

March, 27th 2020

#Life Sciences - summary of health measures taken by the Government

For several weeks now, France has been actively fighting against the coronavirus. In addition to health measures, the Government has adopted various texts as a matter of urgency in order to put an end to speculation in strategic health products and limit the movement of French people.

Some of these unprecedented measures raise questions about their legal regime.

1. WHAT MEASURES HAVE BEEN TAKEN BY THE GOVERNMENT IN ORDER TO FIGHT AGAINST HEALTH PRODUCTS SPECULATION?


First measure to many to come, on March 4, 2020 (modified by the decree dated 13 March 2020) a decree was published in the *Journal Officiel* relating to the requisition by the government of stocks of protective masks (FFP2 and anti-projection masks) held by any legal entity under public or private law. The text aims in particular to ensure priority access to health professionals and patients affected by Covid-19.

The practice of requisitioning is not new. It is a constraint procedure attributed by specific texts to administrative authorities (mayors, prefects, etc.) authorizing them to obtain goods and services by force. Requisitioning is necessarily temporary and it is in this respect that it differs from expropriation.

Under French law, the requisition appears in a law of 1877 which is today codified in the defense code.

Regarding health matters, the Act dated March 5, 2007 relating to the preparation of the health system for large-scale health threats grants the administration with the means of action and in particular the possibility of requisitioning goods or putting in place places a health reserve.

This text was adopted in the context of health threats such as bird flu and Chikungunya. The measures that can be adopted are codified in the French Public Health Code in articles L. 3131-1 and following. The issue of compensation for these requisitions is dealt with in the French Defense Code in articles L.2234-1 et seq.



Concerning the hydro-alcoholic gels prices, Article L.410-2 of the French Commercial Code establishes the principle of free pricing. However, its third paragraph states that this principle *"does not prevent the Government from adopting, by decree, temporary measures against excessive price, motivated by a crisis situation..."* These are the provisions used in the recently published decree of 5 March 2020, which corrects abnormal market prices linked to excessive speculation.

In addition, an Order dated March 7 authorizes pharmacies to prepare hydro-alcoholic solutions until May 31, 2020.

2. WHAT OTHER EXCEPTIONAL MEASURES HAVE BEEN TAKEN IN FRANCE TO GUARANTEE ACCESS TO HEALTHCARE FOR THE POPULATION?

Access to teleconsultation has been made more flexible by the Decree of 10 March 2020. For instance, from now and until April 30 teleconsultation is possible even if the patient is not directed by his doctor and if even if it is not known to the teleconsultant.


In addition, healthcare professionals can use any digital tool to consult them which worries in particular with regard to the protection of the health data of patients who will now circulate via applications such as FaceTime or WhatsApp which belong to GAFAM...

3. WHAT ABOUT CONTAINMENT MEASURES AND THE STATE OF HEALTH EMERGENCY?

On March 16, 2020 The Prime Minister Edouard Philippe has imposed containment measures on the population, who are under a 14-day nationwide lockdown.

Moreover, The Prime Minister announced Monday evening additional rules to safeguard the public, which include a ban on leaving one's house for more than one hour, once a day, and further than a 1km radius away; a ban on open-air markets except in regions where they are the primary source of a food supply; and an increase in a fine for violating confinement, from €135 (\$147) to €1,500 (\$1,630) for recidivism within 15 days; in the event of four violations in 30 days, a fine of €3,700 (\$4,021) and six months in prison is imposed.

Alongside, the state of health emergency has been adopted by the French Parliament which *"is the basis for any regulatory or individual measure restricting certain freedoms in order to combat the epidemic"*.



This law replaces the legal framework of "*exceptional circumstances*", circumstances which, since the famous Dame Dol and Laurent Council of State ruling of 1919, allowed the administration, under the supervision of the judge, to derogate from ordinary legality in order to ensure the continuity of the public service.

It was these exceptional circumstances that led to the adoption of the decree of March 16, 2020 issued by the Prime Minister on the basis of his general police powers and which allowed the adoption of the specific orders issued by the Minister of Health on the basis of articles L. 3131-1 et seq. of the Public Health Code.

The state of health emergency is now becoming the specific framework that will serve as legal basis for the administrative policies measures needed to manage the health crisis we are going through.

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