

**Special Information Briefing**  
**COVID-19 (No. 4):**  
**Royal Decree-Law 8/2020 of 17 March on extraordinary urgent measures**  
**to address the economic and social impact of COVID-19**

## Index

### 1. MEASURES RELATING TO EMPLOYMENT

Schedule I

Schedule II

### 2. MEASURES TO SUPPORT THE ECONOMIC ACTIVITY

- A. Approval of a guarantee facility of up to EUR 100 billion
- B. Increase in the net borrowing capacity of the Spanish Official Credit Institute in the General State Budget Law
- C. Creation of a facility of insurance coverage of up to EUR 2 billion, charged to the Internationalisation Risk Reserve Fund

### 3. CORPORATE AND COMMERCIAL MEASURES

- A. Measures applicable to legal persons governed by private law
- B. Measures applicable to publicly traded companies
- C. Measures regarding the expiration of the time limits for entries in the register
- D. Interruption of the time limit for the return of products during the state of alarm

### 4. BANKRUPTCY MEASURES

- A. Temporary suspension of the duty to apply for voluntary bankruptcy during the state of alarm
- B. Submission by a third party of a request for involuntary bankruptcy
- C. Expiry of the one-month period provided for in article 5 bis of the Bankruptcy Law to apply for the declaration of bankruptcy during the state of alert

### 5. MEASURES TO ENSURE THE PROTECTION OF HOMEOWNERS WITH MORTGAGE DEBT

- A. Scope of the Moratorium
- B. Definition of economic vulnerability
- C. Conditions for applying for the Moratorium
- D. Effects of the Moratorium

- E. Consequences of improper application of the protection provided for in the RDL

## **6. MEASURES RELATED TO FOREIGN INVESTMENTS**

- A. Suspension of the liberalisation regime
- B. Consequences of the lack of authorisation
- C. Duration of the measure

## **7. PUBLIC PROCUREMENT MEASURES**

- A. Service and supply contracts for continuous provision
- B. Service and supply contracts for non-continuous provision
- C. Construction works contracts
- D. Concession contracts for works and services. Request by the contractor to restore the economic equilibrium of the contract
- E. Application to contracts subject to the Law on Excluded Sectors or to Royal Decree Law 3/2020 of 4 February
- F. Exclusions

## **8. TAX MEASURES**

- A. Expediting customs procedures
- B. Suspension of deadlines
- C. ITP-AJD exemption for deeds documenting loan and mortgage credit novations under the RDL

## **9. MEASURES FOR THE PROVISION OF ESSENTIAL PUBLIC SERVICES: GUARANTEE OF WATER AND ENERGY SUPPLY TO VULNERABLE CONSUMERS**

## **10. MEASURES IN THE TELECOMMUNICATIONS SECTOR**

Madrid, 18 March 2020

On 18 March 2020, Royal Decree Law 8/2020 of 17 March on urgent extraordinary measures to deal with the economic and social impact of COVID-19 (the “RDL”) was published in the Official State Bulletin. The RDL establishes a new range of measures, mainly relating to the economy and employment, which expand and enhance those already adopted through the Royal Decree-Laws approved in recent days, as well as Royal Decree 463/2020, of 14 March, which declares the state of alarm for the management of the health crisis caused by COVID-19.

In this legal briefing, we provide a preliminary analysis of the measures approved in different areas.

## 1. MEASURES RELATING TO EMPLOYMENT

The RDL has included certain measures in the area of employment which are analysed in detail in Schedule I (Measures relating to temporary workforce restructuring plans -ERTE-) and Schedule II (Other employment measures) of this legal briefing. It also provides that extraordinary measures in the area of employment shall be subject to a commitment by the company to maintain employment for a period of six months from the date of resumption of activity.

## 2. MEASURES TO SUPPORT THE ECONOMIC ACTIVITY

As a follow-up to the range of support measures for the business sector provided for in Royal Decree-Law 7/2020 of 12 March, the RDL provides for much more ambitious measures from an economic standpoint aimed mainly at guaranteeing the liquidity of the Spanish business sector in the face of the temporary and exceptional situation caused by COVID-19. Consequently, the RDL provides for a plan consisting mainly of the following three measures:

- (i) the approval of a guarantee facility on behalf of the State, of up to EUR 100 billion, to guarantee the financial borrowings (existing or new) assumed by companies and self-employed workers from regulated entities in the financial sector, in relation to certain working capital and liquidity needs of such companies and self-employed workers;
- (ii) increasing the net borrowing capacity of the Spanish Official Credit Institute (*Instituto de Crédito Oficial*) in the General State Budget Law by EUR 10 billion, in order to provide additional liquidity to companies, especially SMEs and the self-employed; and
- (iii) the creation of an insurance coverage facility of up to EUR 2 billion, to be charged to the Internationalisation Risk Reserve Fund (*Fondo de Reserva de los Riesgos de la Internacionalización*).

## A. Approval of a guarantee facility of up to EUR 100 billion

The range of measures described in the previous section begins with the approval of a guarantee facility by the State in respect of financing granted by financial institutions to companies and the self-employed. As stated in article 29 of the RDL, this measure is a financial policy instrument whose purpose is to facilitate the safeguarding of employment and to guarantee access by companies and the self-employed to financing from institutions, financial credit establishments, electronic money institutions and payment institutions, in order to alleviate the adverse effects of a liquidity crisis in the business sector caused by COVID-19.

The RDL is a specific regulation that empowers the Ministry of Economic Affairs and Digital Transformation, in accordance with the provisions of article 114.1 of the General Budgetary Law 47/2003 of 26 November (“LGP”), to grant guarantees for a maximum amount of EUR 100 billion. Several aspects should be highlighted:

- (i) The RDL solely establishes in its First and Second Additional Provisions that *“the Ministry of Finance shall provide the budgetary resources that are necessary for the adequate compliance with the extraordinary measures”* that are required and that, in particular the Ministry of Finance *“will approve the corresponding budgetary amendments”* which will be dealt with *“from existing budgetary resources”* (without the rule stipulating what specific amendments will be made to Law 6/2018 of 3 July on the General State Budget for 2018 to comply with the provisions of the RDL). Therefore, we are faced with a budgetary amendment permitted by article 51 of the LGP, in accordance with the procedure provided for in articles 61 to 63 of the LGP. Consequently, the approval or implementation of such amendments will be made later.
- (ii) The RDL does not provide for the conditions and requirements that will be applicable to the granting of guarantees issued under the aforementioned facility (including, without limitation, the maximum term and means required for their application, the objective and subjective criteria for their granting or the maximum individual amount of each guarantee, if any), so the rule must be further developed, in accordance with the provisions of article 29.2 of the RDL, by Resolution of the Council of Ministers.
- (iii) Finally, article 29.3 of the RDL reiterates [reiterates está bien] that the guarantees regulated in this regulation and the conditions that may be further established by a Resolution of the Council of Ministers must comply with European Union regulations on State aid. These rules state that any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, insofar as it affects trade between Member States, be incompatible with the internal market.

The European Commission and the EU Courts have already examined aid schemes granted by means of a guarantee, finding in these cases that the aid is granted through

State resources and may affect the EU's internal market. Consequently, in order for this type of measure to be considered compatible with State aid rules, the most relevant criterion is selectivity, i.e. it will be necessary to specify whether this national measure may favour certain undertakings or the production of certain goods in relation to others which are in a comparable situation, in view of the objective pursued by the measure.

As stated above, article 29(2) of the RDL provides that the aid is to be granted to “companies and self-employed persons to meet their needs arising, *inter alia*, from the management of invoices, working capital requirements, the payment of financial or tax obligations or other liquidity requirements”. Therefore, *a priori*, it appears that this aid will be applied uniformly, without discrimination between businesses who are in the same circumstances, so that an advantage would not be conferred on one business to the detriment of another and, consequently, the measure would be compatible with State aid rules. However, particular attention will have to be paid to the conditions and requirements that will be laid down in the implementing provisions of this RDL article in order to verify that no market-distorting element is introduced that would allow the opposite conclusion to be reached.

In any event, these measures must be notified to the European Commission, as the competent authority for analysing and determining compliance with State aid rules. If the Commission considers that such rules are respected, it will declare the measures compatible with EU law. Otherwise, the Commission will declare them incompatible and, if the aid has already been granted at that time, will order their recovery from the beneficiaries. At this point, it must be noted that we are dealing with extraordinary measures resulting from a health emergency at a global level, a situation which has already been taken into account by the European Commission itself in the area of State aid.

On 13 March 2020, the European Commission declared that it had put in place all the necessary procedures to enable it to rapidly approve the national aid measures adopted as a result of COVID-19, once it had received notification from the Member States<sup>1</sup>. It also welcomed “*the measures taken by the Member States to provide guarantees to businesses*”<sup>2</sup>.

In addition, the European Commission has approved the first aid granted by a Member State due to COVID-19 and has approved it within a very short period of time since it received the notification (1 day). This first measure is the aid granted by Denmark to compensate for losses incurred by companies as a result of the cancellation or postponement of public events involving more than 1,000 participants or targeting risk groups<sup>3</sup>. When examining this measure, the Commission considered that COVID-19 can

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<sup>1</sup> Document available at [https://ec.europa.eu/commission/presscorner/detail/es/qanda\\_20\\_458](https://ec.europa.eu/commission/presscorner/detail/es/qanda_20_458).

<sup>2</sup> *Idem*.

<sup>3</sup> [https://ec.europa.eu/commission/presscorner/detail/es/IP\\_20\\_454](https://ec.europa.eu/commission/presscorner/detail/es/IP_20_454).

be qualified as an “exceptional event” because it is an extraordinary and unforeseeable event with a significant economic impact, which is why, in this particular case, State intervention to compensate for the damages resulting from its occurrence is justified.

The European Commission also took the opportunity to reaffirm that the Union’s rules on State aid and, more specifically, the guidelines on State aid for rescuing and restructuring non-financial enterprises in difficulty<sup>4</sup>, allow Member States to help companies to cope with liquidity constraints and urgent rescue needs. In this context, Member States, for example, may set up specific support schemes for small and medium-sized enterprises (SMEs), including the coverage of their liquidity needs for a period of up to 18 months. Some Member States already have implemented such schemes. For example, in February 2019 the Commission approved a support plan of EUR 400 million for Ireland to cover the acute liquidity needs, rescue and restructuring needs of SMEs as a preparatory measure for Brexit.

