



SIGMA

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Public Administration: Responding to the COVID-19 Pandemic

*Mapping the EU member states' public administration responses to the COVID-19 pandemic
(for EU Enlargement and Neighbourhood countries)*

PORTUGAL

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PORTUGAL

Centre of Government, policy co-ordination and decision-making process

1. How is the Government (Council of Ministers) functioning (organisation of virtual meetings, remote sessions etc.)?

The Council of Ministers has held sessions and approved decisions online during the crisis. According to the rules of procedure "In case of urgency or exceptional public interest, resolutions can be taken by written decision, through the Government's IT network" provided the required quorum exists.

2. How are the crisis management and external communications co-ordinated within the Government? What is the role of the CoG in this? Is there a central strategy/guidance?

See below on state of emergency.

Co-ordination:

- *National Commission of Civil Protection, chaired by the Minister of the Interior*

Communication:

- *About country measures: <https://covid19estamoson.gov.pt/> and corresponding smartphone application.*
- *Health related information: <https://covid19.min-saude.pt/>*

3. Any arrangements (rules, working procedures) which aim to streamline and accelerate the Government decision-making process (as regards deadlines, public consultations, transparency, impact analysis)?

In the exercise of his constitutional and legal powers (Constitution and Organic Law regulating the States of Siege and of Emergency), the President of the Republic, after consulting the Government and obtaining authorisation from the Assembly, declared a State of Emergency by means of Decree No. 14-A/2020, of 18 March, on the basis of a public calamity situation. This decision entered into force immediately. It is a temporary measure lasting 15 days, subject to renewal.

Under the terms of the Presidential Decree, the following fundamental rights shall be partially suspended: a) Right of movement and settlement in any part of the national territory; b) Property and private economic initiative; c) Workers' rights; d) International travel; e) Rights of assembly and demonstration; f) Freedom of worship, in its collective dimension; and g) Right of resistance.

The law governing the State of Siege and the State of Emergency is an organic law (which needs approval by absolute majority) and therefore has reinforced legal hierarchy (valor reforçado); this implies that all ordinary legislation should respect these laws and no new ordinary law has capacity to amend the existing organic laws.

The effectiveness of the measures that may be adopted by the Government during this period is ensured by the security forces and the Armed Forces.

The violation of the Decree declaring the State of Emergency, or of any the enforcement measures approved by the Government, constitutes a crime of disobedience, provided for and punished with imprisonment of up to 1 year or with a fine of up to 120 days.

Public service and human resource management

1. What arrangements regarding teleworking? What is the share of civil servants teleworking? What is the share of civil servants still coming to the office?

The minister in charge of Public Administration, except for essential services, determined:

- *The guidelines on teleworking, including the determination of jobs requiring on-site work;*
- *The guidelines on COVID-19-related compulsory mobility;*
- *The guidelines to require public employees to exercise functions in a different place than usual, in a different entity or under different working conditions and hours;*
- *The co-ordination with the municipalities with regard to local public services;*
- *The information to citizens regarding administrative services;*
- *The support to public employees through information, support instruments and innovative practices about teleworking.*

2. What other flexible working arrangement (part-time work, distribution of working hours over 7 days...)?

The National Health Service (Serviço Nacional de Saude) has adopted exceptional human resources measures, which include removing overtime ceilings, simplifying hiring procedures (including retired doctors), facilitating mobility, postponing annual leave entitlements.

High-risk staff assigned to face-to-face service: managers must identify high-risk employees, due to their age or special health conditions and adapt, as far as possible, the respective working conditions guided by the current Contingency Plan. These workers should preferably be assigned to BackOffice functions or be placed on teleworking.

3. If civil servants cannot telework, how are they paid?

Civil servants and public employees are considered to be in a situation of justified absence, according to Lei 35/2014, Geral do Trabalho em Funções Públicas (Article 134), so they keep receiving their full salaries (similar to when taking annual leave)

4. Are civil servants being sent on mandatory annual leave? If not, is use of annual leave recommended? Any other special arrangement on absence management?

No data available.

5. Any new, special regulations for working overtime (removing limitations to overtime work e.g. for medical staff)?

No data available.

6. Arrangement for paying for extra workload (health care etc...)?

No data available.

7. What measures have been introduced to create fiscal space to fund health care, economic measures etc. against COVID-19 (salary cuts, freeze of recruitment, promotions...)?

No data available.

