

COVID-19: The French Government issues orders extending procedural deadlines and limitation periods and adapting proceedings before civil and commercial courts in the wake of Covid-19

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On Monday March 23, 2020, the French Parliament adopted an emergency law establishing a “health state of emergency” (Emergency Law No. 2020-290 of March 23, 2020 to deal with the Covid-19 epidemic) (the “**Emergency Law**”), which authorizes the Government to adapt procedural deadlines, limitation periods, and certain contractual deadlines with retroactive effect to March 12, 2020.

The Emergency Law empowers the Government to take general measures by order to combat the effects of Covid-19, as well as a number of specific measures to ensure the continued functioning of the economy and the State during the crisis.

In particular, the Emergency Law authorizes the Government to adapt procedural deadlines, limitation periods, and certain contractual deadlines, with retroactive effect to March 12, 2020.¹ The Government may also amend the rules governing administrative and judicial procedures for the duration of the crisis.²

These provisions are the subject of a series of orders, officially published since March 26, 2020. These orders provide, *inter alia*, an extension of most procedural deadlines and certain contractual time limits, as well as measures aimed at facilitating legal proceedings during the health state of emergency.

This note addresses civil and commercial matters. There are special provisions on administrative, tax, customs, criminal, and labor matters.

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¹ Article 11 specifies that these measures may not exceed a period of three months after the end of the health state of emergency, which will end on July 10, 2020 as provided by Law 2020-546 of May 11, 2020.

² Art. 11.



- **Order No. 2020-306 of March 25, 2020 on the extension of deadlines expiring during the health state of emergency and on the adaptation of procedures during that same period**

1. Deadlines that expire between March 12, 2020 and June 23, 2020:

The order modifies some deadlines, identified below, which expire between March 12, 2020 and June 23, 2020 included (the “**Covered Period**”)³.

Deadlines that expired before March 12, 2020 or that expire after June 23, 2020 are unaffected.

2. Type of deadlines involved and impact:

- **Interruption of procedural deadlines and limitation periods:** acts, which are required by law or regulation to be performed before the expiry of the original time period or deadline are deemed valid if they are performed within the legal deadline to act starting at the end of the Covered Period and up to a two-month time limit.⁴

In practice, the starting point of the initial procedural deadline or limitation period is shifted to June 24, 2020 and its duration remains unchanged unless it is longer than two months.

For example, if an appeal of a first instance judgment were to be filed at any time during the Covered Period, the time for filing an appeal being one month, it would have to be filed within one month of the end of the Covered Period (*i.e.* an appeal before July 24, 2020).

This provision applies to all deadlines in proceedings before courts in non-criminal matters⁵ as well as to statutory or regulatory

limitation periods for payments “*prescribed for the acquisition or retention of a right.*”

- **Extension of certain measures ordered by administrative** (such as the French competition authority or market authority) **and jurisdictional authorities which expire during the Covered Period:** interim, investigative, conciliation or mediation measures, prohibition or suspension measures that have not been pronounced as a sanction, and authorizations, permits or approvals. These measures remain in force for a period of two months following the end of the Covered Period.⁶

- **In contractual matters:**

- **Suspension of penalty payments (*astreintes*) and penalty clauses** that took effect before March 12, 2020 until the end of the Covered Period.⁷
- **Penalty payments, penalty clauses, termination clauses, and forfeiture clauses**, when aimed at sanctioning the non-performance of an obligation within a given period of time that would have taken effect during the Covered Period, do not take effect until the end of this period for the time elapsed between March 12, 2020 (or the date on which the obligation arose, if later) and the date on which the obligation should have been performed.⁸
- A similar extension exists for the **penalty payments, penalty clauses, termination clauses, and forfeiture clauses**, when aimed at sanctioning the non-performance of a **non-monetary** obligation within a given period of

³ The end of the Covered Period, initially based on the end of the health state of emergency, was set at midnight on June 23, 2020 by Order No. 2020-560 of May 13, 2020 setting the deadlines applicable to various procedures during the health state of emergency.

⁴ Art. 2.

⁵ Order No 2020-304 of 25 March 2020 adapting the rules applicable to the courts of the judicial order

ruling in non-criminal matters and to contracts of co-ownership trustee, Art. 1.

⁶ Art. 3.

⁷ Art. 4.

