

The new normal? COVID-19 legislation: travel restrictions

27 January 2021 | Contributed by [Augusta Abogados](#)

Introduction

Travel restrictions

Introduction

Since the World Health Organisation declared the COVID-19 outbreak a pandemic on 11 March 2020, governments worldwide have made significant efforts to cope with this unforeseen situation and control the spread of the virus. Numerous legal provisions, both temporary and permanent, have been introduced in an attempt to strike a delicate balance between public health and safety, individual freedoms and economic stability. As a result, a complex maze of laws, regulations, directives, recommendations and instructions has made it difficult to identify the obligations of air passengers.

This article is the third in a series which provides a snapshot of new Spanish legislation that affects the air travel industry. ⁽¹⁾ At the time of writing, the pandemic is far from under control, although substantial progress has been made with the approval of rapid detection tests and the imminent deployment of vaccines.

Nonetheless, many of the measures passed by governments in recent months appear to be here to stay, so this series may also provide a glimpse of the new normal insofar as aviation legislation is concerned.

Travel restrictions

EU recommendations

In order to protect their citizens, most governments introduced travel bans or restrictions at the start of the pandemic, often citing 'public order' or 'public safety' to override existing domestic and international legal provisions. The European Commission was naturally wary of such restrictions, and on 30 March 2020 it published Communication 2020/C 102 I/02, which provided guidance on:

- the implementation of temporary restrictions on non-essential travel to the European Union;
- the facilitation of transit arrangements for the repatriation of EU citizens; and
- the effects of such measures on visa policy.

On 12 June 2020, in anticipation of the lifting of non-essential travel bans, the European Commission issued Communication 2020/C 197 I/01 (Guidance for a Phased and Coordinated Resumption of Visa Operations), whereby it encouraged member states to start preparing for the development of new protocols and provided a series of common principles for visa operations. Further, by way of EU Recommendation 2020/912 on the temporary restriction of non-essential travel into the European Union and the possible lifting of such restriction, member states were asked to gradually lift the temporary restrictions with regard to residents of third countries listed in an annex from 1 July 2020.

Spanish restrictions

Further to said EU recommendations, on 17 July 2020 the Spanish government published Order INT/657/2020 on temporary restrictions on travel (which has been extended and amended many times since). Essentially, travel restrictions are in place until at least 31 January 2021 and will in all likelihood be extended. Spain has established temporary controls at its intra-EU borders. At present, only the following people are allowed to enter Spain by air:

- persons whose habitual residence is in the European Union or a specified associated country;
- holders of long-stay visas issued by EU member states or Schengen countries who are in transit to the relevant country;
- sanitary personnel who need to enter Spain for work reasons;
- personnel employed in the transport industry who need to enter Spain for work reasons;

AUTHOR

**Sergi
Giménez
Binder**



- diplomatic personnel;
- students in EU member states or Schengen countries who are in transit to the relevant country;
- highly qualified employees, including athletes;
- people travelling for imperative family reasons;
- people in situations of need or *force majeure*; and
- residents in certain third countries (as listed in an annex), if they arrive directly from such countries, have stayed only in countries on the list or have remained in international transit at airports in countries not included on the list. This list is reviewed and updated, if needed, on a bi-weekly basis and currently includes Australia, Japan, New Zealand, Rwanda, Singapore, South Korea, Thailand, China (subject to reciprocity), Hong Kong (subject to reciprocity) and Macau (subject to reciprocity).

Further EU measures in response to second wave

On 13 October 2020, in light of the second wave of the pandemic that hit most European countries in Autumn 2020, the European Commission published EU Recommendation 2020/1475 on a coordinated approach to the restriction of free movement in response to the COVID-19 pandemic. This recommendation:

- establishes general principles on which member states should base their measures to protect public health;
- establishes common criteria that member states should take into account when considering the restriction of free movement;
- asks the European Centre for Disease Control to publish a map, broken down by regions, marking areas as 'green', 'orange', 'red' or 'grey', to assist member states in their decision making; and
- fixes a common framework regarding possible measures for travellers from high-risk areas.

On 30 October 2020 EU Recommendation 2020/1632 on a coordinated approach to the restriction of free movement in response to the COVID-19 pandemic in the Schengen area was issued. This recommendation asks member states to apply the principles, common criteria and common framework of measures set out in EU Recommendation 2020/1475 when ensuring, within the Schengen area, the absence of checks on persons, whatever their nationality, at internal borders.

