



# COVID 19

## NEWSLETTER LITIGATION

**THE IMPACT OF THE HEALTH  
CRISIS ON LEGAL AND  
PROCEDURAL DEADLINES**

**27 MARCH 2020**

**Stehlin &  
Associés**



Stehlin & Associés – Litigation and Arbitration Department

## The impact of the health crisis on legal and procedural deadlines



**The health crisis we are going through has a significant and inevitable impact on legal deadlines**, the non-observance of which can be sanctioned by various mechanisms (nullity, foreclosures, statute of limitation...), as well as **procedural deadlines**, whether they relate to ongoing proceedings or to the introduction of new proceedings.

In order to adapt to the health challenges and containment measures while preserving everyone's rights and the continuation of the essential activity of jurisdictions, **many emergency measures have recently been taken**, the most important of which is **the emergency law n°2020-290 of March 23rd, 2020 and the related ordinances**.

In conjunction with these measures, the courts have issued various announcements relating to their own organisation.



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In order to respond to the Covid-19 outbreak, **the emergency law of March 23rd, 2020**, outlined the framework for transitional measures that can be taken by ordinance over the next three months with retroactive effect to March 12th, 2020.

In particular, **Article 11, I., 2°, provides that** in the context of the spread of the epidemic and in order to deal with the consequences "of administrative or jurisdictional nature", **the Government may take any measure :**

« **b) Adapting, interrupting, suspending or postponing the expiry of the deadlines provided for**, under penalty of nullity, lapse, foreclosure, statute of limitation, unenforceability, forfeiture of a right, termination of an approval or authorisation or cessation of a measure, with the exception of measures involving deprivation of liberty and penalties. [...] ;

**c) Adapting**, for the sole purpose of limiting the spread of the covid-19 epidemic among the persons involved in the conduct and progress of the proceedings, **the rules relating to the territorial jurisdiction and trial panels of the administrative and judicial courts, as well as the rules relating to deadlines for proceedings and trials, the publicity of hearings and the holding of hearings, the use of videoconferencing before those courts and the procedures for bringing cases before the court and organizing adversarial proceedings before the courts »**

**Twenty-five ordinances have been issued under this emergency law**, four of which have been presented by the Minister of Justice.



# The impact of the health crisis on legal and procedural deadlines

## 1. EXTENSION OF EXPIRED DEADLINES DURING THE HEALTH EMERGENCY PERIOD

The restrictions of containment and the current health situation necessarily prevent a good number of actions from being carried out, with potentially significant legal consequences, such as nullity, statute of limitation, forfeiture, etc.

In order to preserve everyone's rights, **the Government introduced - by ordinance n°2020-306 of March 25th, 2020, published on March 26th, 2020 - measures extending all deadlines that would come to an end during a specific but not yet limited « *derogation period* ».**

**This derogation period began on Thursday, 12th March 2020 and will last until one month after the end of the state of health emergency.** This period therefore appears to be decorrelated from the containment period, which has been in place since Tuesday, 17th March 2020.

The ordinance provides in particular that **during this derogation period « *any act, appeal, legal action, formality, registration, declaration, notification or publication* »** which should have been carried out to prevent in particular any « *nullity, sanction, lapse, foreclosure, statute of limitation, unenforceability, inadmissibility, expiration [...]* » **will be deemed to have been carried out in time if it has been carried out within 2 months following the end of the derogation period** (or within the legal time limit if this time limit is less than two months).

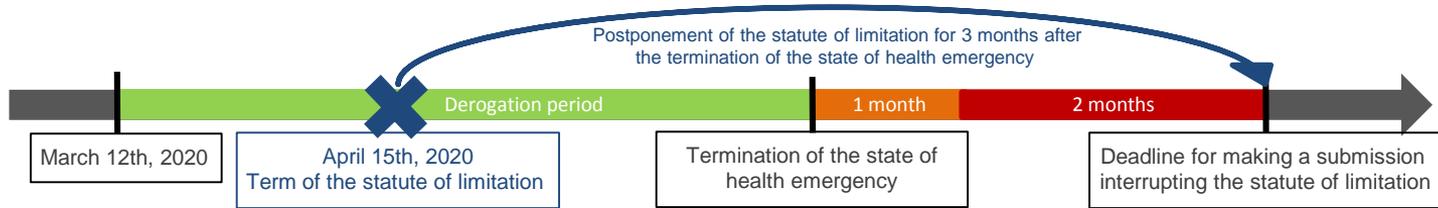
Are therefore not affected by this ordinance:

- deadlines which expired before the derogation period (*i.e.* before March 12, 2020) ;
- deadlines which will expire after the derogation period (*i.e.* after the date of cessation of the state of health emergency + 1 month).

