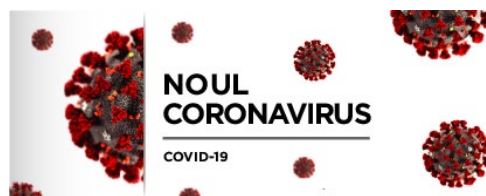


## THE "VACATION" OF THE STATE CONTROLS DURING THE STATE OF EMERGENCY



The state control on the entrepreneurial activity has an unquestionable importance in a democratic society, as a mechanism of checks and balances, having *inter alia* such objectives as ensuring a higher level of protection of the environment, life, health and property of the persons or supervising the placing and circulation of the products on the market in order to ensure their safety.

Generally, the control <sup>1</sup>can be defined as any form of verification, review, audit, evaluation and / or analysis carried out by a control body, whether done on the spot or by requesting documents and information, in order to verify the compliance with the legislation by the persons subject of control.

However, due to the state of emergency declared by the Parliament of the Republic of Moldova on 17.03.2020, the Commission for Exceptional Situations of the Republic of Moldova (**CES**), established by the Resolution no. 3 dated 23.03.2020, moratorium on the state control, until 01.06.2020. Considering the volume of information, we have set out in the following, to synthesize and to answer some key-questions regarding the moratorium mentioned above.

### 1. Do we have total "vacation" of the state control or CES has provided exceptions?

#### I. **The moratorium applies to** the state control, including:

- 1) fiscal, financial;
- 2) regarding the quality of the products/services, the technological parameters and/or the specific requirements for the type of activity carried out;
- 3) regarding the compliance with labor protection rules;
- 4) customs (only for further controls),

planned or unexpected, carried out on the spot, at the premises, the places of activity or of the finding/keeping the goods of the persons registered in the established way that carry out business as an entrepreneur, by the empowered bodies with the right to initiate controls, based on the provisions of the Law no. 131/2012 regarding the State Control over the Entrepreneurial Activity, of the Tax Code no.1163/1997, of the Law no.171/2012 regarding the Capital Market, of the Law no. 320/ 2012 regarding the Activity of the Police and the Status of the Police Officer, as well as of other normative acts that regulate the state control.

#### II. **The moratorium does not apply** to the controls carried out:

- 1) within the criminal prosecution;
- 2) by the National Bank of Moldova;
- 3) by the Court of Accounts of the Republic of Moldova;
- 4) by the National Commission of the Financial Market regarding the individuals and legal entities who carry out insurance activity;
- 5) by the responsible bodies for the management of the public social insurance system, within the strictly necessary limit and for the purpose of verifying the authenticity of the documents confirming the contribution period and the insured income, based on the request of the persons who requested to establish or change the amount of the pension (e.g. NSIH in connection with the establishment of the pension);
- 6) at the request of individuals and legal entities regarding the issuance / extension of licenses, authorizations, certificates and other permissive acts and / or regarding the finding of certain facts (e.g. in connection with the compulsory or voluntary registration as a VAT taxpayer, according to art. 112 of the Fiscal Code);
- 7) at the request of consumers, by the bodies empowered with functions to protect them, based on the Consumer Protection Law no. 105/2003, in case of presenting the truthful information about the violation of the legislation;
- 8) within the limit strictly necessary for the realization of the amount of the state's debts, in the process of insolvency or liquidation of the individuals or legal entities carrying on business as an entrepreneur;

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<sup>1</sup> For further details, see <http://controale.md/>. The information is purely informative, and the authors do not assume responsibility for its use for personal and / or professional purposes.

