COVID-19

ORDINANCES PRESENTATION

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GIDE
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EDITORIAL

Covid-19 Ordinances: the end of the tunnel?

The Law No. 2020-290 of 23 March 2020 declared a state of public health emergency in France, which was then extended by Law No. 2020-546 of 11 May 2020 until 10 July 2020 inclusive. Since Gide was founded100 years ago, the legal profession had never seen such a set of far-reaching measures to protect the population and the economy.

This second edition of Gide's Covid-19 Booklet is up to date as 2 June 2020, date which opens a new stage of return - though still fragile - to a certain normality. It endeavors to provide our readers outside France with an intelligible and free-access overview of all the ordinances made pursuant to this exceptional Law, so as to enable them to grasp the French legal implications of the pandemic.

A multidisciplinary group of lawyers, called the "Covid-19 Taskforce", from all practice areas and working alongside Gide's Scientific Council and the Knowledge Management team, headed by Emilie Leygonie, have contributed to this Booklet.

The reader shall find in the following pages, in addition to an overview of the Law of 23 March 2020, a concise outline of the most significant ordinances pertaining to the business world, relating notably to contractual time-limits, timeframes for court proceedings, the creation of a solidarity fund, companies' difficulties, company administration during the crisis, employment law, public and environmental law, real estate law, intellectual property and new technologies.

For the purpose of this new edition, all of Gide's input has been updated to take into account recently published ordinances and decrees. We welcome the fact that the French legislator now uses easily understandable dies ad quem for its exceptional Covid-19 regime. New contributions have been added, relating to the international application of the freeze on certain contractual sanctions and forfeitures, the continuation of construction sites, the resumption of certain employment deadlines, or the drastically reduced timeframes for consulting works councils.

For practical reasons, hyperlinks direct the reader to the original texts (ordinances, reports, decrees, circulars).

We wish you a pleasant reading of this updated ordinances presentation booklet, and remain by your side to assist you with any questions you may have.

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Orange wording below reflects the updates since the first English edition of this Ordinances presentation booklet

LAWS RELATED TO THE STATE OF EMERGENCY

EMERGENCY LAW NO. 2020-290 OF 23 MARCH 2020 TO DEAL WITH THE COVID-19 EPIDEMIC

The emergency law to deal with the Covid-19 epidemic ("*la loi d'urgence pour faire face à l'épidémie de Covid-19*") - adopted in a matter of days by both chambers of Parliament - was published in the Official Journal of 24 March 2020 (available here).

It contains a series of exceptional measures affecting notably businesses' activities, in particular introducing a "state of public health emergency" (*état d'urgence sanitaire*), as well as empowering the Government to legislate by ordinance to support the economy.

The implementation of the **state of public health emergency** allows the Government to adopt through decrees issued on the basis of the reports of the Minister of Health, general restrictive measures - which according to the law must be proportionate - that may limit, in addition to the freedom of movement and freedom of assembly, economic freedoms, such as the **right of entrepreneurship** (*la liberté d'entreprendre*), or to **requisition goods and services** needed to overcome the public health catastrophe.

Furthermore, the Government has also been authorised to issue, by way of ordinance, **provisional economic emergency measures**, before 24 July 2020, aiming at:

- supporting companies' cash flow, direct or indirect aids for companies whose sustainability is threatened (in particular by setting up a fund) as well as any measures adapting the provisions relating to the organisation of the Public Investment Bank (*Banque Publique d'Investissement*) in order to strengthen its capacity to grant guarantees;

- amending the **law on insolvency proceedings (*droit des procédures collectives*) and restructuring** in order to facilitate preventive measures to deal with the consequences of the health crisis;

- modifying the **companies' undertakings towards their customers and suppliers**, particularly in terms of time-limits and penalties and of the nature of the consideration (in particular with regard to contracts for the sale of package travelling and holidays);

- adapting the rules relating to the territorial jurisdiction and the composition of **the administrative and judicial courts** (*formations de jugement des juridictions de l'ordre administratif et judiciaire*), as well as the rules relating to procedural time-limits, the publicity of hearings and the use of videoconferencing before those courts;

- adjusting the **time-limits**, namely:

  - the time-limits which, if not met, result in nullity (*nullité*), lapse of any right (*caducité*), foreclosure, expiry of the applicable statute of limitations (*prescription*), unenforceability (*inopposabilité*), termination of a measure or forfeiture of a right (*cessation d'une mesure et déchéance d'un droit*), termination of an approval or authorisation, termination of a measure, except for measures involving deprivation of liberty, or any sanction or other effect. These measures will be applicable as of 12 March 2020 and may not last more than three months after the expiration of the administrative police measures taken to slow down the spread of the Covid-19 virus;

  - adapting the rules on time-limits, execution and rescission provided for in **public procurement contracts** and the public procurement code, in particular those relating to contractual penalties;

  - adapting the time-limits applicable to declarations and requests made to the administrative authorities;

- with regard to **corporate law**, simplifying and adapting the conditions under which general meetings and executive bodies of legal entities governed by private law meet and deliberate. It also encompasses any measures simplifying and adapting the rules relating in particular to the approval and publication of financial statements, the allocation of profits and the payment of dividends;

- with regard to **labour law** and **social security legislation**, having the following purposes:

  - to limit the termination of employment contracts, in particular by increasing the use of partial activity and reducing the cost of auxiliary health insurance (*reste à charge*) to be borne by the employer;

  - to adapt the procedures for granting the additional indemnity provided for in Article L. 1226-1 of the Labour Code;

  - to allow an employer or a particular industry (*accord d'entreprise ou de branche*) to modify employees' dates of paid leave (within a limit of six working days), days of reduced working hours (*jours de réduction du temps de travail*), rest days provided for in flat rate agreements and rest days allocated to the employee's time saving account (*compte épargne-temps du salarié*);

  - to allow companies in sectors particularly essential to national security or to the pursuit of economic and social life to legally derogate from the rules of public order and the contractual stipulations relating to working hours, weekly rest and Sunday rest;

  - to modify, on an exceptional basis, the time-limits and procedures for the payment of profit-sharing and incentive payments;

  - to amend the procedures for electing and the appointments' terms of the members of the labour tribunals (*conseillers prud'hommes*) and the members of the regional inter-professional employer/employee committees (*commissions paritaires régionales interprofessionnelles*);

  - to adjust the arrangements for monitoring workers' health;

  - to adjust the modalities for informing and consulting staff representative bodies and suspend social and economic committees' ongoing electoral processes;

  - to adapt the provisions on professional training and apprenticeship;

- derogating from the rules on personal and pecuniary liability of public accountants and from any measures allowing the **Central Agency of Social Security Bodies** (*l'Agence centrale des organismes de sécurité sociale*) to grant loans to entities operating a compulsory supplementary social security scheme ("*organismes gérant un régime complémentaire obligatoire de sécurité sociale* ")

- adapting the law on **co-ownership** of constructed buildings, in particular with regard to the appointment of syndics;

- allowing, in the event of **non-payment of water and energy bills**, to fully defer or to spread their payments, to waive any penalties and to prohibit interruptive measures in favor of "microenterprises within the meaning of Decree No. 2008-1354 of 18 December 2008"; and

- adapting the rules relating to police custody, provisional detention and house arrest under electronic surveillance, as well as any measures adjusting the rules relating to the enforcement of custodial sentences and the execution of custodial measures.

These extremely numerous measures have been progressively further developed by the Government (and should continue to be developed in the future) in the form of ordinances which we describe below.

PRESENTATION OF LAW NO. 2020-546 OF 11 MAY 2020 EXTENDING THE STATE OF PUBLIC HEALTH EMERGENCY AND SUPPLEMENTING ITS PROVISIONS

New article since the first English edition of this booklet

Law No. 2020-546 of 11 May 2020 extending the state of public health emergency and completing its provisions was adopted on 9 May 2020 by the joint commission and was validated by the Constitutional Council on 11 May (see here), with the reservations and censures indicated below.

The first purpose of this law is to extend the state of public health emergency and to help it meet the challenges of the end of lockdown. It also considers new IT tools to combat the spread of Covid-19.

EXTENSION OF THE STATE OF PUBLIC HEALTH EMERGENCY AND AMENDMENT OF CERTAIN PROVISIONS RELATING TO ITS REGIME

Extension of the state of public health emergency: The Law of 11 May extends the state of public health emergency to 10 July 2020 inclusive. However, this state of emergency may be terminated in advance by decree of the Council of Ministers, following the opinion of the Committee of Scientists.

Adjustments to the criminal liability of decision-makers: The Law provides for the insertion of a new Article L. 3136-2 relating to the conditions for incurring criminal liability in the event of a health disaster in the Public Health Code, which provides that, for the application of Article 121-3 of the Criminal Code relating to the conditions for incurring unintentional criminal liability, account must be taken "of the skills, power and means available to the perpetrator in the crisis situation that justified the state of health emergency, as well as the nature of his missions or functions, in particular as a local authority or employer".

Gradual return to the ordinary law on pre-trial detention: Article 16 of Ordinance No. 2020-303 of 25 March 2020, issued pursuant to Law No. 2020-290 of 23 March 2020, provided for the extension of the time limits for pre-trial detention or house arrest with electronic surveillance. The Law of 11 May now establishes the principle of a gradual return to ordinary law for pre-trial detention as of the date on which the courts resume their activity: as of 11 May 2020, pre-trial detention may no longer be extended without a decision by the competent court taken after an adversarial hearing. The Law of 11 May also sets out the procedures necessary for this gradual return to ordinary law.

Travel, transport, opening of establishments receiving the public and places where people gather: The Law of 11 May specifies and supplements the provisions of Article L. 3131-15 of the Public Health Code relating to the measures that may be taken by the Prime Minister during a state of public health emergency. The Prime Minister will now also be able to regulate by decree the movement, access and use of transport and the opening of establishments receiving the public as well as meeting places and no longer limit or prohibit them. It also clarifies and completes paragraph 7 of article L. 3131-15 of the Public Health Code relating to the Prime Minister's power to order the requisition of any person, goods and services needed to combat health disasters.

Quarantine measures and measures for placement and maintenance in isolation: Article 5 of the Law provides for the insertion in article L. 3131-15 of the Public Health Code of a paragraph II, which will specify the arrangements for quarantine measures and measures for placement and maintenance in isolation. These measures may only concern persons who have stayed in one of the Covid-19 traffic zones, the list of which will be made public, arriving in France from abroad or travelling between metropolitan France and the overseas territories and Corsica. The general framework applicable to these measures (duration, places, health monitoring, exit restrictions) will be defined by decree in the Council of State, after the opinion of the committee of scientists, "according to the nature and modes of propagation" of the virus.

Individual measures will be decided by the prefect, on the proposal of the director general of the regional health agency, and the prefect's decision will have to mention the channels and deadlines for appeal, as well as the procedures for referring the matter to the judge of liberties and detention. These individual measures may be appealed against by the persons concerned before the judge in charge of liberty and detention, who will have 72 hours to give a ruling. Placement and maintenance in solitary confinement may be decided only on the basis of a medical certificate. These measures will

have an initial duration of 14 days, which may be renewed only under certain conditions, without exceeding a total duration of one month.

The Constitutional Council has validated this regime but with a reservation of interpretation (no extension of quarantine or isolation measures requiring the person concerned to remain at his or her home or place of accommodation for a period of more than 12 hours a day without the authorization of the judicial judge).

The Law prohibits that persons and children who are victims of violence be quarantined, placed and kept in isolation in the same dwelling or place of accommodation as the perpetrator of such violence, even if it is alleged. It also provides for regular information to be provided to persons subject to quarantine, placement or segregation measures. Article 6 of the Law of 11 May also amends certain provisions of the French Labour Code in order to adapt them to periods of quarantine.

The Constitutional Council has censured the provision of the Law, the effect of which was, as from its entry into force, to leave in place, at the latest until 1 June 2020, the legal regime currently in force for quarantine measures and placement and maintenance in isolation in the event of a state of public health emergency. Article 13 of the Law now provides that it will enter into force immediately.

Extension of the categories of persons authorised to establish violations of the provisions adopted on the basis of a state of public health emergency: The Law of 11 May extends the list of persons authorised to establish violations of the provisions adopted on the basis of a state of public health emergency by means of a report. This will notably be the case for sworn transport service agents, such as those of SNCF and RATP, when the contravention takes place on public transport, or agents of the Directorate General for Competition, Consumer Affairs and Fraud Control for contraventions consisting solely of the violation of measures taken with regard to pricing control or restrictions on entrepreneurial freedom.

Rental evictions and suspension of access cuts in the supply of electricity or gas: The Law of 11 May postpones to 10 July 2020 inclusive the end of the winter truce for rental evictions as well as the prohibition of access cuts, for non-payment of bills, to "the supply of electricity, heat or gas".

CREATION OF AN INFORMATION SYSTEM TO COMBAT THE COVID-19 EPIDEMIC

Article 11 of the Law expressly authorises, under certain conditions, the sharing of data processed in the framework of the information systems deployed in support of combating the spread of the Covid-19 epidemic to derogate from medical confidentiality and the need to obtain the consent of the persons concerned, but only for a period of up to six months from the end of the state of public health emergency.

Moreover, the provisions of this article establish a general legal framework for these information systems. These provisions identify the categories of data controllers for the planned systems; authorise the collection of "health and identification data" and list the purposes pursued; list the categories of persons who may have access to this information and refer the methods for implementing the system to a decree of the Council of State after a public notice from the CNIL. The Constitutional Council censured the provision which provided that an assent of the CNIL was required. It should be noted that the data collected will not be collected for the purposes of the StopCovid digital application, which is not expected to be available before 2 June 2020.

These provisions stipulate that personal data collected by these information systems may not be retained for a period of three months after their collection. They strictly limit the nature of the health data that may be included in the files considered and the list of categories of persons who may have access to the information contained therein. Lastly, they set up a "societal liaison committee" responsible for ensuring that the processing of personal data is actually necessary and that the guarantees provided for by law are respected in practice.

The law also provides for the methods of remuneration of the professionals who will carry out the collection work; the anonymisation of the information collected when it is used for epidemiological surveillance at national and local levels, or for research on the virus and the means of combating its spread; a ban on the communication of data identifying infected persons, except with their express consent, to persons who have been in contact with them and, finally, the conditions for exercising greater parliamentary control over the processing of such personal data (informing Parliament without delay of

the measures implemented for the application of these provisions; submission by the Government of a quarterly report on the application of these measures). These reports are completed by a public notice from the CNIL.

The Constitutional Council also censured the provision of article 11 of the Law, which included the bodies that provide social support for the persons concerned in the scope of persons likely to have access to such personal data without the consent of the person concerned.

TIME-LIMITS, LITIGATION AND PROCEEDINGS

ORDINANCES NO. 2020-304 AND NO. 2020-595 ADAPTING THE RULES APPLICABLE TO JUDICIAL COURTS RULING IN NON-CRIMINAL MATTERS

In accordance with the authorization given by Parliament under law no. 2020-290 of 23 March 2020, the Government passed the ordinance no. 2020-304 on 25 March 2020 which was amended and supplemented by Ordinance No. 2020-595 of 20 May 2020 (the "**Judicial Courts Ordinance**") in order to streamline the functioning of the civil, social and commercial courts, by allowing the parties to be informed and the organization of adversarial proceedings by any means.

The Judicial Courts Ordinance sets up provisions relating to the courts of the judicial order ruling in non-criminal matters.

This presentation does not cover the measures for the legal protection for adults (article 12), nor the special provisions for juvenile courts and educational assistance detailed therein (articles 13 to 21), nor those relating to co-ownership[1] (article 22).

The following provisions shall apply to judicial courts, which are ruling in non-criminal matters during the period between 12 March 2020 and 23 June 2020 inclusive.

SCOPE AND REFERENCE (ARTICLES 1 AND 2)

The Judicial Courts Ordinance recalls that the time limits provided for in Ordinance No. 2020-306 of 25 March 2020 on the extension of time limits during the period of health emergency and the adaptation of procedures during that same period are applicable to proceedings before the courts of law ruling in non-criminal matters[2].

It should be noted that:

- the procedural deadlines applicable before the judge of liberties and detention (*le juge des libertés et de la détention*) and before the first president of the Court of Appeal hearing an appeal against the decisions of the former run in accordance with the legislative and regulatory rules applicable to them;
- the ordinances adapts the procedural deadlines applicable before the juvenile courts; and
- the deadlines relating to foreclosures are suspended between 12 March and 23 June inclusive.

TRANSFER OF TERRITORIAL COMPETENCE (ARTICLE 3)

The Judicial Courts Ordinance allows the first president of the Court of Appeal to designate by order another jurisdiction of the same nature and within the jurisdiction of the same Court of Appeal to hear all or part of the activity falling within the jurisdiction of the court, which is unable to exercise its authority.

This transfer of territorial jurisdiction may not be taken for a period extending beyond 23 June 2020 inclusive and must be published.

HEARINGS, REFERENCES AND DELIVERIES (ARTICLES 4 TO 10)

The Judicial Courts Ordinance provides, inter alia, that:

- when a hearing whereby the judge will hear the parties allegations or witness' testimony is cancelled, the registry shall notify the parties assisted or represented by a lawyer or having consented to communication by electronic means, of the postponement of the case or the hearing by **any means, in particular by electronic means** (in other cases, the registry shall notify the parties by any means, in particular by simple letter).

[1] This part of the ordinance is described p. 102.

[2] This Ordinance is commented p. 15.

- the court may, if the pleading hearing, the end of disclosure procedure (*cloture de l'instruction*) or the decision to rule without a hearing takes place between 12 March and 23 June inclusive, upon decision of its president, **rule as a single-judge formation in first instance and on appeal**, in all cases submitted to it, (subject to specific provisions applicable to commercial and employment courts).
- under the ordinary written procedure, the examining judge or the magistrate in charge of the report (*le juge de la mise en état ou le magistrat chargé du rapport)* may hold the hearing alone to hear the pleadings, he shall inform the parties by any means, and shall report back to the court in his deliberations.
- the parties may exchange their written arguments and documents by any means as long as the judge ensures that the adversarial process is respected.
- the heads of jurisdiction determine the conditions of access to the court and to the courtrooms in order to ensure compliance with the health rules in force.
- the judge or the president of the judicial panel may decide, before the commencement of the hearing, that the proceedings will be held in restricted publicity or in chambers.
- the setting up of dematerialized hearings or testimonies by means of audiovisual telecommunication allowing to ensure the identity of the participants and guaranteeing the quality of the transmission and the confidentiality of the exchanges between the parties and their lawyers or the witness.
- The members of the judicial panel, the registrar, the parties, the persons assisting or representing them, and the persons summoned to the hearing or testimony may be in separate locations.

  In particular, the judge remains the guarantor of the proper conduct of the debates and the respect of the rights of the defense, the adversarial process and the secrecy of the deliberations.
- The possibility, at any stage of the proceedings to decide that they will take place without a hearing if representation is mandatory or when the parties are assisted or represented by a lawyer.
- In the case of summary proceedings, accelerated proceedings on the merits or proceedings in which the judge must rule within a given time limit, the parties do not have the possibility of objecting to the proceedings without a hearing.

  These provisions shall apply between 12 March and 23 June 2020 inclusive.
- Summons for summary proceedings may be rejected before the hearing if the application is inadmissible or if there is no need for summary proceedings (in order to avoid congestion of the summary proceedings hearings which are maintained).
- Decisions may be brought to the attention of the parties or interested parties by any means (without prejudice to the provisions relating to their notification).
- Summons and notifications for which the Court Clerk is responsible shall be sent by simple letter where a registered letter with a request for acknowledgement of receipt is normally required.

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Find here the report addressed to the President of the French Republic pertaining to Ordinance No. 2020-304 of 25 March 2020 (amendment of 28 March 2020), here the circular dated 26 March 2020, and here the report addressed to President of the French Republic presenting Ordinance No. 2020-595 of 20 May 2020.

ORDINANCES NO. 2020-305, NO. 2020-306, NO. 2020-405, NO. 2020-427 AND NO. 2020-558: ADAPTATION MEASURES REGARDING PROCEDURES AND TIME-LIMITS BEFORE THE ADMINISTRATIVE COURTS

In accordance with Parliament's authorisation, Ordinance No. 2020-305 of 25 March 2020 adapting the rules applicable before the administrative courts was published on 26 March 2020. It was supplemented and amended by Ordinance No. 2020-405 of 8 April 2020 adapting various rules applicable before the administrative courts, which entered into force on 10 April 2020, and then by Ordinance No. 2020-427 of 15 April 2020 containing various provisions relating to time-limits to deal with the Covid-19 epidemic.

As expected, an ordinance was finally issued to adapt these rules to the extension of the state of public health emergency and to the lockdown ease. Indeed, in so far as the economic activity is expected to resume gradually, the courts, administrative authorities, economic players and individuals will more easily be able to comply with formalities and usual procedural rules. It would have been disproportionate that the duration of the procedural adjustments justified by the lockdown remain correlated with the duration of the state of public health emergency, which is expected to last until 10 July 2020 inclusive (Article 1 of Law No. 2020-546 of 11 May 2020 extending the state of public health emergency and supplementing its provisions) and whose extension may be required at a later date. Ordinance No. 2020-558 of 13 May 2020 amending Ordinance No. 2020-305 of 25 March 2020 adapting the rules applicable before the administrative courts addresses that concern.

These ordinances result in the departure from the procedural rules applicable before the administrative courts owing to the state of public health emergency. A number of procedural adjustments have significant implications for litigants.

First of all, we note that time-limits to issue a judgment are extended.

On the one hand, where a time-limits set for the judge to rule run or have run in whole or in part between 12 March 2020 and 23 May inclusive, their starting point is postponed to 1 July 2020 (subject to exceptions relating to municipal elections or entry and residence of foreigners).

On the other hand, when the completion date for the investigation of a case ("*la cloture d'instruction*") was between 12 March 2020 and 23 May 2020 inclusive, this date is automatically postponed to 23 June 2020 inclusive, unless this time-limit is postponed by the judge. Consequently, the parties will be able to supplement their submissions at least until 23 June 2020.

Nonetheless, the judge may set an earlier completion date for the investigation of a case, where the urgency or the status of the case so warrants. This solution is welcomed in order to avoid inappropriate or far-remote postponements, when the case is ready to be heard or need to be tried rapidly. The judge will then have to expressly indicate that the postponement rule contained in the commentated ordinance does not apply.

As regards investigative measures ("*mesures d'instruction*"), time-limits (for instance, to submit a document, or rectify a claim) which lapse between 12 March 2020 and 23 June 2020 are automatically extended to 24 August 2020 inclusive. Nonetheless, where the urgency or the status of the case so warrants, the judge may set a shorter time-limit. He shall then specify that the extension provided by the Ordinance does not apply to the date thus set. The drafting of the corresponding provisions has been considerably improved by Ordinance No. 2020-558 of 13 May 2020,as we had hoped.

Secondly, until the state of public health emergency lapses, hearings may be held behind closed doors, with reduced public access, or by videoconference. If that is technically or materially impossible, the court may decide to hear parties and their advocates by any electronic communication means, including by telephone. Some members of the court will be able to participate in the hearing from a separate location from the courtroom. Applications for interim relief ("requêtes en référé") may also be decided on without a hearing, by way of a reasoned order ("ordonnance motivée"). In this case, the judge shall inform the parties of the lack of hearing and set the date from which the investigation of the case will be closed.

Finally, Ordinance No. 2020-305 of 25 March 2020 adapting the rules applicable before the administrative courts' major impact concerns claims' time-limits extension. Pursuant to the aforementioned ordinance, article 2 of Ordinance No. 2020-306 of 25 March 2020 on the extension of time-limits during the period of health emergency and the adaptation of procedures during this same period is applicable to administrative courts, as amended by Ordinance No. 2020-560 of 13 May 2020 setting time-limits applicable to various procedures during the period of health emergency, which uncorrelated these time-limits from the state of public health emergency end date.

This results in an extension of claims' time-limits, which expire between 12 March 2020 and 23 June 2020. The prorogation will start from the latter date and will last for a period of time equal to the legally-allowed timeframe to act, within the limit of two months.

Let us take the example of an administrative act duly notified or published on 15 January 2020. In accordance with the usual two-month deadline to file a claim before the administrative courts, the latest date to directly file a claim should have been 16 March 2020. Due to the ordinances, claims before the administrative courts may be filed no later than Monday 24 August, inclusive.

By contrast, if an administrative act has been duly notified or published on 24 April 2020, the time-limit to bring a claim against this act shall expire on 25 June 2020 and shall not be extended. Indeed, the expiry of the usual two-month time-limit would occur after 23 June 2020.

The same postponement of deadlines' principle is applicable to any remedy ("*recours administratif*"), even non-judicial in nature, for a claim to be admissible as prescribed by the texts and which should have been completed between 12 March 2020 and 23 June 2020. Consequently, if the referral of the claim to the administrative court must be preceded by an administrative remedy, this remedy will be deemed validly exercised if exercised within a timeframe that cannot exceed, as from 24 June 2020, the legal time-limit to act, provided that the latter time-limit is capped to two months.

Non-mandatory administrative remedies, although not prescribed by law, also seem to benefit from this time-limit's extension by virtue of the principle, codified in article L. 411-2 of the relations between the public and the administration code, according to which any administrative decision may benefit from an *ex gratia* or hierarchical remedy thereby interrupting the course of that time-limit, provided that it is within the time-limit set for lodging the remedy.

This exceptional law will therefore have the paradoxical effect of allowing administrative acts published at the end of January 2020 to be directly contended before the administrative judge until August 2020, whereas the time-limits for opposing acts published in May 2020 or at the end of April will have already lapsed.

In the real estate industry, this effect was deemed excessive. It jeopardised real estate projects as both the issue of the required authorisations, and all the more so, of their permanent nature, conditioned the commencement of works. Ordinance No. 2020-427 of 15 April 2020 containing various provisions relating to time-limits to deal with the Covid-19 epidemic thus provided for urban planning and development exemptions. To sum up, the time-limits to challenge a building, development or demolition permit or a decision not to oppose a prior declaration that have not expired before 12 March 2020 are only suspended from that date. They will resume running from 24 May 2020, for the remaining period as of 12 March 2020 and for at least 7 days.

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Find here the report addressed to the President of the French Republic relating to Ordinance No. 2020-305, here the report relating to Ordinance No. 2020-306 (amendment of 28 March 2020) as well as the circular presenting Title I's provisions of Ordinance No. 2020-306 of 25 March 2020, here the report addressed to the President of the French Republic relating to Ordinance No. 2020-405, here the report relating to Ordinance No. 2020-427, as well as the circular presenting Title I's provisions of Ordinance No. 2020-427 of 15 April 2020, and here the report addressed to the President of the French Republic presenting Ordinance No. 2020-558 of 13 May 2020.

