies to any transaction relating to shares or indexes, including cash operations, exchange-traded derivatives or OTC derivatives, which involves creating a net

short position or increasing a pre-existing one, even if it is on an intra-day basis. For the purposes of the ban, net short positions are understood to be those defined in article 3.1 of the above-mentioned Regulation (EU) No 236/2012. These positions include short sales, even if they are covered by securities lending.

The following transactions are excluded from the scope of the ban:

- Market making activities under the terms of the aforementioned European Regulation (articles 2.1.k and 17).
- The creation or increase of net short positions when the investor acquiring a convertible bond has a neutral position in terms of delta between the position in the convertible bond's equity element and the short position taken to cover that element.
- The creation or increase of net short positions when the creation or increase of the short shares position is covered by an equivalent purchase in terms of the proportion of subscription rights.
- The creation or increase of net short positions through derivative financial instruments on indexes or baskets of financial instruments that do not primarily consist of securities affected by the prohibition.

(ii) **Communication of 13 March 2020 on the functioning of the CNMV General Register from 16 March 2020**

- The CNMV General Register will be open from 9:30 to 14:30, but public access will not be allowed.
- In order to ensure continuity regarding the presentation and registration of documents, the following channels have been enabled from 16 March 2020, provided that a Spanish identity card or a certificate with a recognised electronic signature is provided (if no identity card or electronic certificate can be provided, the documentation can be sent to registro@cnmv.es and an entry registration number will be issued anyway):
- Documents addressed to the CNMV may still be presented via any of the websites of the registers of the different Public Administrations, as well as via the following link: <https://sede.cnmv.gob.es/sedecnmv/sedelectronica.aspx>.
- Applications for certificates of registration in the CNMV's special registers may be submitted through the electronic form which can be accessed using the following link: <https://sede.cnmv.gob.es/sedecnmv/LibreAcceso/SolicitudesROD.aspx>

- In addition, in the event that paper documentation needs to be presented that cannot be submitted using the mechanisms described above, the communication provides that the party concerned may submit the documentation to any of the Registers of the different Public Administrations or at a post office, and it will then be forwarded to the CNMV. In order to restrict travel as much as possible, it is recommended that the party concerned travel to the public register or post office nearest to them. However, this point must be interpreted and contextualised in accordance with the rules on the prohibition of movement and public access to the various administrations provided for in the Royal Decree on the State of Alarm, which also provides for the suspension of all administrative deadlines, as explained in our [Information Briefing dated 15 March 2020](#).
- The electronic communication lines for investor claims remain unchanged.

(iii) [Communication of 12 March 2020 on short sales](#)

The CNMV agreed to ban short sales on 13 March as regards all liquid shares admitted to trading on the Spanish stock exchanges whose price has fallen by more than 10% during the session of 12 March and all illiquid shares which have fallen by more than 20%. The number of companies affected by this ban amounts to sixty-nine (69).

(iv) [Communication of 10 March 2020 on the general meetings of listed companies](#)

The CNMV has allowed Spanish listed companies to hold shareholder meetings entirely electronically, acknowledging maximum flexibility to the boards of directors of the listed companies to allow remote attendance and implement real-time remote voting, even though these options are not expressly provided for in the companies' bylaws.

4. Bank of Spain

In addition to adopting and publishing the measures adopted by the ECB indicated below, the Bank of Spain has also published a new protocol for sending documentation (requests, documents and communications addressed to the Bank of Spain) for those procedures that do not currently have an electronic communication procedure. In order to access this electronic submission procedure, the user must have a valid electronic certificate. The Bank of Spain has enabled a specific section on its website for this purpose, with all the technical information of interest.

All of the above is without prejudice to the suspension of administrative deadlines provided for in the Royal Decree on the State of Alarm, which is the subject of our Information Briefing dated 15 March 2020.

We would also like to highlight the [Bank of Spain's communication dated 16 March 2020](#), through

which it states (i) that it is in coordination with banking institutions to guarantee access to banking services throughout the country and (ii) that Spanish institutions will apply the necessary prevention measures to avoid employees taking risks in branches open to the public, as well as a [second communication](#) on the same day, which clarifies that payment institutions may also remain open to the public by taking protective measures.