In short, there is no evidence at present to suggest that the measures referred to in article 29 of the RDL are incompatible with European Union law on State aid, although they have yet to be developed and specified. The rules that may be subsequently adopted shall be analysed again from this perspective.

## **B. Increase in the net borrowing capacity of the Official Credit Institute in the General State Budget Law**

On the other hand, article 30 of the RDL aims to provide companies with additional liquidity by:

- (i) increasing by EUR 10 billion the net borrowing limit for the Official Credit Institute provided for in the General State Budget Law (which currently provides for the allocation of EUR 5.9 billion in its Annex III); and
- (ii) the easing of available financing and the improvement of access to credit for companies by the Official Credit Institute.

It should be noted that, although this credit extension is contained in a special regulation that seeks to mitigate the adverse effects of COVID-19, such article does not specify the objective or subjective criteria that the Official Credit Institute must consider when making use of this new limit. Therefore, we believe that the Official Credit Institute must abide by the direct financing policies currently in force and those adopted subsequently and as a result of the entry into force of the RDL.

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<sup>4</sup> Communication from the Commission (2014/C 249/01).

## C. Creation of an insurance coverage facility, of up to EUR 2 billion, charged to the Internationalisation Risk Reserve Fund

Finally, article 31 of the RDL provides for a special insurance coverage facility of up to EUR 2 billion. The main features of this special facility are as follows:

- (i) It is limited in duration; in accordance with the provisions of section one of article 31 of the RDL, this extraordinary line will have a duration of 6 months from the entry into force of the RDL.
- (ii) Such coverage (which shall be implemented through irrevocable insurance policies or guarantees granted by Compañía Española de Seguros de Crédito a la Exportación, S.A. Cía. de Seguros y Reaseguros (CESCE), S.M.E.) will not have to be focused exclusively on working capital facilities under new international contracts, and may cover new domestic operations (whether for the supply of goods, provision of services, or others carried out by Spanish companies and which form part of the commercial strategy of companies acting primarily in the area of cross-border business) provided (i) that they are carried out by companies that operate internationally or are in the process of expanding internationally, (ii) that they meet the subjective criterias described in the following section and (iii) that they require such new financing as a result of the crisis arising from COVID-19 and not due to circumstances prior to that crisis.
- (iii) In accordance with the previous section, section 1(b) of article 31 of the RDL set out the subjective criteria for companies to be able to benefit from such coverage facility, namely:
  - that they are SMEs and other larger companies (not being listed companies);
  - that they are companies that operate internationally or companies in the process of expanding internationally (either because their international business, as reflected in their latest available financial information, represents at least one third of their turnover or because they are companies which, according to the criteria set out by the Secretariat of State for Trade, have been regular exporters during the last 4 years) that are facing a liquidity crisis or do not have access to financing due to the COVID-19 crisis (which we understand will be represented by the company in question given the difficulty to evidence this circumstance within the duration of the coverage facility);
  - that they are not in an insolvency or pre-insolvency situation or have had incidents of non-payment with public sector companies or the Public Administration.

- (iv) The percentage of credit risk covered by this special facility in the operations subscribed thereunder may not exceed the limit that may be established at any time in accordance with European Union regulations on State aid.

Currently, the European Commission has used its power to regulate State aid in the field of short-term export credit insurance to address existing or potential distortions in internal market competition, not only between exporters in different Member States (trading within and outside the EU), but also between export credit insurers operating in the EU, by adopting guidelines applicable to export credit insurance with a risk period of less than two years<sup>5</sup>.

As this is a coverage facility provided by the CESCE, it is recognised that State resources are involved. It is therefore necessary to ensure that they are distributed evenly to businesses that are in the same situation in subsequent individual measures, and that any quantitative limits that may be set by the European Commission are complied with.

- (v) The facility will be divided into two tranches of EUR 1 billion and will be implemented in two phases. The first tranche will be initially implemented and the second tranche will only be implemented when the satisfactory deployment of the first tranche has been verified.

### 3. CORPORATE AND COMMERCIAL MEASURES

#### A. Measures applicable to private law entities

A series of exceptional measures have been adopted to ease the constitution of the governing bodies and the adoption of resolutions.

- (i) **Constitution of governing bodies:** the governing and management bodies of civil and commercial companies and associations, as well as the governing boards of cooperatives and the board of trustees of foundations, are allowed to hold their meetings by videoconference, even if the articles of association do not expressly regulate this option. In this regard, it is required that the videoconference ensures authenticity, that the connection is bilateral or plurilateral, in real time, and with image and sound of the attendees that are not present in the meeting. This provision also applies to the delegated committees and other mandatory or voluntary committees that have been set up.

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<sup>5</sup> Communication from the Commission to the Member States on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to short-term export-credit insurance (OJ C 392, 19.12.2012, p. 1-7)



- (ii) **Adoption of resolutions by the management bodies:** the voting of resolutions by the governing and management bodies of civil and commercial companies and associations, as well as by the governing boards of cooperatives and the board of trustees of foundations, may be carried out in writing and without holding a meeting even if the articles of association do not expressly regulate this option, provided that the Chairman so agrees and when at least two of the members of the relevant body request it.

The resolutions adopted must be recorded in minutes, indicating the system followed to form the will of the relevant corporate body, the name of the shareholders or, where appropriate, the directors, and indicating the vote issued by each of them. As in the previous section, this provision also applies to the delegate committees and other mandatory or voluntary committees set up.

- (iii) **Annual accounts:** The following measures are established:

- **Draw up of annual accounts:** The three-month period for drawing up the annual accounts is suspended until the end of the state of alarm. Once the state of alarm is over, a new three-month period will start to draw up the annual accounts.
- **Verification of the annual accounts:** The period for the verification of the annual accounts already drawn up is extended for two months after the end of the state of alarm.
- **Approval of annual accounts:** The maximum period for the approval of the annual accounts by the ordinary general shareholders' meeting is amended. The ordinary general shareholders' meeting to approve the accounts of the previous year must be held within three months after the end of the period for drawing up the annual accounts.

- (iv) **General shareholders' meetings called prior to the state of alarm which will be held after the declaration of the state of alarm:** Two alternatives are provided: (i) change of the place and time of the meeting; or (ii) revocation of the resolution calling the meeting in order to hold a new shareholders' meeting within one month from the end of the state of alarm.

In both cases, this must be done at least forty-eight hours prior to the date of the meeting by means of an announcement in the website of the Company or, in the Spanish Official Gazette (BOE) provided that the Company does not have a website.

- (v) **Notarial Minutes:** The Notary who has been requested to attend a shareholders' meeting and to draw notarial minutes of the same is authorised to attend the meeting via telematics means.

- (vi) **Shareholders' right of separation:** Shareholders' ability to exercise their right of separation from the company is limited during the state of alarm, even if there are legal or statutory grounds for doing so.
- (vii) **Reimbursement of contributions to cooperative members:** The period established in Article 51 of Law 27/1999 of 16 July 1999 on Cooperatives for the reimbursement of contributions to the share capital in the event a cooperative member leaves the cooperative is extended, and an additional period of six months is granted for the cooperative to reimburse those members who have left the cooperative during the state of alarm.
- (viii) **Winding up of the company:** The companies whose term of existence, as set out in their articles of association, expires during the state of alarm will see their term of existence extended by two months from the end of the state of alarm. In addition, until the end of the state of alarm, the term for the board of directors to call the shareholders' meeting to cause the winding up of the company or to revert the dissolution cause, is suspended.
- (ix) **Liability of the directors:** The directors will not be liable for the debts incurred by the company during the state of alarm.

## B. Measures applicable to listed companies

The RDL also establishes a series of exceptional measures, only for year 2020, which will apply to companies with securities admitted to listing on a regulated market in the European Union, in relation to:

- (i) **Time limits:** A number of time limits applicable to listed companies have been amended:
  - **Annual financial report and audit report:** the obligation to publish and submit these reports may be complied up to six months after the end of the financial year, as opposed to the four month time period that applied before.
  - **Interim management statement and semi-annual financial report:** the obligation to publish and send these reports may be fulfilled up to four months from the end of the financial year, as opposed to the two or three months (depending on the date of publication of the annual report) that applied before.
  - **Ordinary general shareholders' meeting:** it can be held within the first ten months of the financial year, as opposed to the first six months that applied before.

- (ii) General shareholders' meeting: The calling of the general shareholders' meeting may include telematic attendance and remote voting in real time, as well as holding the meeting anywhere in Spain, even if these circumstances are not foreseen in the articles of association of the company. Similarly, for any general shareholders' meeting already called before the date the Royal Decree came into force, it will be allowed to publish a supplement to the calling of the meeting at least five calendar days before the date scheduled for the general shareholders' meeting in order to envisage these options.

In addition, in the event that it was not possible to hold the general meeting in the place and physical location announced in the notice of call and it was not possible to use the option provided for in the preceding paragraph, all due to measures imposed by the public authorities, the following actions are permitted:

- If the meeting has been validly constituted, it may be agreed by the meeting itself to continue with the meeting on the same day, but in another place and venue within the same province, establishing a reasonable period of time for the transportation of the attendees.
- If the meeting cannot be held, it may be reconvened with the same agenda and the same publication requirements, provided that the notice is published at least five days prior to the holding of the subsequent meeting. In this case, the Board of Directors may provide for the meeting to be held exclusively by telematic means, provided that shareholders are given the opportunity to participate by means of all of the following option (a) telematic attendance, (b) proxy granted to the Chairman of the Board telematically, and (c) early voting through a remote voting system. All of the above notwithstanding the fact that any of the foregoing channels was not provided for in the articles of association (but provided that there are reasonable guarantees to ensure the identity of the shareholder exercising his voting rights). The meeting shall be deemed to have been held at the registered office, regardless of the location of the Chairman of the Board, and Board members may attend via audio or video conference.

