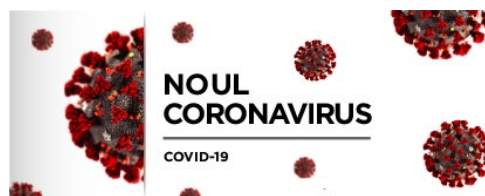


WHAT IS THE STATE OF EMERGENCY?

On March 17, 2020 the Parliament in premiere [declared](#) the state of emergency throughout the territory of the Republic of Moldova, until May 15, 2020.



On the same date, the special Law No.212/2004 on the State of Emergency, Siege and War was amended, by which:

- a) it was allowed to apply during the state of emergency other necessary measures, beside those expressly provided by law, and
- b) the Commission for Exceptional Situations (CES), the Civil Protection Service (CPS) and the Ministry of Internal Affairs (MIA) were allowed to exercise other necessary powers, beside those expressly provided by law.

These actions were preceded by several decisions of the National Extraordinary Public Health Commission (all Commission decisions can be accessed [here](#)), which instituted several preventive measures and restrictions specific to the state of emergency, including

- 1) stopping the regular passenger air flights (including charter) and international passenger rail routes between March 17 and April 1, 2020,
✓ **so, freight and messenger flights/routes have not been stopped;**
- 2) prohibition of entry into the country, through the border points of the Moldovan-Ukrainian and Moldovan-Romanian state border, of foreign nationals (with the exception of foreigners and stateless persons with the right of domicile or permanent/temporary stay, drivers and the personnel servicing the freight vehicles, aircraft/ship crews and train brigades, members of diplomatic missions and accredited consular offices, international organizations/missions, as well as their family members),
✓ **so, is was not forbidden the access of the Moldovan citizens, they being obliged to comply with the established rules (providing information on the zones (countries) where they travelled in the last 14 days, contact with persons diagnosed with COVID-19 infection and other relevant information referring to general health status, completion of the epidemiological record, isolation from other passengers in case of febrile condition or clinical signs of respiratory infection);**
- 3) stopping until April 1, 2020 of the activity of
 - (i) trade of the retail trade units (except food, pharmaceutical and petroleum products units),
✓ **so, it was stopped the activity of wholesale and cash and carry units (as per the Law No. 231/2010 on Internal Trade);**
 - (ii) of open markets and public catering establishments, in their premises and designated/authorized spaces, with the exception of the activities of preparation and distribution of products by catering;
 - (iii) leisure and recreational units, sport halls and centers, swimming pools, fitness rooms, theatres, cinemas, concert halls, museums and other training and recreation facilities (falling under CAEM R90.0 codes (creation and artistic interpretation activities), 91.0 (libraries, archives, museums and other cultural activities), 93.0 (sporting, recreational and entertaining activities), as well as religious confession facilities,
✓ **so, it was stopped the activity of the manufacturing units (factories, plants etc.) and of other service units (banks, non-banking financial institutions, notaries, construction, repairs etc.) has not been stopped, but they are obliged to ensure a fluidized regime of access of persons to the places of service provision, which will not admit the violation of the social distance of 1 meter.**

Under the law, the state of emergency, defined as a set of measures of a political, economic, social and public order nature, can be established on a provisional basis and shall automatically cease on the appointed date (May 15, 2020), provided that the Parliament may

- a) lift the state of emergency earlier, if the situation that caused it (coronavirus pandemic, declared by the WHO on March 11, 2020) has been remedied, or may extend it;
- b) restrict the area of action of the state of emergency, e.g. to a part of the territory of the country or the capital.

The declaration of the state of emergency itself does not impose any measures (unlike, for example, the Decree of the President of Romania of March 16, 2020 on Instituting the State of Emergency, which contained detailed measures, with immediate applicability and with gradual applicability). However, such measures could be taken by the competent authorities (CES, CPS, MIA, other). We will further analyze the most important potential measures, in terms of impact:

1. Restriction of the exercise of certain rights and freedoms (the right of ownership, the free movement, the right to information, the freedom of meetings, etc.), under the following **conditions**:
 - a) in compliance with Article 54 of the Constitution, especially if it is necessary in the interests of national security, the economic well-being of the country, public order, in order to prevent mass disturbances and crimes;
 - b) without prejudice to the existence of the right or freedom, e.g. nobody can be deprived of property, the state can only proceed with the commandeering/requisition of goods (see below);
 - c) without prejudice to the essential rights, in particular the right of free access to justice and the right to life and to physical and mental integrity;
 - d) in compliance with the international treaties on fundamental human rights, to which the Republic of Moldova is a party.
2. The property commandeering, i.e. the compulsion of companies and citizens to temporarily transfer movable or immovable property, under the following **conditions**:
 - a) can be taken only for the purpose of preventing and liquidating the consequences of the situation that determined the state of emergency, in compliance with the law (Law No. 1384/2002),
 - b) there can't be commandeered the personal belongings and household assets, the personal assets strictly necessary for the exercise of the profession or occupation by which the person ensures his/her existence, the parts of the buildings strictly necessary for the owners and others;
 - c) the property shall be returned after the expiry of the commandeering term or when the causes that caused it have ceased;
 - d) if the assets have suffered deterioration or devaluation, the owner have the right to claim compensation, on the terms of the law.

In practice, commandeering may be required in case of aggravation of the epidemiological situation, for example by temporarily takeover of the facilities of private hospitals or manufactures of materials and equipment necessary to fight the epidemic (measure taken in Romania) or of the private transport vehicles.

Notably, establishment of the state of emergency **does not admit confiscation** or **nationalization** of property or any other form of deprivation of property without compensation. Expropriation, in the sense of transferring the assets from private into public property after a right and prior compensation, is not excluded, but would require the adoption of an organic law.

3. Calling citizens to render public interest services, under the following **conditions**:
 - a) the purpose of the call is for carrying out works or activities in the public interest, in connection with the fight against the pandemic;
 - b) only able working citizens can be called, aged 18-60 years - men and 18-55 years - women (except for specialists, e.g. doctors, pharmacists, nurses, for whom the age cap is 65 years - men and 60 years – women);
 - c) there are exempt from calling the pregnant women, persons caring for disabled children, parents, brothers or sisters (if the presence of the caregiver is strictly necessary), persons caring for children under the age of 8.
4. Establishing a special working regime for companies and public institutions, which measures should ensure their functioning and provision of public interest services (notarial, cadastral, registration of

rights, etc.), on the one hand, and prevention of contamination risk, on the other hand. Obviously, electronic services are an effective substitute for physical services.

5. Other measures not expressly provided for by Law No.212/2004, but possible under its recent amendment:
 - a) capping the price of medicines and medical devices, of strictly necessary foodstuffs, of public utility services (electricity and heat, gas, water and sanitation);
 - b) suspension of imports of food and other products from states or zones affected by the virus;
 - c) suspension of exports of food, medicines or other necessary products;
 - d) maintaining the validity of the permissive acts (licenses, authorizations, certificates) that expire during the period of the state of emergency;
 - e) temporary relaxation of the accreditation conditions of the medical institutions (Law No.552/2001) and the conditions for exercising the medical profession (Law No.264/2005).

Reasonably, the imposition of restrictive measures will have to be combined with measures to protect and support businesses and families, to be adopted in active consultation with professional associations and civil society.

Roger Gladei, attorney-at-law
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Note: this analysis reflects the situation as of the evening of March 18, 2020