5. National Commission on Markets and Competition (“CNMC”)

On 12 March, the National Commission on Markets and Competition (“CNMC”) issued a [press release](#) outlining measures intended to increase vigilance against possible abuses which could affect the supply or drive up the price of products needed to protect the health of the population. It is understood that these products include, but are not limited to, sterile gloves, masks and respirators.

In this sense, the CNMC encourages the assistance of citizens in order to bring to its attention, and therefore enable it to investigate, any conduct that may involve setting unfair prices or agreements between operators in relation to the aforementioned health protection equipment. It is understood that both legal entities and private individuals are subject to these possible investigations.

The CNMC is following the lead of other competition authorities, such as the US Department of Justice, which on 9 March reported on measures to investigate possible anti-competitive practices in relation to the manufacture, distribution or sale of medical products such as masks, respirators and diagnostic devices, to prevent anyone from benefiting from an emergency situation such as the present one and to ensure that health authorities are in the best possible position to combat COVID-19 and protect the public interest.

Lastly, the CNMC also reported on the implementation of a business continuity plan, even though employees at its Madrid and Barcelona offices have been working remotely since last Friday.

In relation to this issue, the suspension of the administrative deadlines contained in the Third Additional Provision of the RDEA affect the CNMC in its public sector capacity and, therefore, the deadlines for the investigation and resolution of sanctioning procedures, as well as the deadlines for the resolution of concentrations, are suspended. The CNMC has confirmed that concentrations which are in the pre-notification phase continue to be processed under this preliminary phase, but once notified, the maximum period available to the CNMC for authorising them (one month in the first phase and two additional months in the second phase) would be suspended for as long as the state of alarm is maintained, unless exceptional situations arise.

Safeguards or precautions that companies must have

The exceptional situation resulting from COVID-19 and the state of alarm decreed by the Government does not exempt companies from acting in compliance with applicable competition regulations. In this respect, companies are reminded that they have to operate on the market autonomously and take their own business decisions in full independence from their competitors.

Agreements between competing companies are subject to the principle of self-evaluation of the parties, which must be analysed individually to ensure that they are not contrary to competition law. In the event that it is necessary to adopt some kind of joint cooperation agreement between competing companies to deal with the situation, it is essential to carry out an analysis of said agreement from the perspective of competition law to ensure that said agreement is not anti-competitive, thus avoiding any future penalty from the competition authorities (the European Commission in the European area, the CNMC on a national level or the regional competition authorities as regards Autonomous Communities), as well as any future claim for damages.

6. Spanish Data Protection Agency

On 12 March, the Spanish Data Protection Agency (“**AEPD**”) published the [0017/2020 Report](#) (the “**Report**”) in which it clarifies certain aspects regarding the processing of data derived from the pandemic caused by the SARS-CoV-2 coronavirus, which serves as guidance for legal and natural persons that are carrying out data processing related to the COVID-19 disease. Among other aspects, the Report reiterates the fundamental right to data protection, the continuity of this right during the crisis (as there are currently no grounds for suspending fundamental rights) and the existence of specific rules in current regulations¹ that allow for the legitimate processing of personal data in the present situation².

The most relevant aspects of the Report are as follows:

- (i) Under no circumstances should data protection prevent or hinder, in the broadest sense, measures taken by the authorities³ since the right to data protection must be weighted against public interest. This weighting is reflected in Recital 46 of the GDPR, which provides for the possibility of processing data in certain cases of protection of public interest or the vital interest of the data subject⁴, as well as that of any other private

1 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation, the “GDPR”).

2 A situation in which there is a general health emergency. It is worth remembering that the World Health Organization has declared COVID-19 a global pandemic.

3 The Report places particular emphasis on the establishment of health measures against the COVID-19 epidemic.

4 Recital 45 exemplifies the public and vital interest when treatment is necessary for the control of epidemics and their spread.

individual who may be infected. The Report reiterates that while legislative support (either from the Union or from Member States) is necessary for public interest to be invoked as a legitimate basis, this requirement is not necessary where the processing is intended to protect vital interests of individuals.