- (iii) Board of Directors: With regard to the notice of the shareholders' meeting described in the preceding paragraphs, the resolutions adopted by the Board of Directors and the Audit Committee by videoconference or multiple telephone conference shall be valid even if such alternatives are not provided for in the articles of association, provided that the members of the Board have the necessary means to do so and the Secretary recognises their identity. This information must be included in the corresponding minutes and certification, considering the meeting to be a sole meeting and held at the company's registered office.

## C. Measures regarding the time limits for entries in the register.

During the state of alarm and any of its subsequent extensions:

- (i) The period of expiration of the filings, provisional filings, mentions, annotations and any other registry entries subject to cancellation due to the passing of time is suspended.
- (ii) The calculation of the time limit shall be resumed on the day after the end of the state of alarm and any of its subsequent extensions.

## D. Interruption of the time limit for the return of products during the state of alarm.

During the state of alarm and its possible extensions, the time limits for returning purchased products by any means, either in person or online, shall be interrupted. The calculation of the time limits will resume at the time that the RDL or its extensions cease to be in force.

## 4. BANKRUPTCY MEASURES

### A. Temporary suspension of the duty to apply for voluntary bankruptcy during the state of alarm<sup>6</sup>

Article 43 of the RDL establishes that natural or legal persons who are in a state of insolvency will not be required to declare voluntary bankruptcy during the period of the state of alarm. If the state of insolvency affecting a person takes place:

- (i) **before** the state of alarm, the two-month period legally provided for applying for a declaration of bankruptcy will be suspended and will resume after the end of the state of alarm;
- (ii) **during** the state of alarm, the **application** for bankruptcy must be made within two months following the end of the state of alarm; or
- (iii) **after** the end of the state of alarm, the bankruptcy application must be submitted within two months from the date on which the state of insolvency was known or should have been known.

Although this measure is beneficial in order to avoid the triggering of the obligation to apply for bankruptcy during the state of alarm, and thus avoiding a flood of bankruptcies due to a temporary situation such as the coronavirus crisis, it may be insufficient. In other countries,

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<sup>6</sup> The state of alarm was declared in Spain with effect from 14 March 2020, according to Royal Decree 463/2020 of 14 March, which declared the state of alarm for the management of the health crisis caused by COVID-19.

such as Germany, the moratorium on declaring bankruptcy is being considered for longer periods (e.g. until the end of September).

## **B. Submission by a third party of an involuntary bankruptcy application**

If, during the period of the state of alarm and until two months have elapsed from the end of the state of alarm, any creditor submits an application for involuntary bankruptcy proceedings, it will not be accepted by the courts. Furthermore, once this two-month period has ended, courts will give preference to applications for voluntary bankruptcy presented by debtors, even in circumstances where an application by a debtor is made after the date of the application for involuntary bankruptcy presented by a creditor.

## **C. Expiration of the one-month period provided for in Article 5 bis of the Bankruptcy Law to apply for the declaration of bankruptcy during the state of alarm**

If, during the state of alarm, the period of one working month provided for in Article 5 bis of the Bankruptcy Law to apply for bankruptcy expires<sup>7</sup>, the debtor will not be obliged to apply for a declaration of bankruptcy. This duty will be triggered once the state of alarm ends, with the debtor resuming the period remaining to apply for bankruptcy when the state of alarm came into force.

## **5. MEASURES TO ENSURE THE PROTECTION OF HOMEOWNERS WITH MORTGAGE DEBT**

The RDL establishes a moratorium on mortgage debt incurred for the purchase of the primary residence, in order to guarantee the right to housing for homeowners with mortgage debt in a situation of special vulnerability who see their income fall as a result of the COVID-19 health crisis (the “**Moratorium**”).

### **A. Scope of the Moratorium**

The Moratorium will apply to all loan or credit agreements secured by a real estate mortgage which was taken out on the primary residence and for which the debtor is financially vulnerable as established in this RDL. These protection measures are extended to the guarantors and sureties of the debtor with respect to their primary residence.

The RDL provides that the relevant loan or mortgage must be in force on the date the RDL comes into force, without distinguishing whether or not there is a situation of non-compliance with such loan or mortgage. Therefore, it seems reasonable to consider that the scope of application of the Moratorium also covers loans whose debtor has failed to pay the instalments prior to the entry into force of the RDL. It is less clear whether the legislator’s

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<sup>7</sup> This duty would exist in the event that the debtor was unable to reach a refinancing agreement, an out-of-court settlement or the approvals necessary for the admission of an advance proposal for a settlement within three months of notification to the court that it had commenced negotiations to reach such an agreement or to obtain approvals of an advance proposal for a settlement.

intention has been to include within the aforementioned scope loans that have become due in advance. It seems to us that there are arguments to suggest that these loans could also be included within the aforementioned scope of application, insofar as early maturity does not necessarily result in the cancellation of the loan.

Nor does the RDL refer to financial institutions as lenders, so it can be understood that the Moratorium applies to any mortgage creditor, regardless of whether it is the original holder of the loan or an assignee of the loan.

## **B. Definition of economic vulnerability**

In order for a debtor to be considered economically vulnerable as a result of the health emergency caused by COVID-19, all of the following requirements must be met:

- (i) The debtor must become unemployed or, if he is an entrepreneur or professional, suffer a substantial loss of income or a substantial drop in turnover (which is defined as, at least, 40% of his sales).
- (ii) The total income of the members of the family unit must not exceed, in the month prior to the application of the Moratorium, approximately, the maximum of three times the Public Multiplier Effect on Index of Revenue (“**IPREM**”)<sup>8</sup>, in other words, EUR 1,613.52. The aforementioned limit may be increased in situations of special vulnerability when the family unit<sup>9</sup> is comprised of minors, persons over 65 years of age, persons with disabilities, mental illness, etc.
- (iii) The mortgage payment, plus the basic expenses and supplies of the family unit, must be greater than or equal to 35% of the net income received by all of the members of the family unit.
- (iv) The family unit must have suffered, as a result of the health emergency, a significant deterioration in its economic circumstances in terms of the effort required to access housing. For these purposes, such deterioration exists when the mortgage burden on the family income has been multiplied by at least 1.3 times.

The non-debtor guarantors, sureties and mortgagees who find themselves in the situation of economic vulnerability defined above may require the lender to exhaust the principal debtor’s assets before claiming the secured debt from them, even if they have expressly waived the benefit of exemption in the contract.

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<sup>8</sup> The IPREM is an index used in Spain as a reference for the granting of aid, subsidies or unemployment benefit. In 2020, the monthly IPREM is EUR 537.84.

<sup>9</sup> Family unit is defined as consisting of the debtor, his or her spouse not legally separated or registered partner and the children, regardless of age, residing in the dwelling, including those linked by a relationship of guardianship, care or foster care and their spouse not legally separated or registered partner, residing in the dwelling.

Like other regulations that seek to protect vulnerable mortgage debtors, the RDL establishes objective and subjective requirements for a debtor to be eligible for the Moratorium. One aspect that deserves special emphasis is the subjectivity that may exist when it comes to assessing whether the vulnerability is the cause of the health emergency, since in some cases there will be no immediate and direct impact of the emergency on the economic circumstances of the family unit.

In this regard, and also taking into account the severity of the situation, it is possible to argue that any negative economic consequences that may occur during the state of alarm may be included in the scope of the Moratorium, provided that the other objective requirements are met.

### **C. Conditions for applying for the Moratorium**

In order to prove that the circumstances of economic vulnerability have been met, the debtor must submit to the creditor entity certain documents that demonstrate his or her situation of economic vulnerability in the terms defined in the RDL (e.g. family book, certificate issued by the competent entity stating the amount received, land registry excerpt, etc.).

Moratorium applications may be submitted from the day following the entry into force of the RDL. Debtors within the scope of this RDL may request the Moratorium from the creditor up to fifteen days after the RDL comes into force (initially planned for one month from 18 March 2020, without prejudice to the fact that, following assessment of the situation, it may be extended by the Government by means of a new Royal Decree-Law).

Taking into account the duration of the state of alarm and the limitations on traffic on public roads, it will not be easy for a debtor to gather all the documentation requested or to process the aforementioned application. Even if the RDL does not expressly provide for it, we must understand that the aforementioned request can be submitted by electronic means, which must be the object of legislation implementing and enforcing the provisions of this RDL.

Once the Moratorium application has been made, the creditor will proceed to implement it within a maximum period of fifteen days, notifying the Bank of Spain of its existence and duration for accounting purposes and of the fact that it has not been included in the calculation of risk provisions.

### **D. Effects of the Moratorium**

The Moratorium has the following effects:

- (i) Suspension of the mortgage debt during the period provided for it and the consequent non-enforcement of the early maturity clause contained in the mortgage loan contract for the duration of the Moratorium.

- (ii) For the duration of the Moratorium, the creditor entity may not demand the payment of the mortgage instalment, or of any of the items therein (amortisation of principal or payment of interest), either in full or in a percentage. No interest will be accrued either<sup>10</sup>.
- (iii) The charging of default interest for the duration of the Moratorium will not be allowed.

The RDL does not expressly clarify the duration of the Moratorium, referring only to the fact that a timeframe will be established for it, without specifying how this will be determined. We believe it is necessary for the RDL's implementation regulations to establish an initial period for the Moratorium that may eventually be extended, provided that the circumstances of vulnerability that have given rise to the Moratorium remain in force. If this is the case, we may find situations in which the duration of the Moratorium goes beyond the current health emergency.

## **E. Consequences of improper application of the protection provided for in the RDL**

The debtor of a credit or loan secured by a mortgage who has benefited from the Moratorium without meeting the requirements set out in the RDL will be responsible for any loss and damage that may have occurred, as well as for all the expenses generated by the application of these relief measures, without prejudice to any other liabilities that the debtor's conduct may give rise to (e.g. criminal liability). The amount of damages and expenses may not be less than the benefit unduly obtained by the debtor from the wrongful application of the rule. The debtor who seeks to place or maintain himself in circumstances of economic vulnerability in order to benefit from these measures will also be liable, although in this case it is up to the creditor to prove these facts.

