

March, 25<sup>th</sup> 2020

## **#Construction – Consequences to date of Covid-19 related measures on construction sites**

In this current context of unprecedented health crisis, in view of the quarantine measures ordered by the Government, the professional organizations of the construction industry and the Executive face major difficulties in reaching a consensus as to whether or not to continue work on construction sites, notably in view of the necessary measures to be taken to ensure the health of the persons working on sites, considering the spread of Covid-2019.

Decree No. 2020-260 of 16 March 2020 on the regulation of displacement in the context of the fight of the spread of the Covid-2019, requires that displacements are authorized for professional reasons and cannot be postponed ‘in compliance with the general measures to prevent the spread of the virus and avoiding any gathering of people’.

While the construction companies have not received any guideline from the Government to stop their activities, the professional organizations of the construction industry (CAPEB, FFB, FNTP) have risen to request temporary stoppage of the construction site, while organizational solutions are found, mainly of a sanitary kind, in order to ensure the safety of the workers on the building sites.

80% of companies, and therefore of construction sites stoppage, is then mentioned.

An agreement seems, however, to have been reached to ensure the continuation of the activity under satisfactory sanitary conditions and a guide for the proper continuation of operations should be published at any time, under the control of the *Organisme professionnel de prevention du BTP* (Professional Body for the Prevention of Building and Public Works - OPPBTP), and previously approved by the Ministries of Labour, Solidarity and Health.

In the meantime, on behalf of the Government, the Minister of the Interior Security, Mr. Christophe Castaner, and the Minister of Labour, Ms. Muriel Penicaud, have confirmed that the construction sites were not suspended to date and, on the contrary, has encouraged the continuation of the activity, despite the strong protests from the construction industry, in particular from Mr. Jacques Chanut, President of the FFB.

However, the Government has invited the Owners and other companies not to seek contractual liabilities from the Contractors, their subcontractors or suppliers when they had to suspend their activities while the conditions of performance were no longer possible to guarantee health and safety of the workers attending on the construction sites.



It is likely that this request will also concern companies which cannot materially comply with the guide to good sanitary practices on construction sites, which publication is firmly awaited.

In other terms, it is requested, and not imposed, that Owners should not apply penalties in the event of a suspension of the worksite at the initiative of the Contractor.

However, question must be raised as regard the claim that may arise after the crisis by the Contractor, particularly regarding the mobilization of materials and equipment on site:

#### **WHO WILL HAVE TO TAKE FINANCIAL RESPONSIBILITY FOR IT?**

Likewise, in the event of a site suspension, the company's duty to guard the site will have to be considered.

Moreover, will the operational losses resulting from the Covid-19 be compensated?

On this point, it is important to refer to the terms of the Civil Liability policies subscribed, in order to ascertain whether immaterial damages are covered in case of external event or force majeure.

However, this being said, the force majeure cause has not been officially enacted for the construction industry. Indeed, the Ministry of the Economy, Mr. Bruno Lemaire, mentioned it particularly for public construction contracts, at the closure of a working meeting with the social representatives on 28 February 2020, without returning to it since then.

As a consequence, without clarification from the Executive, it will be necessary to comply with the provision of the construction agreements, or with the CCAG to which they refer, if necessary.

Hence, many issues remain unresolved to date.

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