

# Today's Presenters



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- European Centre for Disease Prevention and Control (ECDC): **51.771 infected cases** reported in the EU/EEA and UK, **with 2.316 deaths** per 16 March 2020.
- Most impacted European countries: **Italy, Spain, France, Germany and the UK.**
- EU-Institutional response snapshot:
  - **Commission Task Force** coordinating all work streams related to the coronavirus pandemic and liaising daily with Member States.
  - **Financial Aid of €105bn: Corona Response Investment Initiative** of €37bn to support national health sectors, labor markets and SME; €28bn diverted Cohesion fund; EIB loans of €20bn to SMEs; EIB/EU budget: €20bn investments in SME
  - **Flexibility** regarding **EU State Aid** and **Fiscal Rules** ('Stability & Growth Pact').
  - **Guidelines** and legal measures for the supply of personal protective equipment in the EU and ensuring intra-EU trade flows of essential goods and services.
  - **140 million EUR funding for research** on vaccines, diagnosis and treatment.
  - Temporary relieve for **aviation industry**: EU changed airport slot usage obligations.
  - **Von der Leyen**: "EU will do whatever is necessary to support Europeans and the European economy". European Council call on 17/3 to i.a. discuss 30-day travel ban





Commercial – Supply Chain  
Data Protection  
Labour & Employment  
Germany

**What does the contract, including the general terms and conditions (GTC), provide for?**

- Have the GTC been validly included?
- Are the GTC compliant with German law?

**Is it impossible to perform the contractual duties? Or just commercially unreasonable?**

- Alternative options for supply?
- Obligation to have goods in stock?

**What happens with supplies for specific events?**

**How to mitigate risks?**

- Inform your customers
- Explore alternative options of supply early

## Home Office

- **Major challenge:** Significant increase in the desire of employers and employees to have options to work from home at short notice.
- Data privacy and data security requirements in a home office are generally the same as in a “no crisis” setting.
- **Important:** Measures need to be taken to avoid the undesirable mixing of private and business data.
- Temporary use of private hardware of employees should be avoided for data privacy/IT security reasons. Employers should use virtualization applications (e.g., Citrix) via a remote desktop or VPN Tunnel or (mobile) device management tools for private hardware.



- A clear “no go” from a data protection standpoint is the (even temporary) use of a private email account of employees.
- Top priority is a clear technical separation between private and business data to ensure data protection compliance and IT security of the company.
- Also ensure data protection through clear home office policies and *ad hoc* training on data privacy/security at home.

What does compensation for short time work require?

What protections instructions can be given to employees?

How does the situation affect the continued payment of remuneration?

How to apply for?

If there is only a suspicion of infection?

If the employee needs to take care of a sick child?

# COVID-19 Pandemic: Legal and Commercial Insight From Across Europe

France – 17 March 2020



- Stage 3 of the pandemic
- Decision to confine people at their home
- Series of measures by the French government to support businesses
- for example:
  - Delayed payment of social security contribution and taxes
  - Reduction for direct taxes for certain businesses
  - The Banque Publique d'Investissement (BPI) has stood as guarantor for all loans requested by SMEs and mediators help renegotiate reimbursement
  - COVID-19 considered as a “case of force majeure” for public procurement contracts
  - Strengthening and simplification of the partial activity system (partial unemployment)

- A general principle under French employment law: the employer's best effort obligation.
- **General Measures**
  - Obligations vis-à-vis the staff representatives
  - Update of Health & Safety documents
  - General measures of prevention
- **Arrangement of Working Conditions**
  - The Business Continuity Plan (BCP)
  - Adapting work organization
  - Sick leave, paid vacation and "RTT" days-off
- **Emergency Measures**
  - Prohibition of situations generating risks (travels, meeting)
  - Home working
  - Repatriation of employees
  - Restricting or prohibiting access to the premises

- Emergency Measures (continued)
  - Measures for cleaning and disinfecting the premises
  - Self-confinement decided by the employee at-risk or infected employee
  - Set up the partial activity and make a request to the Administration
- Compensation for employees
  - Daily allowances for individuals who are in quarantine and unable to work
  - Sick leave for employees who must look after their child whose school is closed – only if home working is not possible
  - Spreading of social security contributions and taxes for companies facing serious difficulties
- Containment situation
  - Practical impact

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- Recommendations by the French data protection authority (CNIL) on processing of health data by employers
  - Processing for business continuity and health and safety purposes

- Force majeure (FM) applies in all contracts governed by French Law (art 1218 of the French Civil Code)
- It is paramount to check your contracts, and, if any, the exact scope of a contractual FM clause
- Conditions of FM in private law contracts (since October 2016)
  - (i) An irresistible event (beyond the control of the debtor)
  - (ii) An unpredictable event (could not reasonably have been foreseen when the contract is signed)
  - (iii) Whose effects could not be avoided by appropriate measures
  - (iv) The event prevents performance of its obligation by the debtor
- Consequences of FM
  - (i) If the prevention is temporary, performance of the obligation is suspended
  - (ii) If the prevention is permanent, the contract is terminated; parties are discharged from their obligations

- Under French private law, Hardship (“imprévision”) applies in all contracts signed after 1 October 2016. Hardship also applies in Public law contracts
- Article 1195 of the French Civil Code is not mandatory/public order
- It is paramount to check your contracts and the scope of a potential hardship clause which will prevail over the Civil Code article
- Conditions of hardship (under private law)
  - (1) A change of circumstances
  - (2) That the change of circumstances were unforeseeable at the time of the conclusion of the contract
  - (3) The change of circumstances that renders performance excessively onerous
  - (4) For a party who had not accepted the risk of such a change
  - (5) That party may ask the other contracting party to renegotiate the contract
  - The first party must continue to perform its obligations during renegotiation
- Consequences of Hardship : In the case of refusal or the failure of renegotiations
  - (1) Parties may agree to terminate the contract, on the date and on the conditions that they determine, or
  - (2) By a common agreement, ask the court to rule on the adaptation.
  - (3) In the absence of an agreement (within a reasonable time), the court may, at the request of a party, revise the contract or put an end to it, from a date and subject to such conditions as it shall determine.