In summary, the legislator seeks to avoid a situation identical or similar to that experienced after the economic crisis that began in 2008, in which the most vulnerable groups lost their homes, by establishing a Moratorium that applies to the entire mortgage burden of debtors economically affected by the health emergency. As the RDL itself indicates, this Moratorium may also be beneficial to financial institutions that are lenders, insofar as it helps to contain delinquency rate and therefore reduces the need to make the corresponding accounting provisions. However, the reality is that these financial institutions will no longer pay the mortgage instalments that are the object of the Moratorium, which could consequently cause them liquidity strains.

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<sup>10</sup> In RDL it does not define it, but we understand that it refers to ordinary interests.



## 6. MEASURES RELATED TO FOREIGN INVESTMENTS

The fourth final provision of the RDL amends Law 19/2003, of 4 July, on the legal regime of the movement of capital and economic transactions abroad (“**Law 19/2003**”). Law 19/2003 establishes a principle of freedom of movement of capital and economic transactions abroad. This liberalisation regime may be suspended by the Government in the case of acts, businesses, transactions or operations which, by their nature, form or conditions of performance, affect or may affect activities related, even if only incidentally, to the exercise of public power, or activities directly related to national defence, or activities which affect or may affect public order, public safety and public health.

### A. Suspension of the liberalisation regime

With the reform implemented by RDL 8/2020, a new article 7 bis is added to Law 19/2003, suspending the liberalisation regime in a number of sectors and circumstances, in which foreign direct investment in Spain become subject to a prior authorisation regime.

- (i) The measure affects foreign direct investments in Spain by investors resident in countries outside the EU and the European Free Trade Association where:
- As a result of the investment, the investor will gain ownership of 10% or more of the Spanish company’s capital; or
  - As a consequence of the corporate transaction, act or legal transaction, the investor will effectively participate in the management, or will take control of the company.

Sectors affected:

- **Critical infrastructure, whether physical or virtual<sup>11</sup>:** This expressly includes energy, transport, water, health, communications, media, data processing or storage, aerospace, defence, electoral or financial infrastructure and sensitive facilities, as well as land and buildings that are crucial for the use of such infrastructure.
- **Critical technologies and dual-use items<sup>12</sup>:** This explicitly includes artificial intelligence, robotics, semiconductors, cyber-security, aerospace, defence, energy storage, quantum and nuclear technologies, as well as nanotechnologies and biotechnologies.

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<sup>11</sup> In accordance with the provisions of Law 8/2011, of 28 April, which establishes measures for the protection of critical infrastructures.

<sup>12</sup> As defined in Article 2(1) of Council Regulation (EC) No 428/2009

- **Supply of critical inputs**, in particular:
    - **Energy** (e.g. electricity and oil & gas)<sup>13</sup>.
    - Those relating to **raw materials and food safety**: In the latter case, no definition or reference or regulatory reference is given that would make it possible to determine the scope of these items. This is particularly relevant in the case of food safety. In the context of a health emergency in which the standard has been issued, the reference to “food safety” appears to be aimed at guaranteeing the supply of foodstuffs. In this way, it could be understood that foreign investment in food chains, department stores or producers is being made subject to prior authorisation.
  - **Sectors with access to sensitive information**, in particular personal data, or with the capacity to control such information, in accordance with Organic Law 3/2018 of 5 December on the Protection of Personal Data and the Guarantee of Digital Rights (“LOPD”) This provision would affect companies that process information (including information that may be classified as personal) that could affect public order, public health and public security, without providing a complete list of the information that is affected by this regulation. Thus, this limitation would operate for, among others, companies that have access to medical records (e.g. companies that provide health services or companies that provide services to them and have access to these data), companies that have access to personal data that may affect the right to privacy of individuals (e.g. security companies, Internet of Things, etc.) or companies in the Big Data sector.
  - **Media.**
- (ii) Other foreign investments in which liberalisation is suspended (irrespective of whether the investment will take place in one of the sectors in (i) above) are those made by:
- Foreign investors controlled directly or indirectly by the government of a third country (including government agencies or the armed forces). For the purpose of determining the existence of control, the criteria set forth in Article 42 of the Commercial Code shall be applied.
  - Foreign investors who have already invested or participated in activities in another Member State in sectors affecting security, public order and public

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<sup>13</sup> Those regulated by Law 24/2013, of 26 December, on the Electricity Sector, and Law 34/1998, of 7 October, on the Hydrocarbons Sector. It therefore affects both liberalised sectors such as the marketing of electrical energy or natural gas, and regulated sectors such as transport or distribution.

health, and especially those listed in (i) above.

- Foreign investors prosecuted, either administratively or judicially, in another Member State or in their home state or in a third state for criminal or illegal activities.

## **B. Consequences of the lack of authorisation**

In the absence of a specific regulatory procedure, the authorisation of the investment must be agreed by the Council of Ministers and may include conditions for the execution of the operation.

The execution of transactions falling within the scope of this amendment without prior administrative authorisation:

- (i) Shall have no validity or legal effect, until such time as they are legalised.
- (ii) Shall constitute a very serious offence, punishable by a fine of up to the economic content of the operation, which may not be less than 30,000 euros.

This means that, while the measure remains in force, transactions affecting these sectors and investors will have to be structured taking into account that their execution will require obtaining prior administrative authorisation (i.e. mainly through the inclusion of suspensive conditions to this effect in the corresponding contracts).

## **C. Duration of the measure**

The timeframe of this reform is independent of the rest of the measures adopted in RDL 8/2020, as it will be maintained until an agreement is reached by the Council of Ministers that determines its withdrawal.

In view of the scope of the amendment introduced, in practice, it will be necessary to carry out a more specific analysis in each case, with special attention to:

- (i) The nationality of the investor. The measure affects “residents in countries outside the EU and the European Free Trade Association”, but no clear rules are defined as to how residence should be determined for this purpose.
- (ii) Those affected sectors where the sector has not been defined or identified by reference to a particular standard (e.g. food safety, raw materials) will be particularly difficult to identify in practice and are likely to require clarification or specification by the Government.

## 7. PUBLIC PROCUREMENT MEASURES

Chapter III includes a section VI with a single article (34) that regulates the measures adopted in the area of public procurement to mitigate the consequences of COVID-19. Thus, as announced in the Explanatory Memorandum of the rule, this article aims to establish measures to avoid negative effects on employment and business viability resulting from the suspension of public contracts. In this regard, in order to prevent COVID-19 and the measures adopted by the various public administrations from leading to the termination of contracts by the entities that make up the public sector, a specific system for the suspension and extension of contracts is provided for.

This regulation covers (i) service and supply contracts for continuous and non-continuous provision, (ii) work contracts and (iii) works concession and service concession contracts, entered into by any of the entities belonging to the Public Sector, as defined in Article 3 of Law 9/2017, of 8 November, on Public Sector Contracts, which transposes into Spanish law Directives of the European Parliament and of the Council 2014/23/EU and 2014/24/EU, of 26 February 2014 (“LCSP”), with the exceptions expressly provided for in the last section of this article.

### A. Service and supply contracts for continuous provision

- (i) Request for suspension by the contractor and payment of damages

Firstly, the first section of article 34 establishes that public service and supply contracts for continuous provision which become impossible to execute as a result of COVID-19 or the measures taken by the public administrations to combat it, will be automatically suspended from the moment the situation which prevents their performance arises and until such time as the performance can be resumed (the contracting authority will notify the contractor of the end of the suspension).

However, this suspension is not entirely automatic, since the contractor must request such suspension from the contracting authority, stating (i) the reasons why the execution of the contract has become impossible, (ii) the personnel, premises, vehicles, machinery, installations and equipment assigned to the execution of the contract at that time, (iii) and the reasons why it is impossible for the contractor to use the means mentioned in another contract. The Administration reserves the right to verify the veracity of these points at a later date. Thus, once the request for suspension has been made, the Administration must resolve it within five calendar days. Once this period has elapsed without notifying the express resolution to the contractor, it will be understood that it has been rejected.

On the other hand, when the request is expressly accepted, the contracting entity must pay the contractor for the loss and damage actually suffered by the latter during the period of suspension, upon request and with evidence of its authenticity, effectiveness and amount by the contractor. These damages shall be claimable only as follows:

- The salary costs actually paid by the contractor to staff assigned on 14 March 2020.
- The expenses for the maintenance of the final guarantee.
- Expenditure on rent or maintenance costs for machinery, installations and equipment directly assigned to the execution of the contract, provided that the contractor can prove that these resources could not be used for other purposes during the suspension of the contract.
- The expenses corresponding to the insurance policies in force at the time of the suspension of the contract.

This list of reimbursable expenses is *numerus clausus*, so no expenses other than those listed above may be claimed.

(ii) Extension of contracts

Royal Decree 463/2020, of 14 March, which has declared a state of alarm for the management of the health crisis caused by COVID-19, agreed to halt all contracting procedures. Therefore, if, on expiry of any of the existing contracts, the new contract guaranteeing the continuity of the service has not been and cannot be signed, the original contract may be extended until the start of performance of the new contract for a maximum period of nine months, without altering the other terms of the contract<sup>14</sup>, irrespective of the date of publication of the invitation to tender for the new contract.

(iii) Other issues

For the cases specifically regulated in this regulation, it is established that (i) the suspension will in no case constitute a basis for terminating the contract, and that (ii) article 208.2.a) LCSP and article 220 of Royal Legislative Decree 3/2011, of 14 November, approving the revised text of the Public Sector Contracts Law (“TRLCSP”), which contain an express and different regulation of suspensions of public contracts, will not be applicable.

## **B. Service and supply contracts for non-continuous provision**

(i) Extension in case of any delay in meeting deadlines

The second section of article 34 states that, in the case of public service and supply contracts for non-continuous provision which have not lost their purpose as a result of the situation created by COVID-19, when the contractor is delayed in meeting the deadlines set out in the contract as a result of COVID-19 or the measures taken by the various Administrations to combat it, the contractor may request an extension which the contracting authority will grant,

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<sup>14</sup> Article 29.4 LCSP.

following a report from the contract's construction manager which establishes that the delay is due to one of the above circumstances and is not the contractor's fault. This extension will be at least equal to the time lost due to the reason given, unless the contractor requests a shorter extension.

In such cases, no penalties will be imposed on the contractor and the contract will not be terminated.

(ii) Payment of additional salary expenses in the event of extensions

In addition, following the request and demonstration of the reality, effectiveness and amount, the contractor will be entitled to the payment of the additional salary expenses actually incurred as a result of the time lost due to COVID-19, up to a maximum limit of 10 per cent of the initial contract price.

