

# Impact of COVID-19 crisis on Spanish aviation industry



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Aviation, Spain

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## Introduction

The rapid spread of COVID-19 throughout the world has forced many governments to issue emergency legislation, generally in a hurry and as a reaction to a continuously changing scenario. For reasons that will probably be analysed in depth in the coming years, Spain is among the countries which have been hit particularly hard. Since the second week of March 2020, the government has kept producing a steady flow of regulations in an attempt to control what was initially perceived as a health problem and which has evolved into a much deeper economic and social crisis. This article provides a summary of the main pieces of Spanish legislation that affect the aviation industry.

## State of alarm declared

Under the authority afforded by Articles 116.2 of the Constitution and 4(b) of the Organic Act 4/1981 for sanitary crises, on 14 March 2020 the government declared a state of alarm throughout all Spanish territory. Although it was initially planned for 15 days, the state of alarm has been extended a couple of times and it now looks as if there will be another extension until mid-May 2020.

As a result of this declaration, with a few exceptions all public spaces, restaurants and retail shops were closed and hotel activities and all public festivities suspended. All hotels, apart-hotels, camping sites and, in general, all short-term tourist accommodation throughout Spain were to be progressively closed by 26 March 2020. Restrictions on the free circulation of people were imposed and the government was allowed to order the temporary requisition of certain essential assets.

## Flight restrictions

Even before the state of alarm was declared, and although the World Health Organisation had not yet declared COVID-19 to be a pandemic, in early March 2020 it became apparent that Europe was facing a serious problem, with Italy at its heart. Coinciding with Italy's decision to close its borders, on 10 March 2020 all flights from Italian airports

to Spanish airports were forbidden as of the following day. This prohibition is still in force and only state aircraft, non-commercial stopovers, cargo flights, positioning flights, as well as humanitarian, medical, emergency and repatriation services are exempted.

### **Reduction of air operations**

When declaring the state of alarm, the government ordered all air carriers to reduce their operations by at least 50%, with some exceptions for transport between mainland Spain and the Balearic Islands, the Canary Islands, Ceuta and Melilla. Subsequently, this reduction was increased to 70%.

Further, domestic flights were stopped. On 17 March 2020 all flights between the Spanish mainland and the cities of Ceuta and Melilla (both on the Mediterranean coast of Africa, were forbidden. The local authorities were given the power to issue special permits in exceptional circumstances.

Similar decisions were taken in respect of the routes between the Spanish mainland and the Canary Islands and the Balearic Islands. However, to ensure the connection with these regions, the government approved a maximum number of flights between Madrid, Barcelona and several airports on those islands, as well as among the islands themselves. Passengers who wish to board such flights must justify the need for the trip.

On 23 March 2020 the government restricted entry into Spain of all non-EU and non-Schengen citizens, with a few exceptions such as diplomatic personnel, cross-border workers and the like. This meant in practice that international flights had to be stopped as well. Flight operations personnel devoted to commercial air traffic (mainly cargo) are specifically exempted from these restrictions. This measure essentially forced all Spanish carriers to ground most of their fleets.

### **Licensing requirements**

Approximately two weeks after declaring a state of alarm, the Spanish State Aviation Agency (AESA) began issuing regulations to deal with the upcoming expiry of flight permits and aeronautical licences.

First, it ruled that all licences, permits and certificates issued to carry out civil aviation activities which are not covered by EU Regulation 2018/1139 would be extended for four months. This extension basically covers licences granted to operators in the areas of firefighting, search and rescue, as well as their pilots and instructors. Further, holders of maintenance, repair and overhaul, aerodrome flight information service and airport platform licences which expire on or before 31 July 2020 benefit from a four-month extension.

Second, the AESA provided alternative means of compliance to the requirements set out in certain EU regulations relating to holders of licences as commercial pilots, instructors, examiners, air traffic controllers, cabin crew and mechanics. The AESA also allowed for temporary alternative means for airlines to publish their activity schedules.

In its most recent decision, the AESA has acknowledged that airworthiness maintenance organisations may have problems in carrying out their activities due to the existing travel restrictions. Hence, in accordance with EU Regulation 2018/1139, the AESA has granted an exemption to airworthiness review certificates (ARC) in respect certain aspects of Part-M, Part-ML and Part 66. Additionally, ARCs which expire before 31 July 2020 have been extended for six months, under certain conditions, subject to prior request from the relevant organisation addressed to the AESA.