Spanish measures on sanitary controls at airports

On 11 November 2020 Spain implemented the above EU recommendations by way of a General Directorate of Public Health resolution relating to sanitary controls at Spanish entry points. Thus, the following rules apply from 23 November 2020 until the government declares an end to the sanitary crisis:

- With the exception of children under six, all passengers arriving by air or sea whose final destination is Spain must undergo sanitary controls before entering the country. These controls do not apply to passengers in transit.
- The maximum admissible temperature of a person is 37.5 degrees Celsius. Temperature checks must be carried out using a contactless thermometer or thermographic camera.
- All passengers travelling from abroad must complete and submit a Sanitary Control Form electronically before travelling to Spain online at 'www.spth.gob.es' or via the Spain Travel Health-SpTH app. At the end of the process, passengers will receive a QR code, which they must show when entering Spain. As an exception, the form can also be submitted in paper format.
- Passengers arriving from certain high-risk countries, listed in an annex, must obtain a negative polymerase chain reaction (PCR) test within 72 hours prior to their arrival in Spain. As evidence of their test results, passengers must provide a document written in Spanish, English, French or German which sets out, at a minimum:
 - their name;
 - their passport or ID card number;
 - the date of their test;
 - the contact details of the laboratory where the test was carried out;
 - the method used for the test; and
 - the result of the test.

Documents written in other languages require an official Spanish translation.

- Passengers who cannot adequately prove their test results may be requested to undergo a test on their arrival in Spain.
- Although the resolution states that only PCR tests are acceptable, the Directorate General of Public Health resolution of 9 December 2020 has been amended to include transcription mediated amplification and other equivalent molecular techniques.
- All enterprises involved in the transport industry (eg, travel agencies, airlines and tourism operators) must inform passengers at the start of the sales process of the requirement to submit a Sanitary Control Form and ensure that they can access such form. They must also inform passengers of the need to undergo a PCR

test if the passengers originate from a high-risk country.

- Before allowing passengers to board a plane, airlines must verify that they have the QR code and, if applicable, their PCR test results. Airlines must check only that the documents are available and must not analyse their content.
- If it is determined during the documentary or sanitary control process that a passenger may have COVID-19, the passenger may be requested to undergo a PCR test or be asked to take one within 48 hours from their arrival in Spain.
- If it is determined during the documentary or sanitary control process that a passenger may have COVID-19 or another disease which may affect public health, or has been in close contact with COVID-19-infected people, a medical evaluation must take place. Should the passenger test positive, the protocols for transporting them to a medical centre will be activated.

The list of high-risk countries is reviewed every two weeks and published on the Ministry of Health's website ('www.mscbs.gob.es') or at 'www.spth.gob.es'. The new lists take effect within seven days of their publication to enable airlines, travel agencies and touristic operators to adjust their customer information. The current list includes the following countries and regions:

- European Union – all countries and regions marked 'red' or 'grey' as per Council Recommendation 2020/1475; and
- non-EU countries – countries with an accumulated incidence of more than 150 per 100,000 inhabitants within 14 days, as published by the European Centre for Disease Prevention and Control.

Rapid antigen tests

Although Spain has declared that only PCR tests are acceptable to gain entry into the country, due to the quick evolution of tests to detect COVID-19, on 18 November 2020 the European Commission published EU Recommendation 2020/1743 on the use of rapid antigen tests for the diagnosis of SARS-CoV-2 infection to ensure the free movement of persons and the functioning of the internal market. This recommendation sets out guidance for member states regarding the use of rapid antigen tests to detect SARS-CoV-2 and recommends that rapid antigen tests be conducted in addition to reverse transcription-PCR tests in clearly defined settings where the deployment of antigen tests is appropriate, with the aim of:

- containing the spread of COVID-19;
- detecting SARS-CoV-2 infections; and
- limiting isolation and quarantine measures.

The Spanish government is expected to pass legislation shortly to account for this latest EU recommendation.

Restrictions on UK flights

In light of the discovery of a new variant of COVID-19 in the United Kingdom, and to mitigate its potential impact in Spain, on 22 December 2020 the Spanish government issued Order PCM/1237/2020, limiting flights from UK airports to aircraft exclusively transporting Spanish or Andorran citizens or residents. Other types of flight or aircraft (eg, state aircraft, search and rescue flights, non-commercial stopovers in Spain, cargo flights, positioning flights and humanitarian and medical emergency flights) are not covered by the restrictions. Initially intended to expire on 5 January 2021, and taking into account that the situation in the United Kingdom remains high risk, the restrictions have been subsequently extended until 2 February 2021 by Orders PCM/1295/2020 and PCM/14/2021.

For further information on this topic please contact [Sergi Giménez Binder](mailto:Sergi.Gimenez.Binder@augustaabogados.com) at Augusta Abogados by telephone (+34 933 621 620) or email (s.gimenez@augustaabogados.com). The Augusta Abogados website can be accessed at www.augustaabogados.com.

Endnotes

(1) For the first article in the series please see "[The new normal? COVID-19 legislation: subsidies, consumer protection and air transport](#)" and "[The new normal? COVID-19 legislation: safety measures](#)".

The materials contained on this website are for general information purposes only and are subject to the [disclaimer](#).