## C. Construction works contracts

(i) Contractor's request for suspension and extension

The third section of article 34 establishes that, for public works contracts that have not lost their purpose as a result of the situation described and when, as a result of COVID-19, it is impossible to continue the execution of the contract, the contractor may request the suspension of the contract from the moment the situation that prevents its performance arises and until such time as the performance can be resumed (the contracting authority will notify the contractor of the end of the suspension).

The contractor must submit a request for suspension to the contracting authority reflecting the same circumstances as those described above for service and supply contracts for continuous provision (section 1). This request must also be resolved by the contracting authority within five calendar days, with the same dismissing effects in the event of no express resolution within this period.

This possibility applies to contracts where (i) the work is scheduled to be completed, in accordance with the "work development programme or work plan", between 14 March, the commencement date of the state of alarm, and during the period of the state of alarm, and (ii) the delivery of the work cannot take place as a result of the situation created by COVID-19 or the measures taken by the State. In these cases, the contractor may request an extension of the final delivery date provided that they offer to meet their outstanding commitments if the initial deadline is extended.

(ii) Compensable damages

Once the suspension or extension of the deadline has been agreed, only the following items will be compensated:

- The actual salary costs paid by the contractor to staff assigned to the project before 14 March and who will continue to work when it resumes. It is specified that the salary costs to be paid will be the basic salary referred to in article 47.2.a of the collective agreement for the construction sector, the disability supplement in article 47.2.b of the aforementioned agreement, and the extraordinary bonuses in article 47.2.b, and the holiday pay, or their respective equivalent salary items agreed in other collective agreements in the construction sector.
- The expenses for the maintenance of the final guarantee, relating to the period of suspension of the contract.
- Expenditure on rent or maintenance costs for machinery, installations and equipment, provided that the contractor can prove that these resources could not be used for purposes other than the performance of the suspended contract and that the amount is less than the cost of terminating such contracts for the rent or maintenance of machinery, installations and equipment.
- The costs corresponding to the insurance policies provided for in the specifications and linked to the subject matter of the contract, which have been taken out by the contractor and are in force at the time of suspension of the contract.

The right to compensation and damages will be recognised when the main contractor proves that it has fulfilled (i) its labour and social obligations on 14 March 2020 (both for itself and for the subcontractors, suppliers and providers it has hired to perform the contract) and (ii) that it has fulfilled its obligations to pay its subcontractors and providers on 14 March 2020.

(iii) Other issues

For the cases specifically regulated in this regulation, the application of articles 208 (suspension) and 239 (*force majeure*) LCSP is expressly excluded, as well as that of articles 220 (suspension) and 231 (*force majeure*) TRLCSP.

**D. Concession contracts for works and services. Request by the contractor to restore the economic equilibrium of the contract**

Section four establishes the regulation of public contracts for works concessions and service concessions in view of the situation created by COVID-19 and the measures adopted by the Administration to combat it. In this regard, it is established that this circumstance will give the concessionaire the right to re-establish the economic equilibrium of the contract by (i) extending its initial duration up to a maximum of 15 per cent or (ii) modifying the economic clauses of the contract.

To do so, the concessionaire must request that the administrative body rebalance the situation, which will only be granted:

- When the contracting authority has assessed that it is impossible to execute the contract as a result of the situation described.
- If the contractor provides evidence of the reality, effectiveness and amount of the loss of income and the increase in costs incurred (including any additional salary costs actually paid while the situation created by COVID-19 is ongoing, compared to those foreseen for the ordinary execution of the works or service concession contract).

## **E. Application to contracts subject to the Law on Excluded Sectors or to Royal Decree Law 3/2020 of 4 February**

Section five establishes that the provisions of article 34 shall also apply to contracts subject to (i) Law 31/2007, of 30 October, on procurement procedures in the water, energy, transport and postal services sectors or (ii) Book I of Royal Decree Law 3/2020, of 4 February, on urgent measures to incorporate 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.

## **F. Exclusions**

Lastly, the last section of article 34 of the RDL establishes that sections 1 and 2 do not apply to (i) contracts for health, pharmaceutical or other services or supplies whose purpose is linked to the health crisis caused by COVID-19, (ii) contracts for security services, cleaning or maintenance of computer systems, (iii) contracts for services or supplies necessary to guarantee the mobility and security of infrastructures and transport services, and (iv) contracts awarded by public entities that are listed on official markets and do not receive income from the General State Budget.

It is also noted that the Minister of Transport, Mobility and the Urban Agenda may adopt measures to guarantee the provision of necessary services, including a change in the circumstances under which contracts can be suspended.

## **8. TAX MEASURES**

### **A. Expediting customs procedures**

Article 32 of the RDL includes a series of measures aimed at expediting customs procedures. This article addresses the important objective of expediting customs procedures for imports in the industrial sector and, to a lesser extent, for exports. The aim is to avoid the risk of the supply chain of goods from non-EU countries being affected, by clarifying the content of article 16 of RD 463/2020, which already provided that the delegated competent authorities shall



take the necessary measures to ensure customs transit at entry points or border inspection points located in ports or airports.

For this reason, and in order to avoid the possibility that, as a result of COVID-19 affecting some officials, the Customs and Excise Units and Administrations might be closed or that some of them might experience delays due to an excessive administrative burden, the Explanatory Memorandum of the RDL points out the benefit of the measure contained in article 32: that the Director of the Customs and Excise Department may agree that the declaration procedure, and the customs clearance that it includes, be carried out by any body or official in the Customs and Excise Area using the existing computer applications for customs clearance without the need to modify them.

## B. Suspension of deadlines

The second of the tax measures is contained in article 33, and concerns the suspension of tax deadlines. We will elaborate how the regulations contained in this article fit into the general regulations and point out some of the gaps left by the RDL.

### (i) Some general issues

Prior to conducting a more detailed analysis of the measures included in this provision, three broad points should be made:

- One of its objectives is to provide security against the uncertainty generated by the Third Additional Provision of RD 463/2020, which established the interruption of deadlines “*for the processing of procedures of public sector bodies*”. As there are multiple tax procedures (regarding the application of taxes, penalties and reviews), following the publication of RD 463/2020, many doubts arose regarding how to apply the suspension contained in said RD to each procedure.

These doubts have been resolved both by the RDL and by the amendment of RD 463/2020 approved yesterday by the Council of Ministers, which clarifies that the suspension of administrative deadlines stated in its Third Additional Provision “*shall not apply to tax deadlines, subject to special regulations, nor shall it affect, in particular, the deadlines for filing tax returns and self-assessments.*” This last point may seem obvious, but we very much appreciate its specific reference. In fact, the Spanish Tax Agency has published a link to the RDL on its website, expressly highlighting this point.

This amendment to RD 463/2020 is effective from the date of its publication in the BOE (18 March 2020), which raises the question of whether or not the deadlines between 14 March 2020 (the date when RD 463/2020 came into force) and 18 March 2020 were suspended. This is a matter of paramount importance when the deadlines for submitting appeals or economic-administrative claims expire between these two dates. Interpreting the new wording of the Third Additional Provision of RD 463/2020 as having effect from 14

March 2020 would mean that taxpayers who did not file appeals or claims with deadlines between 14 and 18 March 2020 would find that these challenges are now out of time. Such an interpretation would not seem consistent with the principles of legal certainty and legitimate expectations.

- A mechanism is established for deferring the deadlines for tax procedures and suspending the statute of limitations and expiration periods which, however, is somewhat vague: this is not a suspension of the procedures in the strict sense, but rather what the regulation itself calls an “extension of deadlines” in some of its sections. The reason for this is that the method of considering a certain period of time unsuitable to justify the interruption of the calculation of deadlines has not been chosen, since during this period of time both the taxpayer and the Spanish Tax Authorities can perform actions.

In particular, as far as the taxpayer is concerned, he or she is entitled to take action without invoking the extension of deadlines (section 3). The Spanish Tax Authorities are also granted such power, both to continue notification of the procedures (as can be concluded from the section 2) and to “*further, order and carry out essential action*” as regards tax procedures (section 5). In other words, both the taxpayer and the Spanish Tax Authorities can continue to drive the procedures forward.

In this respect, it is questionable whether such a configuration of powers is balanced. The Explanatory Memorandum of the RDL justifies the extension of the deadlines in view of the difficulties that the situation generated by COVID-19 entails for taxpayers. The design of this extension contained in the RDL not only benefits the taxpayers, but also the Spanish Tax Authorities, which may or may not act at its discretion by providing notification of procedures or by promoting, ordering or carrying out essential procedures (aforementioned sections 2 and 5). This issue means it is necessary to consider its effect with respect to the maximum periods for resolving the procedures and the statute of limitations periods (sections 5 and 6) when the Spanish Tax Authorities can carry out procedures during these periods.

Unfortunately, procedural issues, and in particular those relating to the calculation of deadlines in tax procedures (especially in verification procedures) have been a very significant source of litigation, and it would not be desirable for this reform to be along these lines. However, the fact that, for procedures where only the resolution of the administrative body is pending and no further action by the taxpayer is necessary, the Spanish Tax Authorities may not issue the resolution required thereof within the period established for that purpose, it is difficult to understand how the taxpayer is actually benefitted (the reason for the reform). The practical significance will depend on the specific case, but we believe that proportionality will be key in terms of applying this rule by the Spanish Tax Authorities. The use of expressions such as “*the Spanish Tax Authorities may*” without establishing any requirement or limit, or that such power refers to (among other actions) carrying out “essential” actions, raises the possibility of questioning unjustified delays in court.

- The RDL opts to set a definitive final date for the extension of deadlines (until 30 April or 20 May, depending on whether the start date of the action in question is before or after the entry into force of the RDL). This criterion is contrary to those established in this respect in RD 463/2020, which referred to the suspension of procedural and administrative deadlines for the duration of the state of alarm and the extensions thereof.

Without prejudice to the fact that setting one date or another is a matter that falls under the remit of the Council of Ministers, setting 30 April as the deadline to which the payment of debts settled before the entry into force of the RDL is extended may appear to fall short, considering that it will affect many debts for which the ordinary payment deadline was 20 April (in particular, those communicated during the first half of March). Granting 10 more days seems to fall short when the situation of difficulty or impossibility of the taxpayers has been so absolute.

