

# ARTICLE

## RESPIRATORY AND ANTI-PROJECTION MASK: RELAXATION OF THE REQUISITION MEASURES ON MARCH 21ST 2020

Real Estate and Construction Environmental Law Public Law and Public Procurement Law Private Clients  
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**By a decree published on March 21st 2020 in the French Official Journal, the Government relaxed the requisition regime for respiratory and anti-projection masks by excluding, to a certain extent, imported masks of the scope of the requisition.**

In less than three weeks, the Government adopted successively three decrees and a ministerial order to rule the requisition of protective and anti-projections masks.

**Act 1:** Anticipating the risk of shortage of masks for health professionals to face the health crisis caused by the covid-19, decree no. 2020 of March 3rd, 2020 pronounces a requisition measure concerning respiratory protection masks (concerning only FFP2 type masks) and anti-projections masks.

For the first category (FFP2 respiratory protection masks), this decree sets a general requisition measure. Any public or private entity holding stocks of these masks shall keep them at the State's disposal, meaning that these masks can no longer be used, sold or exported.

For the second category (anti-projections masks), the requisition measure only concerns masks manufacturers or distributors. Other operators can freely continue to use, sale or export them (notwithstanding the fact that certain French customs services did not consider the distinction between the two categories of masks).

Failure to comply with the requisition measures shall be punishable by up to six months' imprisonment and a fine of up to 10,000 euros (amount which can be multiplied by 5 for legal entities).

Link (in French) to the March 3rd decree): <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000041679951>

**Act 2:** As the sanitary crisis escalates, the Government drastically widens the scope of the types of masks concerned by the requisition, through a decree no. 2020-247 of March 13th, 2020. 11 types of respiratory protection masks are now covered by the requisition measures.

Link (in French) to the March 13th decree: <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000041721820&categorieLien=id>

**Act 3:** Acknowledging that a number of health professionals are unable to secure masks to protect themselves while performing their professional activities, President Macron indicates, on March 16th, that masks will be made available for health professionals for free as of March 17th through the pharmacies network in the 25 most affected French *départements* and the next day in the other departments. This announcement is officialized by a ministerial order of March 16th 2020 which states that masks from the national stock will be distributed free of charge to health professionals such as physicians, nurses, dentists, etc.

Link (in French) to the March 16th ministerial order: <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00041728609&categorieLien=id>

**Act 4:** An increasing number of employees of numerous companies operating in non-medical sectors, but which activities are nonetheless critical for the French economy to continue to run threaten to use their withdrawal right ("droit de retrait", i.e. the possibility for employees to stop working when their working conditions expose them to a serious and imminent risk of danger for their life or health) if they are not provided with adequate personal protective equipment (PPE), predominant among which are respiratory protection masks. Hence, the State decided to relax the requisition regime implemented during the previous days without affecting the constituted national stock. By a decree no. 2020-281 of March 20, 2020, the Government has restricted the scope of the requisition to the stocks of masks already present on the French territory and to masks to be manufactured in France. Imported masks can be freely used, up to 5 million unit per company and per trimester. Above 5 million units, a request for importation shall be filled to the Minister of health and silence kept by the latter for 72 hours means that he renounces to the requisition of the masks at stake.

Provided they can import them, companies can therefore once again provide their employees with adequate PPEs necessary to pursue their professional activities. Stocks already present on the French territory shall be preserved for requisition, which implementing measures seem to imply that companies holding stocks falling under requisition shall spontaneously liaise with the public authorities.



Link (in French) to the March 21st decree: [https://www.legifrance.gouv.fr/affichTexte.do;jsessionid=12DF7981AE44F0CB888D7E1F38A070E2.tplgfr22s\\_3?cidTexte=JORFTEXT000041741041&dateTexte&oldAction=rechJO&categorieLien=id&idJO=JORFCONT000041740980](https://www.legifrance.gouv.fr/affichTexte.do;jsessionid=12DF7981AE44F0CB888D7E1F38A070E2.tplgfr22s_3?cidTexte=JORFTEXT000041741041&dateTexte&oldAction=rechJO&categorieLien=id&idJO=JORFCONT000041740980)

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