Accountability

1. How did you keep the national parliament operational? Any simplification of parliamentary procedures?

The Parliament is operational. Some meetings of parliamentary commissions are held online. MPs are allowed to send a written vote if they are not able to participate in a plenary session by justified reason.

2. How about the Ombudsman (e.g. overseeing the situation in prisons)

The Ombudsperson (Provedoria de Justiça) is functioning, only by online channels. According to Law 44/86 on the regime of state of siege and emergency, the Attorney General and the Ombudsman are in a situation of “permanent session”, to protect the full exercise of their powers to defend democratic legality and citizens' rights.

3. Does administrative justice work? Have deadlines changed?

The COVID-19-related legislation determined the suspension of procedural deadlines through the application of the judicial vacation system until the cessation of the exceptional situation. This scheme applies to the proceedings, acts and judicial processes running under the jurisdiction of the law courts and tribunals, administrative and taxation courts, Constitutional Court, Court of Auditors, arbitration courts, Public Prosecutor's Office, peace courts, and alternative dispute resolution entities and tax enforcement agencies. In addition, direct, indirect, regional and local administration services, and other administrative bodies, namely independent administrative entities, including the Bank of Portugal and the Securities Market Commission. Limitation and forfeiture periods for all types of proceedings shall also be suspended.

Deadlines are suspended, except in the following circumstances: (i) when it is technically feasible to carry out procedural acts and proceedings through suitable remote communication means such as teleconferencing or videoconferencing (ii) urgent acts and steps will only be held in person when fundamental rights are at stake, in particular those affecting minors at risk or to educational tutelary proceedings of an urgent nature, steps and trials of arrested defendants, in compliance with the recommendations from the health authorities and the guidelines of the competent higher councils.

The Supreme Judicial Council of the Judiciary has enacted a number of exceptional management measures in relation to the courts, whereby only those procedural acts and steps where fundamental rights are at stake or which are intended to avoid irreparable damage should be carried out, without prejudice to the possibility of carrying out the other services under the responsibility of the Judicial Magistrates that can be remotely ensured.

Citizens whose rights, freedoms and guarantees have been violated as a result of the declaration of a State of Emergency or of any of the measures adopted during its enforcement period which prove to be unconstitutional or illegal, namely by illegal or unjustified deprivation of liberty, shall be entitled to the corresponding compensation. Legal references to rights, freedoms and guarantees shall apply to analogous rights and, in accordance with the principle of assimilation, to legal entities.

4. Any public debates in respect of principles of good administration (legality, proportionality, predictability) of protective measures?

No data available.

Service delivery

1. Which services are being delivered (all, some, only the essential)?

The Agency for Administrative Modernisation (AMA) is co-ordinating a communication system (including municipalities) and providing guidelines for the administration. The AMA is also responsible for ensuring that access to public services remains efficient through the portal <https://eportugal.gov.pt/>. Services must report daily information about the service points opened and closed to the Agency for Administrative Modernization.

Citizens' centres/One-stop-shops (*lojas de cidadão*) are closed, providing only online services. Some on-site services are maintained, but only through pre-booking.

As regards the services of the Tax and Customs Authority, they are reachable through the Finance Portal (www.portaldasfinancas.gov.pt) or, in case of difficulty in using those electronic services, through the Call Centre of the Tax Authority, reachable via phone. For a face-to-face service, the taxpayer must make a prior appointment and attend the services only on the day and time scheduled.

Essential services

The public services considered essential are determined by order of the Government members responsible for the service area concerned and the Public Administration area. The essential public services, which can be consulted on the ePortugal Portal, continue to perform their functions without any changes:

- Justice ministry:
- Directorate-General for Reintegration and Prison Services
- Judiciary Police
- National Institute of Legal Medicine and Forensic Sciences
- Institute of Registries and Notaries, I.P.

Ministry of Agriculture:

- Directorate-General for Food and Veterinary
- Regional Agriculture and Fisheries Directorates
- National Institute for Agricultural and Veterinary Research, I. P.

Ministry of the Sea:

- Directorate-General for Natural Resources, Safety and Maritime Services

Finance Ministry:

- Tax and Customs Authority, including Finance and Customs Services
- Treasury and Public Debt Management Agency

Ministry of Labour, Solidarity and Social Security

- Social Security
- Authority for Working Conditions
- Directorate-General for Employment and Labour Relations
- Institute of Employment and Vocational Training, I. P.
- Commission for Equality in Work and Employment
- National Institute for Rehabilitation, I. P.