- 9) in connection with the refund of taxes, fees and other payments from the national public budget (e.g. for the VAT refund, the tax body may carry out the verification by counter-taxation);
- 10) in the field of state supervision of public health;
- 11) in the field of compliance with fire regulations;

as well as:

- 12) the cases of finding on the spot the fact of the occurrence of accidents and of the circumstances in which the respective ones occurred;
- 13) prices formation and application;
- 14) supervision of flight safety and aviation security;
- 15) supervision of the obligations of the port state and the flag state;
- 16) observing, on public roads, the maximum permissible total mass, the maximum permissible axle masses and / or the maximum permissible dimensions of the road vehicles;
- 17) to combat the illicit traffic of road transport;
- 18) inspection of the state forestry and aquatic fund.

Also, although the CES did not expressly mention in the issued resolution, we consider that the moratorium does not apply in the case of the control carried out at the office of the fiscal bodies (room controls), as the moratorium refers only to the on-the-spot control carried out, at the premises, the places of activity or finding/keeping the goods of the persons registered in the established manner carrying out business as an entrepreneur;

## 2. Which authorities have the right to carry out state control during the moratorium?

The CES resolution did not exclude or prohibit to perform the control (during the moratorium) by any body established by law.

Therefore, the bodies provided in Annex no. 1 to the Law on the State Control over the Entrepreneurial Activity 131/2012, may perform controls, namely: the National Agency for Food Safety, the Consumer Protection and Market Surveillance Agency, the Technical Supervision Agency, the National Agency for Public Health, the Inspectorate for Environment Protection, the Customs Service, the State Tax Service, the National Car Transport Agency, the Civil Aviation Authority, the Naval Agency, the National Personal Data Protection Center, the State Labor Inspectorate, the National Agency for Quality Assurance in Education and Research, the National Agency for Energy Regulation, the National Agency for Regulation in Electronic Communications and Information Technology, the Audiovisual Coordinating Council, the Competition Council, the National Agency for the Regulation of Nuclear and Radiological Activities.

In addition to the above, the entrepreneurial activity can be subject to control by law enforcement bodies in criminal and contraventional investigations. Some areas of entrepreneurial activity (*internal trade, transport, advertising placement, etc.*) are subject to control by local public administration authorities.<sup>2</sup>

## 3. Are there any derogations from the moratorium? Under what conditions are allowed the exemptions?

Yes. The control can be carried out in cases where there is an imminent danger for the life and health of the population, to the state economic security and to the environment. In order to carry out the control, the body empowered with control functions will submit a request to the State Chancellery indicating:

- a) the identification data of the person subject of the on-the-spot state control;
- b) the reasons for initiating the on-the-spot state control;
- c) the object, the purpose and the method of the on-the-spot state control;
- d) the duration of the on-the-spot state control;
- e) the date of the last on-the-spot state control;
- f) the type of activity carried out by the controlled person;
- g) the causes and reasons that make it impossible to carry out the state control by directly requesting from the person to be controlled the documentation and other information through the postal services or through the electronic mail system, or by telephone / fax, including information on which, according to the law, the person who carries out entrepreneurial activity is not obliged to offer them periodically;
- h) the period of activity subject to control.

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<sup>2</sup> For details on the competence limit, see <http://controale.md/controlul-de-stat-pompieri-ansa-inspectia-muncii-cnsp-etc#p27>

The State Chancellery issues a decision, the same day, regarding the necessity of carrying out the control. If the request was admitted, the control is carried out in accordance with the procedure provided for the unexpected controls<sup>3</sup>, in compliance with the decision of the State Chancellery and the Resolution of the CES no. 3 dated 23.03.2020.

4. *What are the limits of the organs in the case of control during the moratorium?*

The body carrying out the control **shall be prohibited**, in the process of carrying out on-the-spot state control, performed by derogation or in accordance with the points 3-11 of section II above:

- to rise up goods, documents or data storage devices;
- to apply for seizure or seals on goods, premises or any other objects or to take other measures that would lead to the complete suspension of the activity of the person under control, unless the continuation of the activity would cause serious harm to human life or health.

