

16 March 2020

COVID-19 Legal Insights



In this issue:

1. Emergency Status in Romania. The Decree

Are you affected? The decree establishing an emergency status in Romania has just been published.

This document provides a summary of the main economic measures ordered by the Decree No. 195/16.03.2020 of the President of Romania (the “Decree”), which established a state of emergency for the whole territory of Romania. We shall not discuss in this document measures applicable in such particular areas as employment, healthcare services or criminal law proceedings, which will be addressed in subsequent analyses.

The Decree provides for two categories of measures, one of immediate application (Annex 1) and a second one of gradual application (Annex 2), to be implemented subsequently by the relevant authorities, depending on the evolution of the epidemic.

The Decree is subject to approval by the Parliament within 5 days.

The emergency status has been established for a period of 30 days, commencing on 16 March 2020.

1. Support schemes for businesses

The Government shall have the power to approve measures of support for all economic agents affected by Covid-19. There is no indication in the Decree about the contents of such measures, which are left to future determination by the Government.

2. Requisitions and community service. Direct acquisitions

The authorities will enjoy a relatively wide discretion to order requisitions. Central public authorities may order the requisition of facilities for the production of material and equipment which is necessary to combat the Covid-19 epidemic (Article 9, Annex 1).

Also, the Ministry of Internal Affairs needs to review and make proposals for the use of certain material and human resources with a view to give support to the affected population and in order to satisfy the requests for products and services by the institutions acting in the area of defense, public order and national security. The relevant authorities may order the requisition of such assets and issue a call to community service. This is a measure of immediate application (Article 52, Annex 1).

Stocks, production and distribution facilities, protection equipment, disinfectant and medicine used or usable in the treatment of Covid-19 may also be subjected to requisitions. This is defined as a measure of gradual application, to be approved by order of the Minister of Internal Affairs, subject to the agreement of the Prime Minister (Article 7, Annex 2).

Acquisitions of material and equipment necessary to fight the epidemic are exempt from competitive bidding under the public procurement rules (Article 10, Annex 1).

We shall review the basic legal framework of requisitions in a future release of our legal alerts.

3. A regulation for force majeure certificates?

Economic agents affected by Covid-19 may apply for the issuance of “emergency situation certificates”, on the basis of “justifying documents”. The competent authority is the Minister of Economy. There is no clear mention in the Decree about the procedure to obtain these certificates or if they could actually be used as evidence of force majeure, but it appears that this will likely be the case (Article 12, Annex 1).

While it may be too early to speculate, it is possible that the business stimulus to be approved by the Government could be directed to holders of such certificates.

4. Continuity of essential services

The Decree requires the adoption of measures aimed at ensuring business continuity in the supply, as well as in the extraction, production, processing, transport, distribution, delivery, maintenance, repair of resources and of raw and/or semi-processed materials necessary for proper and continuous operation of the national energy system and of public utility services (Article 13, Annex 1).

Prices for medicine, medical equipment, strict necessity food supplies and of public utility services (power, thermal energy, gas, water supply, waste management, fossil fuel etc.) shall be limited to the average price of the 3 months preceding 16 March 2020 (Article 15, Annex 1).

5. Prorogation of authorizations and permits

Documents issued by public authorities due to expire during the state of emergency period shall remain valid. No new date is set for their expiry (Article 14, Annex 1).

6. Prescription terms are suspended

All prescription and forfeiture terms (Romanian: *termene de prescripție și de decădere*) are suspended or do not commence running throughout the duration of the state of emergency (Article 41, Annex 1).

7. Commercial and civil litigation is stayed

According to the Decree, all “civil” cases are automatically suspended. Civil cases will include, among others, commercial and administrative litigation. However, the courts may continue to examine urgent matters. The list of those matters will be established by the Management Committee of the

High Court of Cassation and Justice or, as the case may, of the Courts of Appeal. Hearings may be held by videoconference and documents may be communicated by e-mail or fax.

Forced execution proceedings will continue only insofar as the rules of sanitary discipline may be effectively observed. Such rules are to be established by the National Committee for Special Emergency Situations.

Terms of appeal are interrupted and will recommence after the state of emergency is terminated (Article 42, Annex 1).

8. Restrictions on personal contact

All teaching activities in any learning institution are suspended until the end of the state of emergency (Article 49, Annex 1).

The authorities have the duty to limit to the greatest extent possible any personal contact and use electronic means of communications instead (Article 50, Annex 1).

9. Fake news will be eliminated

The National Authority for Regulation and Administration in Communications has the power to order the immediate interruption of any transmission or deletion of any content which promotes fake news in connection with the development of the Covid-19 epidemic and the protective and preventive measures. Access of users from Romania to fake news content published or transmitted from abroad can also be blocked (Article 54, Annex 1).

10. Closure of borders and travel bans

The closure of borders is foreseen as a gradual application measure. It is not going to be applicable from the date of the Decree, but it may be subsequently ordered by the Minister of Internal Affairs, subject to the agreement of the Prime Minister. The Minister will decide by way of a military ordinance.

The travel ban is also a gradual application measure. All vehicle traffic or the free circulation of persons may be restricted or forbidden to and from certain defined areas. Also, the authorities will have the power to suspend road, rail, sea, fluvial or air traffic on certain defined routes and of the metro (Articles 3 and 4, Annex 2).

11. Temporary closure of public locales

Restaurants, hotels, cafes, clubs, casinos, offices of associations and other public locales may be temporarily closed by order of the Minister of Internal Affairs, subject to the agreement of the Prime Minister (Article 5, Annex 2).

12. Conclusions

The Decree does not by itself establish the expected restrictions on travel within the country or abroad or bans on the operation of businesses. Notwithstanding, the Decree does create the legal framework

for the future implementation of such restrictive measures. The main authorities vested with decision-making powers on the basis of the Decree are the Ministry of Internal Affairs and the Prime-Minister.

13. Further assistance

Our firm supports all measures intended to limit the spread of the Covid-19 epidemic. Our work capabilities remain unaffected, as the vast majority of our personnel is fully capable to work remotely in order to give support to all affected by the ongoing developments.

cornel.popa@tuca.ro

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 keep abreast of developments, please feel free to regularly check our dedicated online resource: <http://www.tuca.ro/covid-19/>



Cornel Popa
Partner
+4 021 204 88 94
cornel.popa@tuca.ro

TUCA ZBARCEA ASOCIATII

Șos. Nicolae Titulescu nr. 4-8
America House, Aripa de Vest, et. 8
Sector 1, 011141, București, România
T + 4 021 204 88 90
F + 4 021 204 88 99
E office@tuca.ro
www.tuca.ro

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