

Royal Decree-Law 16/2020 of 28 April on procedural and organisational measures to address COVID-19 in the ambit of the administration of justice

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Madrid, 29 April 2020

On 14 March 2020, Royal Decree 463/2020 was approved, declaring the state of alarm for the management of the health crisis caused by Covid-19 ("**RDEA**"), within which several measures were established regarding the functioning of the administration of justice. These measures were developed through the corresponding resolution of the General Council of the Judiciary, the Office of the Attorney General and the Ministry of Justice (see, respectively, [Special Information Briefing COVID-19 No. 2](#) and [Special Information Briefing COVID-19 No. 5](#)).

In view of the imminent commencement of the de-escalation phase of the various measures adopted as a result of the COVID-19 crisis, the Council of Ministers has agreed to approve a series of measures, including Royal Decree-law 16/2020 of 28 April on procedural and organisational measures to address COVID-19 in the field of the administration of justice ("**RDL 16/2020**"), which provides for measures to facilitate the resumption of the normal functioning of the administration of justice and the recovery, to the extent possible, of the delay suffered. This is taking place in the context of a backlog of suspended proceedings and an expected increase in litigation, because of the economic situation caused by the health crisis.

RDL 16/2020 is divided into three sections: (i) the first section establishes measures of a procedural nature -such as the entitlement to days, the rules for calculating procedural deadlines after the state of alarm has been lifted, or the rules for processing certain specific proceedings-; (ii) the second section regulates a series of measures of an insolvency and corporate nature, and finally; (iii) the third section provides for a series of measures of an organisational and technological nature through which it is intended to make the functioning of the judicial system more agile, as well as preserving the health and safety of those who participate in it.

This Information Briefing briefly analyses the procedural and organizational measures approved by RDL 16/2020, except for those of an insolvency and corporate nature, which are analysed in a [separate Information Briefing](#). These measures will apply to all procedural actions carried out from the date of their entry into force, i.e. 30 April 2020, regardless of when the proceedings in question were initiated. However, those proceedings for which RDL 16/2020 provides for a certain time period shall be subject to it.

## 1. General procedural measures

In Section I, RDL 16/2020 establishes the following procedural measures:

### A. Enablement of the month of August

Although the wording is unclear, Article 1 of RDL 16/2020 declares that the days from 11 to 31 August 2020 are suitable for all types of procedural actions<sup>1</sup>.

Saturdays, Sundays, and public holidays are excluded, except for those actions for which these days are already working in accordance with the applicable procedural laws.

### B. Calculation and extension of procedural deadlines

The RDEA declared the calculation of all procedural deadlines to be interrupted (see [Special Information Briefing COVID-19 No. 2](#) and [Special Information Briefing COVID-19 No. 5](#)). In this regard, the procedural time limits that had been suspended by the application of the provisions of the RDEA will be recalculated from their commencement on the next business day following that on which the suspension ceases to have effect. Therefore, the first day of the calculation of the time period in question will be the day following the day on which the alarm and its subsequent extensions cease to have effect.

In addition, the time limits for appealing against decisions of the judicial bodies are extended by a period equal to that provided for the filing of the appeal in the corresponding regulatory law<sup>2</sup>, in circumstances where the following requirements are met:

- (i) appeals against judgments and other decisions which, under procedural law, bring the proceedings to an end;
- (ii) where the judgment or decision that is the subject of the appeal has been notified during the suspension of time limits established in the RDEA or within twenty working days following the lifting of such suspension; and
- (iii) where these are not legal proceedings or time limits that would have been exempted from such suspension under the RDEA. For the exceptions provided for in the RDEA, see [Special Information Briefing COVID-19 No. 5](#), which describes

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<sup>1</sup> Article 183 of the Organic Law of the Judiciary ("**LOPJ**") 1 of RDL 16/2020 provides: "*The days of August shall be non-working days for all judicial proceedings, except those declared urgent by the procedural laws. However, the General Council of the Judiciary, by means of regulations, may authorise them for the purposes of other proceedings*". What the Decree seems to establish, and this is confirmed by its Statement of Grounds, is to declare all procedural actions urgent, during the days 11 to 31 August, for the purposes of this article.