# COVID-19 Pandemic: Legal and Commercial Insight From Across Europe

Spain – 17 March 2020



- In Spain, we are the second country in Europe in COVID-19, an increasing number of infected, more than 7,000 today and more than 290 deaths. We are receiving a lot of enquiries about the coronavirus disease 2019 (COVID-19), commonly known as the “coronavirus”, and what organizations should be doing to mitigate the impact of the virus on their business, staff, supply chains, etc.
- Here is an overview of the key legal issues for businesses in Spain to consider, together with some practical steps for businesses to take.

# WHAT MEANS THE “STATE OF ALARM” IN ALL THE SPANISH TERRITORY?

- On the 14<sup>th</sup> of March 2020, the Spanish Council of Ministers agreed and issued **Royal Decree 463/2020** by means of which the State of Alarm was put in place for the management of the health crisis caused by COVID-19 (hereinafter, the “*Royal Decree*”).
- The State of Alarm affects **the entire Spanish territory for a period of 15 calendar days**, extendable subject to the approval of the Spanish Parliament (the “*Alarm Period*”).
- Moreover, the Royal Decree also foresees the intervention of the Spanish armed forces, who will have the same status and faculties as the non-military state agents when carrying out the functions set out in the Royal Decree.
- The purpose of this note is to summarize the measures agreed by the Government in the Royal Decree, which includes a general limitation on movement and circulation as well as the general shut down of commercial establishments (with some exceptions):

- **Mobility restrictions of persons and vehicles**
- **Measures affecting the Education sector**
- **Retail and commercial activities and measures in relation to civil and religious ceremonies**
- **Measures to strengthen the National Health System and to ensure the supply of goods and services**
- **Transport restrictions and measures**

**The Royal Decree has entered into force and is fully effective since its publication in the Official Gazette, BOE 67/2020, published on the 14<sup>th</sup> of March 2020.**

Please note that next Tuesday 17<sup>th</sup> of March a cabinet meeting is scheduled to take place and new social, employment, economic, tax and liquidity measures are expected to be issued

In order to provide an overview on the legal consequences of COVID-19 the following Spanish regulations have been analyzed:

- Royal Decree of 24 July 1889 publishing the Civil Code (hereinafter, the "Civil Code").
- Spanish Act 29/1994, of 24 November, on Urban Leases (hereinafter, the "LAU").
- Spanish Case Law.

Spanish Case Law usually consider and accept the situations that are considered to be force majeure in a very restrictive and exhaustive manner.

The declaration of a force majeure scenario must be necessarily analyzed on a case-by-case basis since there is not regulation listing.

- From a tax perspective, in order to mitigate the impact that COVID-19 may have on the most vulnerable sectors of the economy, i.e. SMEs and self-employed individuals, the Spanish tax authorities will allow the deferral of tax payments, provided the following requirements are met:
  - Tax payment due between 13th March and 30th May 2020, both inclusive.
  - Tax due not exceeding Euro 30,000.
  - Only taxpayers with a turnover not exceeding Euro 6,010,121.04 in 2019 will be entitled to request such deferral.
- Finally, the deferral will be granted for a six-months-period and no late payment interest will be accrued during the first three months.

## **1. What are an employer's health and safety obligations in relation to its staff in these circumstances?**

Taking this into account, employers, to the extent possible, should promote teleworking. In such event, employers may be required to provide any additional supplies or equipment necessary to facilitate home working.

## **2. Should employers place restrictions on travels and displacements?**

Yes, companies could place restrictions on business travels and displacements in order to guarantee the health and safety of its employees.

## **3. What should employers do if a member of staff is confirmed as having the virus and has recently been in the workplace?**

In such circumstances, the employer, together with the Health and Safety Prevention Service, must activate any protocol implemented in the company.

#### **4. How should employers deal with a member of staff who refuses to come to work because they are concerned about the risk of infection?**

The absence will be only justified if a medical service orders the employee to self-isolate.

#### **5. What happens with employees affected by the virus?**

They will be considered to be on sick leave. The sick leave period has been considered by our Government (<https://www.boe.es/boe/dias/2020/03/11/pdfs/BOE-A-2020-3434.pdf>; article 5) as an accident at work. This implies that the affected employee will receive a public sick leave benefit equivalent to 75% of his monthly social security contribution base.

### **6. What happens with employees who have to remain at home due to family circumstances (i.e. to take care a minor child or an old/ill relative)?**

Our government has informed that shortly will be implemented a new public benefit to cover these exceptional circumstances.

### **7. Do employers can impose employees to utilise vacation time during this period?**

In Spain, it may not be valid imposing the employees to use paid holiday during these circumstances where the business activity is low as a consequence of the coronavirus.

### **8. If the situation worsens and employers are considering closing one of their sites, do employers have a right to lay off staff in these circumstances? Are employers obliged to continue to pay staff?**

According to Article 47 of the Workers' Statute, employers can apply a temporary employment suspension (ERTE) or a reduction of working hours if economic, technical, organisation, productive or force majeure reasons are met. In normal circumstances this process would include a consultation period

# Question and Answers

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