

A background image showing several spherical coronavirus particles with characteristic surface spikes, rendered in a light gray, semi-transparent style against a dark gray background. The particles are scattered across the page, with one large, detailed particle in the center and several smaller, more blurred ones around it.

TELLES
— ADVOGADOS —

CORONAVÍRUS

**Emergency
State Measures**

14.01.2021

I - The renewal of the State of Emergency declaration

Faced with the worsening of the public calamity caused by COVID-19, the State of Emergency was renewed, through the Decree of the President of the Republic No. 6-B/2021.

Through that declaration of the State of Emergency (authorized by Resolution of the Assembly of the Republic no. 1-B/2021):

- a) the State of Emergency was modified, **starting at 00:00 on January 14; and**
- b) the State of Emergency was renewed, **which lasts 15 days, beginning at 00:00 on January 16 and ending at 23:59 on January 30**, without prejudice to any renewals.

As in March and April 2020, with the current declaration of the State of Emergency the following rights are partially suspended:

- i) Rights to freedom and movement;
- ii) Private, social and cooperative initiative;
- iii) Workers' rights;
- iv) Right to free development of personality and the negative side of the right to health;
- v) The right to international movement; and
- vi) Right to the protection of personal data.

II – Execution of measures

Attentive to the foundations laid by the declaration of the State of Emergency, through **Decree No. 3-A/2021 of the Presidency of the Council of Ministers**, the Government is establishing and implementing measures to prevent the transmission of the virus and contain the spread of COVID-19, **which come into force at 00:00 on January 15**.

Thus, the measures now enacted focus on:

- i) The circulation in public roads- compulsory confinement and general duty of collection;
- ii) The imposition of the adoption of the remote work regime;
- iii) The restriction on the operation of retail trade and the provision of services open to the public (with the exception of wholesale establishments); and
- iv) The operation or suspension of certain types of facilities, establishments and activities.

Sanitary and Public Health Measures

1. Mandatory Lockdown

A mandatory lockdown in a medical establishment, residential structure or other facilities dedicated to elderly people are imposed to:

- Patients with COVID-19 and those infected with SARS-CoV-2;
- Other people to whom the health authority so determines;
- Residents in residential structures for the elderly, for the purpose of exercising the right to vote.

2. General duty of lockdown

Citizens may only circulate on public roads and spaces within the scope of the authorized travels provided in the Decree, highlighted below:

- The acquisition of essential goods and services;
- The performance of professional or similar activities, when remote work is not possible;
- The attendance by minors at schools, day care centers and leisure activities and the displacement of their companions, as well as the displacement of students to higher education or other school establishments;
- The election of the President of the Republic (including citizens residing in residential structures for the elderly, even if they are located in a municipality other than that of the electoral census);
- The participation in procedural acts before judicial entities or in acts under the jurisdiction of notaries, lawyers, solicitors or registration officers.

3. Remote work and alternated schedule organization

The adoption of the teleworking regime is mandatory, regardless of the employment relationship or the nature of the legal relationship, provided that it is compatible with the activity performed and the worker has the conditions to perform it, without the need for agreement of the parties.

3. Remote work and alternated schedule organization *(cont.)*

Note that the remote worker has the **same rights and duties as other workers**, with no reduction in pay, maintaining the right to receive the **meal allowance that was already owed to him**.

The employer **must provide the work and communication equipment necessary for remote work**. If that is not possible and the worker agrees, the work can be carried out by means that the latter holds.

It should also be noted that whenever it is not possible to adopt remote working, regardless of the number of workers, the employer will have to **organize the hours of entry and exit in a lagged manner**, as well as adopt the technical and organizational measures that **ensure the physical distance and the protection of workers**.

Finally, it should be noted that the telework obligation does not apply to workers of services considered essential, as well as to workers integrated, namely, in educational establishments listed in no. 4 of article 2 of Decree-Law no. 79-A/2020, of 1 October (consult the diploma [here](#)).