### **Consumer protection measures**

Pursuant to the emergency legislation, when selling airline tickets online, the offeror must now insert a clearly visible message where it advises against travel save for unavoidable circumstances. On 15 March 2020 the Ministry of Transport issued an order providing the official template of such announcement, which is mandatory as of 17 March 2020. Users must expressly understand and agree with the message by clicking on a button stating, "I understand the warning". The message must stay on the sellers' websites until the state of alarm has been lifted or until ordered otherwise.

In a later legislative package, the government awarded consumers the right to terminate consumer contracts (whether purchase agreements or services agreements) within 14 days if they cannot comply with them. This affects particularly air tickets, package travel holidays and similar products acquired in advance by consumers, who are now in a position to cancel them. Although a good faith negotiation among the parties is contemplated, companies must return the monies received from consumers if no agreement is reached. Combined with similar provisions set out in EU Regulation 261/2004, this is one of the points which the aviation industry is trying to amend given the devastating effects that it might have on their finances.

The Spanish judiciary anticipates that a large number of passenger claims will enter the court system in the coming weeks. To avoid being overflowed with work, an analysis is being conducted of whether all such complaints should be settled through a mandatory arbitration procedure under the control of AESA.

### **Court and administrative proceedings and actions**

With a few exceptions, all ongoing legal proceedings, judicial procedural time periods and deadlines are suspended. Judges are nevertheless allowed to carry out all judicial actions which may be necessary to avoid "irreparable harm" being caused to the legitimate rights and interests of the parties (it is questionable whether this applies to aircraft finance transactions and leases).

Similarly, with a few exceptions, all administrative time periods are suspended, which is notable for carriers with ongoing administrative proceedings, such as AESA penalties.

All time periods relating to civil and commercial actions are suspended (this applies to all types of claim, such as passenger rights claims and events of default under aircraft leases, which will be difficult to calculate when the state of alarm is lifted).

### **Labour law measures**

On 17 March 2020 the government approved a package to provide flexibility to mechanisms for temporary lay-offs or a reduction of working hours directly based on the loss of activity caused by COVID-19, but only for as long as the state of alarm is in force. All Spanish airlines have made use of these mechanisms, but the timing limitation raises questions about the decisions that the aviation industry will face once the state of alarm is lifted, because all forecasts seem to indicate that recovery will be gradual.

With the idea of further reducing mobility, on 29 March 2020 the government closed all non-essential industries in Spain. To this end, it ordered that all employees of such industries be put on paid leave between 30 March 2020 and 9 April 2020. The time not worked is to be recovered, by agreement between employers and employees (individually or through trade unions) before 31 December 2020. However, enterprises can maintain a minimum level of activity to take care of those processes which are unavoidable, such as the performance of storage maintenance on aircraft. Further, the transportation of people and cargo are considered to be essential services (and can thus be performed), but only to the extent expressly allowed under the state of alarm regulations. Finally, enterprises devoted to the distribution of products acquired online or through other means of distance sales are allowed to continue their activity, which has allowed air cargo operators to continue flying.

### **Government-backed loans**

The Ministry of Economy has opened a credit line of up to €100,000 million to inject cash into the economy. This will be channelled through the Institute of Official Credit (ICO) in various tranches. Interested parties must address their requests for loans to cover their cash flow requirements arising from the COVID-19 crisis through the commercial banking system, and the ICO guarantees up to 80% of such loans. The first tranche of €10,000 million has already been exhausted and a second tranche has been opened.

### **Company law measures**

Special measures have been taken concerning the passing of resolutions by companies and the filing of their annual accounts. The government has allowed for meetings of companies' boards of directors and shareholders to be held via teleconferencing and similar mechanisms. The obligation to prepare the annual accounts within three months from the end of the financial year has been suspended for companies whose deadline expires within the duration of the

alarm status. The computation of said obligation will restart once the alarm status has ended, for another three months from said date, and a similar extension of deadlines is given to approve and submit the accounts to the Commercial Registry.

### **Insolvency law measures**

During the state of alarm and for two months thereafter, debtors are exempted from their obligation to apply for voluntary insolvency even if the objective conditions set out in the Insolvency Act are given. Creditors are neither allowed to request a forced insolvency. This provides airlines with a protective shield, at least for the immediate future.

### **Measures concerning foreign investment**

The liberalisation regime relating to direct foreign investments is temporarily suspended in respect of certain industries and specifically transport and airspace infrastructures, air and space technology. A suspension has also been ordered where the investment is made by foreign governments. Consequently, all such investments must be authorised by the Council of Ministers. The government can extend the suspension to other industries.

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