



SPAIN

19 MAY 2020

Coronavirus, COVID-19

The following information was received from our correspondent AIYON on 19 May:

QUOTE

As commented before, please find attached our update in relation to COVID-19. Changes are, among others:

- Crew changes /Port taxes/Inspections.
- Claim submissions in Court.
- International borders restrictions.
- Carriage of passengers by air/ship.

Considering that some of last changes are of certain relevance, we have opted to actualize our last Circular. We herein attach for you our Circular actualized up to the 15th of May of 2020 which we hope is of your interests.

UNQUOTE

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SHIPPING TRANSPORT TRADE INSURANCE

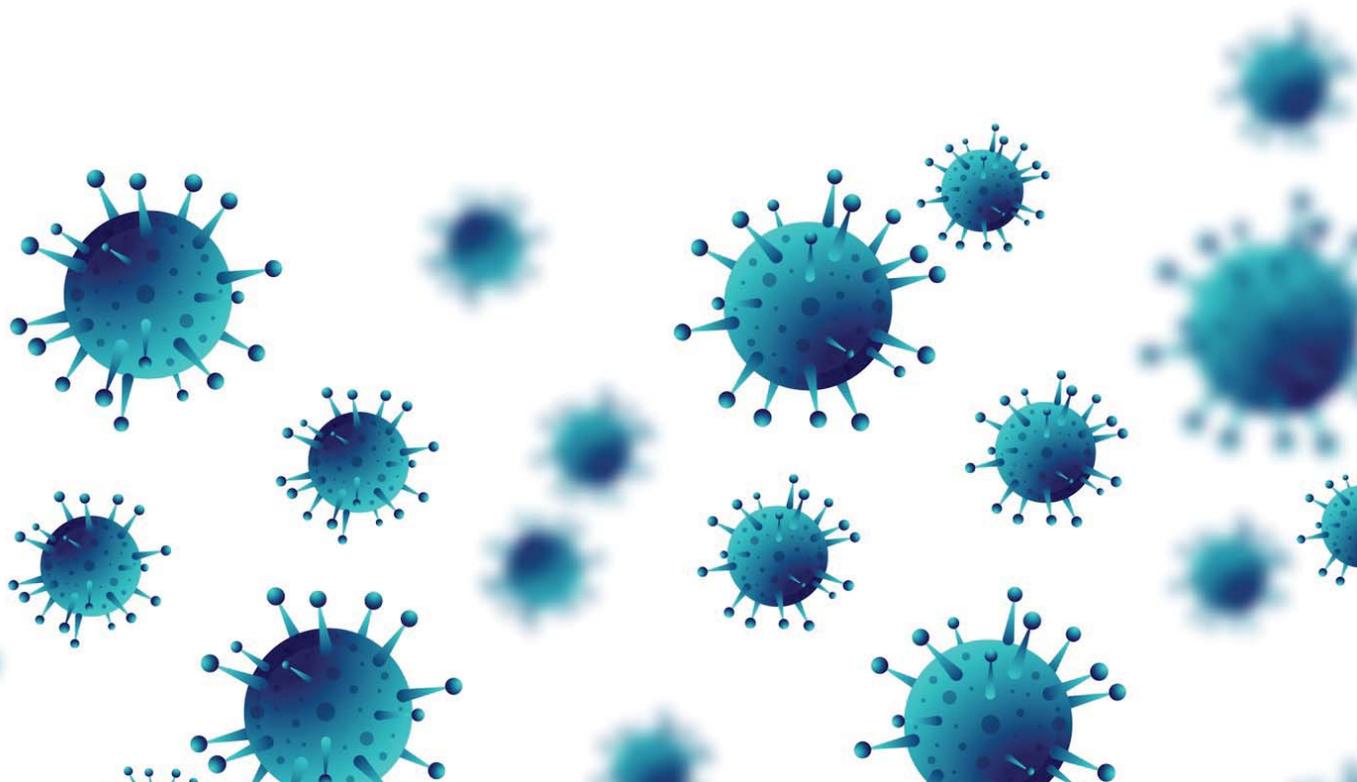
Circular on COVID19, Spain
(updated a 15/05/20)



Introduction

Since March 14, 2020, the Spanish government has declared the "State of Alarm" due to the health crisis situation the country is facing because of the COVID-19 phenomenon. This declaration authorizes the government to take control of the country, being entitled to establish the measures it considers most appropriate, urgent and safe to protect Spain from the effects of the pandemic.

