

APRIL 2020

COVID 19

IMMIGRATION AND BORDER CONTROL MEASURES

Following the epidemiological situation caused by the SARS-CoV-2 coronavirus, the COVID-19 disease and the subsequent declaration of the State of Emergency on 18th March, several pieces of legislation were adopted regarding Immigration and Border Control. In this information note, we list the main measures approved.

A. Border Control

The following exceptional measures were established for border control of the national territory:

1. Ban of air traffic, to and from Portugal, from all flights to and from countries outside the European Union, with the exception of:
 - a) Countries in the Schengen Area (Liechtenstein, Norway, Iceland and Switzerland);
 - b) Portuguese-speaking countries (originating in Brazil, however, only flights to and from São Paulo and to and from Rio de Janeiro will be admitted);
 - c) The United Kingdom, the United States of America, Venezuela, Canada and South Africa, given the presence of important Portuguese communities.

This ban does not apply yet:

- a. To flights allowing nationals or residence permit holders to return to Portugal;
- b. To flights intended to allow foreign nationals in Portugal to return to their respective countries, provided such flights are promoted by those countries' competent authorities, subject to request and prior agreement, and in compliance with the principle of reciprocity;
- c. To state aircraft and the armed forces;
- d. To flights for the exclusive transport of cargo and mail, humanitarian or emergency medical flights and technical stopovers for non-commercial purposes.

The air traffic ban will be in force until 17th April 2020.

2. Restriction of non-essential travel to the European Union;

3. Entry authorization of passengers by SEF¹, in Portugal, when the obligations imposed by the Directorate General of Health are met, only for the following categories of passengers:
 - a. Nationals of a Member State of the European Union, of Schengen Area countries allowed under no. 1, and members of their families;
 - b. Passengers on flights from Portuguese-speaking countries, South Africa, Canada, the United States of America, the United Kingdom and Venezuela, allowed in accordance with no. 1, and provided that reciprocal treatment of Portuguese citizens is guaranteed in those countries;
 - c. To citizens holding a residence permit;
 - d. To health professionals and researchers in the area of health, and humanitarian aid workers, as long as in the exercise of their functions;
 - e. To persons issued with an identity document by the Ministry of Foreign Affairs;
 - f. To citizens repatriated through the consular assistance mechanism;
 - g. To applicants to international protection;
 - h. To citizens travelling for duly substantiated urgent professional reasons;
 - i. To nationals of Portuguese-speaking countries under health protocols concluded for urgent and unavoidable medical acts;
 - j. To citizens whose entry is justified on humanitarian grounds.
4. Reinstatement of the control of persons at the Portuguese internal borders until 15th April 2020, without prejudice of reassessment every 10 days and possible extension;
5. Suspension of all flights by all airlines, commercial or private, from or to Spain or Italy to or from Portuguese airports or aerodromes, with the exception of State aircraft, armed forces aircraft, flights for the transport of cargo and mail, as well as humanitarian or emergency medical flights and technical stopovers for non-commercial purposes.

B. Closure of premises or suspension of face-to-face service

Any administrative entities where procedural or process acts must be performed, such as SEF may, by decision of a public authority based on COVID-19 risk of contagion, be closed or suspend the face-to-face service.

¹ Immigration and Border Services

The deadline for performing the act in question shall also be considered suspended from the day of the closure or suspension of service.

C. Fair impediment, grounds for absences and postponement of process and procedural steps

Regarding the practice of process and procedural acts that must be performed in person before SEF in case of non-attendance in any scheduling or its postponement, the presentation of a declaration issued by a health authority attesting the need for an isolation period due to possible risk of COVID-19 infectiousness shall constitute sufficient grounds for fair impediment.

D. Admissibility of expired documents

The public authorities accept, for all legal purposes, the display of documents to be renewed of which validity expires on 14th March 2020 or on the 15 days immediately preceding or following.

Identification documents, as well as documents and visas related to the continuity in national territory, of which validity expires from 14th March 2020, are accepted, in the same terms, until 30th June 2020.

E. Exceptional rules regarding appointments at SEF

In order to guarantee the rights of all foreign nationals with pending cases, exceptional rules on appointments at SEF have been established, namely:

1. The presence of foreign citizens in national territory with pending processes with SEF, who have submitted applications under Law no. 23/2007 of 4th July² or Law no. 26/2014 of 5th May³, shall be considered regular as of 18th March, when the State of National Emergency was declared.
2. In order to evidence their regular permanence on national territory, such citizens shall produce one of the following documents:

² Legal framework for entry, stay, exit and removal of foreigners from national territory.

³ Establishing the conditions and procedures for granting asylum or subsidiary protection and the statuses of asylum seeker, refugee and subsidiary protection.

- a. An expression of interest document or request issued by the registration platforms in use at SEF, for applications submitted under articles 88, 89 and 90-A⁴ of the legal framework for entry, stay, exit and removal of foreigners from national territory;
- b. A document proving the appointment scheduling at SEF or a receipt proving the submission of the application in other situations of pending proceedings before SEF, namely concessions or renewals of residence permits, either within the general regime or the exceptional regimes.

The documents referred to in the previous paragraph shall be considered valid before all public services.

3. Scheduling of an appointment by justified decision of the Regional Directors is possible in the following urgent situations:
 - a. Citizens who need to travel or evidence the urgent and unavoidable need to leave the national territory for imponderable and unavoidable reasons;
 - b. Citizens whose documents have been stolen or lost.
4. The remaining appointments are suspended and all appointments scheduled up to 27th March 2020 will be rescheduled en bloc, starting on 1st July 2020, in chronological order, guaranteeing equal treatment among foreign citizens.

We will update this information as and when legislation amending or supplementing the above is published.

PARES | Advogados is available to provide information on the consequences on Immigration and Border Control arising from the exceptional and temporary measures adopted to mitigate the effects of Covid 19 in a more detailed fashion that will suit the specific reality of each client.

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⁴ Article 90-A refers to cases of residence permit for investment, better known as *Gold enVisa*.