ORDINANCES NO. 2020-306, NO. 2020-427, AND NO. 2020-560 ON ADAPTING ELAPSED DEADLINES AND PROCEDURES DURING THE STATE OF PUBLIC HEALTH EMERGENCY PERIOD

Pursuant to the authorisation granted by Parliament in Law No. 2020-290 dated 23 March 2020, the French Government adopted Ordinance No. 2020-306 on 25 March 2020, amended by Ordinance No. 2020-427 dated 15 April 2020 then by Ordinance No. 2020-560 of 13 May 2020 setting time-limits applicable to various procedures during the state of public health emergency period (the "**Time-Limits Ordinance**"), which lays down general provisions relating to time-limits and, special provisions concerning time-limits in relation to administrative or tax matters. Furthermore, since its amendment by Ordinance No. 2020-427 dated 15 April 2020, the Time-Limits Ordinance now includes a Title II bis which provides for specific provisions relating to public inquiries and time-limits applicable to urban planning and development. Regarding these sectors, the amended Time-Limits Ordinance's specific consequences for this industry are addressed in the Urban Planning Q&A[3].

As expected, an ordinance was finally issued to adapt these rules to the extension of the state of public health emergency and to the lockdown ease. Indeed, insofar as the economic activity is expected to resume gradually, the courts, administrative authorities, economic players and individuals will more easily be able to comply with formalities and usual procedural rules. It would have been disproportionate that the duration of the procedural adjustments justified by the lockdown remain correlated with the duration of the state of public health emergency, which is expected to last until 10 July 2020 inclusive (Article 1 of Law No. 2020-546 of 11 May 2020 extending the state of public health emergency and supplementing its provisions) and whose extension may be required at a later date. **Ordinance No. 2020-560 of 13 May 2020 setting time-limits applicable to various procedures during the state of health emergency period** addresses that concern.

EXTENSION OF TIME-LIMITS - GENERAL PROVISIONS

Scope of the Time-Limits Ordinance (Article 1)

Subject to certain exceptions, the provisions analysed hereinafter shall apply to time-limits and measures that have expired or expire **between 12 March 2020 and 23 June 2020 inclusive** (hereinafter, the "**Legally Protected Period**" or the "**Period**"). The end date of the Period has been defined by reference to the first end date of the state of public health emergency and matches what Gide had expected (see here the debate). The Legally Protected Period is therefore no longer correlated with the duration of the public health emergency.

Provisions applicable to various deadlines and expiry of a term (Article 2)

Any of the followings will be deemed to have been timely performed, provided that it has been performed following the end of the Period within the legal time-limit to act and **subject to a two-month limit**:

- any act, form of legal recourse or right of action, formality, registration, declaration, notification or publication **prescribed by law or regulation** that would otherwise lead to its invalidity ("*nullité*"), sanction, lapse of any right ("*caducité*"), foreclosure ("*forclusion*"), prescription, unenforceability ("*inopposabilité*"), automatic withdrawal ("*désistement d'office*"), inadmissibility ("*irrecevabilité*"), expiration ("*péremption*"), application of an *ad hoc* regime ("*régime particulier*"), "*non avenu*" or forfeiture of any right whatsoever ("*déchéance de droit*") and which should have been carried out during the Period (contractual provisions shall continue to apply as usual - excepted for certain clauses as provided for in the Time-Limits Ordinance);
- any payment prescribed by law or regulation for the acquisition or retention of a right.

This very broad provision should be applicable to a wide range of situations (including court summons, filing of appeal proceedings, filing of proof of claims ("*déclarations de créances*"), filing of various formalities and publicity to the commercial registry, etc.).

[3] See p. 85.

It is specified that (i) time-limits for reflection, withdrawal or renunciation provided for by law or regulation and (ii) time-limits for repayment of sums of money, if above-mentioned rights are exercised, are not affected by this provision.

Provisions applicable to administrative and judicial measures (Article 3)

Time-limits expiring during the Period **shall be extended automatically for three months (initially two months) following the end of the Period** (unless the court or competent authority has exercised its discretionary power to exclude, suspend or alter the time-limit before being lapsed) for the following measures:

- any conservation ("*mesures conservatoires*"), investigation, instruction, conciliation or mediation measures;
- any prohibitive ("*mesures d'interdiction*") or suspensive ("*mesures de suspension*") measures insofar as such measure has not been imposed as a penalty;
- any authorisations, permits or approvals.

These provisions shall not prevent the court or competent authority from exercising its jurisdiction to modify or put an end to such measures, or, where the interests for which such court or authority has jurisdiction/authority justify it, to prescribe their application or order new ones, setting a time-limit it shall determine. In any event, the court or competent authority shall take into consideration the state of health emergency's constraints, when determining status of limitations or time-limits to be observed.

The Government justifies the extension of this time-limit through Ordinance No. 2020-560 of 13 May 2020 setting time-limits applicable to various procedures during the state of public health emergency period so as to avoid these measures to lapse in August and to enable affected parties to complete the necessary formalities in September.

Provisions applicable to contracts and periodic penalty payments ("*astreintes*") (Articles 4, 5 and 6)

Where the purpose of a clause is to sanction the breach of a contractual obligation within a specified time-limit, any (i) periodic penalty payment ("*astreintes*"), (ii) penalty ("*clauses pénales*"), (iii) cancellation ("*clauses résolutoires*"), or (iv) forfeiture clauses ("*clauses de déchéance*") are deemed **not triggered by the expiration of such time-limit during the Period**.

Periodic penalty payments and the aforementioned clauses shall produce their effects following the expiration of a period - calculated from the end of the Period - equal to the time elapsed between (i) 12 March 2020 (or, where later, the date on which the related obligation arose) and (ii) the date on which the related obligation should have been performed. For instance, a penalty clause which could have become effective on 16 March 2020, will only become effective - if the obligation is still to be performed - on the 5th day following the end of the Period - namely on 28 June 2020.

Furthermore, the enforcement of periodic penalty payments and of the aforementioned clauses, if they are intended to sanction the breach of a non-monetary obligation within a specified time-limit expiring after the Period, is postponed for a period equal to the time elapsed between (i) 12 March 2020 (or, where later, the date on which the related obligation arose) and (ii) the end of the Period. In other words, a penalty clause sanctioning the non-performance of works after 30 June 2020 will only be enforceable subsequently to a period equal to the Period, starting on 30 June 2020, in order to avoid notably to put non-monetary obligations debtors under strain following the restrictions imposed due to the lockdown.

We note that periodic penalty payments and penalty clauses that have been enforceable before 12 March 2020 are suspended during the Period.

SPECIAL PROVISIONS APPLICABLE TO TIME-LIMITS IN ADMINISTRATIVE MATTERS AND BEFORE THE ADMINISTRATIVE COURTS

Provisions relating to time-limits for administrative decision processes ("*délais d'instruction de l'administration*") (Article 7)

Time-limits prescribed in which the administration has or can reach a decision or agreement or issue an opinion, or by the end of which such decision, agreement or opinion automatically accrue, are suspended during the Legally Protected

Period. This is subject to obligations arising from international and/or European laws and exceptions laid down by decrees.

Similarly, such time-limits that should have started running during the Period shall be deemed to have started to run from the end of the Period instead.

Are also suspended during the Period (i) time-limits granted to the administration to check the completeness of an application or to request additional documents during the examination of an application as well as (ii), for civil servants, time-limits to withdraw a contractual termination procedure ("*procédure de rupture conventionnelle*").

Subject to the Time-Limits Ordinance's provisions relating to public inquiries, time-limits for public consultation or participation shall be suspended until 30 May 2020 inclusive.

Provisions relating to time-limits imposed by the administration (Article 8)

Time-limits imposed by the administration on any person to carry out inspections and works or to comply with instructions of any kind are also suspended during the Legally Protected Period (i.e. between 12 March 2020 and 23 June 2020), except when such a time-limit results from a court decision.

The starting point of similar time-limits that should have started to run during the Period shall be postponed until the end of the Period.

These provisions shall not prevent the administrative body from exercising its jurisdiction to modify or discontinue such obligations, or, where the interests for which it is responsible so justify, to prescribe their application or order new ones, within the time-limit it shall determine.

In any event, the administrative body must take into consideration the state of health emergency's constraints, when determining obligations or time-limits to be observed.

By way of derogation, a decree shall determine the categories of acts, procedures or obligations for which time-limits are to be resumed, in order to protect the fundamental interests of the nation ("*intérêts fondamentaux de la Nation*"), the national security, the protection of public health and public hygiene, the upholding of employment and economic activity ("*sauvegarde de l'emploi et de l'activité*"), securing work relations and collective negotiations, the preservation of the environment, the protection of children and young people.

For the same reasons, a decree may, in respect of any act, procedure or obligation, set a specific date for the resumption of a time-limit, provided that the persons concerned are informed thereof.

Provisions relating to time-limits for bringing a right of action (Article 2)

Contentious rights of action

Article 2 of the Time-Limits Ordinance's provisions were expressly given effect before administrative courts by Ordinance No. 2020-305 of 25 March 2020 adapting the rules applicable before the administrative courts.

As a result, time-limits for bringing a claim before the administrative courts shall be extended if they expire between 12 March 2020 and 23 June 2020.

Let us take the example of an administrative act duly notified or published on 15 January 2020. In accordance with the usual two-month deadline to file a claim before the administrative courts, the latest date to directly file a claim should have been 16 March 2020. Due to the ordinances, the claim's time-limit is extended. As the Legally Protected Period ends on 23 June 2020, claims should therefore be filed no later than Monday 24 August, inclusive.

By contrast, if an administrative act has been duly notified or published on 24 April 2020, the time-limit to bring a claim against this act, shall expire on 25 June 2020 and shall not be extended. Indeed, the expiry of the usual two-month time-limit would occur after 23 June 2020.

This emergency legislation will therefore allow for administrative acts published at the end of January 2020 to be challenged until August 2020, whereas the deadline for challenging acts published in May 2020 or at the end of April 2020 will already have lapsed.

In the real estate industry, this effect was deemed excessive. It jeopardised real estate projects; as both the issue of the required authorisations, and all the more so, of their permanent nature, condition the commencement of works. Ordinance No. 2020-427 of 15 April 2020 containing various provisions relating to time-limits to deal with the Covid-19 epidemic thus provided for urban planning and development exemptions. To sum up, the time-limits to challenge a building, development or demolition permits or decisions not to oppose a prior declaration that have not expired before 12 March 2020 are only suspended from that date. They will resume running from 24 May 2020, for the remaining period as of 12 March 2020 and for at least 7 days[4].

Non-contentious rights of action

The same postponement of deadlines' principle is applicable to any administrative remedy ("*recours administratif*"), even non-judicial in nature, for a claim to be admissible as prescribed by the texts and which should have been completed between 12 March 2020 and 23 June 2020.

Non-mandatory administrative remedies, although not prescribed by law, also appear to benefit from this extension, by virtue of the principle according to which any administrative decision may benefit from an *ex gratia* or hierarchical remedy thereby interrupting the course of that time-limit, provided that it is within the time allocated for a contentious right of action to be brought.

SPECIAL TAX PROVISIONS (ARTICLE 10)

The Government considered it necessary to extend the suspension of certain tax-related time-limits until 23 August 2020 to allow companies to focus on resuming their activities,. Indeed, an immediate and undifferentiated resumption of all pending tax audits as of 12 March 2020 for which mandatory time-limits are likely to expire soon after 23 June 2020 could have led to practical difficulties for some of them, notably bars and restaurants.

The following time-limits (i) shall be suspended from 12 March 2020 until 23 August 2020 inclusive and (ii) for those that started to run during the Period, shall run only from the end of said Period:

- as regards tax audit, the time-limits granted to the administration to repair total or partial omissions in the tax base, inadequacies, inaccuracies or errors in taxation and to apply interests for late payment and penalties;
- as regards control and enquiry procedures, the time-limits granted to the administration or to any person or entity and provided for in Title II of the first, second and third parts of the tax procedures book ("*livre des procédures fiscales*") (excepted for the status of limitations provided for by Articles L.168 to L.189 of the same book, by the provisions of Article L.198 A of the same book as regards on-the-spot investigation of claims for reimbursement of value added tax credits ("*crédits de taxe sur la valeur ajoutée*") and by the provisions of Article 67 D of the Customs Code ("*Code des douanes*"); and
- in terms of administrative control ("*contrôle administratif*"), the time-limits provided for in Article 32 of Law No. 2018-727 dated 10 August 2018 for a State for the benefit of a trustworthy society ("*Etat au service d'une société de confiance*").

These provisions do not apply to rescript provisions: the suspension of rescript procedures will thus end on 23 June 2020 at midnight. The last version of the Ordinance specifies that: "*the time-limits provided for in Articles L. 18, L. 64 B, L. 80 B, L. 80 C and L. 80 CB of the tax procedures book and those provided under Article 345 bis of the customs code are suspended from 12 March 2020 to 23 June 2020 inclusive and only run as from the later date, for those which would have started running during such period*".

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[4] See p. 85 for a detailed analysis of the urban provisions.

Find here the report addressed to the President of the French Republic relating to Ordinance No. 2020-306 of 25 March 2020 (amendment of 28 March 2020), here the circular presenting Title I's provisions of Ordinance No. 2020-306, here the report relating to Ordinance No. 2020-427 and the circular presenting Title I's provisions of Ordinance No. 2020-427 of 15 April 2020, and here the report pertaining to Ordinance No. 2020-560 of 13 May 2020.

ORDINANCE NO. 2020-303, NO. 2020-341 AND NO. 2020-557 ON ADAPTING RULES OF FRENCH CRIMINAL PROCEDURE

An Ordinance on *the adaptation of the rules of criminal procedure* was published on 26 March 2020, on the basis of the emergency Law No. 2020-290 of 23 March 2020 *to deal with the Covid-19 epidemic* (**Ordinance relative to criminal procedure**).

The text was later completed by an Ordinance of 27 March 2020 *on the adaptation of the rules applicable to corporate and agricultural insolvency to the sanitary emergency and amending certain rules of criminal procedure,* by Law No. 2020-546 of 11 May 2020 *extending the state of health emergency and supplementing its provisions*, and by Ordinance No. 2020-557 of 13 May 2020 *amending Ordinance No. 2020-303 of 25 March 2020 adapting the rules of criminal procedure on the basis of Law No. 2020-290 of 23 March 2020 as an emergency measure to deal with the Covid-19 epidemic.*

Its initial purpose was "to ensure the continuity of the penal courts' activity" during lockdown by adopting a number of exceptional measures. In the post-lockdown period, these measures are maintained in order to accompany the gradual resumption of the normal activity of the criminal courts.

The provisions of the amended Ordinance on Criminal Procedure are applicable up to expiry of a one-month time limit with effect from the end of the state of health emergency, which was extended until 10 July 2020 inclusive by the Law of 11 May 2020. However, the amended Ordinance on Criminal Procedure allows a decision to be taken by decree to terminate this exceptional regime early if the circumstances justify it.

SUSPENSION OF STATUTES OF LIMITATIONS

Article 3 of the Ordinance relative to criminal procedure provides that the statutes of limitations for criminal actions and the time limitations for sentences are suspended as of 12 March 2020 and up to expiry of a one-month time limit from the date the state of health emergency is declared over.

AMENDMENT OF APPEAL RULES AND APPLICATIONS

Article 4 of this Ordinance, supplemented by the Law of 11 May 2020, provides for an amendment of the use of certain requests and available legal remedies, as follows:

- the time limits set by the provisions of the Code of Criminal Procedure or by the Law of 29 July 1881 on freedom of the press for the appeals are doubled, without being inferior to ten days;
- all appeals and applications, including appeals to the courts of appeal and the Court of Cassation, can be filed by registered mail with acknowledgment of receipt, as well as submissions;
- appeals to the courts of appeal and to the Court of Cassation can be lodged by email;
- applications filed pursuant to the next-to-last paragraph of Article 81 of the Code of Criminal Procedure can be sent by email.
- in matters of pre-trial detention, certain request for **release** can be made by **e-mail**.

EXTENSION OF THE USE OF MEANS OF AUDIOVISUAL TELECOMMUNICATION

Article 5 of the Ordinance relative to criminal procedure makes it possible to use means of audiovisual telecommunication before all penal courts, with the exception of criminal courts in charge of trying the most serious offenses, and this, without it being necessary to obtain the parties' consent. Under certain conditions, the judge can alternatively decide to use any other means of electronic communication, including telephone.

RESTRICTED PUBLICITY OF HEARINGS

Article 7 of the Ordinance relative to criminal procedure makes it possible to derogate from the principle of the publicity of hearings and of the announcement of judgments before the assize courts and the correctional courts, by holding hearings with a limited public, and even behind closed doors when ensuring the safety of those present at the hearing proves impossible. Journalists may however be authorized to attend hearings, even when held behind closed doors.

POSSIBILITY OF A SINGLE-JUDGE RULING

Subject to publication of a decree confirming a lasting health crisis liable to compromise the proper running of the courts despite the implementation of other provisions of the Ordinance relative to criminal procedure, Article 8 of the Ordinance authorizes certain courts, such as the investigating chamber ruling on correctional matters, the correctional court or even the court of criminal appeals to have a single judge rule on the matter.

ADJUSTMENT OF POLICE CUSTODY MEASURES

Article 13 of the Ordinance relative to criminal procedure enables a lawyer and a person in police custody or in customs retention to meet through a means of electronic communication, including by telephone. A lawyer can also use this means to assist his/her client during the interviews.

RELAXATION OF THE CONDITIONS APPLYING TO PRE-TRIAL DETENTION

Articles 15 to 20 of the Ordinance relative to criminal procedure, completed by Article 4 of the Ordinance of 27 March 2020 and by Article 1 of the Law of 11 May 2020, **relax the pre-trial detention conditions**, notably with an extension of the maximum time limits of pre-trial detention, whether it be for detention pending investigation or detention concerning individuals remanded in custody following investigation. The time limits applicable to rule on release applications and detention-related applications are also extended.

ADJUSTMENT OF SENTENCE ENFORCEMENT CONDITIONS

Articles 24 to 29 of the Ordinance contain various provisions aimed at simplifying the sentence adjustment procedure and at adjusting or reducing the length of certain prison sentences.

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Find here the report addressed to the President of the French Republic on Ordinance No. 2020-303 of 25 March 2020, here the presentation circular of 26 March, here the report addressed to the President of the French Republic on Ordinance No. 2020-341 of 27 March, and here the report on Ordinance No. 2020-557 of 13 May 2020.

ORDINANCE NO. 2020-306 DATED 25 MARCH 2020: RIGHT OF CREDITORS TO OBJECT TO CORPORATE TRANSACTIONS DURING THE COVID-19 PERIOD

Among the many unsuspected consequences of the now famous "time-limits" ordinance of March 25th 2020 (available here), some are of direct interest to companies of all sizes, and more specifically to the various restructuring processes employed by them.

Mergers, demergers, partial asset contributions, capital reductions not motivated by losses, dissolution-mergers - all these operations, which are extremely frequent in practice, have the common feature of offering the creditors of the companies concerned a right of opposition, to be exercised within a relatively short period of time (20 to 30 days depending on the case) before the operation in question is completed, the justification for which lies in the modification or even the cancellation of their initial lien. In concrete terms, if they consider that the prospects of payment of their claim are jeopardized, creditors must expressly apply to a judge to request immediate repayment or the provision of guarantees.

However, by extending a large number of legal deadlines in view of the practical difficulties caused by the epidemic in asserting their rights, the ordinance has undermined this mechanism. In that it covers any "legal action prescribed by law on pain of foreclosure", Article 2 of the Ordinance unquestionably applies to the right of opposition. The latter obviously takes the form of a legal action, imposed by various legal texts to protect the substance of the author's right, which can no longer be upheld after the time limit set by the said texts. The result is that, in accordance with Article 2 and in the case of restructuring operations implemented during the health emergency[5], creditors may validly file an opposition on two occasions. On the one hand, the opposition may be lodged within the "normal" period of 20 or 30 days from the various starting points provided for by the texts. On the other hand - and this is the novelty - the opposition can still be received within the same time limit, but this time from 24 June, it being specified that, since its revision on 13 May 2020[6], the Ordinance applies only to time-limits "which expired or will expire between 12 March 2020 and 23 June 2020 inclusive", so that it no longer applies to transactions decided during the 20 or 30 days preceding the latter date of 23 June 2020.

It remains to be seen whether the validation of this late action by the ordinance will result in a corresponding postponement of the overall timetable of the operation. To the letter of the texts, this risk appears to be particularly sensitive in cases of dissolution-merger and capital reduction not motivated by losses. In fact, Articles 1844-5 of the French Civil Code and L. 225-205 of the French Commercial Code expressly bind the effects or continuation of the transaction at the end of the opposition period or to the fate granted to the transaction by the court, whereas Article L. 236-14 of the French Commercial Code provides that such opposition "does not have the effect of prohibiting the continuation of the transactions" in the case of a merger, demerger or partial contribution of assets subject to the demerger regime. It could therefore be deduced that, in the first case at least, the opening of a new deadline for creditors to file an objection postpones the final implementation of the transaction which also seems in line with the opinion of the council of the national order of commercial court clerks[7].

This is not, however, the approach proposed by the Chancellery in a recent position first given on dissolution-mergers (available here) and later transposed to capital reduction not motivated by losses (available here). For the Chancellery, the ordinance does not strictly speaking introduce a classical extension of the time limit, but only deems an opposition lodged within a later open time limit not to be late, so that it would not affect the date of completion of the transaction. The reasoning is undeniably appealing, in that it is based on the strict letter of the text of the Ordinance as well as on its spirit, which aims to preserve individual rights without paralysing economic activity. However, apart from the fact that the position of the Chancellery is cautiously expressed "subject to the assessment of the courts"[8], it leads to the somewhat paradoxical result that the new opposition period offered by the Ordinance to creditors would no longer be of much use to

[5] That is to say, the period beginning on 12 March and ending - at the earliest - on 23 June at midnight, pursuant to Article 4 of Law No. 2020-290 of 23 March 2020 and Article 1 of Ordinance No. 2020-306.

[6] See Article 1 of Ordinance No. 2020-560 of 13 May 2020, which amended Article 1 of Ordinance No. 2020-306 on this point.

[7] See Ministerial letter 50G-2020 dated 16 April 2020;

[8] Yet this reservation is not reproduced in the position resulting from capital reduction, most likely because in the latter case the company at stake is not dissolved in the aftermath of the operation.

them, because of the final completion of the transaction and the underlying risks that it would have been likely to cause for their right of lien.

It should probably then be considered that, as in the case of a merger where the company does not comply with the protective measures imposed by the court, the transaction would be unenforceable against the plaintiff creditor whose opposition would be accepted by the court within the new time limit. This would be tantamount to giving him a priority of payment over the company's assets, a priority that would itself be enforceable against all of the company's creditors.

Beyond that, one can more certainly be of the opinion that these debates confirm the notoriously inappropriate nature of the right of opposition as it is conceived today, in that it makes restructuring operations considerably more cumbersome while being practically never used by its beneficiaries.

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Find here the report addressed to the President of the French Republic relating to Ordinance No. 2020-306 (amendment of 28 March 2020) and the circular presenting Title I's provisions of Ordinance No. 2020-306 of 25 March 2020, as well as the report on Ordinance No. 2020-560 of 13 May 2020.

INTERNATIONAL APPLICATION OF THE FREEZING OF PERIODIC PENALTY PAYMENTS, PENALTY CLAUSES, TERMINATION CLAUSES AND FORFEITURE CLAUSES DURING A STATE OF PUBLIC HEALTH EMERGENCY

New article since the first English edition of this booklet

Ordinance No. 2020-306 of 25 March 2020, as amended and supplemented by Ordinance No. 2020-427 of 15 April 2020, revised certain rules applicable to contractual matters, in particular with regard to deadlines during the period of public health emergency. In particular, Article 4 provides for an adjustment of the time limits attached to periodic penalty payments (*astreintes*) and clauses establishing a penalty for non-performance. This article sets out certain penalties for delay in the performance of obligations, in particular those resulting from penalty clauses, termination clauses and forfeiture clauses, as well as periodic penalty payments (*astreintes*).

This provision, which is technical, does not go without raising delicate questions of interpretation[9] to which some initial answers are suggested in the reports to France's President of the Republic and the presentation circulars accompanying these two Ordinances.

One of the difficulties raised is the mandatory nature of Article 4 and, in particular, its international mandatory nature. On this subject, we have contradictory evidence (1.) which we can try to reconcile (2.).

1. CONFLICTING EVIDENCE

The circular's point of view. The Circular presenting the provisions of Title I of Ordinance No. 2020-427 gives a straightforward answer to the question of the international peremptory nature of Article 4, since it states that *"with regard to the territorial application of these provisions, it may be considered that the provisions of Article 4 are a mandatory rule (loi de police) within the meaning of Article 9 of Regulation No. 593/2008 of 17 June 2008 on the law applicable to contractual obligations, known as "Rome I""*

While the circular quite appropriately includes *"the sovereign discretion of the courts"* as a reservation, it carefully justifies its position, considering that the classification as an overriding mandatory law (*loi de police*) *"seems to be appropriate in view of the purpose of the mechanism [...] which aims to mitigate the economic consequences of the measures taken to fight the Covid-19 epidemic, for the broader purpose of safeguarding the economic organisation of the country".*

What is the reach of such a statement? What analysis should be made of the international scope of Article 4?

International contracts subject to French law. The application of the new Article 4 to international contracts subject to French law does not pose any real difficulty, as long as they are provisions of French law which are normally applicable, whether or not they are an overriding mandatory law.

As for domestic contracts, the question relating to the temporal application of the provisions of the ordinance was asked and in particular whether they also applied to contracts concluded before 12 March 2020, those concluded before its date of entry into force, and those concluded subsequently. On this point, the new wording resulting from Ordinance No. 2020-427 sheds some light as it implies that the new provisions apply to contracts whose obligations arose during the legally protected period. It is also supported by the presentation circular, according to which *"These provisions are applicable to contracts concluded before the entry into force of the ordinance* [...]"; *"They are also applicable to contracts concluded or renewed after the entry into force of the ordinance, as well as to amendments subsequent to this entry into force".*

[9] See the interesting analysis of O. Deshayes, *"La prorogation des délais en période de Covid-19: quels effets sur les contrats ?"* D., 2020.831.

International contracts subject to foreign law. In the case of contracts governed by foreign law, the analysis is more complex and involves higher stakes.

In this case, the overriding mandatory laws' method (*méthode des lois de police*) would allow these provisions to apply immediately to the situation, regardless of the law designated by the conflict of laws rule, i.e. in contractual matters, without regard to the possible choice of law of the parties. Thus, if Article 4 of the amended Ordinance No. 2020-306 is indeed to be regarded as an overriding mandatory rule, the time extensions would likely apply irrespective of the law applicable to the contract.

For this to happen, two conditions must be met: first, the rule must be qualified as an overriding mandatory law, and second, it must seek to apply to the situation, in particular with regard to its geographical location, in correlation with the objective it pursues. A distinction is thus made between a stage of identification of the mandatory law and a stage concerning its *application*.

Intention of the author of the rule. Generally speaking, the identification of an overriding mandatory law is a perilous exercise. It is rare that the qualification is the express intention of the author of the rule.

