



DRC-DDG LEGAL ALERT: Issue 50 February-March 2020

1. COVID-19 Legislative Measures Update: 31 March 2020

Background: On 16 March 2020, DRC-DDG issued a special issue of the [Legal Alert](#) on COVID-19 ('coronavirus') legislative responses and related concerns, including:

- Restriction on entering Ukraine for foreigners;
- Restriction of international passenger transportation;
- Restrictions at entry-exit checkpoints (EECPs) in Luhansk and Donetsk oblasts;
- Initiatives to temporarily lift internally displaced persons' (IDP) verification requirement;
- Restriction of movement by the so-called 'Donetsk People's Republic' (DPR) and 'Luhansk People's Republic' (LPR);
- Closure of a large number of border checkpoints;
- Declaration of national and regional quarantine measures.

As of 31 March 2020, the number of COVID-19 confirmed cases [has grown](#) to 549; 13 of them were lethal and 8 were cured. Since the Special Legal Alert was issued on 16 March 2020, the government introduced the following additional law and regulations to harness the preventive measures:

- Cabinet Resolution [No. 215](#), dated 16 March 2020, declaring national emergency situation and enhancing national quarantine measures;
- On 17 March 2020, the Parliament adopted Law [No. 530](#) 'On Prevention of Spreading of COVID-19 Coronavirus;'
- Cabinet Resolution [No. 239](#), dated 25 March 2020, on the prolongation of the national quarantine and further emergency measures;
- Draft Law [No. 3275](#), adopted on 30 March 2020, 'On Additional Economic and Social Guarantees Regarding the Spread of COVID-19' (final text unavailable as of 31 March 2020).

The following are major additional measures taken by the government as of 31 March 2020:

- **Declaration of National Emergency Situation:** Not to be confused for the emergency *state*, the emergency *situation* does provide a special order of communication and cooperation of state authorities aimed at enhancing governmental responses to a threat. Unlike the emergency state, the emergency situation does not provide the scope for limiting individual rights and freedoms. The actions of the government, however, testify that de-facto restrictions on some constitutional rights (e.g., right to freedom of movement) have been imposed;
- **Extension of Quarantine Period:** The national quarantine period, initially declared for the period from 12 March 2020 to 3 April 2020, has been extended until 24 April 2020; all quarantine measures continue.

Closure of EECPs and Freedom of Movement

- **Restriction of Movement via EECPs:**
 - Starting from 22 March 2020, EECPs in Donetsk and Luhansk regions are [closed](#) for public crossing with “exceptional cases under critical circumstances” and for humanitarian purposes of international organisations;
 - Starting from 16 March 2020, EECPs with Crimea are closed [except](#) for the “needs of humanitarian character” upon the decision of the Head of the State Border Service.
- **Restriction of JFO Areas Movement:** From 28 March 2020, the following movements to/from the area of Joint Forces Operations (JFO) are [restricted](#):
 - From Kharkiv, Zaporizhia, and Dnipropetrovsk regions to JFO area movement is allowed only for residents of Luhansk and Donetsk regions;
 - Residents of Luhansk/Donetsk regions are not allowed to move to Kharkiv, Zaporizhia, and Dnipropetrovsk regions;
 - For both rules, exceptions are provided for the transportation of food, industrial goods, and ‘essentials;’ medical staff; UN, ICRC, and OSCE staff. Cases of critical need and ‘needs of humanitarian character’ are to be considered on an individual basis.
- **Major Restriction on Public Transport:** Suburban, inner-city, intercity, intra- and inter-regional, as well as public transports are restricted for the quarantine period. Travels by private cars and enterprise transports, however, are permitted under certain conditions.