Ministry of Education

- Directorate-General for School Administration
- Portuguese Institute of Sport and Youth

2. Are there any modifications done to the obligations of:

- i. *the administrations towards citizens/businesses (e.g. freezing of deadlines)?*

The administrative acts for the execution of COVID-19-related measures are effective through mere notification to the recipient, by electronic or other means without need of any other formalities; it is understood that the notification to recipients is valid through the publication on the website of the competent entity.

- ii. *citizens/businesses towards public administration (reporting, payments of taxes, contributions, fees...)?*

The Government introduced several tax measures in response to the COVID-19 pandemic. Regarding tax matters, the deadlines for some tax obligations of companies have been postponed, including the following:

- Postponement of the deadline regarding the first instalment of the special payment on account (due in March) to 30 June 2020, without being subject to any penalty.*
- Postponement of the deadline for filing the corporate income tax return (“Modelo22”) for the 2019 tax period— has been extended from 31 May 2020 to 31 July 2020, without any penalty.*
- Postponement of the deadline regarding the first instalment of the payment on account and the first instalment of the additional payment on account by companies (due in July) to 31 August 2020, without any penalty.*
- Situations of infection or preventative isolation of taxpayers and their accountants, declared by health authorities will be considered reasonable cause for a delay to the fulfilment of tax reporting obligations.*

On 18 March 2020, the Government declared that self-employed persons and companies with a turnover of up to EUR 10 million in the 2018 fiscal year or that have started the operation after 1 January 2019, will be allowed to delay the withholding tax (WHT) payment. The Government will allow WHT payment in three instalments with no late payment interest and WHT payment in six instalments with late payment interest being due only over the last three instalments.

Administrative deadlines

Despite the lack of clarity of Law no. 1-A/2020, its interpretation seems to lead to the application to administrative deadlines of the special suspension scheme resulting from the judicial vacations scheme. Therefore, all administrative time limits shall be considered suspended on the date on which Decree Law no. 10-A/2020 of 13 March takes effect, in any administrative procedure. This implies that the suspension does not only affect the time limits after which authorisations and permits requested by individuals will be considered to be tacitly granted by the public administration, but also to time limits to consider authorisations and permits related to environmental impact assessments to be tacitly granted by the administration, even when not requested by private individuals. However, due to the somewhat ambiguous wording of the regulation, this suspension should be examined on a case-by-case basis.

Corporate reporting

Decree Law No. 10-A/2020 also approved an extraordinary measure to defer the legal or statutory deadline for holding general meetings of companies, associations or co-operatives to 30 June.

3. Has the crisis initiated any simplifications or enhanced the use of alternative tools:

- i. *in the internal procedures of the Government (e.g. acceptance of formal approvals over e-mail)?*

See below

- ii. *in the administrative procedures with citizens and businesses (e.g. replacement of handwritten signature with scanned copies or simple exchange of mails)?*

For all legal purposes, public authorities shall accept the display of documents whose validity expires after March 9, 2020 or within 15 days immediately prior to the date of entry into force of the state of emergency. In particular, the citizen's card, certifications and certificates issued by the civil identification and registration services, driving licences, as well as documents and visas related to the stay in national territory, whose validity expires after the date of entry into force of said Decree Law or within the 15 days immediately preceding, shall be accepted, on equal terms, until 30 June 2020.

Public financial management

1. Are COVID-19 response measures being introduced within the framework of or with reference to existing fiscal rules (budget deficit or public debt ratio limits etc...)

- Tacit approval of multi-annual expenses that are not expressly rejected, within three days, after submission of the request for authorisation of an extension of expenses ordinance to the member of the Government responsible for the area of finance (Article 3(1)(c));
- Budgetary changes involving an increase in funds, in exchange for other actual expenditure items, shall be authorised by the member of the Government responsible for the respective sector area (Article 3(1)(d));
- Tacit approval of the disengagement of funds, as soon as three days have elapsed after the submission of the respective request, in cases where this is duly justified in order to comply with the objectives set out in Article 1 of the Decree Law (Article 3(1)(e));

2. Are the cost of these measures being published?

No data available.

3. Have budget users been asked to identify cost-saving measures to partially offset the cost of the response measures?

No data available.

4. Are internal controls continuing to operate smoothly (electronic signatures)?

No data available.