4. Use of visors and masks

The use of visors or masks in the workplace is mandatory, except if the work is done in an office, room or equivalent that has no other occupants or when impermeable physical barriers of separation and protection between workers are used.

5. Body temperature control

In cases where the activity is maintained, body temperature measurements **can be taken by non-invasive means**. This control can also be adopted in the access to public services and institutions, educational and teaching establishments, commercial, cultural or sport spaces, among others.

5. Body temperature control(*cont.*)

These measurements may be made by a worker in the service of the entity in charge of the establishment, and this worker shall be bound by professional secrecy.

Note that access to the above mentioned places **may be prevented** whenever the person refuses the temperature measurement or presents a result equal or superior to 38oC. In the latter case, whenever this determines that a worker cannot have access to his/her place of work, **it shall be considered justified absence**.

Data protection

1. General rules

In the context of strengthening screening capacity and conducting epidemiological surveys, tracing of contacts of patients with COVID-19 and follow-up of persons under active surveillance, the processing of **personal data**, in particular those related to health, may take place for reasons of public interest in the field of public health, independently of the consent of the holders.

Such data may be accessed and processed by health professionals, medical and nursing students and any other professionals mobilized for the reinforcement of the tracking capacity, **being subject to the duty of secrecy or confidentiality**.

Note that the entities responsible for the systems or services on which personal data are accessed, managed or processed must ensure, in particular, the implementation of measures to safeguard the duty of secrecy and confidentiality, as well as the implementation of technical security measures regarding access permissions, authentication, electronic recording of access and personal data accessed.

**Operation of activities, services,
companies and equivalents**

1. Activities of the trade sector

- Closure of facilities and establishments

The facilities and establishments identified in **Annex I** of this note are **closed**.

- Retail and services

Retail trade and service activities in establishments open to the public, or in an itinerant basis, are suspended, with the exception of those that provide basic necessities or goods considered essential (for more details, please see **Annex II** to this note).

- Wholesale and other establishments

The following activities **are not suspended**:

- i) **The activities of wholesale trade;**
- ii) The activity of establishments that maintain their activity **exclusively for the purpose of home delivery**, or the availability of goods at the door of the establishment, the wicket or through products previously acquired through means of communication at a distance (click and collect), being in these cases prohibited access to the inside of the establishment by the public.

- Exercise of retail trade in wholesale establishments

Holders of **wholesale food distribution** establishments **may sell their products directly to the public for as long as the State of Emergency now enacted applies**. To do so, they are required not only to comply with the rules of access, security and priority care, but also to display the respective sale price to the public.

2. Restaurant sector and equivalent

These establishments will operate **exclusively for consumption outside the establishment** through home delivery, directly or through an intermediary, as well as for delivery of meals or packaged products to the door of the establishment or to the wicket (take-away).

3. Fees and commissions charged by intermediate platforms in the restaurant industry and similar sectors

While the present State of Emergency is in effect, such platforms are **prevented from charging service fees and commissions that, globally considered, for each commercial transaction exceed 20% of the value of the sale of the good or service to the public, and are also prohibited to**: i) increasing the value of other fees and commissions charged until the approval of these rules, ii) paying distributors lower amounts of compensation than those practiced before the present State of Emergency were in effect, and iii) granting service providers with which they collaborate fewer rights than those granted before the present rules were in effect.

4. Bottled LPG maximum price regime

A maximum price regime is established for bottled LPG, in steel standard taras, in typologies T3 and T5, being the price, for each month, determined in euros/kg, according to the following formula:

$$(Pr_C + Pr_F + Pr_{D+A} + Pr_{Res.} + Pr_E + spread + ISP) \times (1 + IVA)$$

The regulated price for month M is determined on the first day of the month and applies from the third working day of month M until the second working day of month M+1, and the terms of the regulated price are published daily on ERSE's website.