Economy-Related Measures

- **Ban on Certain Businesses:** Certain businesses where individuals may come in contact with others are banned from operating during the quarantine period. Banned trade and businesses include cafés, restaurants, shopping and entertainment centres, fitness clubs, cultural facilities, and trade services. The following businesses and services are exempted from the ban:
 - Businesses offering groceries, petrol, hygiene items, medicines, veterinary items and feeds, seeds, pesticides, and agrochemicals;
 - Businesses offering insurance, banking, communications, transport repairs, postal services, personal items, electronics, food delivery, as well as healthcare and veterinary services.
- **Economic Support Measures:**
 - Under Law [No. 530](#), dated 17 March 2020:
 - During the quarantine period and for 30 days after its expiration, it is forbidden to apply and charge fines for non-payment of utilities or to stop the provision of such services;
 - Chambers of commerce are entitled to invoke force majeure (exempting an entity from the fulfilment of its contractual obligations) based upon individual requests.
 - Under Law [No. 533](#), dated 17 March 2020 and for the period from 1 March 2020 to 30 April 2020:
 - Land tax and commercial real estate tax will not accrue;
 - Individual entrepreneurs and farmers are exempt from unified social contribution;
 - No fines can be levied for violations of terms of consumer credits.

Guarantees for IDPs	Additional Liability Measures
<ul style="list-style-type: none"> • Under Law No. 530, adopted on 17 March 2020, during the quarantine period and 30 days after its expiration, it is forbidden to: <ul style="list-style-type: none"> – Cancel IDP certificates due to the absence of the person at the declared place of residence; – Conduct inspection of IDP’s declared place of residence for the purpose of social payments; – For ‘Oschadbank’ (the state bank administrating IDP pensions and social assistances) to suspend banking operations of IDPs based on non-passing the in-doors verification. 	<ul style="list-style-type: none"> • A new administrative offence is classified under Article 44-3 of the Code of Administrative Offences providing fine from UAH 17,000 to UAH 34,000 for violating quarantine rules; • Existing Article 325 of the Criminal Code of Ukraine on violation of anti-epidemic rules that resulted or could reasonably have resulted in the spread of the disease is made applicable and its scope is expanded. The sanction is increased from a fine of UAH 1,700 to a fine from UAH 17,000 to UAH 51,000 or imprisonment from 5 to 8 years if leading to grave consequences.

2. Trilateral Contact Group Works on Establishment of an Advisory Council to Facilitate Dialogue between Ukraine and NGCA Authorities

According to media [reports](#), on 11 March 2020, the Trilateral Contact Group (TCG)¹ held a meeting with ‘representatives of the so-called DPR and LPR’ in Minsk. The initiative is said to have resulted in the signing of a protocol outlining the following agreements:

- Proceeding with the next exchange of captives: 51 individuals identified in Ukraine and 40 individuals identified within NGCA;
- Facilitation of communication regarding withdrawal of troops and vehicles;
- Communication regarding the opening of EECPs in Zolote and Shchastya.

However, the most important provision of the protocol relates to the intent to **establish an Advisory Council** “based on the agreements of the heads of states and governments within the Normandy format” for the “necessity of a comprehensive solution to the conflict.” The initiative faced a significant opposition within the Parliament. A Draft Resolution [No. 3229](#) aimed to thwart the establishment of the Council was initiated by 51 MPs on 17 March 2020.

Features of the Advisory Council:

- Serves as an advisory body of the TCG to “exercise dialogue [between Ukraine and ‘LPR’ and ‘DPR’] and develop political and legal solutions for the mitigation of the conflict /.../ including holding of elections in certain areas of Luhansk and Donetsk regions;”

¹ TCG was formed in June 2014 as an operative body including group of representatives of Ukraine, Russia, and OSCE to maintain communication between the parties of the conflict in eastern Ukraine. It was TCG that served as a platform for signing the 13-point Minsk Package of Measures (known as Minsk Arrangements) that came in force on 15 February 2015. Apart from the abovementioned participants, the TCG meetings are also attended by the so-called ‘representatives of DPR and LPR’ who have also been signatories of the Minsk Arrangements, albeit not holding a status of TCG participants.

- The Council is to be comprised of 10 representatives from Ukraine on one side and 10 representatives jointly from ‘LPR’ and ‘DPR’ on the other, both with casting votes. OSCE, Germany, France, and Russia will have one representative with an advisory vote each.

