

## GOVERNMENTAL MEASURES AMENDING CERTAIN TIME LIMITS IN THE CONTEXT OF THE COVID-19 HEALTH CRISIS

Litigation - Arbitration - White Collar Crime | 03/04/20 | Marie Danis



The confinement and social distancing measures imposed by the government to combat the spread of covid-19 are not without effect on the French judicial system. On 15th March 2020, the Minister of Justice, Nicole Belloubet, announced the closure of all courts, thereby postponing the scheduled hearings, except for the "essential litigation".

The health emergency declared for a period of two months by Law n°2020-290 of 23rd March 2020 *allows the government to set adaptation measures by means of government orders* (ordonnances). To date, twenty-nine orders have already been published, including Order No. 2020-306 of 25th March 2020 on extension of time limits during the period of the health emergency and the adaptation of procedures (hereinafter, **the Order**).

In substance, the Order provides for new time limits applicable to civil proceedings in the context of the health emergency; a specific Order (n°2020-303 of 25th March 2020) exists on time limits applicable to criminal proceedings.

The Order implements a period of legal protection (i) and provides both for the extension of the limitation and foreclosure periods for certain acts (ii) and a moratorium applicable to certain contractual clauses (iii). Its interpretation is facilitated by a circular of 26th March 2020 of the Ministry of Justice (hereinafter, **the Circular**).

### IMPLEMENTATION OF A PERIOD OF LEGAL PROTECTION

Only the limitation periods that should have expired "between 12th March 2020 and the expiry of a time limit of *one month from the date of termination of the health emergency period*" benefit from the prorogation (Article 1 of the Order).

As a reminder, the health emergency period is declared "for a period of two months from the entry into force of this law" (Article 4 of law 2020-290). As this law is of immediate application, the date of termination of the health emergency period is set on 24th May 2020, subject to possible legal extensions or premature termination by decree.

In short, the period of legal protection would be between 12th March and 24th June 2020 (date of termination of the health emergency period extended by one month) (hereinafter, **the Protection Period**).

Excluded are the limitation period whose term expires outside of the Protection Period, i.e. either before 12th March 2020, or after the month following the date of termination of the health emergency period.

### EXTENSION OF PROCEDURAL DEADLINES

**The material scope of application is very broad.** The extension of limitation periods concerns all acts, appeals, legal actions, formalities, declarations, notifications or publications "*prescribed by law or regulation*" (Article 2 of the Order), thus excluding acts affected by contractually fixed time limits.

However, it should be noted that, at the end of this period, these acts or payments must be carried out "*within the time limit legally set for action*" but "*within a limit of two months*".

Does the order have a suspensive or an interruptive effect? As a reminder, the suspension stops the course of the limitation or foreclosure period temporarily, without, however, erasing the period already elapsed prior to the suspension. On the contrary, the interruption of the limitation period resets the starting point of a new period.

The Circular seems to provide elements of response in favour of an interruption of the limitation periods, without, however, explicitly referring to this notion:

*"The order does not provide for a general suspension nor a general interruption of the time limits, which have expired during the legally protected period defined in Article 1, nor does it provide for the abolition of the obligation to carry out all acts or formalities, the term of which expires within the period referred to. (...)"*

The same circular states that: "the legal time limit for taking action shall run again from the end of this period, in the limit of two months".

Thus, one understands that there is an interruption of the current limitation periods, thus creating a new period starting to run at the end of the Protection Period, which seems to be confirmed by the Circular.

Consequently, any period extended under the provisions of the Order and starting to run from 24 June 2020, should end at the latest on 24 August 2020.

The following administrative or jurisdictional measures are thus automatically extended (Article 3 of the Order):

- 1° Precautionary measures, legal inquiries, investigation, conciliation or mediation measures;
- 2° Prohibition or suspension measures that have not been pronounced as a sanction;
- 3° Authorizations, permits and approvals;
- 4° Measures of assistance, accompaniment or support for persons in social difficulty;
- 5° Measures to assist in the management of the family budget."

## MORATORIUM APPLICABLE TO PENALTY PAYMENTS AND TO CERTAIN CONTRACTUAL CLAUSES

The Order also aims to take into account the difficulties of enforcement resulting from the health emergency by paralysing the penalty payments ordered by the courts or the administrative authorities as well as the **contractual clauses aimed at sanctioning the non-fulfilment of an obligation within a given period** (penalty clauses (*clauses pénales*), termination provisions (*clauses résolutoires*) and forfeiture clauses (*clauses de déchéance*) (hereinafter, the **Contractual Clauses**) (Article 4 of the Order).

Thus, penalty payments and Contractual Clauses are **deemed not to have taken place or not to have taken effect**, if the payment period or a deadline for fulfilment of a contractual obligation has expired during the Protection Period. They will take effect one month after the Protection Period, if the debtor has not fulfilled his obligation by that time.

Penalty payments and penalty clauses, which had taken effect before the beginning of the Protection Period, are suspended during the Protection Period; they will become effective again the day after the end of the Protection Period.

The Circular also provides that when the penalty payments or the penalty clauses had taken effect before the beginning of the Protection Period, **the judge or the administrative authority may terminate them** if the matter is referred to them (but this is not specified in the Order).

The Order also contains provisions on **the termination or denunciation of agreements** (Article 5 of the Order).

A party that, could not terminate a tacitly renewable contract or object to its renewal within the contractual time limit because of the covid-19 epidemic may be given additional time to do so. In this respect, the Order sets two-month period following the end of the Protection Period (i.e. until 24th August 2020) to terminate or denounce an agreement if, its termination or the objection to its renewal was supposed to take place within a period or a time limit, that normally expires during the Protection Period.

By granting these additional time limits, the government wishes to ensure enhanced protection of the interests of the parties to certain contractual clauses in the exceptional circumstances imposed by covid-19. However, it must be anticipated that questions will arise as to the application of the Order.

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