This is true of Article 4, which does not itself define its geographical scope. The indication of a possible classification as an overriding mandatory law comes from the implementing circular, which is known to have no normative value and which itself is merely a suggestion. The report to the President of the Republic is silent on this point.

Purpose of the rule. In the absence of any indication of the author of the rule, it is normally left to the courts to decide. They look for indications and, in particular, take into account the rule's purpose.

In this respect, the argument put forward in the circular is likely to influence the courts' reasoning. The context of the adoption of Article 4 in application of Law No. 2020-290 of 23 March 2020 *"as an emergency measure to deal with the Covid-19 epidemic",* as well as its purpose, which is in particular to *"mitigate the economic consequences of the measures taken to combat the epidemic",* could be an argument in favour of such a qualification.

The circular goes so far as to link these provisions to the overall objective of *"safeguarding the economic organization of the country".* In this respect, it includes Article 4 in a provision that fits the traditional definition of the overriding mandatory laws (*lois de police*) which results from Francescakis' famous formula concerning *"laws whose observance is necessary for the safeguarding of the political, social or economic organisation of the country"*[10]. This doctrinal definition inspired Article 9 of the Rome I Regulation[11], which provides that overriding mandatory rules are *"provisions, the respect for which is regarded as crucial by a country for safeguarding its public interests, such as its political, social or economic organisation, to such an extent that they are applicable to any situation falling within their scope, irrespective of the law otherwise applicable to the contract under this Regulation".*

It remains to be seen whether the courts will consider, as the circular does, that the application of these provisions is indeed necessary to safeguard the French economic organisation or whether they will consider that this is a form of exaggeration.

Impact of the fact that the parties may depart from the rule. Irrespective of this question, the characterisation of Article 4 as a mandatory rule, the effect of which would be to replace the law chosen by the parties, is surprising in view of one of the characteristics of this article, namely the fact that the parties seem to be able to waive or set aside its application.

This possibility does not result directly from the Ordinance, but it is expressed in the report to the President of the Republic on Ordinance No. 2020-427, which states that "*The parties to the contract remain free to waive the application of this article by express clauses, in particular if they decide to take into account differently the impact of the health crisis on the conditions of contractual performance. They may also decide to waive the provisions of this article".*

It is reiterated in the circular, which, after having recalled that the provisions are applicable to ongoing contracts, specifies that *"the parties remain however free to decide to waive the right to the protection ensured by this protective mechanism",*

[10] Rep. Dalloz International, 1re éd., v° Conflit de lois, No. 137.

[11] Regulation No. 593/2008 of 17 June 2008 on the law applicable to contractual obligations (Rome I)

by means of an *"unequivocal expression of will".* As for *"contracts entered into or renewed after the entry into force of the Ordinance"* and *"amendments subsequent to the entry into force of the Ordinance",* to which Article 4 is also applicable, the Circular offers the parties the freedom *"to contractually exclude the application of these provisions"*.

The author of the circular carefully justifies this option: as long as at the time of the conclusion of the contract, the parties were aware of the public health situation and of the provisions adopted in response, they are *"in a position to integrate them into the economy of the contract and to organise themselves contractually accordingly. They therefore remain free to contractually adjust the deadlines for performance and the consequences of any non-performance, whether or not attributable to the measures taken by the authorities to combat the Covid-19 epidemic".*

The fact that the parties may thus derogate from the adjustment of deadlines laid down in Article 4, which demonstrates that they are suppletive rules, seems to preclude them from being sufficiently imperative to be qualified as overriding mandatory laws (*lois de police*). It is in fact common to consider that what is imperative at international level is necessarily imperative at domestic level. As with the distinction between domestic public policy and international public policy, the difference would be more one of degree than of nature: one speaks then of a "merely mandatory" rule for internal imperatives and of an "internationally mandatory" or "super-imperative" rule, with the idea of a hierarchy[12]. The idea is quite logical for those who see in the mechanism of mandatory rules a manifestation of the role of the State, in particular with regard to contractual relations, and a limit to the will of the parties to evade this law by designating a foreign law. It is, moreover, commonly used.

Thus, instinctively, it is hard to imagine that the parties could rule out the application of an overriding mandatory law, since such a qualification implies that the rule has a *"particular imperative nature"*[13] which enables it to be imposed in international contracts. The reference is moreover expressed in Article 9 of the Rome I Regulation, which precisely defines mandatory rules as *"a mandatory provision the observance of which is considered crucial* [...]".

In the light of the foregoing, it would be legitimate to doubt whether Article 4 is an overriding mandatory law, despite the circular's assertion. Such a doubt could benefit the application of the law chosen by the parties, since the mechanism of overriding mandatory laws is ultimately only an exception, a derogation from the conflict of laws rule[14].

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Does this mean that it is impossible for this rule to be qualified as an overriding mandatory law? On this point, there is oscillation between, on the one hand, the apparent antinomy between mandatory law and suppletive rule mechanisms and, on the other hand, the difficulty of ignoring the express assertion of the circular, coupled with a theoretical justification that is, moreover, intellectually admissible with regard to the purpose of the rule.

Clarification of these issues, either by the author of the rule or by case law, would be welcome. However, it is likely to take some time. In the meantime, therefore, caution is necessary.

2. CONCILIATION ATTEMPT

Is it nevertheless possible to overcome the contradiction? For the sake of completeness, is it not necessary to seek a way of reconciling the two features of Article 4 as presented in the Circular?

We shall venture to consider two avenues of thought which, as things stand, can only be embryonic.

Domestically mandatory nature and internationally overriding mandatory laws (*lois de police*). The first, theoretical, approach would be based first of all on a subtle approach to the differences between concepts generally

[12] See the definition adopted by L. d'Avout., « Le sort des règles imperatives dans le règlement Rome I », D. 2008, p. 2165, specifically. No. 9: mandatory rules have *"a higher degree of mandatory nature: they are domestic rules whose mandatory nature resists the authentic internationality of the contract"*.

[13] In this regard, D. Bureau and H. Muir Watt, Droit international privé, t. 1, 4th ed. 2017, no. 552.

[14] In this regard, D. Bureau and H. Muir Watt, Droit international privé, t. 1, 4th ed. 2017, no. 552.

considered to be equivalent, in particular that of public policy and mandatory nature, but which it has sometimes been pointed out are not necessarily comparable[15].

It would also be based on what distinguishes the mechanisms at work here. While both domestically mandatory rules and the interplay of overriding mandatory law (*loi de police*) are presented as mechanisms of removal, the norm being removed is not the same. In the case of so-called 'merely' mandatory rules, the rule being displaced is the contractual clause that intended to provide otherwise; in the case of overriding mandatory rules, it is in fact the conflict of laws rule that is short-circuited - and ultimately the foreign law normally applicable.

On the basis of these distinctions, the instinctive idea that an overriding mandatory law is necessarily a mandatory rule in domestic law could be revisited.

It is thus refuted by part of the doctrine, which considers that classification as a mandatory law should depend only on the objective it pursues[16] and not on its characteristics, including its internal mandatory nature. It would be *"conceivable for an overriding mandatory law to be suppletive, since this is the technique that the legislature considered to be the most appropriate for achieving the societal objective set in the particular context in which it was acting"*[17] . The hypothesis should remain rare, but the French Cour de Cassation has had occasion to give an illustration of this[18].

The interpretation of Article 4 as suggested by the circular could thus take advantage of this difference in the purpose of the mandatory nature of "merely" mandatory rules and overriding mandatory law (*loi de police*).

Application limited to what is necessary to achieve the purpose of the rule. The second line of thought would be based on the purpose of the text. Its objective, recalled by the circular, is to mitigate the economic impact of measures to combat the epidemic, with a view to safeguarding the economy. However, what safeguards the economy here is not so much the blind and systematic application of the new deadlines to all contracts, but the fact that this possibility exists for those contractors who need it. That is, moreover, what justifies the possibility of renunciation and to stipulate otherwise. The parties, in full knowledge of the facts, can choose a different organisation and draw the contractual consequences. The general objective of safeguarding the French economy thus requires an individual protection mechanism[19].

The text that aims to protect the economy by protecting contractors in difficult situations could be intended to apply only in cases where it is necessary for this individual protection. This would not be the case if the parties have organised themselves otherwise, fully aware of the facts. A simple choice of foreign law - moreover, before the beginning of the health crisis - should be insufficient to characterise a waiver of the protective device and in particular a waiver which, according to the circular, should *"be the subject of an unequivocal expression of will".*

[15] A distinction is sometimes made between the concept of public policy and the mandatory nature of a norm, as opposed to its suppletive nature, the former being presented by some as striving for the protection of the general interest and the latter being likely to include, in addition, the protection of individual interests.

[16] In this sense, A. Jeauneau, *L'ordre public en droit national et en droit de l'Union européenne. Essai de systématisation*, LGDJ, 2018, spec. no. 188 et seq.; B. Rémy, *Exception d'ordre public et mécanisme des lois de police en droit international privé*, Dalloz, 2008, No. 509-511: *"It is* [...] *quite possible that a societal objective may be achieved in different ways, so that the State prefers to leave the choice to individuals to agree on the means to achieve this objective. The contract then becomes an "instrument of political regulation" and the state moves from a welfare, social and propulsive state to a strategic, reflexive and negotiating state. This is the case in particular with regard to certain preferential attributions whose societal objective is the preservation of the French economic fabric and which can be set aside by unequivocal manifestations of will".* See also Dennis Solomon, "The Private International Law of Contracts in Europe: Advances and Retreats", Tul. L. Rev. 2008, pp. 1709-1740, spec. pp. 1736-1737, which distinguishes between limiting the autonomy of the parties' will, which would not be at work in the mechanism of mandatory rules, and *"doing justice to considerations of legislative policy not adequately taken into account by means of the conflict rule in contractual matters",* which would be the opposite of the essence of mandatory rules (our translation).

[17] A. Jeauneau, *L'ordre public en droit national et en droit de l'Union européenne. Essai de systématisation*, LGDJ, 2018, spec. no. 189.

[18] Please refer to Cass. civ. 1re, 10 October 2012, no. 11-18.345: the rules relating to preferential attribution in matters of succession are qualified there as overriding laws, *"by reason of their economic and social purpose",* even though at the same time, in domestic law, it is accepted that these rules *"do not have a public policy character"* (F. Terré, Y. Lequette and S. Gaudemet, *Droit civil, Les successions, Les libéralités*, spec. no. 1113, p. 988). In this regard, see the developments of D. Bureau, in *"Juger le présent, prévoir l'avenir",* Droit et Patrimoine, No. 236, 1 May 2014, pp. 78-84.

[19] The circular also refers to a protective device.

This analysis could be the manifestation of the conditions for implementing an overriding mandatory law, the first of which we have seen was *its identification* within the category of overriding mandatory laws (*lois de police*) and the second, its *"willingness"* to apply to the situation concretely under consideration[20]. This "willingness to apply" is based on the question of whether the use of the rule is legitimate and necessary, in a particular context, with regard to the higher purpose which precisely enabled it to be classified as an overriding mandatory law. Usually, when specified, this "willingness to apply" results from a geographical connection of the situation (for example, the rules applicable to subcontracting, qualified as mandatory rules, apply only where the subcontractor is established in France). Some authors also consider that an overriding mandatory law may be self-limited, i.e. that it refuses to apply outside certain limits, which it defines. In other words, the overriding mandatory law does not always need to apply "immediately", in the sense of "internationally", if the objective it pursues is not threatened. An overriding mandatory law that would make its application dependent on the absence of an alternative organisation of the parties to deal with the crisis would certainly be unprecedented, but it would respond to the very reason for its elevation to the rank of an overriding mandatory law (*loi de police*).

These justifications may be not be entirely convincing, given that the idea that what is mandatory at international level is necessarily mandatory at domestic level is so firmly established. So why bother trying to reconcile what seems irreconcilable? Firstly, because the concepts are subtly intertwined; secondly, because it would be imprudent to overlook the impact that the detailed suggestion of the Minister of Justice's circular may have on the judge; and lastly, because it is necessary to remember those cases where the necessary application of a rule was "*arbitrarily imposed by the legislator*"[21].

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In any event, the application of such overriding mandatory laws (*lois de police*), if they were to be considered in this way, would depend on the court seized: while they would be implemented almost automatically by a French judge, their implementation would be more uncertain before a foreign court or judge where they would be considered as foreign overriding mandatory rules (*lois de police étrangères*). Moreover, the possibility of a possible conflict will have to be taken into consideration in the event that foreign legislators adopt comparable provisions.

Lastly, it should be noted that the objective of protecting the economy could possibly reappear under the international public policy exception and give grounds for refusing to recognise foreign decisions or arbitral awards which would, in practice, run counter to the objective of protection thus aimed for by the Ordinance.

On this subject, doubt - and therefore caution - is thus called for.

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You will find here the report addressed to the President of the French Republic on Ordinance No. 2020-306 of 25 March 2020 (amendment of 28 March 2020) and the circular presenting Title I's provisions, here the report on Ordinance No. 2020-427 and the presentation circular of the provisions of Title I of Ordinance no. 2020-427 dated 15 April 2020.

[20] Article 9 of the Rome I Regulation expressly refers to this condition when it defines the police law as *"provisions the respect for which is regarded as crucial by a country* [...] *to the extent that they are applicable to any situation* ***falling within their scope****"* (emphasis added).

[21] P. Mayer, V. Heuzé and B. Rémy, *Droit international privé*, 12nd ed., 2019, no. 123.

SOLIDARITY FUND AND DISTRESSED COMPANIES

ORDINANCE NO. 2020-317 OF 25 MARCH 2020 CREATING A SOLIDARITY FUND, AND ITS IMPLEMENTING DECREES

In order to deal with the economic, financial and social consequences of Covid-19 and related containment measures, the French government has decided to set up a solidarity fund for severely affected businesses, by enacting Ordinance No. 2020-317 of 25 March 2020 (the "**Solidarity Fund Ordinance**").

This solidarity fund supplements other schemes already in place (such as the partial activity support scheme, the granting of deadline extensions in relation to tax payments and other social security contributions, and tax rebates).

The government specified the conditions applicable to this fund in Decree No. 2020-371 dated 30 March 2020 on the solidarity fund for companies particularly affected by the economic, financial and social consequences of the spread of the Covid-19 epidemic and the measures taken to limit this spread. This decree came into force on 31 March 2020 and was amended by Decree No. 2020-394 of 2 April 2020, Decree No. 2020-433 of 16 April 2020 and then by Decree No. 2020-552.

In addition, clarifications were provided by the ordinance No. 2020-460 of 22 April 2020 on various measures taken to deal with the Covid-19 epidemic.

CREATION OF A SOLIDARITY FUND

Pursuant to Article 1 of the Solidarity Fund Ordinance, a solidarity fund is established for a period of three months (extendable by decree for one additional period of three months maximum) and its purpose is the payment of financial aid to natural persons and legal entities governed by private law whose economic activity is severely affected by the economic, financial and social consequences of the spread of Covid-19 and the measures taken to contain the spread.

The fund is to be financed by the State, and any local authority (both overseas or domestic), and any inter-municipal public establishment subject to ad hoc tax rules may also participate on a voluntary basis. The document published by the Government in the form of a Frequently Asked Questions updated on 16 April 2020 (accessible **here**) also refers to contributions from private donors, in particular insurance companies which have already announced a contribution of 400 million euros, without this being reflected in the Solidarity Fund Ordinance.

The Director General of France's public finance department is responsible for the management of the fund.

ELIGIBILITY CRITERIA, AID ALLOCATION AND AMOUNT

Aid amount

The solidarity fund enables to pay aid directly to eligible businesses, comprising two tranches:

- The first tranche (March) allows a business to receive aid (in the form of a subsidy) in an amount equal to the declared loss in turnover for **March 2020** up to a limit of one thousand and five hundred euros (EUR 1,500). It should be noted that this sum will be tax-exempt. The loss of turnover is calculated by comparison with the turnover of March 2019 (or for companies created after 1 March 2019, by reference to the average monthly turnover calculated between the creation of the company and 29 February 2020).
- The first tranche (April) allows, in the same way, a business to receive aid (in the form of a subsidy) in an amount equal to the declared loss in turnover for **April 2020** up to a limit of one thousand and five hundred euros (EUR 1,500). It should be noted that this sum will be tax-exempt. The loss of turnover is calculated by comparison with the turnover of April 2019 or, at the choice of the business, by comparison with the average monthly turnover for 2019 (or for businesses created after 1 April 2019, by reference to the average monthly turnover calculated between the creation of the business and 29 February 2020 or, in the case of businesses created after 1 February 2020, by reference to the turnover achieved in February 2020 and reduced to one month).

- The first tranche (May) similarly allows a business to receive aid (in the form of a subsidy) in an amount equal to the declared loss in turnover for **May 2020**, up to a limit of one thousand and five hundred euros (EUR 1,500). It should be noted that this sum will be tax-exempt. The loss of turnover is calculated by comparison with the turnover of May 2019 or, at the choice of the business, by reference to the average monthly turnover for the year 2019 (or, for businesses created between 1 May 2019 and 31 January 2020, by reference to the average monthly turnover calculated between the creation of the business and 29 February 2020, or, for companies created after 1 February 2020, by reference to the turnover achieved in February 2020 and reduced to one month).
- It is specified that for natural persons who have received one or more retirement pensions or daily social security allowances for the month of April 2020 or May 2020 and legal persons whose majority manager has received such pensions or allowances, the amount of the subsidy for the first part of the relevant period (April or May), as the case may be, is reduced by the amount of the pensions and daily allowances received or to be received for the month of April 2020 or May 2020, as the case may be.
- The second tranche allows businesses that benefited from the first tranche (for at least a month) and employ, as of 1 March 2020, at least one employee on a permanent or fixed-term contract or have been the subject of a ban on receiving the public between 1 March 2020 and 11 May 2020 and have recorded the last closed financial year a turnover of at least EUR 8,000 (for businesses that have not yet closed a financial year, the average monthly turnover over the period between the date of creation of the company and 29 February 2020 must be greater than or equal to EUR 667) to receive an additional lump-sum in the event that (i) the balance between, on the one hand, their available resources and, on the other hand, their debts due within 30 days and the amount of their fixed expenses, including commercial or professional rents, due in respect of the months of March, April and May 2020 is negative (the absolute value of this balance is hereinafter referred to as the "**Balance**") and (ii) they have been refused an application for a cash loan of a reasonable amount requested to their bank since 1 March 2020 (a request that goes unanswered for over ten days is deemed as a refusal). The amount of the additional aid varies according to the turnover recorded in the last financial year:

Turnover amount	Turnover < €200k or for businesses that have not yet closed a financial year or for businesses with a turnover > €200k but a Balance of less than €2k	€200k ≤ turnover < €600k	Turnover ≥ €600k
Maximum aid amount	€2,000	Amount of the absolute value of the Balance within the limit of €3,500	Amount of the absolute value of the Balance within the limit of €5,000

Aid beneficiaries

The fund is intended for any natural person and legal entity under private law (companies, non-profits, etc.) that is a French tax resident exercising an economic activity, regardless of tax or social security regime, and that meets the following conditions:

1. It is subject to:

   (i) For the first tranche (March), (a) a ban on receiving members of the public implemented between 1 and 31 March 2020; or (b) a turnover loss of at least fifty percent (50%) for March 2020 when compared with March 2019 (it being specified that for a business created after 1 March 2019, the reference for the calculation of turnover loss is the average turnover between the business' creation date and 29 February 2020);

(ii) For the first tranche (April), (a) a ban on receiving members of the public implemented between 1 and 30 April 2020; or (b) a turnover loss of at least fifty percent (50%) for April 2020 when compared with April 2019 or, at the choice of the business, when compared with the average monthly turnover for 2019 (it being specified that for a business created after 1 April 2019, the reference for the calculation of turnover loss is the average turnover between the business' creation date and 29 February 2020 or, in the case of businesses created after 1 February 2020, the turnover achieved in February 2020 and reduced to one month);

(iii) For the first tranche (May), (a) a ban on receiving members of the public implemented between 1 and 30 May 2020; or (b) a turnover loss of at least fifty percent (50%) for May 2020 when compared with May 2019 or, at the choice of the business, when compared with the average monthly turnover for 2019 (it being specified that for a business created after 1 May 2019, the reference for the calculation of turnover loss is the average turnover between the business' creation date and 29 February 2020 or, in the case of businesses created after 1 February 2020, the turnover achieved in February 2020 and reduced to one month);

2. It started its activity before 1 February 2020 for the first tranche (March) or before 1 March 2020 for the first tranche (April and May);
3. It is not in judicial liquidation as of 1 March 2020.
4. It has no more than 10 employees (this threshold is calculated in accordance with the provisions of Article L.130-1 I of France's Social Security Code, i.e. by reference to the average number of persons employed during each month of the previous calendar year);
5. Its turnover excl. tax was less than one million euros (EUR 1,000,000) in the previous financial year (for companies that have not yet closed a financial year, the average monthly turnover over the period between the date of creation of the company and 29 February 2020 must be less than EUR 83,333) or, where the company falls within the category of non-trading profits (*bénéfices non commerciaux*), net income excluding tax of less than the same amount (without taking into account donations and subsidiaries for non-profits);
6. For the first tranche (March) exclusively: to have made a taxable profit, plus, if applicable, the sums paid to the director, of less than 60,000 euros for the last financial year ended (for businesses that have not yet ended a financial year, the taxable profit plus, if applicable, the sums paid to the director is established, under their responsibility, on 29 February 2020, over their operating period and adjusted over twelve months);
7. For the first tranche (April and May) exclusively: to have made a taxable profit, plus, if applicable, the sums paid to the directors holding shares, in respect of the activity carried out, for the last financial year ended which is lower than:
   - for individual businesses: 60,000 euros (this amount being doubled if the spouse of the head of the business carries out a regular professional activity in the business under the status of collaborating spouse); and
   - for companies, 60,000 euros per shareholder and collaborating spouse.
8. For natural persons or, the majority director in the case of legal persons, did not hold on 1 March 2020 a full-time employment contract or (only for the first tranche of March) an old-age pension and did not receive, during (i) the period from 1 March 2020 to 31 March 2020 daily social security benefits in excess of EUR 800 (for the first tranche (March)) or (ii) from 1 April 2020 to 30 April 2020 daily social security benefits in excess of EUR 1,500 (for the first tranche(April));
9. It is not controlled by a commercial company within the meaning of Article L.233-3 of the French Commercial Code;
10. When the natural person or legal entity controls one or more commercial companies within the meaning of Article L.233-3 of the French Commercial Code, the sum of the employees, turnover and profits of the related entities comply with the thresholds mentioned in points 4, 5 and, as the case may be, 6 or 7 above;
11. For non-profits, be subject to commercial taxes or employ at least one employee.

Furthermore, the aid paid to businesses which were, on 31 December 2019, in distress within the meaning of Article 2 of EU Commission Regulation No. 651/2014 of June 17, 2014 declaring certain categories of aid compatible with the internal market pursuant to Articles 107 and 108 of the Treaty on the Functioning of the European Union must be

compatible with Commission Regulation No. 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid.

Aid allocation

	First tranche (March)	First tranche (April)	First tranche (May)	Third tranche
Application start date	1 April 2020, and at the latest 30 April 2020 (this deadline being extended until 31 May 2020 for businesses located in Saint-Barthélémy, Saint-Martin, Saint-Pierre-et-Miquelon, Wallis and Futuna, French Polynesia and New Caledonia and until 15 June for non-profits, artist-authors and members of joint farming groups	At the latest 31 May 2020 (this deadline being extended until 15 June 2020 for non-profits, artist-authors and members of joint farming groups located in Saint-Barthélémy, Saint-Martin, Saint-Pierre-et-Miquelon, Wallis and Futuna, French Polynesia and New Caledonia	At the latest 30 June 2020	At the latest 15 July 2020.
Procedure	Businesses will be able to make a request on the French inland revenue website by filing certain information (in particular SIREN, SIRET, bank details, estimate of turnover loss, amount of aid requested, sworn statement (*declaration sur l'honneur*) certifying that the company fulfils the conditions set out in the decree and the accuracy of the information declared, as well as the absence of unpaid tax or social security debts as of 31 December 2019, with the exception of those benefiting from a payment plan, a statement indicating whether the company was in difficulty on 31 December 2019 within the meaning of Article 2 of Commission Regulation (EU) No 651/2014 of 17 June 2014), where applicable for the first tranche (April and May), an indication of the amount of retirement pensions or daily social security allowances received or to be received in respect of April or May 2020 respectively).			Businesses will be able to visit a platform created by the regional public authority of their place of residence. In order for the regional councils to examine the application, the company will attach a sworn statement, a statement indicating whether the company was in difficulty on 31 December 2019 within the meaning of Article 2 of Commission Regulation (EU) No 651/2014 of 17 June 2014, a brief description of its situation including a 30-day cash flow plan, as well as the name of the bank of which the company is a client and that has refused it a cash loan of a reasonable amount, the amount of the loan applied for and its contact in the bank.
Payor	*Direction Générale des Finances Publiques* (Public Finances Directorate General, or the "**DGFiP**").			
Control mechanisms	The DGFiP will carry out checks before any aid is provided. *Ex-post* checks shall also be carried out by DGFiP. The documents certifying compliance with the conditions of eligibility to the fund and the correct calculation of the amount of aid must be kept by the beneficiary for five years from the date of payment of the aid.			DGFiP.
Payment date	Unknown			

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Find here the report addressed to the President of the French Republic relating to Ordinance No. 2020-317 and here the report relating to Ordinance No. 2020-460 of 22 April 2020.

ORDINANCES NO. 2020-341 DATED 27 MARCH 2020 AND NO. 2020-596 DATED 20 MAY 2020 ADAPTING RULES RELATED TO DIFFICULTIES FACED BY COMPANIES AND FARMS TO THE CONSEQUENCES OF THE COVID-19 EPIDEMIC

Article substantially amended since the first English edition of this booklet

Pursuant to the authorization granted by Parliament in law No. 2020-290 dated 23 March 2020, the Government adopted Ordinance No. 2020-341 on 27 March 2020 which modifies rules concerning companies and farms' difficulties so as to adapt them to the state of public health emergency and to some modifications to the criminal procedure ("**Ordinance No.1**") and Ordinance No; 2020-596 of 20 May 2020 which modifies rules concerning companies and farms' difficulties as a result of the Covid-19 epidemic ("**Ordinance No.2**") in order to adapt some provisions of Book VI of the French Commercial Code to the constraints imposed by the state of public health emergency.

PART I: PROVISIONS OF ORDINANCE NO. 2020-341 OF 27 MARCH 2020

Ordinance No.1 provisions apply to ongoing insolvency proceedings.

In this summary, we will only present provisions related to companies facing difficulties.

Opening requirement of amicable and judicial proceedings due to a debtor's insolvency (article 1, i, 1°)

Ordinance No.1 provides that, until 23 August 2020 inclusive[22] , the debtor's insolvency will be assessed as at 12 March 2020.