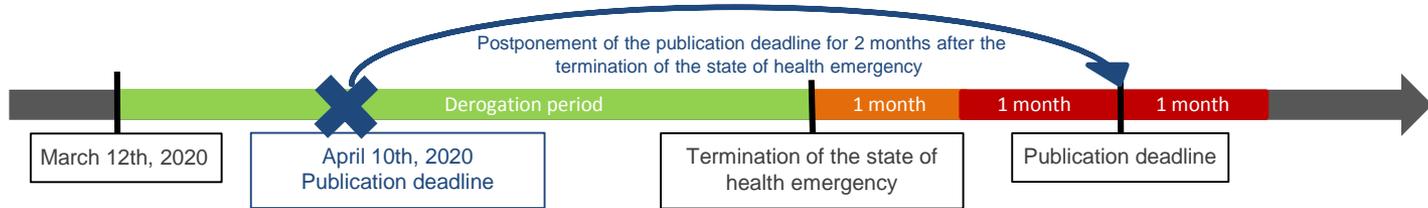


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- **For a statute of limitation (whose term is longer than 2 months)** initially set to expire on April 15th, 2020 :



- **For a publication deadline (1 month term)** initially set to expire on April 10, 2020 :



\* \* \*

**For example:** if the end of the state of emergency was declared on April 30th, 2020, all deadlines initially due to end between March 12th, 2020 and May 30th, 2020 would be extended to June 30th, 2020 if the initial deadline was one month, and to July 30th, 2020 if the initial deadline was two months or more.



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- **IMPACT ON CONTRACTUAL STIPULATIONS** : the provisions of the ordinance of March 25th, 2020 cover acts « *prescribed by law or regulation* », **and thus exclude acts provided for by contractual stipulations.**

As such, **the payment of contractual obligations must take place on the date stipulated in the contract.** The provisions of ordinary law nevertheless remain applicable if their conditions are met, for example the suspension of the statute of limitations due to impossibility to act (Article 2224 of the French Civil Code) or force majeure (Article 1218 of the French Civil Code).

**Concerning the fate of penalty payments and contractual clauses aimed at sanctioning the debtor's non-performance,** Article 4 of the ordinance provides that **penalty payments, penalty clauses, resolutive or forfeiture clauses that should have produced or begun to produce their effects between March 12th, 2020 and the expiry of the « derogation period » are suspended.** They will take effect one month after the end of this period, if the debtor has not fulfilled his obligation by then.

If these clauses began to run before March 12th, 2020, they will be suspended for the period between March 12th, 2020 and the expiry of a period of one month from the date of cessation of the state of public health emergency, with reinstatement from the following day. If they were pronounced before March 12th, 2020, the judge or administrative authority may terminate them if referred to.

**With regard to the termination of agreements,** Article 5 of the ordinance provides that « *Where an agreement may be terminated only during a specified period or is renewed in the absence of denunciation within a specified period, that period or period shall be extended, if it expires during the period defined in I of Article 1, by two months after the end of that period* ».



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### 2. ADJUSTMENT OF THE RULES AND DEADLINES APPLICABLE TO JUDICIARY COURTS RULING IN NON-CRIMINAL MATTERS

As of March 14th, 2020, the French Ministry of Justice issued a circular on the adaptation of the activity of the courts with a view to maintaining only the essential missions (e.g. handling civil litigation of an urgent nature). In this respect, the circular refers to the fact that **the judge « is generally authorised by law to extend the duration of the deadlines set by the courts »** (investigation of the case, deliberation, etc.).

In matters of expertise, the judge may also **extend the time** within which the expert must give his opinion when he encounters difficulties that prevent him from carrying out his mission (Article 279 of the French Civil Procedural Code).

The emergency law of March 23rd, 2020 gave the Government the possibility to take **all measures relating to « time limits for proceedings and trials »**.

The related ordinance n°2020-304 of March 25th, 2020 therefore **lightened the functioning of civil, social and commercial courts**, by simplifying the organization of hearings while preserving the adversarial process by all means.

The ordinance n° 2020-306 of March 25th, 2020 **extends**, in a general way, **the deadlines that expired during this period** (article 2). It provides for the possibility of dematerialised hearings, by videoconference or by any other electronic means of communication, including telephone (Article 7).



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### 3. ORGANISATION OF THE COURTS (EXEMPLE OF PARIS AND NANTERRE)

#### Commercial Court of Paris (Tribunal de commerce de Paris) :

According to a press release dated March 16th, 2020, the Paris Commercial Court announced that « **all substantive hearings [...] are cancelled up until and including April 17th** ». However, the Court reserves the possibility of **maintaining the interim hearings** « in cases of characterized extreme urgency ».

#### Court of Justice of Paris (Tribunal Judiciaire de Paris) :

The Court has announced **its total closure as of March 16th, 2020, except** for « *the treatment of essential litigation* », namely mainly litigation relating to the freedom of persons.

#### Commercial Court of Nanterre (Tribunal de commerce de Nanterre) :

In a press release dated March 19th, 2020, the Commercial Court of Nanterre announced that **its entire activity was suspended**: « *The activity is suspended. There are no hearings for an indefinite period and no possibility of signing decisions.* ». However, the Tribunal specified on March 25th, 2020 that **the most urgent cases** (previously validated by the filing of a motion for interim proceedings from hour to hour) **could be dealt with by videoconference**.

#### Court of Justice of Nanterre (Tribunal Judiciaire de Nanterre) :

The Court announced that « *as of Wednesday 18th, March, (...) In civil matters, all hearings are postponed. Only urgent cases will be examined* ».



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