<sup>2</sup> RDL 16/2020 uses the expressions "*announcement, preparation, formalisation and lodging of appeals*" so that it must be understood as referring to the first procedural time limit subject to preclusion in any of the jurisdictions that allow the decision in question to be considered as being contested within the time limit.

both the exceptions common to all jurisdictions and the particular exceptions of the civil, criminal, contentious-administrative, social and civil registry jurisdictions.

## **2. Organisational and technological measures to make the administration of justice more agile and secure**

Section III of RDL 16/2020 establishes a series of organisational and technological measures that can be divided into three thematic sections according to their content:

### **A. Measures to reduce physical contact of professionals involved in the administration of justice**

The following measures are established during the state of alarm and for three months after its conclusion:

- (i) The convening of procedural acts, court deliberations, and acts that take place in the public prosecutor's offices will take place remotely, provided that the courts, tribunals, and public prosecutor's offices have the necessary technical means at their disposal. Exceptions to the provision above are (i) trials held for the commission of serious crimes, in which the physical presence of the accused will be required; and (ii) military criminal trials<sup>3</sup>.
- (ii) In order to ensure the protection of the health of persons, the judicial bodies shall establish the necessary measures to limit public access to oral proceedings, in accordance with the characteristics of the chambers.
- (iii) The examinations and examinations in person are limited for the preparation of the medical-forensic reports, allowing, whenever possible, the preparation of the corresponding reports solely with the available documentation.
- (iv) The parties are excused from wearing the gown in face-to-face oral proceedings.
- (v) Public attendance is limited to courthouses and prosecutors' offices. Thus, the public will be served at the judicial or prosecutorial offices through the telephone numbers or e-mail addresses provided for this purpose<sup>4</sup>.
- (vi) In the event that it is essential to attend to a court or the public prosecutor's office in person, it will be necessary to obtain an appointment in advance<sup>5</sup>.

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<sup>3</sup> Third additional provision, paragraph 2.

<sup>4</sup> The corresponding telephone numbers or e-mail addresses for these communications will be published on the website of the Territorial Management of the Ministry of Justice or in the body set up by those Autonomous Communities with jurisdiction in the field of Justice.

<sup>5</sup> To this end, the competent administrations shall establish appropriate protocols.

(vii) With the intention that all those who have to interact with the administration of justice can do so by remote means, the first final provision of RDL 16/2020 agrees to the amendment of various provisions of Law 18/2011, of 5 July, regulating the use of information and communication technologies in the administration of justice ("**Law 18/2011**"). This will allow for the electronic identification - of citizens and professionals of the justice administration - through the following technical means:

- Qualified electronic signature certificates issued by providers included in the "Trusted List of Certification Service Providers".
- Qualified electronic seal certificates issued by providers included in the 'Trusted List of Certification Service Providers'.
- Concerted password systems and any other system that the Administrations consider valid under the terms and conditions to be established.

The following technical means of proving signature validity shall also be permitted:

- Advanced qualified electronic signature systems based on qualified electronic signature certificates issued by providers included in the "trusted list of certification service providers".
- Qualified electronic seal and advanced electronic seal systems based on qualified electronic seal certificates issued by providers included in the 'Trusted List of Certification Service Providers'.
- Any other system that the Public Administrations consider valid in the terms and conditions that are established.

In addition, (i) a second paragraph is added to Article 8 of Law 18/2011, imposing the obligation to provide secure and accessible remote means on the Administration; and<sup>6</sup> (ii) the fifth additional provision is amended, imposing the obligation to provide means of access to electronic systems in order to interact with the administration of justice remotely, that is, without the need for the personnel of the administration of justice to be present at their workplace. In this way, it is intended to considerably reduce the presence of administration of justice professionals in their physical headquarters.

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<sup>6</sup> Specifically, the paragraph added to Article 8 of Law 18/2011 reads as follows: "*The competent administrations shall provide the secure means for these systems to be fully accessible and operational without the need for users to be physically present at the headquarters of their respective bodies, offices or public prosecutor's offices*".