The assessment of the insolvency date (*date de cessation des paiements*), as provided for in Article 1(I)(1), has the following consequences:

- a debtor which was not insolvent on 12 March 2020 or had been insolvent for less than 45 days but which would be insolvent for more than 45 days during the period starting on 12 March and ending on 23 August inclusive could, during this period, file to start conciliation proceedings (even if it does not meet the required opening conditions, i.e. being insolvent for less than 45 days);
- a debtor which was not insolvent on 12 March 2020, but becomes so during the period starting on 12 March and finishing on 23 August 2020 inclusive could, during this period, can file to start safeguard proceedings (even if it does not meet the required opening conditions, i.e. not being insolvent).

Nevertheless, Ordinance No.1 specifies that a debtor may, if he is insolvent during the period starting on 12 March and finishing on 23 August 2020 inclusive, file for the opening of reorganization, liquidation proceedings or professional recovery proceedings (insolvency being a requirement for entering into such proceedings).

Since the opening of these proceedings is not stayed by Ordinance No.1, employees' salary claims due on the start date of the said proceedings, could be borne by the competent insurance guarantee (AGS), within the limits set by law.

Ordinance No.1 specifies that the assessment of the insolvency date on 12 march 2020 will not preclude the possibility of requesting the postponement of this date, as provided by Article L. 631-8 of the French Commercial Code or in the event of fraud.

[22] This fixed date results from the amendments made by Ordinance No. 2020-596 and corresponds to the duration initially provided for by Ordinance No. 2020-341 (expiry of a period of 3 months from the date of cessation of the state of public health emergency, before it is extended until 10 July).

EXTENSION OF AMICABLE AND JUDICIAL PROCEEDINGS DURATION

Extension of the duration of conciliation proceedings (Article 1, II)

Ordinance No.1 provides that conciliation proceedings, which duration are set in principle for a maximum period of 5 months, pursuant to provisions of Article L. 611-6 of the French Commercial Code, are automatically extended for a period of 5 months.

Ordinance No.1 further provides that if conciliation proceedings fail (i.e. if no agreement has been reached within the prescribed period), the provisions imposing a 3 months waiting period for filing for a new conciliation proceedings do not apply.

The extension of the duration in judicial proceedings (Article 1, IV and Article 2, II)

Ordinance No.1 provides that, until 23 June 2020 inclusive[23], the following time periods are automatically extended, for a period of three months:

- periods of observation, plan, simplified judicial liquidation and observation period set by the Court of Appeal pursuant to Article L. 661-9 if the French Commercial Code;
- employees' claims coverage period by the AGS are extended in line with the extension time period of observation period, continuation of ongoing business in judicial liquidation and simplified judicial liquidation time period. Thus, the AGS guarantee periods for claims resulting from the termination of employment contracts and employees' claims in the event of a judicial liquidation proceeding (provided for by Article L. 3253-8 2° b) to d) and 5° of the French Labor Code) are extended by a duration equivalent to that of Period 2.

Ordinance No.1 also provides that, until 23 August 2020 inclusive, the court appointed trustee, the court appointed creditors' representative, the judicial liquidator or the trustee in charge of the implementation of a plan may request to the President of the court the extension, for a period of 5 months, of all the deadlines imposed on them by Book VI of the French Commercial Code.

The extension of safeguard and reorganization plans (Article 1, III)

Ordinance No.1 provides that the duration of ongoing safeguard or reorganization plan may be extended under the following conditions:

Until 23 August 2020 inclusive, (i) the trustee in charge of the implementation of the plan may request the President of the court to order the extension of the plan for 5 months or (ii) the Public Prosecutor's Office may request this extension for a maximum period of one year.

From 24 August 2020 and for a period of 6 months, the trustee in charge of the implementation of the plan or the Public Prosecutor may request an extension of the duration of the plan for a maximum period of one year to the court.

It should be noted that, until 23 June 2020 inclusive, the plan duration is automatically extended for 3 months (cf. 1.2.2 above).

The reduction of time period allowing the take-over of employees claims by the AGS (Article 1, I, 2)

Ordinance No.1 provides that court-appointed creditors' representative must send to the AGS, without delay, the statements of employees claims so that these claims can be borne as quickly as possible.

[23] This fixed date results from the amendments made by Ordinance No. 2020-596 and corresponds to the duration initially provided for by Ordinance No. 2020-341 (expiry of a period of 1 month from the date of cessation of the state of public health emergency, before it is extended until 10 July).

Indeed, until 23 August 2020 inclusive, the court appointed creditors' representative shall forward to the AGS the list of employees' claims "without delay", i.e. without sending it to the employees representative and the bankruptcy judge first. Nevertheless, the latter shall still be consulted, the case being, at a later stage.

The adaptation of proceedings and communications due to the state of public health emergency (Article 2, I)

Ordinance No.1 provides that, until 23 June 2020 inclusive:

- the "intermediate" hearing, scheduled two months after the opening of reorganization proceedings in order to assess the continuation of the observation period, is cancelled;
- the request presented to court by the debtor shall be communicated to the court registry (*greffe*) by any means;
- communications between the court registry, the court-appointed trustee, the court-appointed creditors' representative, as well as between the other proceeding bodies shall be made by all means.

Provisions related to farms (Article 3)

Ordinance No.1 provides that for farms, until 23 August 2020 inclusive, in the context of out-of-court settlement proceedings (*règlement amiable*) under the Rural and Sea Fishing Code (*Code rural et de la pêche maritime*") (i) the worsening of a debtor's situation, as from 12 March 2020, may not prevent the appointment of a conciliator and (ii) the financial insolvency, to which the agreement has not put an end to, must be assessed according to the debtor's situation on 12 March 2020.

PART II: PROVISIONS OF ORDINANCE NO.2020-596 OF 20 MAY 2020

Enhancing the President of the court awareness for the detection of companies difficulties (Article 1) - *these provisions are applicable until 31 December 2020 inclusive*

As part of the preliminary warning procedure provided for under Articles L. 234-1, L. 234-2 and L. 612-3 of the French Commercial Code, the Statutory Auditors have the option, as soon as the first information is made available to the management, of notifying the President of the competent court of the insufficiency or lack of measures taken by the management.

The purpose of this measure is to provide the President of the court, as early as possible and as quickly as possible, information on the difficulties encountered by a company.

Enhancing the effectiveness of conciliation proceedings (Article 2) - these provisions are applicable to ongoing proceedings (Article 2) - *these provisions are applicable to ongoing proceedings and until 31 December 2020 inclusive*

Ordinance No.2 puts in place measures aimed at considerably enhancing the efficiency of the conciliation proceedings.

Indeed, the debtor in conciliation may ask the President of the court, having opened the proceedings, to rule by ordinance on request:

- to interrupt or prohibit any legal proceedings from a creditor seeking an order against the debtor for the payment of a sum of money or the termination of a contract for a default of payment;
- to stop or prohibit any enforcement proceedings from a creditor on both movable and immovable property, as well as any distribution proceedings which did not have an allocating effect prior to the application;
- to postpone or defer the payment of due liabilities.

These measures may be combined with the request for grace periods, as already provided for in Article L. 611-7 of the French Commercial Code.

These new provisions allow the establishment of hybrid conciliation proceedings, close to the effects of the safeguard proceeding but without its drawbacks (it being specified that the duration of the conciliation is very largely extended, cf. below).

Provisions aimed at facilitating the use of accelerated proceedings (Article 3) - *these provisions are applicable to proceedings initiated as from the entry into force of Ordinance No. 2 (21 May 2020) and at the latest until 17 July 2021 inclusive*

Ordinance No. 2 facilitates recourse to the accelerated safeguard and accelerated financial safeguard proceedings, by removing the threshold conditions provided for under Article L. 628-1 of the Commercial Code.

If the accelerated safeguard or financial safeguard proceedings fail and no plan is drawn up within the period provided for in the first paragraph of Article L. 628-8 of the Commercial Code, the court may immediately, at the request of the debtor, the trustee, the creditors' representative or the Public Prosecutor's Office, open a reorganization proceeding or order a judicial liquidation.

The aim is to give access to these proceedings to many companies as possible.

Provisions to facilitate the adoption of safeguarding or recovery plans (Article 4) - *these provisions are applicable to ongoing proceedings up to and including 31 December 2020*

Ordinance No. 2 facilitates and accelerates the adoption of a safeguard or reorganization plan by:

- reducing the time limit for creditors consultation to 15 days where the presentation of a draft plan at at the creditors' representative or the trustee's request, subject to the authorization of the bankruptcy judge;
- lightening the formalities for consulting creditors: proposals for the repayment of claims as well as any answers to these proposals may be communicated by any means enabling the creditors' representative to establish with certainty the date of their receipt;
- the termination of the plan is exceptionally based on claims estimated on the basis of a certificate from the chartered accountant or statutory auditor, on admitted claims, uncontested claims and identifiable claims (those for which the deadline for reporting has not expired).

Provisions to facilitate the implementation of the safeguard and recovery plans (Article 5) - *these provisions are applicable to ongoing proceedings and until 31 December 2020 inclusive, with the exception of the provisions on safeguard privilege applicable from the entry into force of the Ordinance (i.e. 21 May 2020) and at the latest until 17 July 2021 inclusive*

Ordinance No. 2 contains provisions to facilitate the implementation of safeguard and reorganization plans:

- increase by a maximum of two years in the duration of safeguard or recovery plans (i.e. a maximum plan duration of 12 years and 17 years in the case of agriculture);
- failure to answer from creditors consulted for the adoption or modification of the plan shall be deemed to be an acceptance of the proposed new repayment proposals;
- introduction of a **post-money privilege** (new "safeguard or reorganization" privilege similar to the "new money" privilege), for those who make a new cash contribution to the debtor either during the observation period or as part of the safeguard or reorganization plan (these cash injections will be mentioned in the judgment which adopts or modifies the plan).

Creditors benefiting from this safeguard or recovery privilege are paid, for the amount of their contribution, in the order provided for in III of Article L. 622-17 and III of Article L. 641-13 of the French Commercial Code i.e. after wage claims.

Contributions made by the debtor's shareholders in the context of a capital increase are excluded from the safeguard or recovery privilege.

Processing of companies in situations of no return (Article 7) - *these provisions apply to proceedings initiated as from the entry into force of Ordinance No. 2 (21 May 2020) and at the latest until 17 July 2021 inclusive*

In order to facilitate and speed up proceedings concerning natural persons in an irretrievable compromised situation, Ordinance No. 2 lays down provisions to broaden the conditions of access to simplified judicial liquidation proceedings (no more threshold conditions: it is open to any natural person whose assets do not include real estate in particular) and professional reinstatement proceedings (the maximum threshold for access to professional reinstatement proceedings is raised from 5,000 to 15,000 euros).

Provisions to facilitate the transfer of companies (Article 7) - these provisions are applicable to current proceedings up to and including 31 December 2020

Ordinance No. 2 provides for adjustments relating to the transfer of undertakings and in particular:

- a reduction in the time limit for the summon of contracting parties provided for under Article R. 642-7 of the French Commercial Code from 15 to 8 days in the event of a disposal plan (this time limit may however be modified by decree pursuant to Article 10 of Ordinance No. 2); and
- an authorization to sell to de jure or de facto directors, relatives of the directors (notwithstanding the prohibitions provided for in Article L. 642-3 of the French Commercial Code) by a specially grounded judgment, after seeking the opinion of the controllers creditors and provided that the proposed offer allows the activity to continue and employment to be safeguarded.

Provisions aimed at facilitating companies rebound capacity (Article 8) - *these provisions apply to proceedings in progress and until the date of entry into force of the ordinance provided for under Article 196 of Law No. 2019-486 of 22 May 2019, and at the latest until 17 July 2021 inclusive*

Ordinance No. 2 reduces to one year the period at the end of which the mention in the RCS of a insolvency proceeding mentioned is struck off the register when the plan is still in force (this period may, however, be modified by decree pursuant to Article 10 of Ordinance No. 2).

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Find here the report addressed to the President of the French Republic relating to Ordinance No. 2020-341 dated 27 March 2020, here the circular presenting articles 1, 2, 3 and 5 of the Ordinance, and here the report on Ordinance no. 2020-596 of 20 May 2020.

COMPANY ADMINISTRATION

ORDINANCE NO. 2020-318 OF 25 MARCH 2020 ADAPTING THE RULES ON THE PREPARATION, DECREE, AUDIT, REVIEW, APPROVAL AND PUBLICATION OF ACCOUNTS

The ordinance No. 2020-318 of 25 March 2020 (the "**Accounts and Deadlines Ordinance**") provides that **certain deadlines relating to the annual accounts of businesses and/or related documents are extended**, in particular "to enable them to complete their formalities steadily; this will help SMEs in particular" (Government Press Kit of 25 March 2020) .

The Accounts and Deadlines Ordinance provides for a general measure on this point, and tailors it more precisely to certain specific entities.

MEASURE APPLICABLE TO ALL LEGAL PERSONS OR ENTITIES WITHOUT LEGAL PERSONALITY

The entities subject to the ordinance are referred to as broadly as possible, and include at least civil and commercial companies, economic interest groups, cooperatives, mutual companies, unions of mutual companies and federations of mutual companies, mutual insurance companies and mutual insurance group companies, pension funds and health insurance group companies, municipal credit unions and mutual agricultural credit unions, funds, non-profits, foundations, and contractual joint ventures (*"sociétés en participation*").

In general, regardless of the relevant entity, the Accounts and Deadlines Ordinance extends by three months the deadlines imposed by law or the articles of association for:

- the approval of the accounts and attached documents;
- the convening of the general meeting in charge of this approval.

This postponement applies to entities having closed or closing their accounts between 30 September 2019 and the expiry of a period of one month after the end date of the state of public health emergency, i.e. now on 10 August 2020 (since the state of public health emergency has been extended until 10 July 2020 at midnight, by Law No. 2020-546 of 11 May 2020 which evidently covers the vast majority of corporate entities.

Thus, in the case of a joint-stock company that would have closed its accounts on 31 December 2019, it could hold its annual meeting to approve the accounts until 30 September 2020, instead of 30 June 2020.

However, it should be noted that this extension **does not apply** to entities (i) that have appointed a statutory auditor and (ii) whose report was issued **before 12 March 2020**. The only remaining possibility for these entities is to be granted an extension by a court's decision.

MEASURES APPLICABLE TO CERTAIN ENTITIES

In addition, the Accounts and Deadlines Ordinance provides further details for a certain number of corporate entities.

For commercial companies required to draw up provisional accounts

As a reminder, the companies subject to this obligation must reach one of the two following thresholds at the end of their financial year: 300 employees or EUR 18 million in net sales.

The Accounts and Deadlines Ordinance **extends by two months the deadline for drawing up the documents** required under this obligation.

This extension applies to documents relating to accounts or half-year periods closed between 30 November 2019 and the expiry of a period of one month after the end date of the state of public health emergency, i.e. now on 10 August 2020.

For joint-stock companies with a management board and supervisory board

In these companies, the management board is required to present the annual financial statements, the management report and the corporate governance report to the supervisory board within three months of the end of the financial year.

The Accounts and Deadlines Ordinance **extends this presentation deadline by three months**.

This extension applies to companies of this type that have closed or are closing their accounts between 31 December 2019 and the expiry of a period of one month after the end date of the state of public health emergency, i.e. now on 10 August 2020.

For companies in liquidation

For these companies, the law requires the liquidator to draw up the annual financial statements and a written report on the liquidation operations within three months as of the end of each financial year.

The Accounts and Deadline Ordinance **extends this deadline by two months**.

This extension applies to companies in liquidation having closed or closing their accounts between 31 December 2019 and the expiry of a period of one month after the end date of the state of public health emergency, i.e. now on 10 August 2020.

For bodies governed by private law beneficiaries of a grant allocated to specific expenditure

As a reminder, when they receive a grant from an administrative authority or a body entrusted with the management of an industrial and commercial public service and that this grant is allocated to a specific item of expenditure, these entities have six months from the end of the financial year during which the grant was awarded to produce a financial report certifying that the expenditure incurred is being used compliantly with the purpose of the grant.

The Accounts and Deadline Ordinance **extends the deadline for producing the report by three months**.

This extension applies to financial reports relating to accounts closed between 30 September 2019 and the expiry of a period of one month after the end date of the state of public health emergency, i.e. now 10 August 2020.

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Find here the report addressed to the President of the French Republic relating to Ordinance No. 2020-318 of 25 March 2020.

ORDINANCE NO. 2020-321 OF 25 MARCH 2020 AND DECREE NO. 2020-418 OF 10 APRIL 2020 ADAPTING THE RULES GOVERNING MEETINGS AND DELIBERATIONS OF GENERAL MEETINGS AND GOVERNING BODIES

In the present health crisis context, the French government adopted on 25 March 2020 an ordinance "*adapting the rules governing meetings and deliberations of general meetings and governing bodies of legal persons [...] because of the Covid-19 epidemic*".

This ordinance authorizes, in the current context, governing bodies of legal persons and private law entities without legal personality to meet remotely, and general meetings to be held behind closed doors. It is therefore issued on a temporary basis until 30 July 2020 with retroactive effect as of 12 March 2020, allowing for the regularization of meetings that have already been held remotely or behind closed doors.

Its main provisions are described below, with a special focus on listed companies. Regulatory provisions detailing the ordinance's provisions have completed the crisis mechanism in place.

REMOTE ATTENDANCE BY MEMBERS OF GOVERNANCE BODIES

While "remote" attendance of members of governance bodies was already possible, it remained subject to a number of restrictions. For example, for a board of directors of a French *société anonyme*, its internal rules and regulations would have to explicitly permit it.

The ordinance reverses this principle by stating that those who attend remotely are deemed to be present; there is no longer any need for such a provision in the articles of association or the internal rules and regulations, and any clause to the contrary becomes unenforceable. The ordinance also generalizes the use of written consultations for decision-making by collegial administrative, supervisory or management bodies.

The possibility of convening these governing bodies remotely will apply to all decisions, including the closing of accounts, which until now required a physical meeting.

HOLDING OF THE GENERAL MEETING BEHIND CLOSED DOORS

By decision of the board of directors , the general meeting may be held "behind closed doors", i.e. without the shareholders or their proxies being physically present.

The possibility of holding a meeting behind closed doors requires that the meeting be convened in "*a place that, on the date of the convening notice or on the date of the meeting, is subject to an administrative measure restricting or prohibiting collective gatherings for health reasons*". This possibility seems to be still open to this day for meetings bringing together a significant number of partners, particularly in view of Decree No. 2020-663 of 31 May 2020, which prohibits "*any gathering, meeting or activity on the public highway or in a place open to the public, involving more than 10 people simultaneously throughout France*[24]*"* and authorises the organisation of gatherings and meetings under the condition of strict compliance with health measures, including *"a physical distance of at least one metre between two persons",* which *"must be observed in all places and under all circumstances*[25]".

Thus, holding a meeting behind closed doors without physical presence remains permissible even if the confinement measures have ceased on the date of the meeting, provided they were in force on the day the meeting was convened. According to the report to the French President, the convening notice must be understood broadly, to include meeting notices ("*avis de réunion*") published by listed companies.

[24] Art. 3 I of Decree No. 2020-663 of 31 May 2020 prescribing the general measures necessary to deal with the Covid-19 epidemic in a state of public health emergency.

[25] Art. 1 of Decree No. 2020-663.

This option to hold the general meeting behind closed doors without physical presence will avoid postponing it. The payment of dividends will not have to be deferred (thus avoiding the need for interim dividends), as will the renewal of issuers' financial delegations, which are often essential to their financing. Lastly, this will make it possible to pay part of the corporate officers' compensation, which is subject to a positive say-on-pay vote.

Certain proxy advisors are opposed to such remote meetings and have publicly stated their preference for postponing the meeting until after the end of the lock down measures . According to them, postponement to a date when companies will have more visibility on the financial year 2020 could lead companies to reconsider the amount of the dividend for 2019 in view of the impact of the coronavirus on their business.

It should be noted that the ordinance softens the use of written consultation for meetings when this alternative means of participation is already provided for by law, by making it possible for any assembly decision to be made, without the need for a clause in the articles of association or in the contract of issuance and with any clause to the contrary being unenforceable.

Convening shareholders' meetings

For companies that have already carried out the formalities for convening an in-person meeting, the change to a remote meeting will not require the renewal of these formalities (and the regulatory delay will not start running again). In this case, listed companies will have to inform their shareholders by means of a press release.

The ordinance has anticipated a possible impossibility to convene registered shareholders by mail (e.g. postal services not functioning). To this end, it is specified that the meeting will not be invalidated simply because it was impossible to convene the meeting by mail "*due to circumstances beyond the company's control*". This protection, which only benefits to listed companies, supposes that the issuer has attempted in practice to convene the meeting.

Taking into account remote attendance

The ordinance provides that shareholders who participate in the meeting by means of a teleconference or audio-visual conference call allowing for their identification will be deemed present for the purposes of calculating a quorum and a majority. In practice, "live" voting will be excluded for the majority of listed companies due to the absence of technical means allowing to verify the participants' status as shareholders in real time.

Thus, the usual procedures for remote participation (postal vote or proxy or chairman's proxy) will prevail in the absence of physical participation. The implementing decree of the ordinance clearly favours electronic means on this point, in two respects.

Firstly, in the case of a postal vote, the body competent to convene the meeting may authorise the transmission of voting instructions by electronic message to the electronic address indicated in the convening notice. The use of electronic voting during the meetings at the initiative of this body is also open in public limited companies ("*sociétés anonymes"*), limited partnerships with shares ("*sociétés en commandite par actions"*) and limited liability companies ("*SARL"*), including for meetings of bondholders and holders of securities giving access to the capital, without the need for a statutory clause to do so. However, in the latter case, the need to set up a website exclusively dedicated to the purpose will continue to apply.

Secondly, in the event of a vote by proxy (excluding blank proxy forms), and again by decision of the body competent to convene the meeting, the proxy forms may be sent by e-mail to the e-mail address indicated in the convening notice. In public limited companies and limited partnerships limited by shares, the mandates as well as the instructions transmitted by the proxy may validly reach the company up to the fourth day prior to the date of the meeting.

This remote access is also becoming the norm with regard to the shareholders' right of communication prior to the meeting, which will now be exercised electronically. However, this presupposes that the shareholder specifies his or her e-mail address in his or her request.

Problems relating to remote attendance

In addition to the impossibility of voting "live", it will probably be impossible to make a request during the meeting to add (in practice, this applies to a request for the removal of a director) or amend a resolution. Similarly, oral questions asked during the meeting could also be jeopardized.

Companies will nevertheless remain free to safeguard these rights in a potentially diminished form. Thus, shareholders could possibly submit beforehand oral questions or amendments to the meeting's resolutions and this could be organized in a manner similar to that for written questions.

However, the implementing decree of the Ordinance has resolved some practical issues relating to the holding of remote meetings:

- on the one hand, when it cannot be performed by the Chairman of the Board or, in his absence, by the person provided for in the Articles of Association, the chairmanship of the meeting may be entrusted by the Board to any corporate officer, and the two scrutineers may be chosen from among the shareholders or even from outside;
- on the other hand, the prohibition provided for by the regulatory provisions to change the mode of participation for a shareholder who has already cast a postal vote, sent a proxy or requested an admission card is lifted by the decree, so as to allow him/her another mode of participation. Thus, a shareholder who had requested to be present may opt for a remote vote until the day before the meeting is held.

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Find here the report addressed to the President of the French Republic relating to Ordinance No. 2020-321.

ORDINANCE NO. 2020-315 OF 25 MARCH 2020 ON THE FINANCIAL CONDITIONS FOR THE CANCELLATION OF CERTAIN TOURIST TRAVEL AND HOLIDAY PACKAGE CONTRACTS

Ordinance No. 2020-315 of 25 March 2020 **(Ordonnance Contrats de Voyages et Séjours – Ordinance on tourist travel contracts and holiday package contracts**) amends the obligations of tourism professionals, organisers or retailers, in order to allow them to offer their customers, for a given and limited period of time (after 1 March 2020 and before 15 September 2020 inclusive), an identical or equivalent package to replace their cancelled trip, or a credit they can use in the next 18 months.

TOURIST TRAVEL CONTRACTS AND HOLIDAY PACKAGE CONTRACTS CONCERNED

The following contracts, whose cancellation is notified between 1 March 2020 and before 15 September 2020 inclusive, are concerned:

- tourist travel contracts and holiday package contracts sold by organisers or retailers;
- contracts related to accommodation services, private car rental services or any other tourist services sold by natural or legal persons, or associations, providing themselves such services.

Sales of travel tickets, regulated by international law and European Union legislation on passenger rights, are excluded.

PROPOSED MECHANISM

As an alternative to the full reimbursement of the payments already made, the organiser or the retailer can instead offer the customer a credit to be used in the following conditions:

The amount of the credit must be equal to the full amount of payments made under the cancelled contract.

This credit is valid for a period of 18 months.

The customer must be informed on a durable medium, at the latest within thirty days following the cancellation of the contract, or, if the contract was cancelled before the Ordinance entered into force, at the latest within thirty days following its entry into force.

The customer cannot request the full reimbursement of the payments made during the credit's period of validity.

In order for the customer to make use of the credit, the organiser or retailer must offer him/her a travel or holiday package contract that meets the following conditions:

The service must be identical or equivalent to the one initially booked.

The price of the service cannot be higher than that of the one initially booked.

The service cannot give rise to any price increase other than what was provided for in the cancelled contract, as the case may be.

The new service must be offered at the latest within three months following notification of the contract's cancellation and this offer remains valid for a period of 18 months.

If the customer does not use this new service offer within the 18-month period, he/she will be reimbursed the full price of the payments made under the cancelled contract. If part of the credit has been used, then the remaining amount shall be fully refunded after expiry of the 18-month period.

Find here the report addressed to the President of the French Republic relating to Ordinance No. 2020-315.

ORDINANCES NO. 2020-306, NO. 2020-315, NO. 2020-316, NO. 2020-427, NO. 2020-538 AND NO. 2020-560: IMPACT OF COVID-19 ON SUPPLIER-CLIENT RELATIONS

Since the beginning of 2020, the coronavirus (Covid-19) has progressively spread throughout the world and reached France abruptly in March.

On 30 January 2020, the World Health Organization (WHO) declared the emergence of this new coronavirus to be a public health emergency of international concern. On 14 March 2020, France moved onto Stage 3 in the management of the epidemic and new containment measures were announced on 16 March and have been progressively strengthened.

On 23 March 2020, the Emergency Law No. 2020-290 to deal with the Covid-19 epidemic which was published, and amended on 11 May 2020, declaring a "state of public health emergency" for a period extending, at the time of writing, from 24 March to 10 July 2020 (hereinafter the "Emergency Period").

The state of emergency essentially involves two types of authorizations:

- In particular, the law authorizes the Prime Minister to limit, by decree, the freedom of movement, the freedom of enterprise and the freedom of assembly. These are the general measures needed to deal with the covid-19 epidemic.
- The Government is authorized to prescribe, by Ordinance, within three months from 24 March, which may enter into force, if necessary, retroactively from 12 March 2020, provisions falling within the scope of the law in order to deal with the economic, financial and social consequences of the spread of the covid-19 epidemic.[26] These are the so-called "economic" measures.