⁸ Art. 4, as amended by Order No 2020-427 of April 15, 2020.

time that would have taken effect **after** the Covered Period.⁹

- **Deadlines for terminating and withdrawing from contracts** are extended for a two-month period following the end of the Covered Period.¹⁰

! Caution with regard to contractual obligations: apart from the above-mentioned provisions, contractual obligations are not modified by the order. In principle, performance of contractual obligations must always take place on the date specified in the contract except when provisions of statutory law supersede (*force majeure*, suspension of the statute of limitations due to frustration) if the legal conditions are met.

— The order provides for a number of exclusions, including:

- Obligations pursuant to Books II, IV, V and VI of the Monetary and Financial Code on the entities, persons, biddings and transactions mentioned in Article L. 621-9 of the same code, as well as obligations pursuant to Article L. 233-7, I. and II. of the Commercial Code, which include disclosure obligations related to tender offers and major holding notifications;
- Financial obligations and their guarantees within the meaning of Article L. 211-36 of the Monetary and Financial Code,¹¹ including financial obligations arising from transactions in financial instruments when one at least of the parties to the transaction is a public or regulated entity (credit institution, investment service provider, etc.), which notably includes financial futures and financial contracts, and those resulting from a contract between two public or regulated entities giving rise to a cash

settlement or the delivery of financial instruments, which covers most interbank transactions.

- **Order No. 2020-304 of March 25, 2020 adapting the procedural rules applicable for non-criminal matters and matters related to property management and homeowner association contracts (*contrats de syndic de copropriété*)**

The order adapting the rules applicable to the judiciary ruling in non-criminal matters relaxes some of the procedural requirements between March 12, 2020 and the end of the health state of emergency, currently scheduled for July 10, 2020, plus one month (*i.e.* August 10, 2020).

The order provides for a number of measures aimed at ensuring the continued operations of the courts in civil, labor, and commercial matters, whose operations were limited on March 16, 2020 to emergency cases:

- **Filter for applications for interim measures.** If an application for interim measures is inadmissible or unjustified, the judge may dismiss it by a non-adversarial order - *i.e.* without any debate between the parties.¹²
- **Rulings may be rendered by a single judge¹³ and judges may hear the parties by videoconference**, or by any electronic or telephonic means, providing that the parties can be identified.¹⁴
- **Rulings may be rendered without a hearing, or with closed court hearings.** In proceedings involving lawyers (*i.e.* almost all proceedings), the judge may decide to rule without a hearing and parties would have 15 days in which to object, except in summary proceedings, expedited

⁹ Art. 4, as amended by Order No 2020-427 of April 15, 2020.

¹⁰ Art. 5.

¹¹ The order specifically excludes the financial and guaranteed obligations mentioned in Articles L. 211-36 of the French Monetary and Financial Code (Article 1, II, 4°).

¹² Art. 7.

¹³ Article 5: The provision concerns courts of first instance and appeal. The judge appointed must be a magistrate of the bench or a member of the bench at the Commercial Court. For industrial tribunals, the hearing may be held by two counsellors - an employer and an employee.

¹⁴ Art. 7.

proceedings on the merits and proceedings in which the judge must rule within a specified time period.¹⁵ As regards hearings that are maintained, they may be subject to restricted publicity, or may be held in chambers (without an audience except for journalists).¹⁶

— **More flexibility for communications between the parties and with the courts.**

- Communications by courts about the postponement of hearings which are not held (most hearings have been canceled since March 16, 2020)¹⁷ and court decisions¹⁸ may be done by any means, including by (i) electronic means when parties are represented, or (ii) ordinary letter, which will be the case, for example, when the first procedural hearing has not yet been held.

! Defendants still need to attend or be represented at hearings which are maintained. If they do not appear, a decision may be rendered by default.

- Exchange of briefs and exhibits between the parties may be done by any means, under the control of the court.¹⁹

— **Transfer of jurisdiction between courts.** Where a court is totally or partially unable to operate, the order gives the first president of the court of appeal, within the same jurisdiction, the opportunity to arrange for a transfer of jurisdiction to another court of the same nature to hear all or part of its cases.²⁰

We will continue to keep you informed of these new developments as they occur and are available to answer any questions you may have.

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¹⁵ Art. 8.

¹⁶ Art. 9.

¹⁷ Art. 4: for court registries, concerning the postponement of hearings only when the parties “are assisted or represented by a lawyer or when they have consented to the receipt of documents on the “Portal of the litigant” of the Ministry of Justice in

accordance with Article 748-8 of the Code of Civil Procedure”.

¹⁸ Art. 10.

¹⁹ Art. 6.

²⁰ Art. 3.