In January, the following post-tax prices apply, to which only delivery service costs may be added (these prices are effective from the 3rd day after these measures take effect):

- LPG butane, in T3 typology: 1,836 euros/kg;
- propane LPG, in typology T3: 2.171 euros/kg;
- propane LPG, in typology T5: 1,950 euros/kg.

5. Public services

The face-to-face service by appointment is maintained, reinforcing the provision of services through digital means.

6. Physical and sporting activity

Only **physical activity and the practice of outdoor sports are allowed, as well as all training activities and professional competitive and equivalent**, without public and in compliance with the guidelines of the DGS.

General provisions applicable to establishments or places open to the public

Occupation: rule of 0.05 people per square meter of area, with the exception of service establishments (not including employees and service providers who are in function), and it must be guaranteed not only that the public remains in the space only for the time strictly necessary, but also avoid waiting situations inside the establishment.

Safety and hygiene rules: shall ensure, in the physical spaces, i) a minimum distance of 2 metres between persons, except where the DGS directs otherwise, ii) the definition, whenever possible, of specific entry and exit circuits, iii) compliance with the hygiene and disinfection rules defined by the DGS, iv) provision of skin disinfection solutions, v) promotion of touch containment in products and equipment, as well as unpackaged products (which should preferably be handled by workers) and vi) periods of the day to ensure cleaning and disinfection operations of employees, products and space.

Priority care: priority should be attributed to health professionals, security forces and criminal police, protection and relief agencies, social support services, people with disabilities, elderly people, pregnant women and people accompanied by infants.

*We wish to draw attention to the fact that failure to comply with the declaration of a State of Emergency will give rise to a **crime of disobedience**, as best described in the annex.*

Finally, we wish to reiterate that the declaration of a State of Emergency in no way calls into question the democratic rule of law, nor, in particular, the rights to life, personal integrity, personal identity, civil capacity and citizenship, the non-retroactivity of criminal law, and also freedoms of expression and information.

Conclusion

Once again, the established measures will have a very strong impact on the affected companies, and TELLES is prepared to help in the access to the already announced support measures for companies, namely financial, labour and fiscal measures, leases, the elaboration of declarations that prove the displacement of workers to their jobs and in everything they need.

ANNEX I

Suspended activities

1. Recreational, leisure and fun activities:

- Discos, bars and dance or party halls;
- Circuses;
- Amusement parks and recreational parks and similar for children;
- Water parks and zoos, without prejudice to workers' access for animal care purposes;
- Any closed places destined for leisure sporting practices;
- Other places or facilities similar to the above.

2. Cultural and artistic activities:

- Auditoriums, unless in the context of electoral campaign events in the context of the election of the President of the Republic, cinemas, theaters and concert halls;
- Museums, monuments, palaces and archaeological or similar sites (interpretative centers, caves, etc.), national, regional and municipal, public or private, without prejudice to workers' access for conservation and security purposes;
- Libraries and archives;
- Bullfighting facilities;
- Art galleries and exhibition rooms;
- Congress pavilions, multipurpose rooms, conference rooms and multipurpose pavilions, unless in the context of electoral campaign events in the context of the election of the President of the Republic.

3. Educational and formative activities:

- Free time occupation activities;
- Language schools and driving schools, without prejudice to tests and exams, and tutoring centers.

4. Sports activities, except those intended for physical activity under the terms of the Decree

- Soccer/football, rugby and similar fields;
- Enclosed pavilions or enclosures;
- Futsal, basketball, handball, volleyball, roller field hockey and the like;
- Enclosed shooting fields;
- Courts of tennis, padel and similar closed;
- Closed skating rinks, ice hockey and the like;
- Swimming pools;
- Boxing rings, martial arts and the like;
- Permanent closed circuits for motorcycles, cars and the like;
- Closed Velodromes;
- Hippodromes and similar indoor tracks;

ANNEX I

- Multisports pavilions;
- Gymnasiums and academies;
- Closed athletic tracks;
- Stadiums.