The elements below are of a general nature and will have to be systematically refined on a case-by-case basis, depending on the type of contract in question and the impact of Covid-19. They will also have to be adapted according to future state or administrative measures.

THE ECONOMIC MEASURES PROVIDED FOR IN THE EMERGENCY LAW AND THEIR IMPLEMENTATION BY GOVERNMENT ORDINANCES

On 25 March 2020, 25 Ordinances were issued by the Government to address the consequences of the Covid-19 outbreak under the Emergency Act.

The main Ordinances providing for measures that have a direct impact on business relations and business activities are the following:

- Ordinance No. 2020-306 of 25 March 2020 relating to the extension of expired deadlines during the health emergency period and the adaptation of procedures during this same period,[27] amended by Ordinance No. 2020-427 of 15 April 2020 and Ordinance No. 2020-560 of 13 May 2020.

  Article 1 of the Ordinance first of all establishes a "*legally protected period*" extending between 12 March 2020 and 23 June inclusive.[28]

[26] Law No.2020-290, article 11.

[27] Certain matters are expressly excluded from the scope of Ordinance No. 2020-306, such as time limits and measures resulting from the application of rules of criminal law and procedure, time limits concerning the enactment and implementation of measures involving deprivation of liberty, financial obligations and related guarantees mentioned in Articles L. 211-36 et seq. of the Monetary and Financial Code, as well as any time limits and measures that have been subject to other specific adaptations by Law No. 2020-290 (Article 1 of the Ordinance).

[28] According to Article 4 of Law No. 2020-290, the state of health emergency extends from 24 March to 10 July 2020. Article 1 of Ordinance No. 2020-306 provides for the extension of the deadlines that expire between 12 March and 23 June 2020. The Report to the President accompanying Ordinance No. 2020-427 specifies in this respect that: "*as announced in the report on Ordinance 2020-427 of 15 April 2020, it now appears necessary to re-examine the relevance of the sliding reference to the end of the state of public health emergency. Insofar as economic activity will resume as of 11 May, and that the easing of lockdown will enable economic operators to*

Article 2 of the Ordinance provides that any act (appeal, legal action, formality, registration, declaration, notification or publication) prescribed by law or regulation which should have been carried out during the legally protected period and which is finally carried out within the legally prescribed period for taking action, calculated from the end of that period and within a limit of two months, shall be deemed to have been properly made.

This article applies only where failure to act within the time limit for taking action results in a penalty or forfeiture of a right. The Ordinance is therefore not intended to apply "*to the periods of reflection, withdrawal or renunciation provided for by law or regulation, nor to the periods provided for the reimbursement of sums of money in the event of the exercise of these rights*" (such as, for example, in the case of distance selling, for the consumer's withdrawal period provided for in Article L.221-18 of the French Consumer Code).

Article 4 of the Ordinance organizes mechanisms for "freezing" periodic penalty payments and penalty, termination or forfeiture clauses, when their purpose is to punish failure to fulfil an obligation within a specified period. It is provided that these are deemed not to have taken effect or come into effect if the agreed period has expired during the *legally protected period*.

Arrangements are also provided for in the case of periodic penalty payments and clauses intended to sanction the non-performance of an obligation, other than sums of money, the period of which expires after the legally protected period, or in the case of periodic penalty payments and penalty clauses the course or application of which took effect before 12 March 2020.

Thus, if the debtor does not perform its obligation within the period initially agreed, the course of the penalty payment or the effect of the clause concerned will be neutralized and its postponement will be calculated, after the end of the legally protected period, on the basis of the period of performance of the contract which has been impacted by the measures resulting from the state of health emergency (for further details on Article 4, refer to part 2.1. below).

Article 5 of the Ordinance also provides for an extension of two months after the *legally protected period* to terminate or denounce a convention which could not be terminated or denounced during that period.

- Ordinance No. 2020-315 relating to the financial conditions for terminating certain tourist travel and holiday contracts in the event of exceptional and unavoidable circumstances or force majeure.

  This Ordinance modifies the obligations of tourism professionals, whether organizers or retailers, to enable them to offer their customers, for a fixed and limited period of time (after 1 March and before 15 September 2020 inclusive), a refund of their trip or stay in the form of an identical or equivalent service offer, or in the form of a credit note valid for eighteen months.

- Ordinance No. 2020-316 relating to the payment of rents, water, gas and electricity bills relating to the business premises of companies whose activity is affected by the spread of the Covid-19 epidemic.

  This Ordinance makes it possible to defer or stagger the payment of rents, water, gas and electricity bills relating to the premises and to waive the consequences likely to be applied in the event of non-payment of bills (financial penalties, suspensions, interruptions or reductions in supplies), to the benefit of small businesses (whose eligibility criteria is set by decree).

On 7 May 2020, Ordinance No. 2020-538 was adopted on the financial conditions for the termination of certain contracts in the event of *force majeure* in the culture and sports sectors.

This Ordinance provides for a mechanism similar to Ordinance No.°2020-315 for live entertainment contractors (theatres, festivals), organisers of sporting events and private sports halls.

Thus, spectators of an artistic performance cancelled between 12 March and 15 September 2020 may receive a credit note for the 2020-2021 season. Similarly, festival-goers of a cancelled 2020 edition may receive a credit for the 2021 edition of the same festival, and spectators of a cancelled sports event will be offered a credit note valid for 18 months. Lastly, sports establishments may, in case of contract cancellation, offer a credit note valid for 6 months.

In all cases, at the end of the credit note validity period, the customer may choose to receive a full refund.

carry out the acts and formalities prescribed by law, this reference based on the end of the state of public health emergency can now be replaced by a fixed date in the ordinance that adapted the deadlines to the health crisis".

THE MAIN CONTRACTUAL ADJUSTMENTS AND MEANS OF LEVERAGE IN THE CONTEXT OF COVID-19

In the current situation, many companies are facing a drastic decrease or a total shutdown of their activity, affecting their business relations with their usual partners. These events generate new questions regarding the sharing of responsibilities and the treatment of losses incurred or to be anticipated.

In this context, business partners may seek to adjust their contractual framework in order to improve visibility in the continuation of their relationship and better control business flows. The impact of covid-19 on commercial relations raises many legal questions, the most important of which are the possible exonerating causes related to the covid-19 pandemic in contracts governed by French law, as well as the consequences of State measures restricting freedom and activity.

Exceptional arrangements: freezing of periodic penalty payments and penalty, termination or forfeiture clauses

A first mechanism is provided for in Article 4(1) and (2) of Ordinance No. 2020-306. It allows the neutralisation of the application of periodic penalty payments and penalty, termination or forfeiture clauses when their purpose is to punish the non-performance of an obligation, including sums of money, within a specified period, if this period has expired during the legally protected period. The course of periodic penalty payments and the application of penalty clauses which took effect before 12 March 2020 shall also be suspended during that period.

This first mechanism thus postpones the date on which these contractual penalty mechanisms will take their course or effect, if the debtor does not comply by the end of the *legally protected period*.

A second mechanism is provided for in Article 4(3) of the aforementioned Ordinance, again allowing the course and effect of the said penalty mechanisms to be postponed, but this time when they are intended to punish failure to perform an obligation, other than a sum of money, within a specified period, if that period expires on a date later than the *legally protected period*.

According to the Report to the President accompanying Ordinance No. 2020-427, the exclusion of monetary obligations from this second mechanism is justified by the fact that "*the impact of the measures resulting from the state of health emergency on the possibility of fulfilling monetary obligations is only indirect and, after the legally protected period, the financial difficulties of debtors should be taken into account by the rules of ordinary law (grace periods, collective proceedings, over indebtedness)"*. It is therefore possible to deduct, in return, that the first system also applies to obligations for sums of money.

With regard to the method of calculation provided for the postponement of the period initially agreed, the date on which the periodic penalty payments take effect and the aforementioned clauses take effect shall be postponed by a period equal to the time elapsed:

- Under the first mechanism (paragraphs 1 and 2): between, on the one hand, 12 March 2020 or, if later, the date on which the obligation arose and, on the other hand, the date on which it should have been performed, calculated from the end of the *legally protected period*. Thus, according to the example given in the Report to the President accompanying Ordinance No. 2020-427: if a deadline was due on 20 March 2020, *i.e.,* eight days after the start of the legally protected period, the penalty clause punishing non-compliance with this deadline will only take effect, if the obligation has still not been fulfilled, eight days after the end of the legally protected period. On the other hand, periodic penalty payments and penalty clauses which took effect before 12 March 2020 will start to run again from the end of the *legally protected period*.
- Under the second mechanism (paragraph 3): between, on the one hand, 12 March 2020 or, if later, the date on which the obligation arose and, on the other hand, the end of the *legally protected period*. Thus, according to the example given in the Report to the President accompanying Ordinance No. 2020-427*: if a works contract prior to 12 March 2020 provides for the delivery of the building on a date that falls after the end of the legally protected period, the penalty clause sanctioning any failure to fulfil this obligation will only take effect on a date that is postponed by a period equal to the duration of the legally protected period*.

Consequently, in the event that one or other of these mechanisms should apply, the performance by the debtor of his obligation within the period calculated in accordance with Article 4 of that Ordinance cannot be considered late and give

rise to the implementation of a penalty clause or any other contractual sanction mechanism referred to in that provision, without it being necessary to invoke other provisions of ordinary law (such as force majeure).

The parties to the contract remain nevertheless free to exclude the application of this article by specific provisions in the contract, in particular if they decide to take into account differently the impact of the health crisis on the performance conditions of the contract. They may also decide to waive the provisions of this article.

While we obviously have no indication at this stage as to how judges will assess these exceptional derogation measures, their implementation should be assessed in the light of the obligation of good faith which governs the contractual relations between the parties.

In other words, as soon as possible, there should be a detailed justification by objective reasons for the failure to perform the obligation within the contractually agreed time-limit or, at the very least, for not having exceeded that time-limit for the sole purpose of evading, without any legitimate reason, the performance of contractual obligations, so as to avoid any subsequent challenge on the ground of bad faith.

Finally, the benefit of the "freezing" of contractual sanction mechanisms does not exclude the possibility of invoking ordinary law provisions such as force majeure and unforeseen circumstances.

General law provisions related to *force majeure* and unforeseen circumstances

Force majeure

Article 1218 of the French Civil Code provides that, except where contractual provisions amend the conditions of *force majeure*, an event that qualifies as *force majeure* must be:

- **outside** (is the event outside the company's control?): it is undeniable that, in the current situation, Covid-19 and its consequences are outside of companies' control;
- **unforeseeable** (was the event unforeseeable when the contract was signed?): the reasonably unforeseeable nature will depend particularly on the date the contract was signed. According to the French corporate representative association (Medef), the date of 29 February 2020 (the date on which the epidemic was declared in France) could be considered as a sort of "pivot date". The date of 14 March 2020 (the date on which France moved onto "Stage 3" of the epidemic) and the date of 16 March 2020 could also be considered as new pivot dates.

  In any event, the unpredictability must be analysed on a **case-by-case basis** according to the date the contract was signed, the activity in question and the impact that each of the State measures may have on the activities concerned;
- **insurmountable** (could the company have limited the effects of the event by appropriate measures?): this criterion requires determining the impact of the pandemic and the resulting government measures on the contract and whether these completely prevent the performance of contractual obligations. This condition must also be analysed **on a case-by-case basis according to the activities concerned**.

Please note: as case-law currently stands, **with regard only to payment obligations**, ***force majeure*** **cannot in principle be invoked** - unless the general principle of good faith can be invoked in view of the exceptional circumstances of the situation

In the event of a case of *force majeure*, the company may either **suspend** the obligation for the duration of the event (except in the case of excessively long duration) or **terminate** the contract in the event of definitive impediment. Firms are strongly advised to carry out a thorough analysis of each contractual situation and to give preference to suspending contracts whenever possible.

Future contracts: for contracts under negotiation and future contracts, it would be advisable to provide for a ***force majeure*** **clause** recognising the Covid-19 pandemic and all its consequences that may not have been anticipated by the parties as an event of *force majeure*.

Unforeseen circumstances (Hardship)

Unless contractually provided otherwise, Article 1195 of the French Civil Code provides for contracts entered into after 1 October 2016 (entry into force of the reform of contract law) an **option for renegotiation in the event of unforeseen circumstances**, *i.e.*, a change of circumstances that was unforeseeable at the time of conclusion of the contract which makes performance "excessively onerous" (and not only "less profitable"). Again, the existence of a contingency situation must be analysed on a **case-by-case basis** and will depend on the nature of the contractual relationship and the impact of the pandemic on it.

In the event of **unforeseen circumstances**, the company concerned may ask its co-contractor to **renegotiate** the terms of the contract to reduce the financial impact of the impediment. If the negotiations fail, the parties may then decide to **terminate** the contract or refer the matter to a judge to **amend** it.

The risk of invalidity of *force majeure* or contingency clauses

Please note: if the parties are able to waive the benefit of hardship and/or *force majeure*, such clauses could, if they are not reciprocal and/or if they are accompanied by other unbalanced clauses, constitute a **significant imbalance** between the rights and obligations of the parties, sanctioned by Article L.442-1 of the French Commercial Code or, if they are included in pre-formulated contracts be deemed non-binding.

The objective of continuing the flow of business under the aegis of good faith

One may reasonably anticipate the development of business litigation related to the possibly aggressive behaviour adopted by the various economic players in response to the Covid-19 pandemic.

It is therefore advisable to avoid any abrupt disruptive position and to give priority as far as possible to transparency and discussions in good faith, with a view to the effective continuation and/or resumption of business relations if they were to be suspended.

The impact on legal payment terms

Many companies will be forced to extend their payment terms from those initially agreed in order to be able to pay their commercial partners. Such measures could lead them to fail to comply with the provisions of the French Commercial Code on payment terms.[29]

In particular, Emergency Law No. 2020-290 authorized the Government to take measures "*modifying, with due regard for reciprocal rights, the obligations of legal persons exercising an economic activity with regard to their customers and suppliers and of cooperatives with regard to their member-cooperators, in particular in terms of payment terms and penalties and the nature of the consideration to be given [...]".*

In view of the Emergency Law and the exceptional circumstances currently faced by companies, one might have expected the Government to take certain measures to ease the regulation of payment terms.

Nevertheless, none of the 25 Ordinances adopted on 25 March 2020 include such measures.

On the contrary, the Report made to the President of the Republic relating to Ordinance No. 2020-306 of 25 March 2020 provides that the extension of certain expired deadlines "*excludes acts provided for by contractual stipulations. **Payment of contractual obligations must always take place on the date provided for in the contract**. With regard to contracts, however, the provisions of ordinary law remain applicable if their conditions are met, for example the suspension of the limitation period for impossibility to act pursuant to Article 2224 of the French Civil Code, or the force majeure provided for by Article 1218 of the French Civil Code*".

In this context, apart from the provisions of general law and unless new Ordinances are adopted on the matter, no operator will therefore be able to invoke the situation linked solely to the measures decided by the Government to set aside the legal provisions relating to payment terms.

[29] Articles L. 441-10 et seq. of the French Commercial Code.

Moreover, recent statements by the French Ministry of Economy show that the administration will pay particular attention to compliance with payment terms during this period with regard to companies which had sufficient cash flow to cope with the situation.

The French Ministry of Economy has thus indicated that companies, particularly the largest, which do not meet their obligations in regard to payment terms will not have access to the State guarantee for bank loans to companies set up by the Government.

The French Ministry of Economy nevertheless announced on 23 March 2020 the creation of a crisis committee to deal with the worsening situation of payment terms, with the aim of responding to the most difficult cases and defusing a trend towards cessation or late payment.

The mission of this crisis committee, which will be held in the form of conference calls under the supervision of the Mediator of Enterprises and the Credit Mediator and will involve the business federations (AFEP, CPME, MEDEF, U2P), the consular chambers as well as the DGCCRF, will be, first of all, to identify the extent of the deterioration of payment terms and, secondly, to put an end to critical situations by intervening with companies whose behavior is deemed abnormal.

Extension of the right of termination

Article 5 of Ordinance No. 2020-306 of 25 March 2020 grants a party that had the possibility of terminating or opposing the renewal of its contract within a period expiring during *the legally protected period* an additional period of time to do so.

Indeed, this Article provides that where a convention can be terminated only during a specified period or renewed in the absence of denunciation within a specified period and these periods expire during *the legally protected period*, these periods will be extended by two months after the end of that period.

COMMERCIAL DISPUTES

On 15 March, the French Minister for Justice announced that, as of the following day, the courts would be closed, except for essential litigation, in particular in criminal matters and for proceedings of extreme urgency.

Following this announcement, the Paris Commercial Court announced on Monday 16 March that all hearings on the merits of the Commercial Court would be cancelled until further notice. On 18 May 2020, the Paris Commercial Court announced that investigative and trial hearings will be held either by videoconference or on the court's premises.

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Find here the report addressed to the President of the French Republic relating to Ordinance No. 2020-306 (amendment of 28 March 2020) as well as the circular presenting Title I's provisions of Ordinance No. 2020-306 of 25 March 2020, here the report relating to Ordinance No. 2020-315 of 25 March 2020, here the report relating to Ordinance No. 2020-316 here the report relating to Ordinance No. 2020-427, as well as the circular presenting Title I's provisions of Ordinance No. 2020-427 of 15 April 2020, here the report on Ordinance No. 2020-538 of 7 May 2020 and here the report on Ordinance 2020-560 of 13 May 2020.

TAX LAW

ORDINANCES NO. 2020-304, NO. 2020-305, NO. 2020-306 AND NO. 2020-560: TAX MEASURES

APPLICATIONS THAT CAN BE FILED WITH A BUSINESS TAX CENTRE (SERVICE DES IMPÔTS DES ENTREPRISES - SIE)

Application for a payment deferral of direct taxes

Businesses can request, without any penalty for late payment being imposed, a deferral of direct tax instalment payments.

Deferral can be requested in relation to the following direct taxes: corporate income tax (*impôt sur les sociétés*), corporate property tax (*contribution foncière des entreprises*), contribution on value added tax of businesses (*contribution sur la valeur ajoutée des entreprises* or CVAE), and payroll tax (*taxe sur les salaires*).

Deferral is granted for a period of three (3) months without justification needing to be given.

Businesses having already paid their March instalments may still stop the automatic debit (SEPA) with their bank. They can otherwise apply for a refund before their business tax center once the automatic debit is effectively realized. Please note that the French tax authorities have warned businesses however to not revoke the automatic debit mandate used for the payment of their taxes since such a revocation prevents the collection of all taxes even the ones that are not covered by the exceptional deferral measure (such as VAT).

Regarding monthly contracts for the payment of the corporate property tax (*contribution foncière des entreprises*) or property tax (*taxes foncières*), businesses can also suspend, without penalty, their monthly payment.

A press release dated 29 May 2020 from the Ministry of Action and Public Accounts has relaxed the modulation of the payment of corporate income tax and CVAE instalments by allowing the payment of instalments to be staggered according to the forecast result for the financial year and by increasing the tolerated margin of error.

Thus, corporate income tax instalments can be modulated as follows[30]:

- the second instalment can be adjusted so that the sum of the first and second instalments is at least 50% of the forecast corporate income tax for the current financial year, with a margin of error of 30%;
- the third instalment can be adjusted so that the sum of the first three instalments is at least 75% of the forecast corporate income tax for the current financial year, with a margin of error of 20%;
- the fourth instalment can be adjusted so that the sum of all instalments corresponds at least to the amount of the forecast corporate income tax for the current financial year, with a margin of error of 10%.

CVAE instalments can be modulated as follows:

- the first instalment can be modulated with a margin of error increased to 30% (instead of the 10% provided for by law);
- the payment of the second instalment on 15 September should ensure that both instalments together reach the total amount of CVAE for 2020, with a margin of error of 20%.

In case of insufficient instalment, the 5% surcharge and late interest may be applied, at the time of the balance, on the difference between the expected taxation (minus the margin of error) and what has actually been paid.

In addition, the payment of the June corporate income tax and CVAE instalments, when calculated on the basis of the 2019 results (filing of the tax return postponed to 30 June[31]) is deferred from 15 June to 30 June 2020, so that each company is able to correctly assess its instalment.

[30] This also includes the social contribution of 3.3%. It should be noted that these modulation facilities are offered for all instalments (from the second to the fourth) of all current and future financial years, but they cease as from financial years starting after 20 August 2020.

It is also noted that:

- if companies have postponed their March corporate income tax instalment to 15 June 2020, this instalment must be paid on that date. The June instalment is then suspended and will be adjusted on the next instalment;
- the rules for the last instalment for large companies (payment obligation of 95% or 98% of the corporate income tax) remain unchanged.

The following taxes are however currently excluded: value added tax (VAT) and assimilated taxes, the repayment of the withholding tax (*prélèvement à la source*) paid by businesses and the special tax on insurance agreements (*taxe spéciale sur les conventions d'assurances*).

Application for a remission of direct taxes

Businesses can also apply for a remission of their direct taxes.

The relevant taxes are the same as those referred to in the aforementioned application for payment deferral. However, it is specified that such remission also covers late payment interest and/or penalties relating to these direct taxes.

Unlike the abovementioned application for a payment deferral, remission will only be granted if the business can show that it is experiencing serious economic difficulties which cannot be overcome through a payment deferral.

Acceleration of repayment of tax credits owed to businesses

We understand that the French tax authorities (*Direction générale des Finances publiques - DGFIP*) have issued instructions for the repayment of tax credits to be accelerated.

Businesses can apply for a tax credit refund without waiting for the filing of their income tax return next May. We understand that the business tax centers (*service des impôts des entreprises - SIE*) are mobilized to process refund claims as quickly as possible, within a few days.

All tax credits that are refundable in 2020 are covered, including the competitiveness and employment tax credit (*crédit d'impôt compétitivité emploi - CICE*) and the research tax credit (*crédit impôt recherché - CIR*) or innovation tax credit (*crédit d'impôt innovation - CII*).

An accelerated refund is conditional upon the online filing of certain forms (in particular form no. 2573, form no. 2069-RCI and form no. 2572).

The French tax authorities have also undertaken to process businesses' VAT credit refund application as quickly as possible.

VAT

At a press conference, the Minister for Action and Public Accounts answered a question by stating that when a customer has not yet paid its invoice to its supplier, who consequently has not collected the VAT, the French tax authorities (DGFIP) could, on a case-by-case basis, grant a payment deferral of the corresponding VAT.

In addition, while requests for payment deferral may only apply to direct taxes, a new measure provides for, during the lockdown period and under certain conditions, a simplified reporting process for VAT in the form of the two following measures.

[31] Please see our article "Covid-19: Impact on tax returns and certain formalities" here

Extension of the simplification related to paid leave

The French tax authorities extend to the lockdown period the simplification provided for in its guidelines32 regarding paid leave in case of difficulties in the preparation of declarations.

This measure, available for businesses subject to the standard VAT regime (French "*régime du réel normal*"), enables them to estimate the amount of VAT due for a month and to only pay a down-payment equal to such estimate.

We however draw your attention to the fact that the French tax authorities only tolerate a 20% margin of error.

Down-payment

- This measure allows a business, under certain conditions, to limit its March payment to a down-payment equal to:
- 80% of the declared VAT amount for the months of February or January, where the business has experienced a drop in its turnover due to the COVID-19 crisis;
- 50% of the declared VAT amount for the months of February or January, where the business has ceased its activity since mid-March (complete closure) or where its activity is in sharp decline (estimated at 50% or more) due to the COVID-19 crisis.

This measure should be applicable for the entire lockdown period decided by the public authorities.

However, we draw your attention to the fact that the French tax authorities have already announced that these measures will be subject to ex-post verifications.

IMPACT ON THE TAX AUDITS

The Minister for Action and Public Accounts announced Monday 16 March that no new tax audit will be launched by the French tax authorities and that no procedural documents will be sent for ongoing tax audits.

Ordinance No. 2020-560, dated 13 May 2020, extended the suspension of tax audits until 23 August 2020 (see 5. Impact on tax procedures). The Chairman's report on this order specified that this extension will allow a staggered return of tax audit procedures, adapted to the economic situation of each taxpayer.

IMPACT ON TAX LITIGATION

Following the Emergency Law no 2020-290 dealing with the covid-19 epidemic, dated 23 March 2020, the Government adopted on 26 March 2020 two Ordinances (no 2020-304 et no 2020-305) adapting the rules applicable to civil jurisdictions[33] (ruling in non-criminal matters) and to administrative jurisdictions[34].

In order to adapt to the current situation:

- the Government Ordinance relating to civil jurisdictions alleviates their functioning, in particular by making the organization of hearings more flexible and by allowing the parties to be informed and the organization of adversarial proceedings by any means.
- This Government Ordinance applies from 12 March 2020 until the expiry of a one month period after the end of the declared state of health emergency.
- the Government Ordinance relating to the administrative jurisdictions makes it possible, in particular, for judges from other courts to fill the empty seat of an incomplete panel of judges, to inform the parties by any means of the dates of hearings, and to make extensive use of telecommunications in order to hold hearings.

[32] BOI-TVA-DECLA-20-20-10-10 No. 260.

[33] Competent in tax matters, in particular for the solidarity tax on wealth (*impôt sur la fortune* - ISF), real estate wealth tax (*impôt sur la fortune immobilière* - IFI), inheritance tax and registration duties (*les droits de succession et les droits d'enregistrement*).

[34] Competent in tax matters, in particular for corporate income tax, personal income tax, VAT, etc.

This Government Ordinance applies from 12 March 2020 until the end date of the declared state of health emergency.

Law No. 2020-546 of 11 May 2020 extended the state of health emergency until 10 July 2020, end of day.

IMPACT ON TAX PROCEDURES

Following the Emergency Law no 2020-290 dealing with the covid-19 epidemic, dated March, 23 2020, the Government adopted on 26 March 2020, the Ordinance no 2020-306 on the extension of the deadlines that expired during the period of declared state of public health emergency and the adaptation of procedures during the same period. This order was amended by Order No. 2020-560, dated 13 May 2020.

In essence, the consolidated Ordinance provides for a "mechanism for postponement of term and deadline" according to which the non-completion of procedures of whatever form (deed, formality, registration, etc.) that were supposed to be completed during the reference period (*i.e.* between 12 March 2020 and 23 June 2020) and may produce adverse legal effects such as a penalty, expiration of a statute of limitation or forfeiture of a right, these procedures may be carried out at the end of the reference period within the period normally provided for, but at the latest within two months following the end of the reference period.

The Government Ordinance also extends certain jurisdictional or administrative measures. It also provides, regarding relations with the administration, for the suspension of certain deadlines until 23 June 2020 inclusive, mainly those under which an administrative decision may be deemed taken in absence of any response from the administration. This would, for example, be likely to concern the implied rejection of contentious claims by taxpayers.