On the other hand, perhaps it would have been easier to follow the method of RD 463/2020, but adding a period of 10 days (or whatever was considered appropriate) to the end date of the state of alarm, since the end thereof will not mean an immediate return to normality.

(ii) Content of the article

It provides for the extension of the deadlines for carrying out certain actions and for paying tax debts, in accordance with the following breakdown:

Affected procedures	Consequences of the suspension
<p><b>Deadlines that have not yet expired upon the entry into force of the RDL:</b></p> <ul style="list-style-type: none"> <li>▪ Deadlines for the payment of debts that have already been communicated (voluntary and enforcement period)<sup>15</sup>.</li> <li>▪ Deadlines and time frames relating to deferral of payments.</li> <li>▪ Deadlines relating to auctions and the awarding of goods referred to in articles 104.2 and 104 bis of the General Tax Regulation</li> <li>▪ Deadlines for meeting requirements, attachment proceedings and requests for information with tax implications.</li> </ul>	<p>The deadline is extended to 30 April 2020 (articles 33.1 and 33.8 of the RDL).</p>

<sup>15</sup> It only affects debts settled and communicated by the Spanish Tax Authorities, and not debts resulting from self-assessments, which will keep the payment periods established in the specific regulations for each tax.

# Pérez-Llorca

<ul style="list-style-type: none"> <li>▪ Deadlines for making submissions at the commencement of said proceedings or at a hearing, in proceedings regarding the application of taxes, penalties or declarations of nullity, returns of undue income, corrections of material errors and revocations.</li> <li>▪ Deadlines for meeting the requirements and requests for information of the Directorate General of the Catastro (<i>“the Catastro is an official register of the quantity, value, and ownership of real estate used in apportioning taxes”</i>).</li> </ul>	
<p style="color: red;">Deadlines starting after the entry into force of the RDL:</p> <ul style="list-style-type: none"> <li>▪ Deadlines for the payment of debts that have already been communicated (voluntary and enforcement period)<sup>16</sup>.</li> <li>▪ Deadlines and time frames relating to deferral of payments.</li> <li>▪ Deadlines relating to auctions and the awarding of goods referred to in articles 104.2 and 104 bis of the General Tax Regulation</li> <li>▪ Deadlines for meeting requirements, attachment proceedings and requests for information with tax implications.</li> <li>▪ Deadlines for making submissions at the commencement of said proceedings or at a hearing.</li> <li>▪ Deadlines for making submissions at the commencement of said proceedings or at a hearing communicated by Directorate General of the Catastro.</li> </ul>	<p>The deadline is extended until 20 May 2020 unless the term granted by the general regulation is longer, in which case the later deadline will apply (articles 33.2 and 33.8 of the RDL).</p>
<p style="color: red;">Enforcement proceedings on tax debts</p>	<p>No guarantees encumbering real estate will be enforced until 30 April 2020 (article 33.1 of the RDL).</p>
<p style="color: red;">Deadlines for filing appeals or economic-administrative claims.</p>	<p>The periods will not start until 30 April or until notification of the act being challenged has been made, if later (article 33.7 of the RDL).</p>

The taxpayer may, however, if he or she prefers, respond to requests for information or make submissions at any time prior to the new deadline set by the RDL, in which case the action is deemed to have been completed (article 33.3 of the RDL).

<sup>16</sup> It only affects debts settled and communicated by the Spanish Tax Authorities, and not debts resulting from self-assessments, which will keep the payment periods established in the specific regulations for each tax.

It is also established that the provisions of sections 1 to 3 of article 33 of the RDL are without prejudice to the special provisions of the customs regulations in this regard (article 33.4 of the RDL).

As regards the effects on the duration of certain procedures and in terms of statute of limitation and expiration, article 33.5 of the RDL establishes that, in the procedures for the application of taxes, regarding penalties and for review, the period that has elapsed between the entry into force of the RDL and 30 April 2020 shall not be counted for the purposes of calculating the maximum duration of the procedures for the application of taxes, regarding penalties and for reviews processed by the Spanish Tax Authorities. However, during this period the Spanish Tax Authorities may promote, order and carry out essential actions. Two measures are established regarding the statute of limitation and expiration:

- Firstly, that the period between the entry into force of the RDL and 30 April will not be counted for the purposes of the periods of statute of limitation or expiration (article 33.6 of the RDL).
- Secondly, that, for the purposes of calculating the periods of statute of limitation, the resolutions that are being reviewed or in economic-administrative proceedings shall be deemed to have been communicated when there is evidence of an attempt to communicate the resolution between the entry into force of the RDL and 30 April 2020 (article 33.7 of the RDL).

(iii) Specific issues not adequately addressed by the RDL

Although the RDL resolves the vast majority of taxpayer doubts regarding compliance with tax deadlines and provides certainty about how to act during this exceptional situation, there are a number of issues that have not been clarified:

- Firstly, section 2 of article 33, which establishes 20 May 2020 as the deadline for responding to requests, seizure orders, requests for information or the commencement of submissions or hearings that are communicated as from the entry into force of the RDL, does not include a list of the proceedings to which this deadline extension applies, as is the case in section 1.
- Secondly, section 7 indicates that the period for filing appeals (which is understood to include appeals for reconsideration, even if they are not expressly cited) or economic-administrative claims will not begin until 30 April 2020. However, the use of the verb “begin” suggests that this measure is only applicable to appeals or claims against proceedings initiated after the entry into force of the RDL, so the deadlines for bringing actions that were in place before it entered into force do not seem to be affected. This is probably an unintended effect but the current wording leads to that conclusion and will have to be acted upon.

- Similarly, reference is made to the fact that the period for submitting “administrative appeals against decisions handed down in economic-administrative proceedings” will not begin until 30 April 2020, but the scope of this is not clear, given that decisions handed down in economic-administrative proceedings are only subject to appeals via economic-administrative or contentious-administrative proceedings.
- No mention is made of the initiation of new proceedings. In other words, a tax audit, for example, may be initiated at any time, but under the Third Transitional Provision such proceedings would not be covered by the provisions of article 33. A certain misalignment arises here because the taxpayer who would be affected by such proceedings would be negatively affected. The practical effect of this situation will be closely related to the proportionality referred to previously. In our opinion, and given that section 6 of the article “freezes” the calculation of the statute of limitation for the period between the entry into force of the RDL and 30 April, the initiation of proceedings would entail a clear lack of proportionality that could be appealed against in the courts.
- On the other hand, section 7 does not pronounce on the deadlines for making submissions within economic-administrative claims, so it must be understood that such deadlines are governed by general regulations, which does not seem to be in line with the spirit of the measures implemented.
- With regard to the effects of the extension of the deadlines on the amount of the tax debt, it should be noted that the RDL does not include any provision on the accrual of interest for late payment that may be generated by the extension of the deadlines for the resolution of tax procedures as a result of the provisions of the RDL. It should therefore be understood that such interest continues to accrue, although clarification would be advisable. In this sense, it is worth remembering that the purpose of the regulation is to assist with the situation of the taxpayers affected by the current situation. It would also seem appropriate for the Spanish Tax Authorities’ approach to this situation to take into account that there will be cases in which it is possible for the taxpayer to stop generating interest for late payment (for example, by paying the debts within the deadlines set out in sections 2 and 5 of article 62 of the General Tax Law, “LGT”), but in other cases it will not be within their control (this is the case for the suspension of procedures such as verification procedures in which it may be impossible for the taxpayer to make progress) and only the Spanish Tax Authorities will be able to advance, or not. In such cases, it does not seem very consistent with the purpose of the measures taken that this cost be borne by the taxpayer.
- Finally, it is worth noting the possibility of the Government “forgetting” taxes that arise periodically and collectively (the property tax, for example). Although these tax debts derive from an administrative settlement, since the legislature provides for the suspension applying exclusively to section 2 and 5 of the LGT, the payment of these debts would not have staying effects. Apart from the management competence of the Local Councils, we do not believe that there is a compelling reason for this

differentiation given that, as these are genuine “administrative settlements” and only the form of notification is different, we believe suspensions should also have been applied here (62.2 and 62.5 LGT). Consequently, a rectification by or action from Local Councils would be advisable in areas where the voluntary period for payment of these taxes is already open or will open in the coming weeks (for example, that of the property tax in Barcelona).

### C. ITP-AJD exemption for deeds documenting loan and mortgage credit novations under the RDL

Lastly, the RDL, through its first final provision, introduces a new exemption from the Property Transfer Tax and Stamp Duty (“ITP-AJD”), in its Stamp Duty form (“AJD”) for any deeds that formalise contractual novations of loans and mortgage loans that take place under the RDL.

Despite the fact that the Government has introduced this new exemption with the clear aim of eliminating the tax cost of possible mortgage loan novations that may occur under the RDL, the effective scope of this measure will be limited.

Firstly, with the approval of Royal Decree-Law 17/2018, of 8 November, a new rule for determining the payer of the AJD was introduced into the regulations governing the ITP-AJD. In accordance with this rule, the lender became the payer of the AJD in the deeds of mortgage-backed loans (as well as in the novations according to Consultations of the DGT V1133-19 and V1134-19, of 23 May 2019). Therefore, under this new rule, the payer of the AJD in the event of a mortgage novation would be the financial institution and not the mortgagor.

Secondly, and for mortgage novation transactions, there was already a specific AJD exemption regulated by Law 2/1994 of 30 March on the subrogation and modification of mortgage loans (“Law 2/1994”). In particular, article 9 of the aforementioned Law provides for AJD exemption for deeds of novation of mortgage loans agreed by mutual agreement between creditor and debtor, provided that the creditor is a financial institution and the modification refers to the conditions of the interest rate or term. This applies on the understanding, according to the Consultation of the DGT V3127-18 of 5 December 2018 (among others), that the establishment of grace periods is considered to be a modification that affects the term.

Therefore, in the event of a novation of the mortgage loan, the introduction of the above measure will have no direct impact on the mortgagor, as they are not liable to pay the tax. With regard to the financial institution, the measure will bring it a very limited benefit, since this new exemption would only have a practical application in the event that the novation concerns issues other than the term and the interest rate – we expect such cases to be the minority.

