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Addressing Covid-19 pandemic: overview of measures recently adopted in France to address the sanitary crisis

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Since the outset of the Covid-19 crisis, the French Government has taken numerous measures aiming to address the current sanitary crisis and resulting economic consequences.

(i) Emergency Law of 23 March 2020 addressing the Covid-19 epidemic

The French Government adopted on 23 March 2020 a specific legislative arsenal to fight the COVID-19 crisis, ie. the **Emergency Law no 2020-290 to address the COVID-19 epidemic** (hereafter the Emergency Law).

Firstly, the Emergency Law authorizes the Government to declare the **"state of health urgency"** (*état d'urgence sanitaire*) for a limited period of time. With the publication of the Law on 24 March 2020, this state of health urgency came into force throughout the French national territory for a period of two months. Under this regime, the Prime Minister and the Minister of Health are allowed to take exceptional measures to tackle a sanitary crisis, and in particular:

- **restrict public freedoms** (including the freedom to conduct business) and impose potential complete lockdown, with higher sanctions in case of non-compliance.
- **impose price caps on certain products in case of stock or supply tensions**.
- **order seizure of necessary goods and services**: pursuant to this provision, private companies could for instance be enjoined to produce medical devices or drugs to ensure appropriate supply to health establishments.

All the measures must be strictly proportionate to the sanitary crisis, appropriate to the time and place circumstances and cease as soon as they are no longer necessary. The Emergency Law provides for a way to challenge governmental measures taken under the state of health urgency (summary proceedings before administrative courts known as *référé-liberté* (petition for protection of fundamental freedoms) or *référé-suspension* (petition for suspicion of a measure under certain conditions)), despite the fact that French Courts are currently closed but for urgent cases. Such cases would be heard as a matter of emergency.

Secondly, as time is of the essence, the Emergency Law authorizes the French Government, for a three month period starting on 12 March 2020, to **use Government Orders ("*ordonnances*") to enact new legislative provisions** without having to first submit bills to the French Parliament. The French Government thus has the ability to legislate directly in order to take measures to mitigate the impact of the crisis on companies and workers. The scope of intervention conferred to the French Government is **very broad and concerns all sorts of economic and social measures** that are deemed necessary to address the economic consequences of the crisis. The Government adopted 25 "*ordonnances*", which have been published on 26 March 2020.

(ii) Other decrees and ministerial orders addressing the COVID-19 epidemic

In the early stages of the crisis or in addition to the Emergency Law, the French Government has issued several urgent Decrees and ministerial orders. In particular:

- **a seizure order** (now under Decree No. 2020-293 of 23 March 2020) to compel owners of protection masks on the French territory to hand them to the French State, in exchange of an indemnity compensating the direct loss and not the loss of profit.

  Stocks of protection masks are therefore requisitioned through 31 May 2020 in order to ensure priority access to caregivers and patients, notably:

  - stocks of respiratory protection masks (types FFP2, FFP3, N95, etc.) held by any legal entity (company, association, public body…) under public or private law;

  - stocks of anti-projection masks complying with standard EN 14683 held by the companies that manufacture or distribute them.

  As regards stocks of imported masks, they may be requisitioned in whole or in part by an order of the Minister of Health above a certain threshold.

- to ensure the production and dissemination of hydroalcoholic products, the Government provided for a **price cap** to limit price surged on hydroalcoholic gel, an **authorization for the placing on the market of certain hydroalcoholic biocidal products for human hygiene** until 31 May 2020, and an authorization for pharmacies to make their own hydroalcoholic gels until 31 May 2020 as well (under Decree No. 2020-293 of 23 March 2020);

- **restriction of sale of paracetamol by pharmacists to patients without prescription**. Pharmacists may dispense without prescription only 1 box of paracetamol (500 mg or 1g) per symptom-free patient, or 2 boxes (500 mg or 1g) in case of symptoms (pain and/or fever) (ministerial order of 23 March 2020 from the Health Minister);

- In addition, said ministerial order of 23 March 2020 from the Health Minister provides for exceptional drug dispensation by pharmacists to avoid discontinuation of treatments. In particular, exceptionally for chronic treatment of patients, when the period of validity of a renewable prescription has expired and in order to avoid any interruption of treatment detrimental to the patients' health, pharmacists, service providers, or medical equipment distributors can – until 15 April 2020 and within the limits of the prescription initially provided – proceed to **dispensation a volume of products or services guaranteeing the continuation of treatment until the end of the state of health urgency**;

- **derogatory conditions for the reimbursement of telecare (*téléconsultation*) activities;**
- powers given to the general directors of the regional health agencies (*ARS – Agences régionales de santé*) to authorize health establishments to carry out a care activity other than the one for which they had been authorised (ministerial order of 21 March 2020 from the Health Minister).

Regarding **clinical trials**, the French Health Authority ANSM (*Agence nationale de sécurité du médicament et des produits de santé*) recommended that **priority should be given to clinical trials related to the management of patients infected with Covid-19**. More generally, **sponsors should re-evaluate whether it is appropriate to initiate or continue a clinical trial**; and, where appropriate, consider potential necessary adaptions to the ongoing clinical trials. In such cases, the sponsor should assess in coordination with the investigators the risks of the contemplated adaptations with respect to the safety of the patient and the integrity of the clinical trial data. Priority must of course be given to the safety of patients. Such assessment should be held available to the authorities.

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