With regard to tax matters more specifically, the Government Ordinance provides that the following deadlines are suspended from 12 March 2020 to 23 August 2020 inclusive, and will run only from this latter date:

- the statute of limitation regarding the right for the French tax authorities to reassess tax returns (Articles L. 168 to L. 189 of the French Tax Procedure Code and Article 354 of the French Customs Code) for those that are supposed to expire on 31 December 2020;
- the deadlines relating to the conduct of audit and investigation procedures in tax matters[35];
- the deadlines provided for in Article 32 of the Law of August 10, 2018 relating to the experimentation of the limitation of the duration of administrative controls on certain businesses in certain regions (Hauts-de-France and Auvergne-Rhône-Alpes).

The suspension period is however different for tax rulings which are suspended from 12 March 2020 to 23 June 2020, end of day, and only run from this latter date. This concerns:

- the response time for the French tax authorities in case of *rescrit-valeur* (a specific tax ruling provided for in Article L. 18 of the French Tax Procedure Code, consultation of the French tax authorities on the market value of a company prior to a donation);
- the response time for the French tax authorities in case of taxpayer consultation prior to a transaction (Article L. 64 B of the French Tax Procedure Code);
- the response times for the French tax authorities to requests for tax rulings and tax approvals (Articles L. 80 B, L. 80C. and L. 80 CB of the French Tax Procedure Code);
- certain limits for customs matters (Article 345 bis of the French Customs Code).

It is to be noted that the deadlines that should have started to run during this period will only start to run as of 23 June 2020 or 23 August 2020, as the case may be.

Moreover, the Government Ordinance expressly provides that these provisions do not apply to tax returns. Please see our article "*Covid-19: Impact on tax returns and certain formalities*" for more information on this subject.

[35] Ordinance No. 2020-560 dated 13 May 2020 specified that the suspended time limits are those provided for both in Title II of the French Tax Procedure Code (part one) and its two regulatory parts (parts two and three).

PROHIBITION TO COMBINE CERTAIN STATE AID MEASURES WITH THE DISTRIBUTION OF DIVIDENDS BY LARGE BUSINESSES

Following the announcements made by Mr. Bruno Le Maire on 27 March 2020, that the State will grant financial support to businesses, in the context of the current crisis, only if they commit to not distributing dividends and/or proceeding to any share buybacks. A document was published on the Ministry of the Economy and Finance website on 2 April 2020 to provide further details regarding this measure[36].

In short, large businesses asking for a payment deferral of taxes (section 1.1 above) or a state-guaranteed loan must undertake (i) not to pay any dividend in 2020 and (ii) not to proceed to any share buyback in 2020.

If a business does not make this commitment or does not respect it, it will be sanctioned with the application of the standard tax penalties, and will not be able to benefit from the State guarantee on any State-guaranteed loan it would have contracted.

Please see our article "*Covid-19: Dividends and share buybacks: commitments imposed on large companies benefiting from government cash support measures*" for more information on this subject.

REFUSAL OF AID FOR BUSINESSES IN A NON-COOPERATIVE STATE

In a letter dated 23 April 2020, addressed to the Director General of the Treasury, Bruno Le Maire asked the former, in a manner similar to the ban on the distribution of dividends discussed above, to refuse to grant businesses with a registered office in an uncooperative State or territory or with a subsidiary without economic substance the granting of deferrals of payments of tax or social security charges or loans guaranteed by the State.

TAX MEASURES PROVIDED FOR BY THE SECOND AMENDING FINANCE LAW 2020

The second Amending Finance Law 2020, adopted on Thursday 23 April 2020 ("AFL 2") provides for several tax measures.

Tax and social contribution exemption on sums paid by the solidarity fund

AFL 2 provides for an exemption from corporate income tax, income tax, and all social contributions (legal or conventional) on sums paid to businesses by the solidarity fund created by Ordinance No. 2020-317 dated 25 March 2020.

Tax incentive for landlords to waive rents

AFL 2 allows a landlord to deduct from its taxable profits the loss resulting from a rent waiver without the said landlord needing to have a commercial motive.

This incentive applies to rent waivers granted between 15 April 2020 and 31 December 2020.The intention is to encourage landlords to assist lessees and, therefore, to, help them reduce their indebtedness and enable them to resume work in better conditions after the health crisis.

This measure thus broadens the tax deductibility of rent waivers granted by lessors to their tenants, as lessors do not have to justify any particular interest, in particular commercial interest.

Please see our detailed article "Tax incentive for landlords to waive rents" for more information on this measure.

Reduced VAT rate for certain health goods

AFL 2 provides for a reduced VAT of 5.5% for:

- protective masks and protective clothing suitable for epidemic control (gloves, overalls, hair nets, etc.); and

[36] See the document here (in French)

- products intended for personal hygiene and suitable for combating the spread of the Covid-19 virus.

Increase in the ceiling for overtime exemption

AFL 2 increases to EUR 7,500 the ceiling of the income tax exemption applicable to wages received for overtime, to take into account wages received since March 16, 2020, the beginning of containment, and until the end of the state of health emergency. A ceiling of EUR 5,000 is however maintained for wages received for hours worked outside the period of the state of public health emergency.

Increase in the ceiling for the deduction of sums paid to non-profits providing support to the most disadvantaged

AFL 2 raises to EUR 1,000 the ceiling for income tax deductions of sums paid to non-profits supporting the most disadvantaged, food banks in particular, in order to support donations from individuals.

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Find here the report addressed to the President of the French Republic (amendment of 28 March 2020) relating to Ordinance No. 2020-304, here the circular dated 26 March 2020 presenting ordinance No. 2020-304 of 25 March 2020, here the report addressed to the President of the French Republic relating to Ordinance No. 2020-305 and here the report relating to Ordinance No. 2020-306 (amendment of 28 March 2020) as well as the circular presenting Title I's provisions of Ordinance No. 2020-306 of 25 March 2020 and here the report pertaining to Ordinance No. 2020-560 of 13 May 2020.

EMPLOYMENT LAW

ORDINANCES NO. 2020-322, NO. 2020-428 AND DECREE NO. 2020-434 ON ADAPTING THE RULES RELATIVE TO SICK LEAVE AND PROFIT-SHARING SCHEMES

Among the measures taken to fight the spread of the Covid-19 epidemic, new grounds for taking a leave of absence (e.g., childcare or care for a vulnerable person) have been added entitling those eligible to, in principle, the following (i) daily allowances paid by Social Security, with no length of service proviso and no waiting period for the benefit thereof; and (ii) maintained legal wage, as set forth for sick leave.

Article 1 of Ordinance no. 2020-322 of 25 March 2020 (***Ordonnance Arrêt Maladie et Épargne Salariale*** – *Ordinance on leave of* absence *and employee savings schemes*) adjusts certain common-law rules so that all employees having taken a leave of absence benefit from maintained salary, without preconditions.

Article 20 of Law No. 2020-473 of 25 April 2020, provides that, from 1 May 2020, some employees benefiting from leave of absence due to the Covid-19 epidemic will automatically be placed in a situation of partial activity, it being provided that, from this date, they will no longer be entitled to daily Social Security allowances nor to maintained wage as set forth for sick leave.

Article 2 of the Ordinance on leave of absence and employee savings schemes also allows companies to postpone the date of payment of the mandatory and optional profit-sharing sums.

TEMPORARY ADAPTATION OF MAINTAINED SALARY CONDITIONS DURING A LEAVE OF ABSENCE

Extension of the maintained salary scheme

Article 1 of the Ordinance on leave of absence and employee savings schemes temporarily suspends certain conditions governing the employer's payment to its employees on leave of the supplementary indemnity paid in addition to the daily Social Security allowances.

Thus, as a dispensation measure in order to benefit from the supplementary indemnity paid by the employer:

- the one-year length of service provision no longer applies;
- the exclusion of certain categories of employees (employees working from home, seasonal workers, intermittent employees and temporary workers) no longer applies.

Therefore, all employees are eligible for maintained salary, whatever their length of service, provided that they can justify (i) a leave of absence specifically obtained within the scope of the Covid-19 epidemic ***(nevertheless, the automatic transition to a situation of partial activity from 1 May applies to most absences from work due to the Covid-19 epidemic, see below)*** or (ii) a leave of absence justified by an incapacity resulting from illness or an accident.

Initially, this scheme was not intended to apply until 31 August 2020.

Ordinance No. 2020-428 of 15 April 2020 removes this deadline and specifies that these adjustments are applicable to ongoing leaves of absence on 12 March 2020 as well as those which began afterwards, regardless of the starting date of these leaves of absence and will cease to apply on a date fixed by decree which may not be later than 31 December 2020.

Adaptation of the deadlines and terms and conditions for granting the supplementary indemnity

Decree No. 2020-434 of 16 April 2020 issued pursuant to the Ordinance on leave of absence and employee savings schemes adjusts the deadlines and terms and conditions under which the supplementary indemnity is granted during this period.

Article 1 of the Decree provides that:

- the waiting periods applicable to maintained salary are aligned with those applicable for payment of daily Social Security allowances:
  - for ordinary leaves of absence which started between 12 March and 23 March 2020, the supplementary indemnity is paid from the 4th day of absence (application of a 3-day waiting period);
  - for ordinary leaves of absence which started on 24 March 2020 and derogatory leaves of absence related to the Covid-19 epidemic, **the supplementary indemnity is paid from the first day of absence, without waiting period**;
- as a dispensation measure, for the calculation of the total duration of maintained salary, the following are not taken into account:
  - compensation periods for ongoing leaves of absence or those taken after 12 March 2020;
  - compensation periods paid during the last 12 months preceding the starting date of the leave of absence concerned.

The above-mentioned adjustments shall apply to supplementary indemnities paid:

- from 12 March to 31 May 2020 for derogatory leaves of absence related to the Covid-19 epidemic ***(nevertheless, see below the transition to a situation of partial activity as of 1 May 2020 applicable to employees benefiting from derogatory leave due to the Covid-19 epidemic,*** *so that these arrangements from 1 May 2020 to 31 May 2020 should only apply to employees subject to an isolation measure because of their close contact with a person infected by Covid-19 and benefiting from a derogatory leave of absence for this reason)*;
- from 12 March to the end of the state of public health emergency for ordinary leaves of absence.

Article 2 of the Decree provides that for derogatory leaves of absence, the amount of the supplementary indemnity shall amount to 90% of the gross salary, less the amount of the daily Social Security allowances, regardless of the total duration of the compensation as from 12 March and until 30 April 2020.

AUTOMATIC PART-TIME EMPLOYMENT FOR THOSE EMPLOYEES BENEFITING FROM "COVID-19" SICK LEAVE AS OF 1 MAY 2020

Article 20 of the Amending Finance Act 2020 (Law No. 2020-473 of 25 April 2020) provides that, as of 1 May 2020, employees benefiting from exceptional leave of absence due to the Covid-19 epidemic will automatically be placed in a situation of partial activity and, as such, will benefit from the partial activity indemnity equal to 70% of their gross salary.

This indemnity cannot be combined with the daily Social Security allowances or with the complementary wage maintenance allowance paid by the employer.

This applies to employees who are unable to continue working for one of the three following reasons:

- The employee is a vulnerable person presenting a risk of developing a serious form of the SARS-Cov-2 virus infection. To be considered vulnerable, a person needs to meet one of the eleven criteria listed in Article 1 of Decree No. 2020-521 of 5 May 2020:
  - be aged 65 and over;
  - have a previous cardiovascular infection (ATCD);
  - suffer from uncontrolled diabetes or diabetes presenting complications;
  - have a chronic respiratory pathology likely to decompensate in the event of a viral infection: (obstructive bronchopneumonia, severe asthma, pulmonary fibrosis, sleep apnoea syndrome, cystic fibrosis in particular):

  - have chronic renal failure and be on dialysis;
  - suffer from progressive cancer under treatment (excluding hormone therapy);
  - be obese (body mass index (BMI) > 30 kgm2);
  - have congenital or acquired immunodeficiency;
  - suffer from cirrhosis (at least Stage B of the Child-Pugh);
  - have major sickle cell disease or a history of splenectomy;
  - be in the third trimester of pregnancy.
- The employee shares his/her home with a vulnerable person;
- The employee is the parent of a child under 16 years of age or of a disabled person who is subject to a measure of isolation, eviction or home support.

To take into account the provisions of the Amending Finance Act 2020, Decree No. 2020-520 of 5 May 2020 amends Decree No. 2020-73 of 31 January 2020 to put an end, as of 1 May 2020, to the possibility for the employees listed above to benefit from daily Social Security allowances.

POSTPONEMENT OF PROFIT-SHARING PAYMENT DEADLINES

In principle, the sums accrued under the mandatory and optional profit-sharing schemes must be paid to the beneficiaries or paid into an employee savings scheme before the 1st day of the sixth month following the end of the company's financial year, subject to late-payment penalties.

As an exemption to this rule, Article 2 of the Ordinance on leave of absence and employee savings schemes provides that it will be possible to postpone, up to 31 December 2020, the payment of the mandatory and optional profit-sharing sums that were supposed to be paid in 2020 (particularly before 1 June 2020 for mandatory and optional profit sharing accrued in 2019 by companies whose accounting period corresponds to a calendar year).

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Find here the report addressed to the President of the French Republic relating to Ordinance No. 2020-322 and here the report relating to Ordinance No. 2020-428 of 15 April 2020.

ORDINANCE NO. 2020-323 OF 25 MARCH 2020 ON THE EMERGENCY MEASURES TAKEN REGARDING PAID VACATION, REST DAYS AND WORKING TIME IN THE CONTEXT OF COVID-19

In order to face the economic, financial and social consequences linked to the spread of the Covid-19 epidemic, the law no. 2020-290 of 23 March 2020 authorizes the French government to implement various adjustments of positive law, by way of ordinances, notably in the field of labour law.

It is in this context that Ordinance No. 2020-323 of 25 March 2020 (***Ordonnance Congés et RTT*** – *Ordinance on paid vacation and RTT days*) was published in the Official Journal of 26 March 2020, effective immediately.

It provides for several urgent measures relative to paid vacation, rest days and working time.

PAID VACATION

Article 1 of this Ordinance authorizes the employer, within the scope defined by an industry-wide or company agreement, to impose dates for accrued days of paid vacation, including before the period of availability during which such days can usually be taken, or to modify the date(s) of paid vacation already requested by the employee:

- within a limit of **6 days of paid vacation maximum**;
- over a period going up to 31 December 2020;
- subject to compliance with a notice period of one full day minimum.

The company or industry-wide agreement can also authorize the employer to split the paid vacation days and set such dates without having to accept simultaneous paid vacation dates for spouses or partners under a civil pact of solidarity working in the same company.

Failing such an agreement, it is recalled that Article L.3141-16 of the French Labour Code, the provisions of which have not been amended by the Ordinance on paid vacation and RTT days, makes it possible for an employer to modify the order and dates of paid vacation, subject to complying with a notice period of one month before the scheduled paid vacation date, save in exceptional circumstances justifying a shorter notice.

REST DAYS

When justified to protect the company in the face of economic difficulties caused by the Covid-19 outbreak and subject to compliance with a notice period of one full day minimum, the employer can unilaterally impose or modify the dates of the compensatory rest days under the 35-hour workweek (*RTT days*), of rest days set forth under a fixed working time arrangement and rest days corresponding to rights paid into a time savings account.

The total number of days imposed or whose date(s) can be modified **is limited to 10 days** over a period going up to 31 December 2020.

WORKING TIME

As a temporary and exceptional measure, Article 6 of this Ordinance provides for the possibility for companies "*in the activity sectors particularly essential to the Nation's security and to the continuity of economic and social life*" to derogate from the public order rules regarding:

- the **maximum daily duration of work**, which can be increased to 12 hours a day;
- the **daily duration of rest**, which can be lowered down to 9 consecutive hours, subject to granting subsequent compensatory rest equivalent to the duration of rest of which the employee has been deprived;
- the **maximum weekly duration of work**, which can be increased to 60 hours a week.

In order to implement one or several of these exemptions, the employer must inform both the Works Council (*Comité social et économique -CSE*) and the Direccte (*Direction Régionale des Entreprises, de la Concurrence, de la Consommation, du Travail et de l'Emploi* - Regional Directorate for Companies, Fair Trading, Consumer Affairs, Labor and Employment) without delay and through any means.

Furthermore, in application of Article 7 of this Ordinance, companies coming under these activity sectors can also derogate from the rule on Sunday rest, by granting weekly rest shifts.

A decree shall determine the sectors concerned, as well as the granted exemption categories, it being specified that these exemptions **shall cease to be in force on 31 December 2020**.

PRIOR INFORMATION OF THE WORKS COUNCIL AND A POSTERIORI CONSULTATION

Ordinance No. 2020-389 of 1 April 2020 relative to the emergency measures taken regarding staff representative bodies provides for prior information of the CSE but, by way of derogation, its consultation may be carried out a posteriori within one month of this information when the employer implements at least one of the following measures:

- imposition of rest days ("RTT" days, rest days set forth under a fixed working time arrangement and rest days corresponding to rights paid into a time saving account) or modification of their dates for rest days already requested;
- derogation on maximum working times or Sunday rest in certain sectors of activity.

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Find here the report addressed to the President of the French Republic relating to Ordinance No. 2020-323 of 25 March 2020.

ORDINANCES NO. 2020-346, NO. 2020-428, NO. 2020-460 AND DECREES NO. 2020-325, NO. 2020-435 AND NO. 2020-522 ON EMERGENCY MEASURES REGARDING PARTIAL ACTIVITY

In order to face the economic, financial and social consequences linked to the spread of the Covid-19 epidemic, Law No. 2020-290 of 23 March 2020 authorizes the French government to make adjustments to labour law rules, by way of ordinances, notably relative to partial activity.

In this context, Decree No. 2020-325 of 25 March 2020 (***Décret Activité Partielle*** – *Decree on partial activity*) has implemented an exceptional partial activity mechanism applicable **retroactively as of 1 March 2020**.

Ordinance No. 2020-346 of 27 March 2020 (***Ordonnance Activité Partielle*** – *Ordinance on partial activity*) –published in the Official Journal of 28 March 2020 and which entered into force immediately thereafter – completes this mechanism.

The Decree No. 2020-435 of 16 April 2020 issued pursuant to the Ordinance on partial activity specifies the methods for calculating the partial activity indemnity and compensation - in particular for certain specific categories of employees - to be paid after the placement in a situation of partial activity due to the Covid-19 epidemic from 12 March 2020 to 31 December 2020.

The scheme has also been supplemented by certain provisions contained in Ordinance no. 2020-460 of 22 April 2020.

NEW RULES RELATIVE TO THE IMPLEMENTATION OF PARTIAL ACTIVITY

The Decree on partial activity provides that where an employer is forced to reduce its activity due to circumstances of an exceptional nature (such as the Covid-19 outbreak), it can opt for partial activity, subject to the following conditions:

- The employer must file its partial activity request online **here** no later than 30 days after having placed its employees in a situation of partial activity.
- The administration has 2 days following receipt of the partial activity authorization request to notify the employer of its decision to either refuse or accept said request – it being specified that if the administration fails to answer within that time frame, it shall be deemed to have implicitly accepted the request.
- The partial activity authorization can now be granted for a maximum duration of 12 months, renewable under certain conditions (instead of 6 months previously).
- The employer must send the administration the opinion rendered by the Works Council (*Comité Social et Économique – CSE*) at the latest within 2 months following the date it filed its partial activity request.

As for the Ordinance on partial activity, it specifies that where the partial activity measure affects all the employees of a company, establishment (*établissement*), department (*service*) or workshop (*atelier*) to which is assigned a protected employee, such partial activity also applies to the protected employee (knowing that previously this was subject to authorization).

INDIVIDUALISATION OF PARTIAL ACTIVITY

Article 8 of Ordinance No. 2020-460 of 22 April 2020 provides for the ability to individualise partial activity and thus, derogate from the collective nature of the mechanism, through:

- placing in partial activity only part of the employees of an establishment, department or workshop, including if they belong to the same professional group (*même catégorie professionnelle*);
- applying a non-uniform division of working hours and non-working hours (*heures chômées*) between these employees.

This individualisation must be necessary to ensure the activity's continuity or resumption and requires:

- either a company-wide agreement (*accord d'entreprise*) or an establishment-wide agreement (*accord d'établissement*), where none, an industry-wide agreement or convention (*convention ou accord de branche*);
- or a favourable opinion of the Works Council (*CSE* or *Conseil d'entreprise*).

The collective agreement (*accord collectif*) or document submitted to the Works Council (*CSE* or *Conseil d'entreprise*) shall determine:

- the skills identified as essential to maintain or resume the activity of the company, establishment, department or workshop;
- the objective criteria, related to the positions, functions occupied or professional qualifications and skills, justifying the designation of the employees who continue working, of those placed in partial activity or of those subject to a different distribution of working hours and non-working hours;
- the procedures and frequency, which may not be less than three months, according to which the criteria are reviewed, so as to take into account the volume and operating circumstances of the company, in order to, where appropriate, modify the agreement or document;
- the specific arrangements for achieving a work-life balance for the employees affected;
- the procedures put in place to inform the company's employees of the implementation of the agreement throughout its duration.

EXTENSION OF THE PARTIAL ACTIVITY MECHANISM

As a temporary and exceptional measure, the Ordinance on partial activity broadens the scope of application of the partial activity mechanism, notably making the following entities eligible:

- public companies self-covered against unemployment risks;

  In this respect, Article 6 of Ordinance No. 2020-460 of 22 April 2020 amends the wording of Article 2 of the Ordinance on partial activity in order to clearly provide that the employees subject to private law are eligible for partial activity:

  - of companies listed in the national directory of companies as majority-owned by the State;
  - of semi-public companies (*sociétés d'économie mixte*) in which regional authorities have a majority shareholding;
  - of chambers of trade, chambers of agriculture as well as the establishments and departments of these chambers;
  - of the chambers of commerce and industry;
  - of the companies in the electricity and gas industries;
  - of the Post Office;
  - of public entities of an industrial and commercial nature (*établissements publics à caractère industriel et commercial*)
  - of public interest groups (*groupements d'intérêt public*);
  - of local public companies (*sociétés publiques locales*);

  provided that such employers are primarily carrying industrial and commercial activities, the proceeds of which constitute the major part of their revenue.
- foreign companies with no establishment in France and with at least one employee working in France (provided such companies come under the French social security and unemployment insurance systems);
- home-based workers employed by private employers and nurses (*assistantes maternelles*) (it being specified that a specific mechanism applies to them);
- employees of businesses with financial autonomy operating an industrial and commercial public service of ski lifts or ski slopes.

Ordinance No. 2020-428 of 15 April 2020 on various social provisions aimed at dealing with the Covid-19 epidemic sets out the terms and conditions for financing the partial activity indemnities paid to nurses and employees of private employers by providing that the reimbursement of the sums paid by the employer is covered by the State and the body in charge of managing the unemployment insurance, following the example of the terms and conditions applicable to other employees.

PARTIAL ACTIVITY ELIGIBILITY EXTENDED TO EMPLOYEES WORKING UNDER A FIXED-ANNUAL WORKING TIME SCHEME, SALES REPRESENTATIVES (VRP) AND SENIOR EXECUTIVES

For employees working under a fixed-annual working time scheme

The Decree on partial activity provides that employees working under a fixed-annual working time in days or hours scheme are now eligible to benefit from the partial activity mechanism, including when such partial activity involves a reduction of working time.

In such a case, the number of hours eligible for the State-funded reimbursement must be calculated on the basis of the legal working week corresponding to the days of reduced working time applied in the establishment in due proportion to this reduction.

The number of hours taken into account for the calculation of the partial activity indemnity is determined by converting a number of days or half-days into hours, in accordance with the following terms and conditions provided by the Decree No. 2020-435 of 16 April 2020:

- a half-day not worked corresponds to 3.5 hours not worked;
- a day not worked corresponds to 7 hours not worked;
- a week not worked corresponds to 35 hours not worked.

Decree No. 2020-435 of 16 April 2020 also specifies that when employees working under a fixed-annual working time scheme take a paid or rest day or when a public holiday not worked - corresponding to one working day - occurs during partial activity, these days are converted into hours according to the same methods. The hours resulting from this conversion are then deducted from the number of hours not worked during partial activity.

For employees not subject to legal provisions on working week (sales representatives and senior executives)

The Ordinance on partial activity provides that employees not subject to the legal or CBA provisions on working week (sales representatives (*Voyageurs, Représentants, Placiers* - VRP) and senior executives) can be placed in a situation of partial activity.

Ordinance No. 2020-428 of 15 April 2020 indicates however that senior executives can only be placed in a situation of partial activity in case of temporary closure of their establishment or part of establishment.

Decree No. 2020-435 of 16 April 2020 specifies the methods for calculating the partial activity indemnity for sales representatives:

- the monthly salary reference corresponds to the average gross remuneration received during the last 12 calendar months preceding the first day the employee was placed in a situation of partial activity;
- the hourly reference amount is determined by deducting the amount of the reference monthly salary to the legal working time;
- the loss of remuneration corresponds to the difference between the reference monthly salary and the remuneration actually received during the same period;
- the number of payable hours not worked corresponds to the difference in remuneration received by deducting the hourly reference amount, within the limit of the legal working week.

For senior executives, the calculation methods are defined by Decree No. 2020-522 of 5 May 2020, as follows:

- the monthly reference salary corresponds to the average gross remuneration received during the last 12 calendar months, or of all worked calendar months if the employee has worked less than 12 months, preceding the first day the company or establishment was placed in a situation of partial activity;
- the hourly rate is determined by indexing one-thirtieth of the monthly reference salary to 7 hours;
- the number of unworked hours eligible for compensation, within the legal working time, is obtained by making the following conversion: half a day equals 3.5 hours, a day equals 7 hours, a week equals 35 hours.

MODIFICATION OF THE PARTIAL ACTIVITY INDEMNITY AND COMPENSATION

Modification of the method for calculating the State-funded partial activity compensation

The state-funded partial activity compensation paid to the employer is no longer a fixed-rate sum, but is instead proportional to the remuneration of the employees in partial activity. It now covers 70% of the employee's pre-partial activity gross remuneration taken into account within the limit of 4.5 times minimum wage, with an hourly minimum of 8.03 euros, whatever the company's headcount.

The decree specifies that this minimum does not apply to employees working under an apprenticeship or professional training contract, whose remuneration corresponds to a percentage of minimum wage.

As a consequence, (i) below the ceiling of 4.5 times minimum wage, the employer will obtain a full refund from the State, whereas (ii) over and above this ceiling and/or in case of an increase of the 70% rate, the employer will have to bear the financial burden of the differential.

The French Service and Payment Agency (*Agence de service et de paiement - ASP*) should proceed to the payment of the compensation to the employer within 12 days on average.

The annual quota of payable hours per employee placed in a situation of partial activity is increased, from 1 000 hours according to civil law to 1 607 hours until 31 December 2020 (By-law of 31 March 2020, JORF no. 0081 of 3 April 2020).

Further details regarding the basis of the partial activity indemnity and compensation

Under Articles R. 5122-12 and R. 5122-18 of the French labour code, the basis for calculating the partial activity indemnity and compensation corresponds to the basis used for calculating the indemnity in lieu of paid holidays according to the rule of salary maintenance (i.e. the salary of the month preceding the placement in a situation of partial activity).