## 9. MEASURES FOR THE PROVISION OF ESSENTIAL PUBLIC SERVICES: GUARANTEE OF WATER AND ENERGY SUPPLY TO VULNERABLE CONSUMERS

The following measures are taken to ensure energy supplies of electricity, natural gas and water to the consumers that are considered to be most vulnerable, thereby extending the definition of vulnerable consumers provided for in electricity regulations to the natural gas and water sector:

- (i) **Impossibility of suspending electricity, natural gas and water supplies to vulnerable consumers:** During the month following the entry into force of the RDL<sup>17</sup>, electricity, natural gas and water suppliers may not suspend supply in the event of non-payment in relation to consumers considered vulnerable<sup>18</sup>, severely vulnerable<sup>19</sup> or at risk of social exclusion<sup>20</sup> according to the criteria contained in Royal Decree 897/2017 of 6 October, which regulates the figure of the vulnerable consumer, the discount rate (*bono social*) and other protection measures for domestic consumers (“RD 897/2017”).
- (ii) **Automatic extension of the discount electricity rate (*bono social*) until 15 September 2020:** The measure will be applicable to those beneficiaries for whom the two-year term of the discount rate provided for in article 9.2 of RD 897/2017 expires before that date<sup>21</sup>. In this regard, for the duration of the automatic extension period, the beneficiary is exempted from requesting the renewal of the discount rate at least fifteen working days before the end of the two-year period of validity. The duration of this measure is not limited to the duration of the state of alarm or to the one-month

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<sup>17</sup> It should be noted that this measure is not limited to the duration of the state of alarm, but rather to the period of the month following the entry into force of the Royal Decree Law.

<sup>18</sup> The concept of vulnerable consumer is limited to natural persons, in their habitual residence, covered by the voluntary price for the small consumer (*precio voluntario del pequeño consumidor*, PVPC) and who meet any of the requirements set out in article 3.2 of RD 897/2017.

<sup>19</sup> In accordance with article 3.4 of RD 897/2017, a consumer will be considered as severely vulnerable when, having met the requirements to be considered as a vulnerable consumer, the family unit to which they belong has an annual income less than or equal to 50% of the thresholds established in section 2.a) of the same article, increased where appropriate in accordance with section 3. A consumer is also considered as severely vulnerable when they and, where appropriate, the family unit to which they belong, have an annual income less than or equal to one times the IPREM at 14 payments, or twice that amount if they are in the situation referred to in section 2.c) or 2.b) respectively.

<sup>20</sup> In accordance with the provisions of article 4 of RD 897/2017, a consumer at risk of social exclusion is a consumer who meets the requirements to be considered severely vulnerable, as established in article 3 of the same regulation, and who is served by the social services of an autonomous or local administration that finances at least 50 percent of the amount of his or her bill.

<sup>21</sup> In accordance with the provisions of article 9.2 of RD 897/2017, “the discount rate shall be applied for a period of two years unless, prior to this, any of the conditions for entitlement thereto are no longer met. This two-year period may be extended under the terms set out in article 10.” However, it should be noted that this period does not apply in the case of large families (*familias numerosas*) that receive the discount rate, for which the application of the discount rate will be extended to the period for which the corresponding title of large family is in force.



period foreseen for the previous measure, but rather **extends until 15 September 2020**<sup>22</sup>.

- (iii) **Maintenance of the prices of bottled LPG (butane cylinder):** The application of the mechanism to review maximum retail prices, before tax, of liquefied petroleum gases in containers weighing between 8 and 20 kg, excluding mixed containers for using liquefied petroleum gases as fuel<sup>23</sup>, is suspended for the next **three two-month periods**. During the period of suspension, the applicable price will be 86.9232 €/Kg<sup>24</sup>.
- (iv) **Maintenance of the last-resort rate (TUR)<sup>25</sup> for natural gas:** The mechanism for updating the terms of the last-resort rate (*tarifa de último recurso*) for natural gas and manufactured gases by pipeline in island territories<sup>26</sup> is suspended for the next two quarters. During the period of suspension, the terms of the rate established in the Resolution of 23 December 2019 of the Directorate-General of Energy Policy and Mines will be in force.

## 10. MEASURES IN THE TELECOMMUNICATIONS SECTOR

### A. Guarantee of the maintenance of electronic communications services and broadband connectivity

During the state of alarm and in order to ensure connectivity and the provision of electronic communication services in the imposed situations of containment and reduced mobility, providers of electronic communications services will be unable to suspended publicly available electronic communications services which were contracted at the date of entry into force of the state of alarm (14 March 2020)<sup>27</sup>. This measure will be applicable even if the contracts signed with consumers provide for the possibility of suspension or interruption of

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<sup>22</sup> It should be recalled that, in accordance with the provisions of article 45.4 of Law 24/2013, of 26 December, on the Electricity Sector, the discount rate will be assumed by the parent companies of the groups of companies engaged in electricity retailing, or by the companies themselves if they do not form part of any corporate group.

<sup>23</sup> Provided for in articles 3.5 and 6 of Order IET/389/2015 of 5 March.

<sup>24</sup> Price established in the Resolution of 14 January 2020, of the Directorate-General for Energy Policy and Mines.

<sup>25</sup> In accordance with the provisions of article 93 of Law 34/1998 of 7 October, on the Hydrocarbons Sector, the last-resort rate is the maximum price that may be charged by retailers who have been designated as suppliers of last resort to consumers who, according to the regulations in force for this rate, are entitled to it. According to the Agreement of the Council of Ministers of 3 April 2009, consumers connected at pressures below 4 bar, and with an annual consumption that does not exceed 50,000 kWh/year, are entitled to the supply of last resort.

<sup>26</sup> Provided for in article 10 and the second section of the single additional provision of Order ITC/1660/2009, of 22 June.

<sup>27</sup> It should be noted that, unlike in the case of energy supplies where the guarantee of supply measure is limited to vulnerable consumers, no such limitation is provided for in the field of telecommunications and it will therefore apply to any consumer who has a contract for the provision of publicly available electronic communications services.

services. In exceptional cases, service may be suspended or interrupted for the security and integrity of electronic communications networks and services.

## **B. Guarantee of the provision of the universal telecommunications service (*servicio universal de telecomunicaciones*)**

During the period of the state of alarm, the operator designated with the provision of the universal public telecommunications service shall guarantee the provision of the elements making up the universal telecommunications service<sup>28</sup>. In addition, it must maintain, as a minimum, the set of current beneficiaries, as well as the quality of the provision of the services that make up the universal service, with particular reference to the following areas:

- (i) functional internet access service under the conditions laid down in Royal Decree 424/2005, of 15 April, which approves the Regulation on the conditions for the provision of electronic communications services, the universal service and user protection<sup>29</sup> <sup>30</sup>.
- (ii) the conditions under which the affordability of the service is currently guaranteed, as defined in article 35 of the same regulation<sup>31</sup>.

## **C. Suspension of portability**

During the state of alarm and in order to prevent users from physically going to customer service centres or the need to carry out physical interventions in customers' homes to maintain continuity of services (i) extraordinary commercial campaigns for contracting electronic communications services that require number portability are prevented; and (ii) all fixed and mobile number portability operations that are not in progress are suspended, except in exceptional cases of *force majeure*.

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<sup>28</sup> These elements are as follows: (i) provision of connection to the public electronic communications network at a fixed location with broadband capacity at 1 Mbps; (ii) provision of publicly available telephone service at a fixed location; (iii) provision of coin or card payment telephone service through street terminals (telephone booths); (iv) preparation and delivery of the directory of subscribers; (v) telephone directory enquiry service; (vi) specific measures for users with disabilities.

<sup>29</sup> The operator designated with guaranteeing the provision of this element, until 1 January 2023, is Movistar (Telefónica de España S.A.U.).

<sup>30</sup> In accordance with article 52 of Law 2/2011 of 4 March on Sustainable Economy, the network connection must allow broadband data communications at a downstream speed of 1Mbit per second. In relation to each user, the designated operator must ensure that the above-mentioned overall data rate to be provided by the connection, averaged over any 24-hour period, is not less than one megabit per second.

<sup>31</sup> In this respect, the provisions of Order PRE/531/2007, of 5 March, publishing the Agreement of the Government's Delegate Commission for Economic Affairs, of 25 January 2007, approving the conditions for guaranteeing the affordability of the offers applicable to the services included under the universal service, must be taken into account.

SCHEDULE I: CURRENT LEGISLATION VS. ROYAL DECREE AS REGARDS TEMPORARY WORKFORCE RESTRUCTURING PLANS (“ERTES”)

TOPIC	CURRENT LEGISLATION	ROYAL DECREE
<p>1. MEASURES RELATING TO ERTES <sup>32</sup></p> <p><b>ERTE due to force majeure</b></p>	<p>Definition of force majeure: no legal definition exists. The concept is interpreted <b>by the courts</b> on a case-by-case basis.</p>	<p>Suspensions of contracts and reductions of the working day will be considered to be the result of a situation of force majeure when the direct cause thereof is one of the following:</p> <ul style="list-style-type: none"> <li>▪ <b>Loss of activity as a result of the coronavirus, including the declaration of the state of alarm,</b> involving:                             <ul style="list-style-type: none"> <li>▪ suspension or cancellation of activities</li> <li>▪ temporary closure of premises open to the public</li> <li>▪ restrictions on public transport and, in general, on the mobility of persons and/or goods</li> <li>▪ lack of supplies that seriously impede continuing with the regular development of the activity</li> </ul> </li> <li>▪ <b>Urgent and extraordinary situations due to staff infection or the adoption of preventive isolation measures</b> decreed by the health authority, which are duly accredited.</li> </ul>
	<p>Procedure: Presentation of the documentation justifying</p>	<p>Usual procedure, with the following special features: <sup>33</sup></p>

<sup>32</sup> The measures relating to ERTES will remain in force for the duration of the extraordinary situation caused by the coronavirus.

<sup>33</sup> The special features provided for in the Royal Decree will not be applied to workforce restructuring plans to suspend employment contracts or reduce working hours (both for reasons of force majeure and for economic, technical, organisational or productive reasons) which were initiated or communicated before the entry into force of the Royal Decree and based on the causes provided for therein.