At first, the "State of Alarm" was decreed for a period of 15 days, but this period has been extended on several occasions and currently remains in force while Spain is already immersed in the various phases of de-escalation planned by the government.



1. Restrictions and modifications of land, sea and air transport

It is undeniable that the COVID-19 crisis is affecting particularly the transport sector, which is why the European Council puts forward four legislative proposals to Parliament in order to provide greater flexibility, relieve administrative burdens and reduce financial costs for companies of the transport sector. The proposals are as follows:

- **Rail transport:** The Council's proposal is to extend the deadline for transposition of the Railway Safety and Interoperability Directives (currently 31/12/2020). This would give the railway sector greater flexibility to deal with current circumstances.
- **Road transport:** It is proposed to allow the extension of the validity of certificates and licences for companies to carry out their activities, supporting thus transport operators and administrations that due to the current situation may have difficulties in completing some administrative formalities before the expiry of the deadline.
- **Air transport:** In order to avoid unnecessary administrative burdens, it is proposed to modify the rules on air carrier licensing in case of financial difficulties (if these are caused by the COVID-19 crisis). In addition, it is also proposed to introduce an exception to the procedures used by States to impose restrictions on mobility and traffic rights in cases of emergency. Such limitations on rights can only be maintained as long as there is public health risk clearly linked to the epidemic.
- **Maritime transport:** It is proposed to modify the regulation of port services in order to reduce the current regulation, allowing the States to control the collection of charges from shipping companies for the use of port infrastructures, making it thus possible to waive, suspend, reduce or defer these charges.

It is also generally proposed in the European Union that certain periodic checks carried out on roads, railways, inland waterways and internationally should be temporarily postponed in order to make mobility more flexible. On the other hand, the situation with regard to the restrictions established on mobility and transport (land, sea or air) has also varied considerably in recent days in Spain.

Ministerial Order TMA/400/2020, of 9 May, establishes the conditions to be applied in Phase 1 of de-escalation in terms of mobility

In order to ensure the mobility of the **Canary and Balearic Islands** by means of **air transport**, the following provisions have been made:

- 1.- From 00:00 hours on 11 May 2020, the ban on regular commercial operations between the Islands is lifted. All other restrictions will remain in force for the time being (Order TMA7246/2020 of 17 March).
- 2.- The public service obligations on air routes between the Islands (with the exception of the fare system applicable to them) are suspended as from the entry into force of this order and the duration of the State of Alarm.
- 3.- An essential minimum of daily frequencies is established.
- 4.- Operators have to guarantee the safety distance according to RD 463/2020), considering sufficient to offer 50% of the capacity.
- 5.- Operators offering these services must inform the Directorate General of Civil Aviation (DGAC) of their operations programme seven days in advance and submit a document in which they commit to start operations on the scheduled dates and maintain them for at least 15 calendar days. DGAC will supervise and control the services.
- 6.- The Government Delegation in the Islands may authorise, for exceptional circumstances (repatriation, health reasons, etc.), the landing of executive aviation flights, air taxis or similar services.

Also, certain rules and prohibitions relating to **Maritime Transport** services are relaxed in the Autonomous Communities of the Balearic and Canary Islands. Specifically in the **Canary Islands**:

1.- The disembarkation of passengers of the RoRo passenger vessels operating regular services between the mainland and the islands is prohibited in the ports of the Canary Islands, with the exception of the drivers of the roll-on roll-off vehicles.

2.- The Autonomous Community of the Canary Islands is hereby authorised to lay down the conditions governing the provision of inter-island scheduled maritime services or lines.

3.- In the territories of the island, while in phase I, the following vessels and boats may navigate between ports or points along the coast of the same municipality and nearby unlicensed islands:

- Those of tourist transport of passengers.
- Those intended for the provision of internships and training courses.
- Those used for recreational or sporting purposes by their owners or in nautical rentals.