5. Activities in open spaces, spaces and public ways, or spaces and private ways similar to public ways:

- Cycling, motorcycling, car racing and similar closed routes, except those intended for the practice of sports allowed under the decree, in a training context;
- Nautical competitions and exhibitions;
- Aeronautical tests and exhibitions;
- Popular parades and festivals or folkloric or other events of any nature.

6. Gaming and betting activities:

- Casinos;
- Gambling establishments, such as bingos or similar;
- Amusement equipment and the like;
- Games rooms and recreation rooms.

7. Hospitality and restaurant activities:

- Restaurants and similar, cafeterias, tea houses and the like, except for home delivery, directly or through an intermediary, as well as for the provision of meals or packaged products at the door of the establishment or at the wicket (take-away);
- Bars and the like;
- Bars and restaurants in hotels, except for delivery to the guest rooms (room service) or for the provision of packaged meals or products at the door of the hotels (take-away);
- Esplanades.

7. Spas or similar establishments.

ANNEX II

Activities in operation, because they are considered essential at the present juncture

1. Grocery stores, mini-markets, supermarkets, hypermarkets;
2. Fruit shops, butcheries, fish shops, bakeries;
3. Fairs and markets, in cases of food products sales, under the terms set by the Decree;
4. Agri-food production and distribution;
5. Fish markets
6. Catering and beverages for home delivery, directly or through an intermediary, as well as for the provision of meals or packaged products at the door of the establishment or to the wicket (take-away);
7. E-commerce activities, as well as service activities that are provided at a distance, without contact with the public, or that develop their activity through electronic platform;
8. Medical services or other health and social support services;
9. Pharmacies and places of sale of non-prescription medicines;
10. Medical and orthopedic products establishments;
11. Opticians;
12. Cosmetic and hygiene products establishments;
13. Establishments of natural and dietetic products;
14. Essential public services and their repair and maintenance (water, electric power, natural gas and liquefied petroleum gases channeled, electronic communications, postal services, wastewater collection and treatment services, wastewater collection and treatment services, urban solid waste management and urban hygiene services and passenger transport service);
15. Services qualified for water supply, wastewater collection and treatment and/or waste generated within the scope of the activities or establishments referred to in this Annex;
16. Stationery and tobacco stores (newspapers, tobacco);
17. Social games;
18. Medical-veterinary care centers;
19. Establishments for the sale of pets and food and feed;
20. Establishments for the sale of flowers, plants, seeds and fertilizers and chemical and biological phytosanitary products;
21. Establishments for the washing and dry cleaning of textiles and hides;
22. Drugstores;
23. Hardware stores and do-it-yourself stores;
24. Fueling stations and electric vehicle loading stations;
25. Fuel sales establishments for domestic use;

ANNEX II

26. Establishments of trade, maintenance and repair of bicycles, motor vehicles and motorcycles, tractors and agricultural and industrial machinery, ships and boats, as well as sale of parts and accessories and towing services;
27. Establishments for the sale and repair of household appliances, computer and communications equipment;
28. Banking, financial and insurance services;
29. Funeral and related activities;
30. Home maintenance and repair services;
31. Home security or surveillance services;
32. Cleaning, disinfection, rootlessness and similar activities;
33. Home delivery services;
34. Vending machines;
35. Activity by itinerant sellers, for availability of goods of first necessity or other goods considered essential in the present conjuncture, in the localities where this activity, according to the decision of the municipality taken under the paragraph 2 of Article 16 of the Decree, is necessary to guarantee access to essential goods by the population;
36. Rental activity of goods vehicles without driver (rent-a-cargo);
37. Rental activity of passenger vehicles without driver (rent-a-car);
38. Rendering of services of execution or improvement of the Networks of Fuel Management;
39. Establishments for the sale of irrigation material and equipment, as well as products related to winemaking, as well as fruit and vegetable accommodation material;
40. Establishments for the sale of plant protection products and biocides;
41. Establishments for the sale of veterinary drugs;
42. Establishments where medical services or other health and social support services are provided, namely hospitals, doctor's offices and clinics, dental clinics and emergency medical-veterinary care centers, as well as the support services integrated in these locations;
43. Educational, teaching and professional training establishments, day care centers, occupational activity centers, and spaces where full-time school responses operate, which include activities of animation and family support, the family support component and curricular enrichment, as well as language schools and tutoring centers;
44. Driving schools and vehicle technical inspection centers;
45. Hotels, tourist establishments and local accommodation establishments, as well as establishments that guarantee student accommodation;
46. Service activities that integrate highways, namely service areas and gas stations;

