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# COVID-19 Legal Insights



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1. **Emergency Situation Certificate issued, on request, by the Ministry of Economy, Energy and Business Environment**

## Emergency Situation Certificates: How to obtain them and what are their legal effects

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This document contains a summary of the main provisions of Order No. 791/25 March 2020 of the Ministry of Economy, Energy and Business Environment (the “**Order**”), which sets forth the procedure and conditions in which Emergency Situation Certificates (“**ESC**”) are released by the Ministry of Economy, Energy and Business Environment on request of the economic operators whose activity is affected in the context of the COVID-19 epidemic.

### 1. **Who may apply for an ESC?**

Any economic operator may apply for an ESC, including applicants that are not registered with the Trade Register, if:

- a) It is affected by the measures taken by the competent authorities considering the state of emergency and who entirely or completely ceased their activity as a result of such measures, for the type 1 (blue) certificate; or
- b) It suffered a decrease in its income in March 2020 by at least 25% as opposed to the average income earned between January and February 2020, for the type 2 (yellow) certificate.

ESCs shall be granted by the Ministry of Economy, Energy and Business Environment only while the state of emergency is effective (*i.e.* until 16 April 2020).

### 2. **What are ESCs used for?**

ESCs may be used by economic operators:

- a) In their dealing with public authorities in order to receive relief or support;
- b) In their business relations (e.g. as basis for renegotiating specific contracts).

ESCs may be used in one of the following cases:

- a) By the employers that entirely or partially ceased their activity in accordance with the

decisions of the competent authorities, who may request the State's support in order to pay benefits for temporary suspension of employment (as per the Government Emergency Ordinance No. 30/2020);

- b) By the small and medium enterprises that entirely or partially ceased their activity in accordance with the decisions of the competent authorities, who can request the postponement of the payment of utilities and rent (as per the Government Emergency Ordinance No. 29/2020).

### **3. May ESCs be assimilated to force majeure certificates?**

In principle, the assimilation may only be partial. ESC rather appears to be a document facilitating the claim of force majeure or the access to certain benefits subject to the conditions set forth in the above-mentioned special regulations (Government Emergency Ordinance No. 30/2020 and Government Emergency Ordinance No. 29/2020). An ESC is not a prerequisite for invoking the force majeure as per the Civil Code. The party concerned shall be free to apply for the issuance of a force majeure certificate or to resort to the applicable contractual clauses.

### **4. How to apply for a ESC**

Economic operators that wish to obtain an ESC shall have to file an electronic application via <http://prevenire.gov.ro/>, a platform which shall be adjusted accordingly within 5 days after the Order is published in the Official Journal. The list of necessary documents is attached hereto.

### **5. The signatures on the documents underlying the ESC application**

All documents uploaded in the electronic application shall be signed electronically. The Order allows submission of documents electronically signed by a third party (a proxy of the economic operator) if the legal representative of the operator does not have an electronic signature. In this case, the legal representative shall sign by hand all required documents, and the proxy shall apply the electronic signature on each document and upload them onto the electronic platform.

It is unclear whether the authorities will request for an extended electronic signature to be applied. We tend to believe that, given the current state of emergency and the need to limit inter-personal contact, a simple electronic signature should suffice. If the applicants or their proxies should use an extended electronic signature and they do not already have it, the process of issuing the ESC shall become lengthier and additional risks could occur in terms of the pandemic spread.

### **6. How ESCs are issued**

In accordance with the Order, ESCs shall be issued automatically from the platform <http://prevenire.gov.ro/>, after the application is validated by the system.

ESCs shall be issued electronically and sent by e-mail, via the application. ESCs are valid without signature and stamp and are verifiable on <http://prevenire.gov.ro/>, based on their series and

number.

Please note that ESCs are issued automatically, therefore mainly based on an affidavit issued by the applicant economic operator. Consequently, the Order sets forth that the relevant authorities are entitled to conduct inspections and controls with respect to the issued ESCs and thus check the documents that the applicants' affidavit relied on. If such inspection or control finds reasonable suspicions that the ESC was obtained in breach of the applicable legal provisions or without the applicant's true de facto or de jure situation being attested, the matter shall be referred to the bodies entitled to impose penalties.

## Appendix

### List of documents to be submitted together with the application for ESC:

- a) Identification details of the economic operator, such as: (i) copy of the certificate of registration with the Trade Register; (ii) copy of the tax registration certificate; (iii) copies of the identity documents of the director/legal representative; (iv) a status certificate recently issued by the National Trade Register Office; (v) power of attorney granted by the economic operator for the electronic signature to be applied on the documents; (vi) if the applicant is not registered with the Trade Register, any documents confirming registration with other relevant authority and documents attesting to the licensing of the activity;
- b) An affidavit given by the legal representative of the economic operator, attesting that all information and documents underlying the ESC application are true and observe the laws applicable for the type of ESC requested.

The Order does not provide a list of the documents and information justifying the ESC application submitted by an economic operator. In our opinion, the affidavit could be accompanied by the following:

- a) If a Type-1 ESC is applied for, data related to the complete or partial cease of activity further to the decisions issued by the relevant public authorities while the state of emergency is effective;
- b) If a Type-2 ESC is applied for, documents (e.g. accounting documents) indicating a decrease by minimum 25% in the amounts earned in March 2020 as opposed to the average income earned between January and February 2020.

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## Editors

**COVID-19 - Legal Insights** is our response to the COVID-19 outbreak. We shall keep you informed on the various legal challenges posed by the coronavirus, thanks to a dedicated practice group comprising lawyers with different backgrounds, such as compliance/regulatory, corporate and commercial, insurance, labour and employment, litigation and arbitration, insolvency, public procurement, data privacy, tax and customs. In addition, our taskforce offers strategic advice on crisis-specific matters: corporate restructuring, review and (re)negotiation of agreements (including collective bargaining agreements and individual employment contracts), performance of the contracts which are affected by force majeure and hardship, unblocking pre-litigation relationships, etc. To be up to date with the news in these matters, you may access the resources available at the following link: <http://www.tuca.ro/covid-19/>



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