Contentious Issues:

- If established, the Council will be the first body recognised by Ukraine to include ‘representatives of DPR and LPR’ as its rightful members. This may be construed as Ukraine’s factual recognition of ‘DPR’ and ‘LPR,’ a highly contentious issue in Ukrainian politics;
- Currently, Ukraine and Russia are members of the TCG alongside OSCE as a mediator. Since 2014, Ukraine has been positioning Russia as an aggressor state in the international armed conflict. The design of the Council, however, provides Russia with the same role of an advisor in the conflict dialogue as it does for Germany and France;
- Apart from political consequences (including the potential lift of sanctions), the outlined above might lead to the de-legitimisation of Ukraine’s public international law claim against Russia on reparation for damages and destruction. It may also undermine Ukraine’s current efforts to establish Russia’s responsibility for human rights violations within NGCA.

3. Cabinet Abolishes Option for Ukrainian Citizens to Enter Russia Under National IDs or Birth Certificates

Starting from 1 March 2020, Cabinet Resolution [No. 1056](#) comes into force, temporarily suspending provisions of bilateral treaties between Ukraine and Russia ‘[On Visa-Free Travels of Ukrainian and Russian Nationals](#)’ (signed on 16 January 1997) and ‘[On Crossing Ukrainian-Russian State Border by Residents of the Border Regions](#)’ (signed on 18 October 2011).

Implications of the Resolution:

- Ukrainian citizens are no longer allowed to leave Ukraine for Russia on the basis of their national IDs (national passports) or birth certificates (for children under 16 years of age) – instead, an international passport is required;
- The resolution impacts only *Ukrainian* citizens *leaving* Ukraine: nationals returning to Ukraine can still do it with a national ID or birth certificate. Rules for Russian citizens remain unchanged;
- Introduced to counter human trafficking, the restriction is connected to the safety situation and declared to be of a temporary nature. The restriction’s expiry term, however, is not provided.

4. Government Extends ‘Preferential 5-7-9 Loans’ Programme for Micro and Small Enterprises

Background: In January 2020, the Cabinet created a framework for the new ‘Affordable 5-7-9 Loans’ programme for micro and small businesses.² The programme offers up to UAH 1.5 million for terms up to 5 years with a yearly interest rates ranging from 5% to 9%. As of 16 March 2020, the programme has provided 169 loans for an aggregated amount of UAH 110 million. The loans have been provided for limited purposes outlined within the programme terms.

² For more information, please see DRC-DDG [Legal Alert](#) Issue No. 48, Section 2.

Recent Developments: On 18 March 2020, the Cabinet is [said](#) to have adopted a resolution on amending the terms of the ‘Affordable 5-7-9 Loans’ programme. Based on the available information, the amendments provide:

- Increased maximal size of the preferential loans up to UAH 2 million;
- The extended list of loan use purposes, now also including:
 - Purchasing commercial real estate (without the right to rent out to other persons);
 - Purchasing franchises for business purposes;
 - Replenishing working capital up to 25% of the whole cost of an investment project.

The resolution also provides special terms for businesses with activities closely related to the State responses to COVID-19 threat. For instance:

- The programme is now also available for businesses which i) produce medicines, medical equipment, or expendables; ii) provide medical or socio-medical services such as taking care of sick persons, delivery of food, and other essential items;
- The following special features are added to the programme for eligible micro and small businesses:
 - the loan can also be used to pay rental expenses, utility services, staff salary, “and other expenses;”
 - businesses producing medicines, medical equipment, or expendables are eligible for the increased maximal loan size of UAH 3 million.

5. Cabinet Splits the Ministry of Veteran Affairs and Temporary Occupied Territories Back into Two Ministries

Six month ago, in September 2019, the government merged the Ministry of Temporary Occupied Territories and IDPs and the Ministry of Veterans Affairs into a single Ministry.³ On 11 March 2020, the government, through Cabinet Resolution [No. 212](#), split the Ministry back to the separate ministries format. The Ministry for Reintegration of the Temporary Occupied Territories now is headed by the [newly-appointed](#) Vice-Prime Minister Oleksiy Reznikov.

Some of the terminology used in this issue of the Legal Alert was taken from draft laws or current legislation and does not necessarily reflect the position of DRC-DDG.

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³ For more information, please see DRC-DDG [Legal Alert](#) Issue 44, Section 3.