ANNEX II

47. Fuel filling stations not covered by the previous number and electric vehicle loading stations;
48. Establishments located inside airports located in continental territory, after passenger security control;
49. Canteens or canteens that are in regular operation;
50. Other collective catering units whose catering services are practiced under a contract of continuous performance;
51. Notaries;
52. Activities and establishments listed in the previous numbers, even if integrated in shopping centers.

ANNEX III

Description of the criminal contingencies associated with failure to exercise the limited rights listed in the Declaration of State of Emergency

The declaration of a state of emergency approved by public health imperatives, as a measure to combat the Covid-19 pandemic, generally provides for the possibility of mandatory confinement of citizens in their homes and restrictions on movement on public roads, unless justified. Failure to comply with the measures decreed in this context is likely to lead to various criminal consequences. Thus:

1. With the declaration of a state of emergency, the **rights to freedom and travel** were partially limited, restricted or conditioned as follows: *"the restrictions necessary to reduce the risk of contagion and to implement measures to prevent and combat the epidemic, particularly in municipalities with a higher level of risk, may be imposed by the competent public authorities, as well as, to the extent strictly necessary and proportionate, a ban on movement on public roads during certain periods of the day or certain days of the week, and a ban on movements that are not justified, namely by performing professional activities, obtaining health care, assisting third parties, attending educational establishments, producing and supplying goods and services, and for other ponderous reasons, in which case the Government shall specify the situations and purposes in which individual freedom of movement, preferably unaccompanied, is maintained"*.

Persons who disobey the guidelines determined under the restricted right in question commit a crime of simple disobedience and incur a prison sentence of up to one year or a fine of up to 120 days. The penalty of fine incurred by individuals will range from a minimum amount of EUR 50.00 to a maximum amount of EUR 60,000.00.

ANNEX III

2. With the declaration of the state of emergency, the **right to private, social and cooperative** initiative was partially limited, restricted or conditioned in the following terms: *"the resources, means and establishments of health care provision integrated in the private, social and cooperative sectors may be used by the competent public authorities, preferably by agreement, subject to fair compensation, according to what is necessary to ensure the treatment of patients with COVID-19 or the maintenance of care activity in relation to other pathologies"*.

Individuals and legal persons who do not observe the rules that will be determined under the restricted right in question commit a crime of simple disobedience and incur a prison sentence of up to one year or a fine of up to 120 days. The penalty of fine incurred by natural persons will range from a minimum amount of EUR 50.00 to a maximum amount of EUR 60,000.00. The penalty of fine incurred by legal persons is between the minimum amount of EUR 1,000.00 and the maximum amount of EUR 1,200,000.00.

3. With the declaration of a state of emergency, **workers' rights** were partially limited, restricted or conditioned as follows: *"any employees of public, private, social or cooperative entities may be mobilized by the competent public authorities, regardless of their type of bond or functional content and even if they are not health professionals, namely civil servants in prophylactic isolation or covered by the exceptional protection regime for immunosuppressed and chronically ill people, to support the health authorities and services, namely in the conduct of epidemiological inquiries, in contact tracing and in the follow-up of people under active surveillance"*.

Workers who do not obey or do not comply with a regularly reported order from a competent authority or official commit a crime of simple disobedience and incur a prison sentence of up to one year or a fine of up to 120 days. The penalty of fine incurred by natural persons will range from a minimum amount of EUR 50.00 to a maximum amount of EUR 60,000.00.