## B. Organisational measures of the judicial bodies

The main measures included in this section are the following:

- (i) The legislation establishes that the judicial bodies that are to become operational at the time of the entry into force of RDL 16/2020 may be transformed into judicial bodies that exclusively address proceedings associated with Covid-19.
- (ii) It is allowed to anticipate the entry into operation of the judicial bodies corresponding to the 2020 programming, and all or some of them may be exclusively dedicated to the processing of proceedings associated with COVID-19.
- (iii) The legislation establishes that the territorially assigned Judges by the appointment of the President of the High Court of Justice may exercise their judicial functions on a preferential basis in judicial bodies that process proceedings associated with COVID-19.

## C. Organisational measures for the working day of professionals in the administration of justice

In order to ensure that the administration of justice has sufficient staff to handle the foreseeable workload, RDL 16/2020 states that, during the state of alarm and up to three months after its conclusion, morning and afternoon working days will be established for the Attorneys of the administration of justice and the rest of the personnel in the service of the administration of justice. In this regard, the Ministry of Justice and the Autonomous Communities with jurisdiction in the field of justice will establish the distribution of the working day and the setting of timetables in accordance with the provisions of the LOPJ.

### 3. Specific measures in the civil and commercial jurisdiction

#### A. Procedural measures

As indicated above, an extension of time limits has been established for appeals against certain court decisions issued during the State of Alarm or within 20 working days after they were lifted. In the civil judicial order, some considerations should be made regarding the aforementioned decisions which, we recall, are "*judgments and other decisions, which, in accordance with procedural laws, terminate the proceedings*".

In this sense, this extension of the time limit clearly applies to those judgments handed down at first instance or on appeal. There are also decisions that terminate the proceedings, such as certain orders, which would be affected by this measure. For example:

- (i) orders determining the adoption of precautionary measures;
- (ii) orders ruling on challenges to jurisdiction, where the challenge has been made due to lack of international jurisdiction, because the matter pertains to a court of another jurisdiction, because the matter has been submitted to arbitration or mediation, or because of a lack of objective competence;
- (iii) orders that the proceedings be discontinued on the grounds of an *ex-post* lack of a cause of action;
- (iv) orders refusing enforcement;
- (v) orders refusing preliminary proceedings; or
- (vi) orders rejecting the request for measures of access to evidence for the purpose of bringing proceedings for infringement of competition law, where that request is made prior to the bringing of the action.

However, there are other instances in which the extension of the time limit for appeal will not be so clear. There are decisions that do not terminate the proceedings but which are nevertheless subject to appeal to a higher body, although in these cases the time limit for lodging the appeal would not be extended (certain procedural incidents).

Thus, such an extension of the term should always be considered with caution and applied with the utmost prudence.

## **B. Preferential treatment of certain proceedings**

Article 7 of RDL 16/2020 provides for the preferential processing of certain proceedings during the period from the lifting of the suspension of procedural deadlines until 31 December 2020<sup>7</sup>. The provisions of this article shall not affect the preferential status of other proceedings under procedural law.

In the civil jurisdiction order, the following proceedings will be given preference:

- (i) Voluntary jurisdiction proceedings or files in which the measures referred to in Article 158 of the Civil Code (measures relating to children in divorce proceedings) are adopted, as well as the special and summary proceedings in family matters provided for in Articles 3 to 5 of RDL 16/2020.

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<sup>7</sup> Note that during the State of Alarm there are proceedings that have not been suspended in the civil order and that are still ongoing (e.g. proceedings for interim measures). See Pérez-Llorca Special Information Briefing COVID-19 (No. 5).

- (ii) Proceedings arising from the lack of recognition by lending institutions of the legal moratorium on mortgages on habitual residences and on properties subject to economic activity.
- (iii) Proceedings arising from any claims that may be made by the tenants for failure to apply the legally stipulated moratorium or mandatory extension of the contract.
- (iv) Insolvency proceedings of debtors who are natural persons and who do not have the status of entrepreneurs.