- (ii) In order to process certain categories of data, not only is it necessary to have a legal basis, but also a reason for lifting the general ban on processing this type of data, such as:
- the existence of a duty of protection towards workers - which is complemented by the obligation of workers to inform and cooperate with the company in the event of any risk to the safety and health of workers - and therefore the mere suspicion of contact with the SARS-CoV-2 coronavirus must be communicated by workers to companies, which in turn may process such data in accordance with the GDPR and, in particular, Article 32 thereof ("security of processing");
 - Union or Member State law on public health;
 - for the diagnosis, medical care and assessment of the working capacity of the worker or for the management of health and social care systems and services; and
 - to safeguard the vital interests of the data subject or of a third party if they are not physically or legally able to give their consent.

The Report reiterates that a data protection officer may process personal data in such cases in order to safeguard an individual's vital interests or essential public health interests.

- (iii) Notwithstanding the above, each processing must be assessed on a case-by-case basis and in accordance with the provisions of the Spanish health authorities, who are the guarantors of essential public interests. Thus, companies must, at all times, follow the guidance of the authorities, even if it involves the processing of health data, such as, for example, when it is necessary to inform third parties of the contagious situation of an individual, to avoid infection of third parties due to their lack of knowledge and, consequently, the spread of the SARS-CoV-2 coronavirus.
- (iv) Employers may process their employees' data to ensure the safety of other workers and to prevent infection, within the limits set out in the GDPR⁵, for the sole purpose of safeguarding the vital and/or essential interests of other persons. If such processing is carried out to mitigate the effects of the COVID-19 disease, employers, insurance

⁵ Fundamentally, to guarantee the principles of accuracy, minimisation of data processed for the given purpose and the limitation of such purpose, preventing third parties from processing the data for other purposes.

companies or banking institutions may not process such data for purposes other than those strictly necessary for safeguarding vital interests.

At the same time, the AEPD published [another document](#) in which it answers questions raised in relation to COVID-19, of which we highlight the following:

- (i) Companies may process, in compliance with regulations, staff data necessary to ensure their health, including their possible infection with the SARS-CoV-2 coronavirus, in order to adopt the necessary measures to prevent transmission.
- (ii) Companies can ask their staff if they are infected or about the existence of symptoms typical of the disease. However, it would be contrary to the principle of data minimisation to circulate extensive and detailed health questionnaires, or to include questions that are not related to the COVID-19.
- (iii) Companies can report cases of infection within the workforce without identifying those who may be infected, unless it is absolutely necessary or advised by the relevant authorities.
- (iv) Companies can ask their workers to inform them if they have recently been (within two weeks at the most, as this is the coronavirus incubation period) in an area of high virus concentration.
- (v) Although workers are not obliged, when on sick leave, to inform the company of the reason for their leave, this individual right can be given up in favour of the defence of other rights such as the right to the protection of the health of the collective of workers in pandemic situations and, more generally, the defence of the health of the entire population.
- (vi) Companies can take the temperature of their workers to ensure their health and that of other staff, although the process must be carried out in accordance with the Law on Occupational Health and Safety and should be performed by a health professional. This information can only be processed for the specific purpose of containing the spread of the coronavirus and for the period necessary therefor.

Through both documents, the AEPD has shed some light on the processing being carried out these days by companies in view of the extraordinary situation caused by the SARS-CoV-2 coronavirus. These instructions are merely for guidance, as they are not legally binding, so companies must analyse each specific case before processing any data in relation to the COVID-19 disease.

7. European Securities and Markets Authority

The European Securities and Markets Authority (“ESMA”) has published the following communications:

(i) **Communication of 16 March 2020 on the obligation to communicate net short positions**

In an attempt to prevent damage to confidence in the European Union markets and in response to the current level of threat to the European Union markets arising from the situation created by COVID-19, on 16 March 2020, the ESMA has published a [communication](#) in which it temporarily required investors with net short positions in shares traded on an European Union regulated market to notify the relevant national authority if their position reaches or exceeds 0.1% of the capital after the entry into force of the decision.

