

COVID-19: POTENTIAL LEGAL IMPACT. THE EU'S BORDER MANAGEMENT MEASURES (EU/SPAIN)

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Legal Briefings - By **Antonio Pastor**

With the aim of tackling the crisis caused by the COVID-19 outbreak, Spain has approved a set of provisions with wide-ranging impact across all business sectors; these have been analysed in several newsletters (see [here](#)). In that context, this newsletter analyses the measures that the EU has adopted to manage its borders.

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REINFORCING THE EXTERNAL BORDERS OF EU+

On 17 March 2020, the European Council, a non-legislative EU body that defines the EU's general political priorities, issued new conclusions during its follow-up meeting to combat the COVID-19 crisis in which it endorsed the European Commission's Guidelines on **border management**.

The conclusions and agreements reached by the Heads of State and Government on the European Council are devised to be applied simultaneously and uniformly by the 27 Member States, including the United Kingdom pursuant to the Withdrawal Agreement dated 24 January 2020, as well as by EU institutions. Schengen members may also apply the measures. Specifically, it was agreed to **reinforce the EU's external borders by restricting non-essential travel to the EU from third countries for a period of 30 days**, while allowing the passage of medicines, food and goods. Other agreements refer to **supplies of medical equipment, promoting research into a vaccination for COVID-19**, and **support for the socio-economic measures** proposed by the Euro-group and European Commission.

The territory affected is known as "**EU+**"; that is, the territory of the Member States that are Schengen Member States (plus Bulgaria, Croatia, Cyprus and Romania), the territories of the United Kingdom and Ireland (under a special 'opt in/opt out' regime and which are able to trigger a travel restriction), and the territories of the Schengen Associated States (Iceland, Liechtenstein, Norway and Switzerland). The primary aim of Schengen is to remove border controls (among its Member States) and, therefore, to make their external borders common to all its members (for the nationals of third countries).

RESTRICTIONS ON NON-ESSENTIAL TRAVEL

In a communication to EU institutions on 16 March 2020, the European Commission has justified **travel restrictions** on the need for a coordinated response from the EU and its Member States to protect the public health of its populations and to prevent the virus from further spreading from the EU to other countries.

According to the Communication, essential travel entails: the repatriation of EU nationals (including British nationals pursuant to the Withdrawal Agreement, and nationals of the Schengen area - including their families) from third States; the return of long-term EU residents whatever their nationality; frontier workers; travel by healthcare professionals, health researchers and elderly care professionals; transport personnel engaged in the haulage of goods; diplomats, military personnel and humanitarian aid workers in the exercise of their functions; passengers in transit or who are travelling for imperative family reasons; persons in need of international protection or for humanitarian reasons. In any event, coordinated and reinforced health checks should be carried out on all individuals allowed to enter the EU+ area.

GUIDELINE ON EU+ BORDER MANAGEMENT. POTENTIAL RESTRICTIONS ON GOODS TRANSPORT AND 'GREEN LANES'

As for the European Commission's Guidelines on border management, endorsed by the European Council, it should be pointed out that they are principles of coordination aimed at the Member States to ensure that the measures adopted by the EU and Member States to **protect health** do not undermine the **integrity of the Single Market**.

In the context of **control of the EU's external borders**, the Guidelines establish that anyone, irrespective of their nationality, that crosses the external borders to enter the Schengen area will be subject to systematic checks, including health checks. Member States are able to refuse entry - which must be proportionate and non-discriminatory - to non-resident third country nationals where they present relevant symptoms or have been particularly exposed to risk of infection and are considered to be a threat to public health; alternatively, they may be placed in isolation or quarantined. The Guidelines also allow for the reintroduction of temporary border controls (which must be proportionate and non-discriminatory) at internal borders if justified for reasons of public policy or internal security. Controls must be notified in accordance with the Schengen Borders Code.

In the case of **transport of goods and services**, the European Commission states in the Guidelines that border control measures should not undermine the continuity of economic activity and should preserve the operation of the supply chains. If Member States impose restrictions on the transport of goods and passengers on grounds of public health, those restrictions must be transparent, official and public, must be duly motivated, proportionate, relevant and non-discriminatory. Any restrictions should be notified to the European Commission and to the other Member States before being applied. Indeed, companies should monitor the measures that Member States are able to adopt.

The Guidelines also refer to the need to preserve the **free circulation of all goods**, especially essential products such as medicines, medical equipment, essential foods. With that aim, Member States should designate priority lanes for freight transport, or 'green lanes'. No additional certifications should be imposed on those products and the Member States should ensure constant provisioning to meet social needs. The Guidelines also include measures related to health.

THE MEASURES ADOPTED IN SPAIN

According to the Schengen agreement, and as established by the above EU documents, internal borders may be re-established on grounds of public order and national security, and restrictions may be placed on the movement of foreigners across the external borders.

Indeed, Spain has adopted a number of measures, including Order INT/239/2020, of 16 March, which re-establishes **controls at the internal land borders** due to the health crisis triggered by the COVID-19 outbreak; the Order was issued pursuant to Royal Decree 463/2020, of 14 March, which declares the state of emergency to tackle the health crisis caused by COVID-19. The Order makes it possible to apply restrictions on movement within Spanish territory, on entry into and departure from Spain, and temporarily re-establishes interior border controls, as permitted by the Schengen Borders Code. These measures **do not apply to goods transport** (article one, paragraph 4), only to people wanting to enter Spain; entry will only be permitted in the case of Spanish nationals, Spanish residents, frontier workers, people providing documentary evidence of force majeure or imperative need, diplomats and consular workers travelling in the exercise of their functions. However, the above Royal Decree does ensure the supply of the goods and services necessary to protect public health, and provides for other transport measures to protect people, goods and places. Furthermore, companies should monitor any subsequent actions and provisions that may be adopted in the current situation.

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KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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