### **C. Suspension of the application of the provisions of Article 151.2 of the Code of Civil Procedure in relation to acts of communication by the Public Prosecutor's Office**

By virtue of the provisions of the Third Final Provision of RDL 16/2020, the application of the provisions of Article 151.2 of the Civil Procedure Law is suspended in relation to the acts of communication of the Public Prosecutor's Office until 31 December 2020. Until that date, the term regulated in the said article will be ten calendar days.

Article 151.2 regulates the acts of communication to the Public Prosecutor's Office, the State Attorney, the lawyers of the General Courts and Legislative Assemblies, or the Legal Services of the Social Security Administration, other public administrations of the Autonomous Communities or Local Entities, as well as those that are carried out through the notification services organised by the Associations of Public Prosecutors.

These acts of communication shall be deemed to have been carried out on the day following the date of receipt as stated in the certificate or receipt, and if it is sent after 3 p.m., it shall be deemed to have been received on the following working day.

In other words, in accordance with RDL 16/2020, acts of communication to the Public Prosecutor's Office shall be deemed to have been carried out after ten calendar days.

## **4. Specific measures in the criminal justice system**

### **A. Working days**

In the criminal jurisdiction, the general rule is that every day is a working day –including weekends, public holidays, and August– during the investigative stage of the proceedings<sup>8</sup>.

The investigative stage runs from the order to initiate the proceedings until the order to convert it into summary or ordinary proceedings is made, depending on the type of proceedings.

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<sup>8</sup> Article 184 of the Spanish Organic Law on the Judiciary.

Therefore, the rule included in Article 1 of RDL 16/2020 applies to the procedural acts corresponding to the stages of the criminal proceedings that follow the aforementioned orders.

## **B. Remote procedural acts**

In the criminal jurisdiction, RDL 16/2020 excludes the possibility of holding trials for serious crimes through teleconference. These proceedings shall be held in person.

Serious crimes are those which carry the following penalties in abstract<sup>9</sup>:

- (i) any one of the penalties which may be imposed on a legal entity;
- (ii) a term of imprisonment of five years or more;
- (iii) disqualification of five years or more;
- (iv) suspension from employment or public office for five years or more;
- (v) deprivation of the right to drive motor vehicles and mopeds, or to keep and bear arms for a period of over eight years;
- (vi) deprivation of the right to reside or to visit certain places for a period of over five years;
- (vii) prohibition on approaching or communicating with the victim or others for a period of over five years; and
- (viii) deprivation of parental rights.

## **5. Specific measures in the social jurisdictional order**

### **A. Proceedings for challenging temporary employment regulation proceedings (“ERTEs”) on economic, productive, organisational and technical grounds arising from COVID-19**

RDL 16/2020 establishes that complaints against ERTEs for economic, productive, organisational and technical grounds filed in accordance with the provisions of Article 23 of RDL 8/2020 that affect more than five employees must follow the collective conflict procedural.

They will be entitled to promote collective conflicts:

- (i) the representative commission constituted to negotiate the ERTE;

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<sup>9</sup> The abstract penalty is that established in the Criminal Code for that offence, regardless of the penalty requested for the accused party in the specific case, due to their particular circumstances.

- (ii) the trade unions whose scope of action corresponds to or is broader than the scope of the conflict (in these cases, the scope of the ERTE);
- (iii) the business associations whose scope of action corresponds to or is broader than that of the ERTE provided that it is an ERTE with a broader scope than the company;
- (iv) the employers and the bodies representing the workers' legal representatives or trade union interests;
- (v) the public administrations that employ people and are included in the scope of the ERTE and the bodies that represent the labour force in the service of the former; and
- (vi) the associations representing economically dependent self-employed workers and the trade unions representing them, for the exercise of collective actions relating to their professional status, provided that they meet the requirement of point (ii) above, as well as the companies for which they carry out their activity and the business associations of the latter, provided that their scope of action is at least equal to that of the ERTE.