If we focus on the **Balearic Islands**, and under the condition to guarantee health protection measures:

1.- Transport on lines between the Peninsula and the Balearic Islands is authorised.

2.- The embarkation/disembarkation of passengers and vehicles is permitted on RoRo passenger ships and passenger ships providing regular services on the inter-island maritime lines of the Autonomous Community, establishing frequencies and entitling the Autonomous Community to regulate the provision of these services and modify their number.

3.- Recreational sailing is permitted between points on the coast of the same municipality and nearby uninhabited islands.

The above outlined restrictions shall not apply to state ships or cargo ships, or to ships sailing for humanitarian, medical or emergency purposes. The disembarkation of crew members and passengers may only be authorised by the authorities in exceptional circumstances (repatriation, health reasons, etc.).

2. Entry and movement in Spain

Since a restriction of inter-provincial movement is being applied to residents in Spain during the de-escalation process, it is considered appropriate to limit access from other Member States by air, land and sea as well.

Therefore, during the de-escalation period it is necessary to intensify health surveillance and control measures for all international travellers in order to avoid the appearance of new cases of COVID-19. To this end, it is established that **international passengers entering Spain during the "State of Alarm" will have to remain in their homes or lodgings during 14 days**, having to limit their movements only to acquisition of food, pharmaceutical products and products of basic needs; to attend health centres, services and establishments; and for reasons of force majeure or situations of necessity. **Wearing of mask is obligatory during these journeys.**

This recent Order comes into force on 15 May and will remain in force during the "State of Alarm" period, and coexists with Order INT/356/2020, of 20 April, extending the criteria for the application of a temporary restriction on non-essential traveling from third countries to the European Union and associated Schengen countries. Travel agencies, tour operators and transport companies must inform travellers of these measures at the beginning of the process of selling tickets to Spain. In the case of airplanes, the companies will provide a public health form to trace the passengers.



Once again, when analysing this measure, it should be stressed that **it will not be applicable to cross-border workers, transporters or crews (sea or air), or health professionals when commuting to work, provided that they have not been in contact with a person diagnosed with COVID-19.**

On the other hand, and according to Order INT/396/2020, of **8 May, from 15 May until midnight on 23 May** (without prejudice to possible extensions), they will only be able to enter via internal borders: (i) Spanish citizens and residents in Spain (having to accredit their habitual residence); (ii) cross-border workers; (iii) health professionals or those caring for the elderly who are commuting to work; (iv) consular and diplomatic personnel; (v) persons who are travelling exclusively for work reasons or those who document causes of force majeure or situations of necessity (measures taken for flights and boats originating in countries of the Schengen area).

It is important to stress that these internal border restrictions will not affect the transport of goods. This exclusion is intended to ensure the continuity of economic activity and to guarantee the supply chain. The exclusion should also cover the movement of the **crew members of vessels** in order to ensure the provision of maritime transport services and the continuity of fishing activity, as well as the movement of the aviation personnel necessary to carry out commercial air transport activities.

Consequently, it is accredited that Spain recognizes **seafarers**, along with other professionals in the sector, as essential workers following IMO criteria. Following this criterion, the Spanish government has already facilitated the transfer of nearly two hundred seafarers from the Seychelles Islands from Spanish vessels and has issued **Order TMA/374/2020**, which regulates what documentation is required to allow crew changes in Spain and return to their countries of residence or to embark on another vessel calling at a Spanish port, and which consists of:

- Certificate of Competence or Seafarers' Identity Card or Discharge Book.
- Employment agreement or letter of appointment. This documentation shall include, at least, the name of the ship and its flag, the port where the ship is located and the estimated date of embarkation/disembarkation.

3. Situation of ports and logistics services

In Spain, port operations and services are functioning normally. All professionals who provide services in ports take, as far as possible, all recommended sanitary measures: PPE, gloves, masks, decontamination and maintain the minimum distance of at least 1.5 meters. Even so, this has not prevented ports from experiencing problems of saturation of available storage space as many supply chains are paralysed, with goods being trapped in their port terminals (e.g. motor vehicles).