The measure will apply immediately, requiring net short position holders to communicate their relevant positions as at the close of the trading session on Monday, 16 March 2020. These temporary transparency obligations affect any natural or legal person, irrespective of their country of residence. The measures do not apply to shares admitted to trading on a regulated market when the principal venue for the trading of shares is located in a third country, or to market making or stabilisation activities.

(ii) **Communication of 11 March 2020 on recommendations to market participants**

On 11 March 2020, ESMA published a [communication](#) containing a list of recommendations to market participants regarding contingency measures taken by supervised entities in the context of the COVID-19 emergency with the aim of reinforcing investor protection and ensuring orderly and stable financial markets.

The recommendations of ESMA are as follows:

- **Business continuity plans:** The communication indicates that all market participants must be prepared to implement contingency plans, including the deployment of business continuity measures;
- **Market disclosure:** Issuers should disclose any inside or relevant information on the impact of COVID-19 on their fundamental economic parameters.
- **Financial information:** Issuers should report on current and potential impacts of COVID-19 in their 2019 year-end financial report, if it has not yet been finalised, or otherwise in their interim financial reporting disclosures.

- Fund management: Fund managers should continue to apply the risk management requirements.

8. European Central Bank

(i) Meeting of the Council of 12 March 2020

In order to support bank lending to small and medium-sized enterprises and the liquidity of the euro area economy, the Governing Council of the European Central Bank (“ECB”), at its recent meeting on 12 March, adopted two major packages of measures to address the impact of COVID-19, in particular with regard to monetary policy and the ECB's supervisory powers over credit institutions:

a) Measures related to monetary policy ⁶

The monetary policy measures to improve liquidity include the following:

- The short-term (until June 2020) implementation of additional longer-term refinancing operations (“LTROs”). Such transactions will be carried out through a fixed rate tender procedure with full allotment, with an interest rate equal to the average rate applicable to the deposit facility;
- In terms of targeted longer-term refinancing operations (TLTRO III) already provided for, significantly more favourable terms will apply during the period from June 2020 to June 2021 for all operations outstanding during that period. The applicable interest rate will be 25 basis points below the average rate applied in the Eurosystem's main refinancing operations;
- Acquisition of assets as part of the impetus to the private sector purchase programme: as a reinforcement of the current asset purchase programme, it has been agreed to temporarily make net asset purchases amounting to EUR 120 billion until the end of 2020;
- Preservation of official interest rates: Lastly, the European Central Bank has decided not to change official interest rates at the moment.

⁶ <https://www.ecb.europa.eu/press/pr/date/2020/html/ecb.mp200312~8d3aec3ff2.en.html>

b) Flexibility measures regarding the supervision of credit institutions:

As part of the measures adopted to support the provision of bank credit to those most affected by the spread of the coronavirus, such as small and medium-sized enterprises, the ECB has agreed to temporarily relax certain capital and operational requirements for credit institutions, in particular:

- Capital and liquidity buffers (Pillar 2 Guidance): institutions will be allowed to temporarily operate below the level of capital set out in the Pillar 2 Guidance, the capital conservation buffer and the liquidity coverage ratio.
- Possibility to use capital instruments not classified as Common Equity Tier 1 (CET1) to meet the Pillar 2 Requirements (P2R): bringing forward the application of provisions that would have only been effective from January 2021 (as a result of the revision of the Capital Requirements Directive V), the ECB authorises institutions to partially use elements of Tier 1 capital (such as reserves or intangible assets) and Tier 2 capital (such as related share premium accounts) to meet capital requirements.
- Possible adoption of individual measures: the ECB is exploring with the institutions the possibility of adopting individual measures, such as adjustments to timetables, processes and deadlines, as well as the possibility of rescheduling on-site inspections and extending the deadlines for implementing corrective actions resulting from recent on-site inspections and investigations of internal models.