Decree No. 2020-435 of 16 April 2020 specifies that:

- for the employees having a variable or paid remuneration on a non-monthly basis, the reference salary **takes into account the average variable remunerations paid over the last 12 calendar months**, or over all the months worked if the employee has worked less than 12 calendar months, preceding the first day he was placed in a situation of partial activity;
- the calculation basis shall **exclude** sums representing professional expenses and items of remuneration which, although having the character of a salary, are not the counterpart of actual work or are not affected by the reduction or absence of activity and are allocated for the year;
- where the remuneration includes a fraction corresponding to the payment of the indemnity in lieu of paid holiday, this fraction shall be deducted in order to determine the basis for calculating the partial activity indemnity and compensation, without prejudice of payment by the employer of the indemnity in lieu of notice.

Adjustments of indemnifiable hours for certain categories of employees

With regard to employees who have entered into individual agreements on fixed hours including overtime and for employees whose working hours exceed the statutory working week pursuant to a collective agreement or convention, Article 7 of Ordinance No. 2020-460 of 22 April 2020 provides, by way of an exception, that:

- the working week provided for in the contract for individual agreements on fixed hours or collective working hours (*durée collective du travail*), shall be taken into account, instead of the statutory working week, to determine the reduction in working hours giving rise to partial activity;
- the overtime provided for by the individual agreement on fixed hours or by the collective agreement or convention shall be taken into account to determine the number of indemnifiable unworked hours.

Article 4 of the aforementioned Ordinance also provides for the recognition of unworked hours in excess of the legal working week of 35 hours when compensating nurses and employees of private employers whose working hours are in excess of the legal working week.

Modification of the indemnification owed to certain categories of employees

In particular, the Ordinance on partial activity adapts the indemnification of:

- part-time employees, in order to allow them to benefit from minimum wage, which up to now only applied to full-time employees;
- apprentices and employees working under a professional training contract, in order to allow them to benefit from a partial activity indemnity paid by their employer, of an amount equal to the percentage of minimum wage applicable to them;
- employees in training, for whom the indemnification conditions have been aligned with those of common law for employees in a situation of partial activity.

Ordinance No. 2020-428 of 15 April 2020 specifies the methods for calculating the partial activity hourly indemnity for the apprentices and beneficiaries of a professionalization contract when their remuneration is higher or equal to the legal minimum wage.

PAY SLIP AND SOCIAL SECURITY REGIME

In order to ensure that employees are properly informed regarding partial activity, the Decree provides that the employer has 12 months, with effect from 26 March 2020, to add a specific 'partial activity' heading to their pay slips, indicating:

- the number of indemnified hours;
- the rate applied for calculating the indemnities paid to the employees; and
- the sums paid with respect to the period in question.

The Ordinance on partial activity provides that the partial activity indemnities are exempt from social security contributions, but remain subject to the payment of the CSG (*Contribution Sociale Généralisée*) and CRDS (*Contribution pour le Remboursement de la Dette Sociale*) contributions, respectively at a reduced rate of 6.2% and 0.5%.

Article 5 of Ordinance No. 2020-460 of 22 April 2020 limits the exemptions from contributions and social security contributions in the event of payment of an additional indemnity by the employer, in addition to the legal partial activity indemnity, aimed at paying the employee more than 70% if his/her previous gross remuneration.

As of 1 may 2020, if the sum of the legal indemnity and the additional indemnity is greater than 3.15 times the French minimum wage, the additional indemnity will be subject to the contributions and social security contributions applicable to incomes for the portion exceeding 3.15 times the French minimum wage.

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Find here the report addressed to the President of the French Republic relating to Ordinance No. 2020-346, here the report addressed to the President of the French Republic relating to Ordinance No. 2020-428 of 15 April 2020 and here the report relating to Ordinance No. 2020-460 of 22 April 2020.

ORDINANCE NO. 2020-385 OF 1 APRIL 2020 MODIFYING THE DEADLINE AND CONDITIONS OF PAYMENT OF THE EXCEPTIONAL BUYING POWER BONUS

By application of article 7 of the French Social Security Finance Act for 2020 no. 2019-1446 of 24 December 2019, employers can decide, either by company agreement or unilateral decision taken after consultation of the Works Council (*"Comité Social et Economique"* or CSE), to award their employees an exceptional buying power bonus that is exempt from tax and from social security contributions under certain conditions.

Ordinance no. 2020-385 of 1 April 2020 (**Ordinance on exceptional buying power bonus**), published in the Official Journal of 2 April 2020 and effective immediately after its publication, softens and extends the scheme.

POSTPONEMENT OF THE BONUS PAYMENT DEADLINE

Initially, in order to benefit from social and tax exemptions, the Social Security Finance Act for 2020 provided that employers had to pay the bonus by 30 June 2020 at the latest.

The Ordinance on exceptional buying power bonus extends the deadline for payment of the bonus from 30 June to 31 August 2020. Thus, any exceptional buying power bonus paid until 31 August 2020 that meets the legal conditions will benefit from the related social and tax exemptions.

OPTIONAL NATURE OF THE PROFIT-SHARING AGREEMENT

The Social Security Finance Act provided that payment of the bonus was subject to the existence of an optional profit-sharing agreement in force within the company.

The Ordinance on exceptional buying power bonus abolishes this condition by allowing companies without optional profit-sharing agreement to benefit from the scheme.

However, the maximum amount exempted per employee depends on whether the company is covered by an optional profit-sharing agreement:

- **companies not covered by an optional profit-sharing agreement may pay an exceptional buying power bonus up to a maximum of EUR 1,000 per employee; and**
- **companies covered by an optional profit-sharing agreement may pay an exempt bonus up to EUR 2,000 per employee**.

POSTPONEMENT OF THE DEADLINE FOR CONCLUDING AN OPTIONAL PROFIT-SHARING AGREEMENT FOR 2020

Positive law on optional profit-sharing agreements provides that such agreements must be concluded:

- before the first day of the second half of the calculation period following the date on which it takes effect - i.e. for an optional profit-sharing scheme taking effect on 1 January 2020, no later than 30 June 2020; and
- for a period of three years.

France's Social Security Finance Act for 2020 already provided that optional profit-sharing agreements concluded between 1 January 2020 and 30 June 2020 could exceptionally be concluded for a period of less than three years, but not less than one year.

The Ordinance on exceptional buying power bonus goes further by **postponing the deadline for concluding an optional profit-sharing agreement from 30 June 2020 to 31 August 2020**, when the financial year is based on the calendar year (as is the case for the majority of companies).

For these companies, an agreement entered into between 1 July and 31 August will thus not cause them to lose the benefit of the exemptions, even though it will have been concluded during the second half of the financial year.

EXTENSION OF BENEFICIARIES

Initially, the bonus could only be paid to employees and temporary workers present within the company on the date of payment of the bonus.

The Ordinance on exceptional buying power bonus extends the beneficiaries by adding that the bonus shall also benefit employees and temporary workers present within the company on the date the collective company or group agreement is filed or on the date of the employer's unilateral decision to pay the bonus.

ADDITION OF A NEW MODULATION CRITERION FOR ADJUSTING THE AMOUNT OF THE BONUS

In principle, the amount of the bonus paid to beneficiaries depends on:

- their remuneration;
- their classification level;
- their actual seniority during the past year or the working time provided for in their employment contract.

The Ordinance on exceptional buying power bonus introduces **a new criterion for modulating the bonus, which takes into account the employees' working conditions during the Covid-19 crisis**.

This modulation is part of a strategy to encourage employees having to go to their workplace during the public health emergency period. Thus, employees required to physically go to their workplace will receive a higher profit-sharing bonus than employees working remotely.

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Find here the report addressed to the President of the French Republic relating to Ordinance No. 2020-385 of 1 April 2020.

ORDINANCES NO. 2020-389 AND NO. 2020-560, AND DECREE NO. 2020-419 SETTING EMERGENCY MEASURES APPLYING TO STAFF REPRESENTATIVE BODIES DURING THE COVID-19 CRISIS

Article 11 of law no. 2020-290 of 23 March 2020 relative to the emergency measures taken to face the Covid-19 epidemic, authorises the French government to adjust by way of ordinance *"the rules for informing and consulting staff representative bodies, in particular the social and economic committee, to enable them to deliver the required opinions within the deadlines and to suspend ongoing electoral processes of works councils (Comité Social et Economique, or "**CSE**")".*

It is in this context that Ordinance no. 2020-389 of 1 April 2020 (***IRP Ordinance***) was published in France's Official Journal of 2 April 2020, and effective as from 3 April 2020, amended by Ordinance No. 2020-560 of 13 May 2020 that came into force the next day.

SUSPENSION OF ONGOING ELECTORAL PROCESSES

The IRP Ordinance provided for the suspension of ongoing or contemplated electoral processes as from 12 March 2020, until the end of a period ending three months after the end of the state of public health emergency.

The extension of the state of public health emergency until 10 July 2020 provided for by Law No. 2020-546 of 11 May 2020 should have automatically led to the postponement of works council elections. However, in order to ensure that suspended or postponed works council elections are held in time for them to be taken into account under the third cycle of the works council hearing measure, i.e. before 31 December 2020, Ordinance no. 2020-560 of 13 May 2020 freezes the deadlines at the applicable dates before the implementation of the law extending the declaration of public health emergency and suspends ongoing electoral processes up until 31 August 2020 inclusive.

If the electoral process has already given rise to the completion of certain formalities between 12 March and 3 April 2020, the suspension will take effect from the date of completion of the latest formality.

The IRP Ordinance provides that this suspension impacts:

- the timeframe for employers to organise elections;
- the timeframe within which disputes relating to the elections must be submitted before the Administration and the judge;
- the timeframe for the Administration to decide on these disputes.

Where a claim has been submitted to the Administration authority or where the latter has rendered a decision after 12 March 2020, the period within which it has to take a decision and the period within which its decision can be challenged shall start running from the date of the end of the electoral process (i.e. from Monday 31 August 2020).

EFFECTS OF THE SUSPENSION

The IRP Ordinance specifies that if the suspension occurs between the date of the first round and the date of the second round, the regularity of the first round shall not be called into question.

Furthermore, the obligation to hold by-elections is abolished, whether or not the electoral process has been initiated, where the office of the members of the works council expires less than six months after the date of the end of the suspension of the electoral process.

The IRP Ordinance also recalls that electorate and eligibility conditions shall be assessed on the date of each of the two rounds of voting. Thus, if, due to the suspension or postponement of the professional elections, the second round takes place several months after the first round, the electorate and eligibility conditions will have to be reviewed on that date.

EXTENSION OF STAFF REPRESENTATIVES' ONGOING OFFICE

In case of suspension or postponement of the electoral process, the IRP Ordinance provides for the extension of elected staff representatives' office on 12 March 2020 until the announcement of the results of the first or, as the case may be, the second round of the professional elections.

The IRP Ordinance confirms that staff representatives remain protected against termination of their employment contract, and the interruption or non-renewal of a temporary work assignment if they are temporary workers.

VIDEOCONFERENCING, CONFERENCE CALLS AND INSTANT MESSAGING

The IRP Ordinance reinforces mechanisms for remote meetings and thus authorises, by way of derogation and after simply informing the CSE members, the use of:

- videoconferencing (without limitation contrary to positive law),
- conference calls,
- or even to an instant messaging system, if the two previous means are not possible or if a company agreement so allows.

These rules shall apply to all meetings of staff representative bodies convened during the state of public health emergency.

Decree No. 2020-419 of 10 April 2020 relative to the procedures for consulting employee representative bodies during the state of public health emergency specifies in particular that when the meeting is held:

- as a conference call, the technical system implemented must guarantee the members' identification, as well as their effective participation by ensuring the continuous and simultaneous transmission of sound during the deliberations;
- through instant messaging, the technical system must guarantee the members' identification, as well as their effective participation by ensuring the instant communication of the messages written during the deliberations.

In addition, the decree provides that meetings using instant messaging must be held in 4 stages:

1. verification that all members have access to a technical device that meets the conditions mentioned above;
2. closure of the deliberations by message from the president, which may not take place before the deadline set for the closure of the deliberations;
3. simultaneous voting by the members who shall be entitled to the same duration for voting as from the opening of the voting operations indicated by the president;
4. transmission of the results by the president to all the members at the end of the time limit set for voting.

PRIOR INFORMATION OF THE WORKS COUNCIL AND A POSTERIORI CONSULTATION

French Ordinance No. 2020-323 of 25 March 2020 gives the employer the possibility of implementing emergency measures regarding paid vacation, working time and rest days until 31 December 2020.

In this context, the IRP Ordinance provides for prior information of the CSE but, by way of derogation, its consultation may be carried out a posteriori within one month after the employer implements at least one of the following measures:

- imposition of rest days ("RTT" days, rest days set forth under a fixed working time arrangement and rest days corresponding to rights paid into a time saving account) or modification of their dates for rest days already requested;
- derogation on maximum working times or Sunday rest in certain industries.

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Find here the report addressed to the President of the French Republic relating to Ordinance No. 2020-389 of 1 April 2020, and here the report on Ordinance No. 2020-560 of 13 May 2020.

DECREE NO. 2020-471 OF 24 APRIL 2020 DEROGATING FROM THE PRINCIPLE OF SUSPENSION OF DEADLINES DURING THE PERIOD OF HEALTH EMERGENCY LINKED TO THE COVID-19 EPIDEMIC IN THE FIELD OF LABOUR AND EMPLOYMENT

New article since the first English edition of this booklet

A decree has put an end to the suspension of deadlines introduced as a result of Covid-19 for certain decisions or requests from labour inspectors or Labour Administration (*directions régionales des entreprises, de la concurrence, de la consommation, du travail et de l'emploi*) ("**DIRECCTE**"), in particular with regard to collective dismissal plans (*plan de sauvegarde de l'emploi*), common-consent termination, working hours, health and safety at work and employee savings schemes.

Initially, in order to allow administrations and citizens to adapt their operations during the coronavirus crisis, Ordinance No. 2020-306 of 25 March 2020 had provided for a general suspension of deadlines:

- given to the administration to render a decision, its agreement, an opinion or to check the completeness of a file or request additional documents (Ordinance No. 2020-306, art. 7);
- imposed by the administration, in accordance with the law or regulations, on any person to carry out inspections, work or fulfil certain obligations, except if these deadlines result from a court decision (Ordinance No. 2020-306, art. 8).

Thus, these types of deadlines, which were running on 12 March 2020, had been in principle suspended until the end of the "legally protected" period (date of the end of the state of public health emergency + 1 month), while those which should have started to run during this period are postponed until the end of this period.

However, the same ordinance provided that a decree could decide for the deadlines to resume before the end of the legally protected period for categories of acts, procedures and obligations that it determines, provided that it is based on the grounds of protection of the interests of the nation, security or protection of health, the environment or children and youth (Ordinance No. 2020-306, art. 9).

This list was supplemented by Ordinance 2020-427 of 15 April 2020 with the addition of grounds relating to the safeguarding of employment and activity as well as the securing of individual and collective labour relations (Ordinance No. 2020-427, art. 7).

DEROGATORY RESUMPTION OF CERTAIN DEADLINES SINCE 26 APRIL 2020

Pursuant to the option opened by article 9 of Ordinance No. 2020-306, the Decree of 24 April 2020 resumes deadlines for certain administrative decisions provided for by the French Labour Code in the areas of employment, working hours, working days, health and safety at work and employee savings schemes.

For certain categories of acts, procedures and obligations listed in the annex to the Decree (see here), the deadlines that were suspended on 12 March 2020 by virtue of Ordinance No. 2020-306 resumed as of the entry into force of the text, i.e. 26 April 2020 (Decree No. 2020-471, arts. 1 and 2).

Although the decree refers only to the periods "suspended on 12 March 2020" resuming, it includes the mechanism for deferring the starting point of periods of the same nature that should have begun to run during the legally protected period.

Thus:

- periods that had started to run before 12 March 2020 resumed on 26 April. The period remaining to run on that date is the period prescribed by law or regulation, from which the period already elapsed before 12 March must be deducted;

- for periods which should have started to run since 12 March, their starting point is 26 April 2020;
- for deadlines that started to run on 26 April, they apply without any postponement or suspension mechanism related to the Covid-19 outbreak.

LIST OF ADMINISTRATIVE DECISIONS OR APPLICATIONS CONCERNED

The four main areas for which the deadlines resume on 26 April 2020 are the following:

- employment,
- the duration and organisation of working time,
- employee savings schemes,
- health and safety.

Termination of the employment contract

The matters for which deadlines start running again are:

- the validation or approval by the Labour Administration of the collective agreement relating to protection collective dismissal plan (Article L 1233-57-4 of the French Labour Code), including for companies in receivership or judicial liquidation (Article L 1233-58 of the French Labour Code);
- the approval of a common-consent termination (Article L 1237-14 of the French Labour Code);
- the notification of the decision of validation by the administrative authority of a collective agreement concerning a breach of the collective bargaining agreement (French Labour Code, Article L 1237-19-4).

Duration and organisation of working time

The matters for which deadlines start running again are:

- the processing by the Administration of the request for derogation from the maximum weekly working time (Article L. 3121-21 of the French Labour Code);
- the processing by the Administration of the request for a derogation from the average maximum weekly working time (articles L. 3121-24 and R. 3121-15 of the French Labour Code);
- the notification of the labour inspector's decision to authorise the use of individualised working hours (Article R. 3121-29 of the French Labour Code);
- the labour inspector's decision on the application for authorisation to exceed the maximum daily working hours (Article D 3121-5 of the French Labour Code);
- the labour inspector's decision on the application for an exemption from the minimum daily rest period Article L 3131-3 of the French Labour Code);
- the decision of the labour inspector upon request for authorisation to exceed the maximum daily working time, in the event of resorting to substitute teams (Article R 3132-12 of the French Labour Code);
- the exemption granted by the labour inspector to authorise the organisation of work on a continuous basis and the allocation of weekly rest in rotation, in the absence of a collective bargaining agreement (Article L 3132-14 of the French Labour Code);
- the decision of the labour inspector to authorise the use of substitute teams, in the absence of a collective bargaining agreement (Article L 3132-18 of the French Labour Code);
- the decision of the labour inspector to authorise the exceeding of the daily working hours for a night worker in exceptional circumstances (Article L. 3122-6 of the French Labour Code);
- the decision taken by the labour inspector to authorise a period of night work different from that provided for, in the absence of a conventional stipulation defining the period of night work (Article L 3122-22 of the French Labour Code);

- the decision taken by the labour inspector to authorise assignment to a night shift, in the case of night work (Articles L 3122-21 and R 3122-9 of the French Labour Code);
- the decision taken by the labour inspector to authorise an exception to the maximum daily and weekly working hours for young workers (Articles L 3162-1 and R 3162-1 of the French Labour Code);
- the decision taken by the labour inspector to authorise night work for young workers in certain industries (Articles L 3163-2 and R 3163-5 of the French Labour Code).

Employee savings

The deadline for the administration to issue observations as from the filing of an employee savings agreement (Articles L 3313-3 and L 3345-2 of the French Labour Code) starts running again.

Occupational health and safety

The matters for which deadlines start running again are:

- the formal notice to the employer by the Administration stating that the worker is subject to a dangerous situation (Articles L 4721-1 and L 4721-2 of the French Labour Code);
- the formal notice to the employer by the labour inspector to comply with the provisions of the decrees mentioned in articles L. 4111-6 (general or specific health and safety measures, risk assessment, information of employees on risks and employee safety training) and L. 4321-4 (work equipment and means of protection) (Article L 4721-4 of the French Labour Code);
- the formal notice to the employer by the labour inspector stating that the worker is exposed to a carcinogenic, mutagenic or toxic chemical agent (Articles L 4721-8 and R 4721-6 of the French Labour Code);
- the request to check the compliance of the ventilation and sanitation of the work premises (Articles R 4722-1 and R 4722-2 of the French Labour Code) or the lighting of the work premises (Article R 4722-3 and R 4722-4 of the French Labour Code);
- the request to check work equipment and protective means (Articles R 4722-5 to R 4722-8 of the French Labour Code);
- the request to check compliance with the occupational exposure limit values (Articles R 4722-13 and R 4722-14 of the French Labour Code);
- the request to check the levels of asbestos fibre dust (Articles R 4722-15 and R 4722-16 of the French Labour Code);
- the request to check compliance with the obligations relating to the prevention of the risks of exposure to noise (Articles R 4722-17 and R 4722-18 of the French Labour Code);
- the request to check compliance with the obligations relating to the prevention of risks of exposure to mechanical vibration (Articles R 4722-19 and R 4722-20 of the French Labour Code);
- the request to check compliance with the provisions relating to ionising radiation (Articles R 4722-20 and R 4722-20-1) and artificial optical radiation (Articles R 4722-21 and R 4722-21-1 of the French Labour Code);
- the request to carry out a technical inspection of the limit values for exposure to electromagnetic fields (Articles R 4722-21-2 and R 4722-21-3 of the French Labour Code);
- the request to check the conformity of all or part of the fixed or temporary electrical installations (Articles R 4722-26 and R 4722-27 of the French Labour Code);
- the request for analyses by the labour inspector (Article R 4722-29 of the French Labour Code);
- the decision to authorize the resumption of work (Article R 4731-5) or activity (Article R 4731-12 of the French Labour Code) after temporary stoppage.

ORDINANCES NO. 2020-460 AND NO. 2020-507, AND DECREES NO. 2020-508 AND NO. 2020-509: WORKS COUNCIL (CSE) CONSULTATIONS IN LIGHT OF THE COVID-19 HEALTH CRISIS

New article since the first English edition of this booklet

Ordinance No. 2020-460 of 22 April 2020 provides for two provisions relating to the Works Council (*CSE*):

- the introduction of the new option to individualize partial activity when it is implemented by unilateral decision (a favourable opinion from the Works Council is required), and
- a decree aiming at reducing the Works Council's consultation and expertise time-limits, having a far-reaching application. These time-limits are provided for in Decree No. 2020-508 of 2 May 2020.

New Ordinance No. 2020-507 of 2 May 2020 amended the aforementioned Ordinance of 22 April, thereby excluding collective dismissal plans (*plan de sauvegarde de l'emploi - PSE*) and collective performance agreements from the measures to reduce consultation and expertise time-limits. It also introduces a reduction of the time-limits for communicating the agenda to the Works Council's members, and provides for the ability to interrupt ongoing consultations and to initiate a new procedure applying the derogatory consultation time-limits.

REDUCTION OF THE TIME-LIMITS FOR COMMUNICATING THE AGENDA

By way of derogation, the time-limits for communicating the agenda for the Works Council's or Central Works Council's (*CSE central*) meetings relating to the employer's measures aimed at dealing with the economic, financial and social consequences of the spread of the Covid-19 epidemic, shall be reduced.

Thus, the agenda (i) of the Works Council is communicated by the WC's president at least 2 days (instead of 3 days) before the meeting; and (ii) that of the Central Works Council is communicated to its members at least 3 days (instead of 8 days) before the meeting.

However, these time-limits shall not apply to information and consultation meetings held in the framework of:

- a collective dismissal plan (Articles L. 1233-21 et seq. of the French Labour Code);
- a collective performance agreement (Article L. 2254-2 of the French Labour Code).

These provisions are applicable to time-limits starting to run between 3 May 2020 and 23 August 2020 (Decree No. 2020-509 of 2 May 2020).

These new time-limits replace the statutory and contractual time-limits: therefore, if a different time-limit to communicate the agenda is provided for in a collective bargaining agreement, this reduction also applies.

REDUCTION OF THE TIME-LIMIT REQUIRED FOR THE WORKS COUNCIL CONSULTATION AND EXPERTISE

Scope of the reduction of the consultation and expertise time-limits

Article 9 of the Ordinance of 22 April provides that a decree shall define the time-limits relating to:

- Works Council's consultation and information relating to the employer's measures aimed at dealing with the economic, financial and social consequences of the spread of the Covid-19 epidemic;

- the performance of expert assessments carried out at the Works Council's request, when it has been consulted or informed in such cases.

This therefore derogates from the applicable contractual provisions.

Ordinance of 2 May amending Article 9 of the Ordinance of 22 April and the Decree of 2 May provide that these provisions are not applicable to the information and consultation procedures carried out as part of the following procedures:

- information and consultation procedures concerning collective dismissal plans;
- information and consultation procedures concerning collective performance agreements;
- recurring information and consultation procedures mentioned in Article L. 2312-17 of the French Labour Code (i.e. relating to the company's strategy, the company's economic and financial situation and its employment policy, working and employment conditions).

Apart from these exceptions, the reduction of consultation and expertise procedures' time-limits does not exclusively apply to measures related to the end of the lockdown. Indeed, as the Ordinance relates to "*the employer's decisions intended to deal with the economic, financial and social consequences of the spread of the epidemic*", it applies to any consultation (and related expert assessment) for instance, or any other consultation relating to the general management of the company or related to the health, safety or working conditions), especially as the employer may choose to interrupt an ongoing consultation to apply the new time-limits.

8, 11 or 12 days instead of 1, 2 or 3 months

The Decree of 2 May has drastically reduced the time-limits for Works Council's consultation, indeed:

- without an expert's intervention (most common), the time-limit for Works Council's consultation is reduced from 1 month to 8 days;
- with an expert's intervention, this time-limit is reduced from 2 months to 12 days for the Central Works Council and 11 days for establishments' Works Councils. This time-limit remains 12 days when several expert assessments are carried out at the Central Works Council's scope and in one or several establishments, when the usual time-limit in these circumstances is of 3 months.

Where the consultation involves one or several Works Council and the Central Works Council, the opinion of each establishment's Works Councils must be delivered and communicated within one day (instead of 7 days) before the date on which the Central Works Council is deemed to have been consulted.

24 or 48 hours for the time-limits relating to the completion of expert assessments

Time-limits are similarly considerably reduced for the completion of expert assessments:

- the expert has 24 hours, instead of 3 days, to ask the employer for additional information deemed necessary;
- the employer has also 24 hours, instead of 5 days, to reply;
- the time-limit allowed for the expert to notify the employer of the estimated cost, scope and duration of the expert assessment is reduced from 10 days to 48 hours from the time of his appointment or 24 hours from the time the employer responds to a request;
- the time-limit given to the employer to seize a judge if it intends to challenge the expert assessment is reduced from 10 days to 48 hours;
- finally, the expert must submit the report 24 hours, and no longer 15 days, before the expiry of the time-limits for the Works Council's consultation.

"Retroactivity" of the Decree

The Decree's provisions apply to the consultation time-limits which start running between 3 May 2020 (publication date) and 23 August 2020. Nonetheless, the Ordinance of 2 May provides that when the time-limits that started running before 3 May 2020 have not yet expired, the employer may interrupt the ongoing procedure and initiate, as from the same date, a new consultation procedure benefitting from the reduced time-limits.

FAVOURABLE OPINION OF THE WORKS COUNCIL IN THE EVENT OF A UNILATERAL DECISION TO INTRODUCE INDIVIDUALISED PARTIAL ACTIVITY

Article 8 of the Ordinance of 22 April allows for the individualisation of partial activity or for the application of a non-uniform division of working hours or non-working hours (*heures chômées*) within the same establishment, department or workshop.