TOPIC	CURRENT LEGISLATION	ROYAL DECREE
<p style="text-align: center;"><b>ERTE due to force majeure (cont.)</b></p>	<p>the ERTE and the existence of force majeure to the Labour Authority. The Labour Authority may request from the Labour Inspection Authorities a report and ultimately decide on the existence of force majeure within <b>five (5) days</b></p>	<ul style="list-style-type: none"> <li>▪ application to the Labour Authority accompanied by a report on the link between the loss of activity and the coronavirus and, where appropriate, supporting documentation</li> <li>▪ communication of the application to the employees and providing the report and supporting documentation to the workers' representatives.</li> <li>▪ the Labour Authority will decide on the existence of force majeure within <b>5 days</b> of the application</li> <li>▪ <b>Optional</b> report from the Labour Inspection Authorities within <b>5 days</b></li> </ul>
<p style="text-align: center;"><b>ERTE for economic, technical, organisational or productive reasons</b></p>	<p>Causes:</p> <ul style="list-style-type: none"> <li>▪ <b>economic:</b> where the company's results indicate a negative economic situation (the existence of current or expected losses, or a persistent decline in its level of revenue or sales if, for three consecutive quarters, the level of revenue or sales for each quarter is lower than that recorded in the same quarter of the previous year)</li> <li>▪ <b>technical:</b> when changes occur in relation to means or instruments of production, among others.</li> <li>▪ <b>organisational:</b> when changes occur in relation to staff working methods and systems, or the way</li> </ul>	<p>Causes: <b>economic, technical, organisational and productive reasons</b> <u>related to the coronavirus</u></p>

TOPIC	CURRENT LEGISLATION	ROYAL DECREE
<p align="center"><b>ERTE for economic, technical, organisational or productive reasons (Cont.)</b></p>	<p>production is organised, among others.</p> <ul style="list-style-type: none"> <li>▪ <b>productive:</b> when there are changes to the demand for the products or services that the company intends to place on the market, among others.</li> </ul> <p>Procedure:</p> <ul style="list-style-type: none"> <li>▪ Establishment of the representative commission within a maximum period of <b>7 or 15 days</b> if there is no worker representation</li> <li>▪ Consultation period of a maximum of <b>15 days</b></li> <li>▪ Report from the Labour Inspection Authorities <b>within 15 days</b></li> </ul>	<p>Procedure<sup>34</sup>:</p> <ul style="list-style-type: none"> <li>▪ Establishment of the representative commission within a maximum period of <b>5 days</b>. In the absence of <b>workers' representatives</b>, the representative commission will be composed of the <b>most representative unions at sector level</b> and with the right to be part of the negotiating commission for the applicable collective agreement (one person per union, with decisions being taken by the corresponding majorities) and, failing that, by <b>3 workers of the company</b></li> <li>▪ Consultation period of up to a maximum of <b>7 days</b></li> <li>▪ <b>Optional</b> report from the Labour Inspection Authorities within <b>7 days</b></li> </ul>
<p align="center"><b>ERTE for economic, technical, organisational or productive reasons (Cont.)</b></p>	<p><b>Date of effect:</b> after the end of the consultation period and the corresponding notification to the Labour Authority and the workers' representatives (between <b>22 and 30 days</b> after the communication of commencement)</p>	<p><b>Date of effect:</b> after the end of the consultation period and the corresponding notification to the Labour Authority and the workers' representatives (<b>12 days</b> after the communication of commencement)</p>

<sup>34</sup> See Note 2

TOPIC	CURRENT LEGISLATION	ROYAL DECREE
Common costs involved with ERTes	Unemployment: minimum contribution period of 360 days in the 6 years prior to the ERTE and these contributions must not have been used to apply for another benefit or allowance previously	Access to unemployment protection without a qualifying period <sup>35</sup>
	Periods used: accounting for periods used	Periods of unemployment already used may not prejudice any recognition of future unemployment benefits (“counter reset”)
Common costs involved with ERTes (Cont.)	Social Security Contributions; The company must pay for them during the term of the ERTE	<p>Social Security Contributions: for ERTes authorised due to force majeure, exemptions apply<sup>36</sup></p> <ul style="list-style-type: none"> <li>▪ Companies with less than 50 employees on 29 February 2020 will be required to pay the employer social security contribution for unemployment</li> <li>▪ Companies with 50 or more employees are required to pay 75% of the employer contribution</li> </ul> <p>This exemption is conditional on the continuation of employment and will be applied at the request of the employer after communication of the identity of the workers and the period affected.</p>

<sup>35</sup> The extraordinary measures in the area of contributions and protection due to unemployment will be applied to those affected by the procedures for the suspension of contracts and reduction of the working day communicated, authorised or initiated prior to the entry into force of this Royal Decree, provided that they derive directly from the coronavirus.

<sup>36</sup> See Note 4

SCHEDULE II: OTHER EMPLOYMENT MEASURES INTRODUCED BY THE ROYAL DECREE

TOPIC	ROYAL DECREE
<p>Remote working</p>	<ul style="list-style-type: none"> <li>▪ <b>Prioritisation of remote working:</b> businesses should take appropriate measures if this is technically and reasonably possible and if the adaptation effort required is proportionate.</li> <li>▪ These alternative measures, particularly remote working, should take priority over temporary suspension or reduction of activity.</li> <li>▪ <b>Self-assessment:</b> by way of exception, the obligation to assess the job shall be deemed to have been fulfilled by the <b>self-assessment carried out voluntarily</b> by the worker himself.</li> </ul>
<p>Right to adapt the timetable and reduce the working day</p>	<ul style="list-style-type: none"> <li>▪ <b>Employees who can prove that they have a duty of care</b> towards their spouse or partner and/or relatives by blood up to the second degree (“Relatives”), <b>shall be entitled to have their working day adapted and/or reduced</b>, when exceptional circumstances arise in connection with the actions required to prevent the spread of the coronavirus.</li> <li>▪ <b>Exceptional circumstances arise when:</b> <ul style="list-style-type: none"> <li>▪ the presence of the worker is necessary for the care of Relative, for reasons of age, illness or disability, requiring personal and direct care as a direct consequence of the coronavirus</li> <li>▪ the government authorities have taken decisions related to coronavirus that involve closing down facilities that provide care or attention to Relatives in need of care</li> <li>▪ the person who has up until now provided direct care or assistance to Relative is no longer able to do so for justifiable reasons related to the coronavirus</li> </ul> </li> <li>▪ <b>The right to special adaptation of working hours</b> is an individual right of each parent or carer and must be justified, reasonable and proportionate to the care needs of the worker and the circumstances of the employer. This right to adapt can refer to the distribution of working time or any other working condition, change of shift, split or continuous working day, change of workplace or functions, etc.</li> <li>▪ <b>The right to a reduction in the working day to care for Family Members</b> with a proportional reduction in their salary. It is governed by the general rules except that notification must be provided 24 hours in advance and may be extended to 100% of the working day if necessary. In cases where the reduction of the working day reaches 100%, the worker’s right must be justified, reasonable, and proportionate in view of the company’s circumstances.</li> <li>▪ If the worker is already enjoying an adaptation or reduction of his or her working day or some other right to</li> </ul>

TOPIC	ROYAL DECREE
<p><b>Right to adapt the timetable and reduce the working day (Cont.)</b></p>	<p>an arrangement, he or she may temporarily waive it or have the right to have the terms of its use modified, provided that the exceptional circumstances mentioned above (duly verified) are present. The worker’s request must be limited to the exceptional period of the duration of the health crisis and must be adapted to the specific care needs to be provided (duly verified) as well as to the organisational needs of the company, and it is presumed that the request is justified, reasonable and proportionate unless there is evidence to the contrary.</p>
<p><b>Measures to support coronavirus research</b></p>	<ul style="list-style-type: none"> <li>▪ <b>Exceptional employment measures</b> have been adopted in the area of public bodies that are part of the Spanish Science, Technology and Innovation System, such as allowing for <b>extraordinary working days</b> to be compensated economically, as well as <b>recruiting</b> for the implementation of public plans and programmes for scientific and technical research or innovation related to the coronavirus.</li> <li>▪ Similarly, the granting of <b>extraordinary loans</b> in the budget of the Ministry of Science and Innovation in relation to scientific research in the field of coronavirus has been approved.</li> <li>▪ Certain rules have been introduced regarding cash contributions made by the Carlos III Health Institute and the Higher Council for Scientific Research for scientific and technical research resulting from the health emergency caused by the coronavirus.</li> </ul>
<p><b>Self-employed Persons</b></p>	<ul style="list-style-type: none"> <li>▪ <b>Extraordinary benefit</b> for cessation of activity for self-employed persons affected by the declaration of the state of alarm, whose activities have been suspended or in circumstances where their turnover in the month prior to that for which the allowance is requested is reduced by at least 75 percent in relation to the average turnover for the previous six-month period, who meet the following requirements:             <ul style="list-style-type: none"> <li>▪ Affiliation and registration, on the date of the declaration of the state of alarm, in the relevant Special Regime.</li> <li>▪ The applicant must be up to date with the payment of social security contributions.</li> </ul> </li> <li>▪ The extraordinary benefit will have a duration of one month, to be extended, where appropriate, until the last day of the month in which the state of alarm ends, in the event that this is extended and has a duration longer than one month.</li> <li>▪ The time of its payment shall be understood to be the time of contribution and shall not reduce the periods of benefit for cessation of activity to which the beneficiary may be entitled in the future.</li> <li>▪ The payment of this benefit is incompatible with any other benefit under the social security system.</li> </ul>



TOPIC	ROYAL DECREE
Unemployment benefits <sup>37</sup>	<ul style="list-style-type: none"><li>▪ For the duration of the extraordinary public health measures adopted by the authorities to combat the effects of the spread of the coronavirus, the late submission of applications for unemployment benefit will not reduce the duration of entitlement to the corresponding benefit.</li><li>▪ Eligibility for unemployment benefit may be extended automatically in cases where it is subject to the six-monthly extension of entitlement.</li></ul>

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<sup>37</sup> See Note 4.