ANNEX III

4. With the declaration of the state of emergency, **the right to free development of the personality and the negative aspect of the right to health** were partially limited, restricted or conditioned in the following terms: *"Body temperature controls may be imposed, by non-invasive means, as well as diagnostic tests for SARS-CoV-2, namely for access to and permanence in the workplace or as a condition of access to public services or institutions, educational establishments and commercial, cultural or sports spaces, in the use of means of transport or in relation to institutionalized persons or persons housed in residential structures, health establishments, prison establishments or educational centers and their workers"*.

Individuals who do not observe the rules that will be determined under the restricted right in question commit a crime of simple disobedience and incur a prison sentence of up to one year or a fine of up to 120 days. The penalty of fine incurred by natural persons will range from a minimum amount of EUR 50.00 to a maximum amount of EUR 60,000.00.

5. The violation of the duties of (i) mandatory confinement to those subject to it, (ii) home retreat, (iii) remote work and organization out of time, (iv) closure of facilities and establishments and (v) suspension of activities of facilities and establishments, is likely to substantiate the practice of the crime of disobedience, if the prohibited conduct does not cease, after warning by the forces, security services or municipal police. In this case, individuals and legal entities incur a prison sentence of up to one year or a fine of up to 120 days. The penalty of fine incurred by individuals will range from a minimum amount of EUR 50.00 to a maximum amount of EUR 60,000.00. The penalty of fine incurred by legal persons is between the minimum amount of EUR 1,000.00 and the maximum amount of EUR 1,200,000.00.

ANNEX III

Description of the administrative offence contingencies applicable to the non-compliance with the legal norms that provide for the measures to contain the transmission of the infection

Failure to comply with the obligation to adopt the telework system during the state of emergency, regardless of the employment relationship, the modality or the nature of the legal relationship, whenever the functions in question allow it, becomes a very serious offence.

Failure to comply with the duties of (i) observing the rules of occupation, occupancy, permanence, physical distance and the existence of prior marking mechanisms in places open to the public, namely in catering and similar establishments, as defined in the declarations of the respective situations of alert, contingency or calamity, (ii) mandatory use of masks or visors for access to or permanence in commercial spaces and establishments and for the provision of services, in public buildings or buildings for public use where services are provided or acts involving the public take place, in educational, teaching and daycare establishments, inside theaters for shows, exhibitions or films or the like, and in public transport for passengers, (iii) suspension of access to the public in catering or drinking establishments that have spaces for dance or where dance is habitually performed, (iv) compliance with the opening hours of retail establishments or service providers defined in the terms of the respective alert, contingency or calamity declarations, (v) failure to hold celebrations and other events involving a larger number of people than defined in the respective alert, contingency or calamity declarations, (vi) compliance with the rules on the supply and sale of alcoholic beverages established in the respective alert situations declarations, (vii) compliance with the rules on the consumption of alcoholic beverages set forth in the declarations of the respective alert, contingency or calamity situations, (viii) compliance with the rules on maximum capacity limits for land, river and sea transportation, (ix) compliance with the rules on the restriction, suspension or closure of activities or separation of persons who are not sick, means of transport or goods and (x) compliance with the limits on fees and commissions charged by intermediate platforms in the catering sector and the like, constitute an administrative offence, punishable by a fine of EUR 100.00 to EUR 500.00 in the case of natural persons and EUR 1,000.00 to EUR 10,000.00 in the case of legal persons.

ANNEX III

Failure by a natural person to comply with the rules applicable to air traffic and airports, in accordance with the declarations of the respective situations of alert, contingency or calamity, by refusing to perform molecular testing by RT-PCR to screen for infection by SARS-CoV-2 before entering national territory constitutes an administrative offence, punished with a fine of EUR 300.00 to EUR 800.00.

Negligence is punishable, in which case the amounts referred to are reduced by 50%.



TELLES' teams from different practice areas have worked together in order to provide its clients with the necessary and pertinent information in view of the current conjecture.



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