(ii) Communication dated 15 March 2020 on coordinated central bank action to enhance the provision of global US dollar liquidity

The Bank of Canada, the Bank of England, the Bank of Japan, the European Central Bank, the Federal Reserve and the Swiss National Bank have announced coordinated actions to enhance the provision of global US dollar liquidity, effective the week of 16 March 2020. To this end, the aforementioned central banks have agreed to reduce the price of liquidity swap line arrangements by 25 basis points. In addition, central banks with regular US dollar liquidity operations have also agreed to start offering US dollars weekly in each jurisdiction with a maturity of 84 days, in addition to the existing weekly maturity offers.

9. European Commission

(i) Control of concentrations

With regard to the concentrations under review by the European Commission, the various case teams of the Directorate-General for Competition report that they are continuing to work to meet, as far as possible, the deadlines set.

However, in relation to the transactions that are in the pre-notification phase, the notifying parties have been expressly requested not to proceed with formal notification until at least 29 March, unless exceptional situations arise such as the need to comply with a long stop date as agreed by the parties in the corresponding purchase agreement.

(ii) Guidelines for border management and ensuring the availability of essential goods and services

On 16 March, the European Commission published Guidelines for border management measures to protect health and ensure the availability of goods and essential services. These Guidelines set out the principles for ensuring effective implementation of border management measures to protect health while ensuring the integrity of the European Single Market. They are divided into the following areas:

- Transport of goods and services

The transport and mobility sector is seen as an essential sector for ensuring economic continuity. The Commission therefore considers it essential that all Member States take joint and coordinated action.

In this respect, control measures should not affect the continuity of economic activity and should preserve the functioning of supply chains, mainly for those goods that are essential, such as foodstuffs (including livestock), medical and sanitary products and protective equipment.

To ensure this, the Commission stresses the importance of guaranteeing freedom of movement (both within and outside the borders of the European Union) for workers in key sectors, such as truck and train drivers, or pilots and cabin crew.

- Should a Member State decide to impose measures affecting or restricting the transport of goods and passengers on grounds of public health, the Commission reiterates that it must be duly notified of such measures prior to their implementation and, in all cases, they must be transparent, proportional, specific, non-discriminatory and duly motivated.

- Supply of goods

The Commission advises Member States that they must ensure the free movement of goods within the Single Market and that any measure restricting this is prohibited.

Member States must ensure the supply of goods necessary to meet citizens' needs, avoiding impulsive purchases as a result of any possible panic. The Commission clarifies that no additional certification is required for goods legally circulating in the Single Market, and reiterates that there is no evidence that food is a source of COVID-19 transmission.

Lastly, it establishes the need to support as necessary certain specific transport nodes such as ports, airports or logistics centres.

- Health-related border measures (both external and internal)

The Commission recommends adopting the following measures at the external borders:

- Establishment of control measures at both entry and exit to assess the presence of symptoms or exposure to COVID-19 of travellers arriving in or departing from risk areas or countries.
- Distribution of information materials to those travellers arriving from or travelling to risk areas or countries.
- Isolation of suspected cases and, where appropriate, transfer to health facilities.

The Commission states that all citizens entering the Schengen area (irrespective of whether they are nationals of a Member State or not) are subject to checks at border points, including health checks.

It reports that, provided they are proportionate and applied in a non-discriminatory manner, Member States are entitled to prevent the entry of non-EU nationals who are not resident in the European Union when they show symptoms or have been particularly exposed to risks of infection and are therefore considered a threat to public health.

In relation to the Union's internal borders, it allows the establishment of temporary controls provided they are justified on grounds of public interest or internal security. However, it stipulates that such controls must be established in a proportionate manner and with due regard to the health of individuals. In this respect, it reminds

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Member States that the implementation of health checks on persons entering the territory of the European Union does not require the establishment of internal border controls.

Finally, it states that the measures adopted by each Member State must be non-discriminatory and equally applicable to all citizens of the Union, irrespective of the Member State to which they belong or in which they reside. This does not preclude the application of measures deemed necessary for the containment of COVID-19, such as isolation or quarantine, but they must always be imposed under the same conditions as those required of nationals of the Member State concerned.

The information contained in this Briefing is of a general nature and does not constitute legal advice. This Briefing was prepared on 18 March 2020 and Pérez-Llorca does not undertake any commitment whatsoever to update or review its content.