Deadlines to submit financial reports to the SAI are extended.

5. Does each budget user or at least ministry have a risk management strategy that envisaged emergency measures in response to a sudden crisis? How is staff and customer safety balanced against the need to deliver required services?

On 2 March 2020, the Government instructed all public services to elaborate contingency plans. The idea is to be able to continue offering services even if workers have to work from home.

Public Procurement

Decree Law No. 10-A/2020 establishes an exceptional public procurement regime to the formalisation of public procurement operations (public works contracts, rental or acquisition of personal property, and procurement of services) aimed at the prevention, containment, mitigation and treatment of epidemiological infection by COVID-19, as well as the restoration of normality following it. The scope of this measure includes both corporate and governmental public sector entities, as well as, with the necessary adaptations, local authorities.

The essential feature of this scheme is the use of the direct adjustment procedure. In addition, the new law provides for, besides the aforementioned direct adjustment modality, the possibility for the contracting entities to resort to the simplified direct agreement scheme (a rather informal procedure) for the formalisation of contracts involving the rental and acquisition of goods and services or the procurement of services (excluding works), as long as the operation does not exceed EUR 20,000 (in practice, four times the general limit that the Public Contracts Code (CCP) currently provides in Article 128).

In an attempt to simplify public procurement, the Decree also rules out the application of the usual impediments of the direct adjustment procurement method, such as that set out in Article 113(2) of the CCP (possibility of inviting an entity with a contract volume having already exceeded a certain limit in the current economic year or in the two preceding years).

It also deviates from the relative preference which should normally be given, within closed procedures (with no public call for tenders), to the prior consultation scheme (which involves the need for the contracting authority to draft an invitation addressed to at least three entities).

It should also be highlighted that due to the major difference with respect to the direct adjustment procedure provided for in the CCP, the provision that the effectiveness of the contract does not depend on its publication in the Base Portal for public contracts. Another particularity also worth noting is the possibility for the contracting authority to make advance payments on account of the contractual price, if and when required in order to guarantee that the economic operator can make the relevant goods and services available to meet the public health interest objectives referred to in the legislation.

Regardless of their value, contracts covered by this Decree Law may start to take effect before their prior approval or declaration of conformity; in particular, payments arising from such contracts may be made.

Last, with special emphasis on public procurement, Article 7 of the Decree Law stands out for the exceptional regime that provides more flexibility regarding the level of authority required to authorise the signing of contracts for the acquisition of services by bodies, agencies, services and other entities, including the corporate public sector, the Ministry of Health, DGRSP, INMLCF, I. P., HFAR, LMPQF and IASFA, I. P. In these cases, the authorisation is the responsibility of the top manager or senior management body, and subsequent communication of the same to the supervising Government members is considered sufficient.

With regard to the exceptional expense authorisation regime, we may summarise the following rules, which apply, exceptionally, to the public procurement procedures carried out under the Decree Law:

- *Tacit approval of expenditure requests after 24 hours without reply (Article 3(1)(a));*

- *Purchases made subject to the Decree Law (Article 3(1)(b)) shall be deemed as justified expenditures for the purposes of these requests for authorisation;*

The decision to contract the acquisition of services aimed at conducting studies, opinions, projects and consulting services, as well as any specialised work, does not require the administrative authorisations provided for in the general law, which will be a responsibility of the member of the Government in charge of the sector area in question (Article 4).

Other measures related to public administration or public services

Mobility restrictions are not applied to:

- a. *Health professionals and civil protection agents;*
 - b. *Holders of political offices, magistrates and leaders of the social partners.*
- *The obligation of regular meetings of municipal councils is suspended; online sessions are authorised.*
- *Online sessions of collegiate bodies, in public and private organisations, are authorised.*
- *The Government may determine the temporary requisition of industries, factories, workshops, fields or facilities of any nature, including health centres, private health services and establishments and the temporary requisition of all types of goods and services, as well as impose mandatory services on any entity, where appropriate and indispensable for the protection of public health.*
- *The possibility of civil requisition by health or civil protection authorities of any goods or services owned by public or private legal entities, such as health equipment, ventilators and protective masks, is foreseen.*
- *As for alternative forms of work, the activity scheme via teleworking becomes mandatory, regardless of the employment relationship, if it is compatible with the functions performed.*
- *Exceptional and temporary measures to foster the acceptance of card-based payments in the context of the COVID-19 pandemic.*