For this reason, and in order to make operations more flexible, the Port Authorities have been given the autonomy to modify the rates, reduce the minimum requirements for traffic and activity and grant postponements. Some of the proposals are:

- **Extend the reduction of the occupation rate by 20-60%** depending on whether they are passenger or cargo terminals.
- **To grant 6-month deferrals in the payment of port charges**, without accruing interest on arrears or requiring additional guarantees.
- **As a specific measure for shipowners and shipbuilders in the port**, they will be exempted from paying the port charge provided they have been obliged to anchor or moor as a result of an order issued by a competent authority. If their stay in the port was not directly due to an order, but their stay has been prolonged in the port (e.g. cruise ferries), a reduction in the fee will be applied from the first day of the stay in port waters, up to a 30% discount. Likewise, a reduction in fees will be applied to vessels providing port services.

In addition to these measures, the following activities are suspended:

1

The carrying out of scheduled inspections and surveys by the Maritime Administration, as provided for in the Regulations on the Inspection and Certification of Civilian Ships, unless these arise from emergency situations.

2

The carrying out of periodic inspections of foreign ships, with the exception of those a: (i) ships subject to a report or notification by another Member State; (ii) ships which cannot be identified in the inspection database; (iii) ships which have been involved in a collision, grounding or stranding on their way to port; (iv) ships which have been accused of allegedly violating the provisions in force concerning the discharge of hazardous substances or effluents; (v) ships which have manoeuvred in an erratic or unsafe manner.

On the other hand, the validity of the following administrative titles is extended in case they expire during the "State of Alarm":

- Professional cards and certificates issued to seafarers, as provided for in the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW) and in national regulations on maritime training.
- Certificates and documents issued for ships governed by the international instruments of the International Maritime Organisation (IMO), the International Labour Organisation (ILO) and the European Union
- Certificates and documents issued for ships and vessels providing services under national regulations.
- Maritime training certificates issued for seafarers, as provided for in the STCW Convention and health regulations for a maximum period of six months from their expiry.

- Certificates for the checking of medical supplies on board of ships, provided for under international and national regulations, for a maximum period of five months from their expiry.
- Medical certificates of competency issued to seafarers, in accordance with the STCW Convention and national regulations, for a maximum period of three months from the date of expiry.



4. Judicial and Legal Measures (Time bars)

From 14 March and until the end of the State of Alarm, all legal proceedings, both administrative and judicial, are paralyzed (except for essential, priority and emergency services that are being provided). Therefore, all administrative and procedural, prescription and caducity time-bars for the exercise of actions are suspended. The calculation of the time limits will be resumed at the time when the State of Alarm is declared terminated.

In spite of the above and apart from the peculiarities and limitations of some Spanish Autonomous Communities, since 15 April legal professionals can again submit documents via LEXNET (or the corresponding regional version of the digital platform). In fact, the judicial bodies may notify the decisions made in the proceedings in progress when they come from non-essential proceedings, but the notification will not lift the suspended deadlines. They may also proceed with the deliberation and ruling of those cases whose processing has finalized, provided that a hearing is not necessary. However, as mentioned above, the deadlines will not begin to be calculated until the first working day after the end of the "State of Alarm", **which is currently 25 May, but we do not rule out that it may be extended again.**

In non-essential actions and services, the submission of the documents that initiate the proceedings, their registration and distribution, as well as their processing in accordance with the applicable procedural rules will be possible at all instances until the moment in which a procedural action is taken that opens a period of time that must be suspended by virtue of the second additional provision of Royal Decree 463/2020. The same shall apply to procedural documents that are not linked to interrupted or suspended terms or deadlines, and until procedural actions are taken that open procedural deadlines that must be suspended by virtue of RD 463/2020.

With regard to the return to work of members of the judicial career, the personal presence at work has been re-established, articulating it in several phases. In the first phase, a mixed service (face-to-face and teleworking) will be maintained, reducing public hearing hours and limiting them to days when face-to-face proceedings must be held. Even so, and in any case, the general attendance system shall be fully implemented by June 2.