## **B. Preferential and urgent nature of certain proceedings in the labour jurisdiction**

The RDL 16/2020 establishes that from the moment that the suspension of the procedural deadlines contained in RDL 463/2020 becomes inactive until 31 December 2020, the following proceedings will have preferential and urgent status. These include, among others:

- (i) the proceedings for the dismissal or termination of contracts;
- (ii) the proceedings arising from the procedure for declaring the duty and manner of recovering working hours not rendered during the recoverable paid leave provided for in RDL 10/2020 for those employees who do not render essential services;
- (iii) the proceedings for the application of the right to adjust the working hours and to reduce the working day as provided for in Article 6 of RDL 8/2020;
- (iv) the proceedings for the individual, collective or *ex officio* challenge of ERTEs on economic, productive, organisational or technical grounds or due to *force majeure* arising from COVID-19; and
- (v) the proceedings to make effective the remote working or the adjustment of

working conditions to being able to carry it out.

In addition, the preferred nature of the rest of the proceedings that are qualified as such by the Regulatory Law of Labour Jurisdiction or by any other procedural law that may be applicable, are maintained.

Notwithstanding the above, (i) the individual or collective proceedings to challenge the ERTes on economic, productive, organisational and technical grounds or due to *force majeure* resulting from COVID-19, (ii) the proceedings conducted to make effective the remote working or the adequacy of working conditions to carry it out, or (iii) to adapt the working hours within Article 6 of RDL 8/2020, will be considered urgent for all purposes and with respect to other preferential proceedings that are processed in the Court, except for those aimed at protecting fundamental rights and public freedoms.

### **C. Expansion of the eligibility of the participants to apply for the effectiveness of the consolidated pension plan rights**

The twentieth additional provision of RDL 11/2020 on the availability of pension plans in the event of unemployment or cessation of activity as a result of the health crisis caused by COVID-19 is amended to include new subjects who may apply to make effective their vested rights. Specifically, it extends the right to:

- (i) self-employed workers who have previously been integrated into a Social Security scheme as such, or into an alternative mutual scheme, and as a result of the health crisis caused by COVID-19 have ceased their activity or, when without having ceased their activity, their invoicing in the calendar month prior to that in which the availability of the pension plan is requested has been reduced by at least 75 percent in relation to the average invoicing of the previous calendar period;
- (ii) self-employed agricultural workers in seasonal production included in the Special System for Agricultural Workers, as well as employees in fishing, seafood or specific seasonal production included in the Special System for Sea Workers, when their average invoicing in the months of the production season prior to that for which the benefit is requested, has been reduced by at least 75 percent in relation to the same months of the previous year's season; and
- (iii) self-employed workers who carry out activities under one of the following codes of the National Classification of Economic Activities (CNAE) 2009: 5912, 5915, 5916, 5920 and between 9001 and 9004, both included, provided that, without ceasing their activity, their invoicing in the calendar month prior to that for which the benefit is requested, is reduced by at least 75 percent in relation to that carried out in the previous 12 months.

Additionally, Article 23 of RDL 15/2020 is amended with regards to the documentation to be submitted by these workers for their application and the amounts of the available consolidated rights.

## **6. Amendment of Law 9/2017, of 8 November, on Public Sector Contracts, which transposes the Directives of the European Parliament and the Council 2014/23/EU and 2014/24/EU, of 26 February 2014 ("LCSP") into Spanish law**

The third final provision of RDL 16/2020 agrees to amend Article 159.4 of the LCSP in the sections corresponding to letters d) and f):

- (i) A new paragraph is added to section d) of Article 159.4 of the LCSP to provide that, in cases where the tendering procedure does not contemplate award criteria whose quantification depends on value judgments, the tender must be submitted in a single envelope or electronic file. Otherwise, the bid will be submitted in two envelopes or electronic files.
- (ii) The wording of section f) of Article 159.4 of the LCSP is amended, in line with the new wording of section d), to eliminate the public nature of the act of opening the envelope or electronic file containing the offer that can be evaluated through the simple application of formulas.

## **7. Amendment to Law 40/2015 of 1 October on the Legal Regime of the Public Sector ("LRJSP")**

The second additional provision of RDL 16/2020 determines that the dissolution regime provided for in Articles 96.1.e) and 96.3 of the LRJSP will not be applicable to the annual accounts approved during the years 2020, 2021 and 2022.

The information contained in this Information Briefing is of a general nature and does not constitute legal advice. This document was prepared on 29 April 2020 and Pérez-Llorca does not assume any commitment to update or revise its contents.