The body carrying out the control **is entitled**, in the process of carrying out on-the-spot state control, performed by derogation or in accordance with the points 3-11 of section II above:

- to make copies, photo or video recordings of the documents and data storage devices;
- to inspect, to measure goods or to take samples from them.

In case the respective actions are not possible or the person carrying out the entrepreneurial activity does not allow these actions to be performed, the control body raises them, indicating in the written report the elements of individualization of each document or device. The raised items are returned as soon as possible, but no later than 3 working days from the moment of raising them.

The results of the finalized state control are examined in the manner provided by law.<sup>4</sup>

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<sup>3</sup> For details on unexpected and planned controls, see <http://controale.md/controlul-de-stat-pompieri-ansa-inspectia-muncii-cnsp-etc#p34>

<sup>4</sup> For details on finalizing the control, see <http://controale.md/controlul-de-stat-pompieri-ansa-inspectia-muncii-cnsp-etc/dupa-incheierea-controlului>

- 1) fiscal, financial;
  - 2) regarding the quality of the products/services, the technological parameters and/or the specific requirements for the type of activity carried out;
  - 3) regarding compliance with labor protection rules;
  - 4) customs (only for further controls),
- planned or unexpected, carried out on the spot, at the premises, the places of activity or of finding/keeping the goods of the persons registered in the established way carrying out business as an entrepreneur.

**Moratorium on Controls**

Yes ←      → No

The body carrying out the control **shall be prohibited:**

- 1) to rise up goods, documents or data storage devices;
- 2) to apply for seizure or seals on goods, premises or any other objects or to take other measures that would lead to the complete suspension of the activity of the person under control, unless the continuation of the activity would cause serious harm to human life or health.

The body carrying out the control **is entitled:**

to make copies, photo or video recordings of the documents and data storage devices; to inspect, to measure goods or to take samples from them.

- 1) within the criminal prosecution;
- 2) by the National Bank of Moldova;
- 3) by the Court of Accounts of the Republic of Moldova;
- 4) by the National Commission of the Financial Market regarding the insurance activity;
- 5) for the purpose of verifying the authenticity of the documents confirming the contribution period and the insured income, based on the request of the persons who requested to establish or change the amount of the pension;
- 6) at the request regarding the issuance/extension of licenses, authorizations, certificates and other permissive acts and/or regarding the finding of certain facts;
- 7) at the request of consumers, in case of presenting the truthful information about the violation of the legislation;
- 8) for the realization of the amount of the state's debts, in the process of insolvency or liquidation of the individuals or legal entities carrying on business as an entrepreneur;
- 9) in connection with the refund of taxes, fees and other payments from the national public budget;
- 10) in the field of state supervision of public health;
- 11) in the field of compliance with fire regulations;
- 12) the cases of finding on the spot the fact of the occurrence of accidents;
- 13) prices formation and application;
- 14) supervision of flight safety and aviation security;
- 15) supervision of the obligations of the port state and the flag state;
- 16) observing, on public roads, the maximum permissible total mass, the maximum permissible axle masses and / or the maximum permissible dimensions of the road vehicles;
- 17) to combat the illicit traffic of road transport;
- 18) inspection of the state forestry and aquatic fund.

**Derogations**  
danger to the: population life and health, state economic security and to the environment.

**Request**  
to the State Chancellery regarding the on-the-spot control, indicating:

- a) Identification data of the person;
- b) Reasons;
- c) Objectives, scope and control method;
- d) Control duration;
- e) The date of the last carried out on-the-spot control;
- f) The type of activity carried out by the controlled person;
- g) Causes and reasons that make it impossible to carry out the control by directly requesting the information and documentation that the controlled person is not obliged to provide periodically;
- h) The period of activity subject to control.

**Admitted request**  
The control is carried out in accordance with the procedure provided for the unexpected controls, in compliance with the decision of the State Chancellery and the CES's Resolution

**Rejected request**  
The on-the-spot control is not carried out.

**State Control result**  
examined in the manner provided by law (general order).