Likewise, article 1 of Royal Decree-Law 16/2020, of 28 April, on procedural and organisational measures to deal with the COVID-19 in the area of the Administration of Justice, declares days from 11 to 31 of August 2020 to be working days, excluding from this provision Saturdays, Sundays and public holidays, except for those legal proceedings for which these days are already working days in accordance with procedural laws. Therefore, from the moment the suspension of the deadlines is lifted and until 31 August, those legal proceedings related to urgent or suspended matters will be preferably carried out in Courts and Tribunals (trying to carry them out telematically). Without prejudice to this, the parties will be informed of the indications for this period with sufficient time in advance, preferably before 15 June.

Since August is historically a non-working month in Spain, this decision has generated more than a few criticisms among the affected professionals (lawyers and solicitors above all) since this affects their annual rest period.

With regard to maritime law matters, the documents that we understand can be submitted and that, in addition, could be processed for its urgent nature, could include the arrest of ships. Although there is a certain ambiguity regarding what can be considered urgent measures, we understand that ship arrest would not be affected by the procedural suspension decreed by the "State of Alarm". In fact, our firm has contacted several courts that consider that the ship arrest would indeed be among such urgent and priority measures.

5. Newly announced measures

Spain approves the following two regulations, in force from 16/05/2020:

- 1) The "Order TMA/410/2020, of 14 May, limiting entry into Spain to aircrafts and passenger vessels through designated points of entry with capacity to deal with public health emergencies of international importance". This Order will come into effect at 00:00 hours on May 16, 2020 and will remain in force until 24:00 hours on May 24, 2020, without prejudice to any extensions that may be agreed.

The purpose of this order is to designate the ports and airports that will be enabled as the sole point of entry into Spain, when a passenger flight originating from any airport outside Spanish territory or from passenger ships or passenger vessels and ROROs that provide a scheduled service originating from any port outside Spanish territory (provided that the transported passengers are not the drivers of the road vehicles): (i) Airports of "Josep Tarradellas Barcelona-El Prat", "Gran Canaria", "Adolfo Suarez Madrid-Barajas", "Málaga-Costa del Sol" and "Palma de Mallorca"; (ii) Ports of Barcelona, Bilbao, Las Palmas de Gran Canaria, Málaga, Palma de Mallorca, Tenerife, Valencia and Vigo

Exceptions:

- State aircraft or vessels.
- Aircraft making stopovers for non-commercial purposes.
- Exclusive cargo flights or ships or positional, humanitarian, medical or emergency flights or ships.

The Ministry of Health, upon a justified request, may lift the limitation provided for in this order by authorising, sporadically, aircraft or vessels carrying exclusively Spanish citizens, residents in Spain or other groups covered by Order INT/401/2020.

2) "Order INT/409/2020, of May 14, extending the criteria for the application of a temporary restriction on non-essential traveling from third countries to the European Union and associated Schengen countries for reasons of public order and public health due to the health crisis caused by the COVID-19". This order will come into force at 00:00 hours on 16 May 2020 and will remain in force until 24:00 hours on 15 June 2020, without prejudice to any extensions that may be agreed.

The entry within the Schengen borders (Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016) shall be refused on grounds of public policy and public health in connection with the health crisis caused by COVID-19 to any third-country citizen unless he or she belongs to one of the following categories:

- **Usual resident in the European Union, in the Schengen associated States or Andorra, and going directly to their place of residence.**
- Holders of a long-stay visa issued by a Member State or Schengen Associated State who are travelling to the latter.
- **Cross-border workers.**
- Healthcare or elderly care professionals commuting from or to work.
- **Personnel engaged in the transport of goods in the course of their work, including crew members of vessels and flight crews (there is a condition that they must be able to continue their journey immediately).**
- Diplomatic, consular, international organizations, military personnel and members of humanitarian organizations, in the exercise of their duties.
- Duly accredited persons travelling for imperative family reasons.
- Persons who provide documentary evidence of force majeure or necessity, or whose entry is permitted on humanitarian grounds.

Likewise, the closure, on a temporary basis, of the land posts authorized to enter and leave Spain through the cities of Ceuta and Melilla, agreed in Order INT/270/2020, of 21 March, is maintained.