When this scheme results from the employer's unilateral decision, a "*favourable opinion of the Works Council*" is required and the document submitted to the Works Council must cover a number of aspects, such as the skills identified or objective criteria applied.

Agreements concluded and unilateral decisions will cease to have effect on 31 December 2020 at the latest.

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Find here the report addressed to the President of the French Republic relating to Ordinance No. 2020-460 of 22 April 2020 and here the report on Ordinance no. 2020-507 of 2 May 2020.

PUBLIC LAW AND ENVIRONMENT

ORDINANCES NO. 2020-330, NO. 2020-347, NO. 2020-391, NO. 2020-560 AND 2020-562: PUBLIC SECTOR ARRANGEMENTS

Presentation of three ordinances issued on the basis of article 11 of the emergency law of 23 March 2020 to deal with the Covid-19 epidemic, which authorises the Government to take, within three months, any measure falling within the scope of the law and enabling it to deal with the economic, financial and social consequences of the Covid-19 epidemic:

- Ordinance No. 2020-330 of 25 March 2020 on budgetary, financial and fiscal continuity measures for local authorities *(collectivités territoriales)* and local public establishments (*établissements publics locaux*) in order to deal with the consequences of Covid-19;
- Ordinance No. 2020-347 of 27 March 2020 adapting the law applicable to the operation of public establishments and administrative collegiate bodies during the state of public health emergency, as amended by Ordinance No. 2020-560 of 13 May 2020 setting the time limits applicable to various procedures during the public health emergency;
- Ordinance No. 2020-391 of 1 April 2020 aimed at ensuring the continuing operation of local institutions and the exercise of their powers of local authorities and local public establishments in order to deal with the Covid-19 epidemic , as amended by Ordinance No. 2020-562 of 13 May 2020 aimed at adapting the operation of local institutions and the exercise of the powers of local authorities and local public establishments to the extension of the state of public health emergency in the context of the Covid-19 epidemic.

These ordinances introduce flexibility in order to guarantee, until the end of the state of public health emergency, the continuing operation of local authorities, public institutions and administrative collegiate bodies.

ADJUSTMENTS AFFECTING THE OPERATION OF LOCAL AUTHORITIES (*collectivités territoriales*)

Expanding the prerogatives of local executive branches, by derogation to ordinary law:

- the executive branch of any local authority or of any public establishments for inter-municipal cooperation (EPCI) may take, in the absence of delegation from the deliberative body, any decisions falling within the latter's remit which would, under normal circumstances, be delegated to the executive by the deliberative body. The exercise of these prerogatives by the executive in the absence of mandate from the deliberative body, runs up to the first meeting of the relevant deliberative body, which may then decide to put an end to its exercise in whole or in part [applicable from 12 March 2020 to 10 July 2020 inclusive[37]];
- the executive branch of any local authority may, without deliberation of the deliberative body, proceed to the allocation of subsidies to any association and may offer guarantees in respect of any loan until 10 July 2020 inclusive[38] (Ordinance No. 2020-391 of 1 April 2020);
- reinstatement as of 26 March 2020 of the delegations of borrowing powers, granted to the executive by any municipal council or by the deliberative body of an EPCI, provided such delegation had ended with the municipal campaign of March 2020. The exercise of these prerogatives runs up to the first meeting of the municipal council or the deliberative body of an EPCI;
- unless otherwise decided by the regional council (*conseil régional*), the presidents of the regional councils may grant financial aid to any company (on the basis of Article L.1511-2 of the *code général des collectivités territoriales* (CGCT)), up to a limit of 200,000 euros per financial aid (taking into account the outstanding aid credit on the balance of a company), until a date set by decree and no later than 26 September 2020;
- in the event that the 2020 local budget was not adopted by their local deliberative body, local executive bodies may, without prior authorisation from their respective deliberative bodies, commit, liquidate and mandate the totality of the

[37] Except in municipalities where the municipal council was elected in its entirety in the 1st round of the election of municipal and community councillors held on 15 March 2020 and in the public establishments for municipal cooperation with own taxation mentioned in VI of article 19 of the emergency law of 23 March 2020 to deal with the Covid-19 epidemic, for which this mechanism is applicable from 12 March until the date of entry into office of the municipal and community councillors elected in the 1st round.

[38] Ibid

investment expenditure (excluding debt annuities and programme authorisations) provided for in the local budget for 2019, within the limit of the appropriations opened;

- local executive bodies may, for the financial year 2020, and without a mandate from their respective deliberative organs, make budgetary appropriations changes from chapter to chapter, up to a maximum of 15% of the actual expenditure of each section in the 2019 budget (excluding appropriations relating to personnel costs);
- unless otherwise agreed by the deliberative body, the executive body of any local authority may sign the agreement with the State allowing the financing of the solidarity fund for companies created by the State, during the duration of that fund (Ordinance No. 2020-330 of 25 March 2020).

Relaxation of budgetary rules:

- Postponement of the deadline for adoption of (i) the 2019 accounts and (ii) the initial 2020 budget, up to and including, in the case of a budget settled by the prefect after referral to the regional audit chamber (*chambre régionale des comptes*), 31 July 2020 (the deadline for transmission of the management accounts by the local authority's accountant being 1 July 2020; the deadline for communication to the deliberative body of the necessary information for drawing up the budget being 15 July 2020; abolition of minimum time limits between request for budgetary information and the vote on the initial budget, and abolition of any deadline relating to the transmission of the draft budget prior to its examination).
- in the event that the 2020 local budget was not adopted by the local deliberative body, specific limitations relating to multiannual envelopes shall not apply to regional authorities (commitment and programme authorisations up to one-third) referred to in Article L.4311-6 of the CGCT
- for the financial year 2020, the ceiling for budgetary adjustments for already existing unforeseen expenditure is raised to 15% of the estimated expenditure of each section and this expenditure, in the investment section, can be financed by borrowings.

Amendments for all local authority and EPCI's deliberating bodies of the rules relating to (i) quorum, (ii) convening meetings, (iii) prior referral to committees, (iii) meetings by video or audioconference, (iv) voting and transmission of acts for legal review for the period from 12 March 2020 until 10 July 2020 inclusive[39] or in certain cases until the end of the state of public health emergency (Ordinance No. 2020-391 of 1 April 2020)

Adjustment of the timetable for the adoption of deliberations on local tax matters (Ordinance No. 2020-330 of 25 March 2020)

Local tax	Deadline for voting on deliberations	
	Before the entry into force of the Ordinance	After the entry into force of the Ordinance
Property tax (*taxes foncières*)	15 or 30 April 2020	3 July 2020
Businesses' property tax (*cotisation foncière des entreprises*)	15 or 30 April 2020	3 July 2020
Tax for the management of aquatic environments and flood	15 or 30 April 2020	3 July 2020
Departmental transfer duties for real property (*DMTO des départements*)	15 or 30 April 2020	3 July 2020
Local tax on outdoor advertising (*taxe locale sur la publicité extérieure*)	1 July 2020	1 October 2020
Tax on electricity consumption (*taxe sur la consommation finale d'électricité*)	1 July 2020	1 October 2020
Tax for the removal of household waste (*redevance d'enlèvement des ordures ménagères*)	1 July 2020	1 September 2020

[39] For the provisions of Articles 1, 3, 7 and 8 of Ordinance No. 2020-391.

ADJUSTMENTS AFFECTING THE OPERATION OF PUBLIC ESTABLISHMENTS AND COLLEGIAL ADMINISTRATIVE INSTANCES DURING THE STATE OF PUBLIC HEALTH EMERGENCY (Ordinance No. 2020-347 of 27 March 2020)

Use of dematerialized meetings or videoconferencing for the adoption of deliberations of the following institutions [applicable from 12 March 2020 until the end of the state of public health emergency, plus one month]:

- all public establishment, regardless of their status;
- the Banque de France;
- public interest groups (*groupements d'intérêt public*);
- independent administrative authorities (*autorités administratives indépendantes*) and independent public authorities (*autorités publiques indépendantes*);
- private bodies entrusted with a public administrative service mission;
- commissions and other administrative collegiate bodies tasked with adopting opinions or decisions. This is aimed in particular at social dialogue bodies such as technical committees (*comités techniques*), health, safety and working conditions committees (*comités d'hygiène, de sécurité et des conditions de travail*), as well as committees reviewing housing allocations set up by low-rent housing bodies (*organismes d'habitations à loyer modéré*) (provided for in Article L. 441-2 of the Construction and Housing Code).

Delegations of power from legislative organs to the executive branches in order to adopt urgent measures [applicable until 15 July inclusive]:

This concerns any public establishment, public interest groups, social security body or any organisation responsible for the management of a public administrative service. However, this does not apply to the power, by independent administrative authorities or independent public authorities, to impose sanctions as this cannot be delegated.

Extension of the office term of any member of an administrative collegiate body or authority whose term expires during the period running from 12 March 2020 until 30 June 2020 inclusive. The extension of office term is until 30 June 2020 at the latest or, where an election must take place, until 31 October 2020.

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Find here the report addressed to the President of the French Republic relating to Ordinance No. 2020-330 of 25 March 2020, here the report relating to Ordinance 2020-347 of 27 March 2020, here the report relating to Ordinance No. 2020-391 of 1 April 2020, here the report on Ordinance No. 2020-560, and here the report on Ordinance No. 2020-562 of 13 May 2020.

ORDINANCES NO. 2020-306, NO. 2020-427, NO. 2020-460, NO. 2020-539 AND NO. 2020-560 (TIME-LIMITS): CONSEQUENCES OF THE STATE OF PUBLIC HEALTH EMERGENCY ON PLANNING AND COMMERCIAL PLANNING PERMISSIONS

As a result of the initial wording of Ordinance No. 2020-306 of 25 March 2020 relating to the extension of time-limits during the public health emergency period and the adaptation of procedures during the same period, time-limits to challenge administrative decisions ("*délais de recours*") before the administrative courts had been significantly extended, as were time-limits to review applications ("*délais d'instruction*").

Indeed, it established a very long "legally protected period" of suspension or extension of delays and measures starting from 12 March 2020 and until "the expiry of a period of one month from the end date of the state of health emergency".

Real estate industry players rapidly deemed these measures - many of which are applicable to urban planning procedures - as excessive and in conflict with reviving the economic activity as soon as possible, following the end of the public health crisis, and especially the construction sector.

Sensitive to these arguments, the Government adopted a new Ordinance No. 2020-427 on 15 April 2020 containing various provisions relating to time-limits to deal with the covid-19 epidemic, which adjusts and complements the provisions of Ordinance No. 2020-306 of 25 March 2020, notably with regard to town planning and commercial planning.

In particular, the Ordinance of 25 March 2020 is supplemented by Title II Bis *prescribing special provisions relating to public inquiries and time-limits applicable to urban planning and development and construction*[40].

Two major amendments contained in the Ordinance of 15 April 2020 were to be noted:

- the time-limits for challenging a planning permission which had not expired on 12 March 2020 were to be suspended, and not interrupted for the duration of the state of health emergency and should have resumed for the remainder of the period as of when the time-limit was suspended from 24 May 2020. The extra "buffer" month was thus removed;

- the time-limits for reviewing ("*le délai d'instruction*") planning permissions and for works' compliance inspection ("*le délai de récolement*") were only to be suspended until the end of the state of health emergency. They should start running again from 24 May 2020 for the remaining period. The "buffer" month has also been removed.

This Ordinance was supplemented by Ordinance No. 2020-460 of 22 April 2020. Article 23 introduced new urban planning measures. Notably, the Government could now decide - by decree - that the time limits for the examination of the planning permission should start running again. Similarly, authorizations to open, re-open, occupy as well as construction work authorizations on establishments receiving the public ("*établissements recevant du* public"), mid-rise buildings or high-rise buildings now benefit from the rules applicable to time-limits for planning permissions.

However, in anticipation of the extension of the state of public health emergency until 10 July inclusive, and in order to safeguard the objective of a quick recovery of the construction sector, the Government has adopted Ordinance No. 2020-539 of 7 May 2020 determining specific time limits applicable in the area of planning, development and construction during the period of health emergency. This ordinance fits with the resumption of the time limits for appealing against and examining planning permission, as well as the duration of the work, the termination of the state of health emergency in maintaining the initial date of resumption of these periods at 24 May 2020 (hereinafter "**the derogation period**"). It also extends the benefit of these derogation provisions to actions against acts prior to obtaining planning permission ("activities" approval, the opinion of CDAC (France's local commissions for commercial development, or *Commissions Départementales d'Aménagement Commercial*) on commercial urban planning) and the rules for the withdrawal of these authorisations.

More broadly, in light of the economic activity resumption from 11 May onwards, it became apparent that referring to the end of the state of public health emergency to set the legally protected period was no longer justified.

[40] This addition is the result of Ordinance No. 2020-460 of 22 April 2020 referred to hereafter.

The Government therefore adopted a new Ordinance No. 2020-560 of 13 May 2020 *setting time-limits applicable to various procedures during the state of public health emergency period.* The effect of the Ordinance is *inter* alia, to replace the sliding date for the end of the legally protected period with a fixed date - 23 June 2020 at midnight - which was the initial date for the end of the legally protected period, prior to the extension of the state of public health emergency to 10 July 2020.

The Ordinance also prolongs the period of extension of the validity of town planning and commercial planning permissions from two to three months from 24 June 2020.

Finally, the Ordinance crystallises the suspension of public consultation and participation procedures end date to 30 May 2020.

The present note is therefore updated to take into account all these changes.

Thus, depending on the deadlines and measures set out below, reference should be made to:

- **the derogation period defined by Ordinance No. 2020-539, running from 12 March to 23 May 2020 at midnight; or**
- **the legally protected period as defined by Ordinance No. 2020-306, amended by Ordinance No. 2020-560, running from 12 March to 23 June 2020 at midnight.**

HOW IS THE TIME-LIMIT TO CHALLENGE PLANNING PERMISSIONS CALCULATED?

The time-limits to appeal ("*délais de recours*") or refer to the *préfet* ("*déféré préfectoral*") a decision of non-opposition to prior declaration ("*decision de non-opposition à déclaration préalable*") or a building, development or demolition permit, that have not expired are suspended until 24 May 2020 for the remaining limitation period as of 12 March 2020, provided that this period is at least seven days long.

However, the starting point of the time-limits to appeal a decision, which should have started running between 12 March 2020 and 23 May 2020 is postponed until 24 May 2020.

Therefore:

- Assuming that a planning permission is duly published on 12 February 2020, the time-limit for lodging an appeal would have expired in theory on 13 April 2020, namely during the derogation period;

  In light of the Ordinance's provisions relating to the suspension of time-limits', the time-limit to challenge the planning permission has been suspended as from 12 March 2020 and will start running again on 24 May 2020, for the remaining limitation period.

- Assuming that a planning permission is duly published on 15 January 2020, the time-limit for lodging an appeal would have expired in theory on 16 March 2020, namely during the derogation period;

  In light of the Ordinance's provisions relating to the suspension of time-limits', the time-limit to challenge the planning permission has been suspended as from 12 March 2020 and will start running again on 24 May 2020, for seven days, namely until 2 June (time-limits expiring on Saturdays, Sundays or bank holidays are extended until the next working day).

- Assuming that a planning permission is duly published on 12 May 2020, namely during the derogation period, the time-limit will only start running from 24 May 2020 for two months, namely until Monday 27 July 2020 at midnight (time-limits expiring on Saturdays, Sundays or bank holidays are extended until the next working day).

It should be pointed out that this time-limits' extension seems likely to also benefit *ex gratia* appeals, since Article L. 411-2 of the French Code of Public-Administration Relations provides that any administrative decision may be the subject, within the time-limit granted for lodging a contentious appeal, of an *ex gratia* or hierarchical appeal which interrupts the course of that time-limit.

Lastly, the ordinance of 7 May 2020 shall apply to the derogation provisions:

- to challenge the **"activity" approvals provided for in Article L. 510-1 of the French Commercial Code urban planning code** when they relate to a project subject to urban planning authorization and

- to challenge the **opinions issued by the CDAC** under the conditions provided for in I of Article L. 752-17 of the French Commercial Code.

For example, in the event of an "activities" approval published on 12 February 2020, the period after which the CDAC will have of which it is no longer possible to bring an action would have expired in principle on 13 April 2020, i.e. during the period of a health emergency.

Taking into account the suspension of the time limits provided for in the ordinance, the time-limit for submitting an appeal was suspended as of 12 March and will restart on 24 May for the remaining period.

Similarly, in the case of a favourable opinion from CDAC, for which the period for appeal began to run on 12 February, the time-limit after which it is no longer possible to bring an action would have expired in principle on 12 March 2020, i.e. during the period of a state of public health emergency.

Given the suspension of the time limits provided for in the Ordinance, the time limit for challenging a decision was suspended as of 12 March 2020 and will restart on 24 May 2020, for an incompressible period of seven days.

WHAT ABOUT THE TIME-LIMIT FOR NOTIFYING APPEALS AGAINST PLANNING AND COMMERCIAL OPERATION PERMISSIONS?

The ordinances of 15 April 2020 and 7 May 2020 do not specifically address time-limits for notifying appeals ("*délai de notification des recours*") against planning permissions. Thus, article 2 of the Ordinance of 25 March 2020 should apply.

According to this Article, as prescribed by law or regulation, for the appeal to be admissible, notifications that should have been completed between 12 March and 23 June 2020 inclusive are deemed having been duly made provided that they have been made within the legally prescribed time-limit, following the end of this legally-protected period, subject to a two-month limit.

In this event, the time-limit of fifteen clear days following the filing of the appeal, provided for in Article R. 600-1 of the French Urban Planning Code, is therefore extended from 24 June 2020.

In other words, if an appeal against a planning permission was lodged on 10 March 2020, the appellant should have notified - as provided for in Article R. 600-1 of the French Urban Planning Code - the authority which issued the permission and the holder of such permission at the latest on 25 March 2020 at midnight.

Pursuant to the Ordinance's provisions, the fifteen-day time-limit will be calculated as of 24 June 2020. The appellant will therefore have until 9 July 2020 midnight to notify the appeal.

Similarly, if an appeal against a planning permission is lodged on 10 April 2020, notification of the appeal may also be deferred until 9 July 2020 midnight, as the time-limit for notification expires within the legally-protected period.

On the contrary and paradoxically, if an appeal against a planning permission is lodged on 15 June 2020, notification of this appeal must be made within 15 days from that date, namely 30 June 2020 at midnight at the latest, since the time-limit for notification expires after the end of the legally-protected period.

The same postponement of time-limits' principle should apply to the obligation to notify, within five days of its submission to the CNAC (France's national commission for commercial development appeals, or *Commission Nationale d'Aménagement Commercial*), the appeal against a decision or opinion of the CDAC (France's local commissions for commercial development, or *Commissions Départementales d'Aménagement Commercial*) provided for in Article R. 752-32 of the French Commercial Code: notification of this appeal could also be postponed until 29 June 2020.

HOW WILL URBAN PLANNING TRANSACTIONS BE RECORDED?

The extension of the time-limits provided for in Article 2 of the Ordinance should also apply to the one-month time-limit granted by Article L. 600-8 of the French Urban Planning Code for recording transactions whereby a person who has applied to, or intends to apply before the administrative court for the cancellation of a building, demolition or development permit undertakes to withdraw this appeal or not to lodge an appeal in return for the payment of a sum of money or the granting of a benefit in kind.

Transactions that were to be registered between 12 March and 23 June 2020 inclusive may therefore be registered until 24 July 2020.

IS THE VALIDITY OF PLANNING PERMISSIONS EXTENDED?

Article 3 of the Ordinance provides that the validity of planning permissions - i.e. the period within which authorised works must begin - and of commercial operation permissions ("*autorisations d'exploitation commerciale*") - i.e. the period within which sales outlets must be opened to the public and/or permanent customer withdrawal points ("*les points permanents de retrait à la clientèle*") – that are due to expire between 12 March and 23 June 2020 inclusive, are automatically extended until the expiry of a period of three months "*following the end of this period*", i.e. until 24 September 2020.

However, a planning permission whose period of validity expired before 12 March 2020, or which will expire after 23 June 2020, may not benefit from the Ordinance's validity extension period.

WHAT HAPPENS TO APPLICATIONS CURRENTLY BEING REVIEWED?

How are the time-limits to review applications applied?

The time-limits for reviewing planning permission's applications and town planning certificates are suspended as of 12 March 2020 and will start running again, for the remaining limitation period, as of 24 May 2020.

With regard to planning permission's applications, town planning certificates and prior declarations which time-limit to review the application should have started running between 12 March 2020 and 23 May 2020, the starting point is postponed to 24 May 2020.

Article 12 ter also covers applications for the extension of planning permission's ("*demandes de prorogation des autorisations*"), which are provided for in Book IV of the French Urban Planning Code.

Therefore, no permission can be obtained by tacit agreement during this period, nor can a refusal be made tacitly.

Article 12 ter specifies that this time-limits suspension during the derogation period also applies to time-limits granted for the *collectivités territoriales* and their *établissements publics,* public bodies, authorities or commissions to issue an opinion or give their approval in connection with a planning permission's review.

For instance, the time-limit to review a planning permission's application for building in the vicinity of a historic monument, is in principle four months and the *Architecte des Bâtiments de France (ABF)*, then consulted, must render its opinion within two months of the receipt of the complete application.

Let us assume such an application was filed on 12 February 2020 and submitted to the ABF the same day. The time-limit to review the planning permission's application has run for a month and has been suspended since 12 March 2020 until 23 May 2020. It will resume, for the remaining limitation period of three months, on 24 May 2020. ABF will have a further month from 24 May 2020 to render its opinion.

It should be noted that the regulatory power may now also provide by decree for the resumption of time limits under the conditions set by article 9 of Ordinance of 25 March 2020, i.e. for reasons of protection of the fundamental interests of the Nation, security, protection of health, public health, preservation of the environment and protection of children and young people.

What about commercial projects?

With regard to commercial operation permissions ("*autorisations d'exploitation commerciale*"), the position will vary depending on whether the project requires a planning permission.

Should the project require a planning permission, this will be recognised as a commercial operation permission. The time-limit for reviewing the application for this permission, as the time-limit granted to CDAC or CNAC to render its opinion on the commercial aspect of the permission, are suspended since 12 March but will start running again from 24 May 2020.

However, and paradoxically, should the project not require a planning permission, then Article 7 of the Ordinance of 25 March 2020 is applicable, and not Article 12 ter. In this event, time-limits for CDAC or CNAC to review the applications already running as of 12 March 2020 are suspended until 23 June 2020.

Thus, no "autonomous" commercial operation permission can be obtained by tacit agreement before 24 June 2020.

What is the situation for projects of establishments receiving the public (ERP), for mid-rise buildings (MRB) and high-rise buildings (HRB)?

In contrast to the rules applicable to “stand-alone” commercial operating authorisations, the ordinance of 23 April 2020 aligned the authorisation rules for “autonomous” ERP, MRB and HRB on the rules of those included in the planning permission.

Thus, in all cases, the time required to process opening, reopening, occupancy and work authorisations on ERPs, MRBs or HRDs is shorter than the time required to process a building permit and work is suspended as of 12 March but will start running again on 24 May 2020.

What is the time-limit for requesting additional documents?

Ordinance No. 2020-539 of 7 May 2020 specifies that article 12 *ter* also applies to the time-limits set for the administration to verify the completeness of a file or to request additional documents as part of the investigation.

The time-limit for requesting additional documents, which is in principle one month from receipt of the planning permission's application, shall therefore be suspended as of 12 March 2020 and will start running again from 24 May 2020, for the remaining limitation period.

Let us recall that the time-limit for examining planning permissions only starts running on receipt of the complete application.

Therefore, a planning permission's application submitted on 11 March 2020, could, in theory, be subject to a request for additional documents until 23 June 2020. The time-limit to review the planning permission's application shall thus only start running once the additional documents - which themselves must be submitted within three months following such a request - have been received.

HOW IS THE TIME-LIMIT FOR WITHDRAWING PLANNING PERMISSIONS APPLIED?

The Government has heard the appeals of those involved in the real estate sector and is now extending the deadline for withdrawing planning permission applications (“*délai de retrait des authorisation d’urbanisme*”) from the rules of article 12 *ter* and no longer those of article 7 of the Ordinance of 25 March 2020.

Therefore, the (not clear-day) time-limit for withdrawing planning permission applications is also suspended as of 12 March 2020 and will resume, for the outstanding limitation period, on 24 May 2020.

Similarly, regarding permissions and prior declarations which time-limit for withdrawal was to start running between 12 March 2020 and 23 May 2020, the start date is postponed to 24 May 2020.

Therefore:

- Assuming a planning permission was issued on 12 February 2020, the withdrawal time-limit should have lapsed on 12 May 2020, i.e. during the derogatory period;

  In light of the Ordinance's provisions relating to the suspension of time-limits, the withdrawal time-limit was suspended from 12 March 2020 and will resume on 24 May for the remaining limitation period.

- Assuming a planning permission was issued on 15 December 2020, the withdrawal time-limit should have lapsed on 15 March 2020, namely also during the derogatory period;

  In light of the Ordinance's provisions relating to the suspension of time-limits, the withdrawal time-limit was suspended from 12 March 2020 and will resume on 24 May 2020 for seven days, i.e. until 30 May

- Assuming a planning permission was issued on 12 April 2020,i.e. during the derogatory period, the withdrawal time-limit will start running on 24 May 2020 for three months, i.e. until 24 August 2020.

HOW IS THE TIME-LIMIT FOR THE ADMINISTRATION TO CHALLENGE THE COMPLIANCE OF THE WORKS CALCULATED? WHAT ABOUT THE *DÉLAI DE RÉCOLEMENT*?

Article 12 ter provides for a shorter legally-protected period for both the works' compliance inspection procedure ("*procédure de récolement*") and time-limits for appeals, ending 23 May 2020, regardless of the end-date of the state of public health emergency.

Thus, the time-limit - of three or five months as appropriate - granted to the administration to challenge the conformity of the works is suspended as of 12 March 2020 and will resume, for the remaining limitation period, on 24 May 2020.

Similarly, regarding permissions and prior declarations which works' compliance inspection ("*délai de récolement*") should have started running between 12 March 2020 and 23 May 2020, the starting point is postponed to 24 May 2020.

Lastly, Article 8 of the Ordinance suspends the time-limit available to the project owner to file a modification or to ensure the works compliance with the planning permission, in the event that the administration has issued a formal notice to do so as part of its works' compliance inspection. This time-limit will only resume, for the outstanding limitation period, on 24 June 2020.

We note, however, that the Ordinance of 15 April 2020 introduces another paragraph to Article 8, which henceforth allows the administrative body to exercise its jurisdiction - notably to prescribe that works be made to comply with the planning permission - within the time-limit it determines. In any event, the administrative body must take into account the state of health emergency's constraints, in determining obligations and time-limits to be met.

WHAT ABOUT PUBLIC INQUIRIES AND PUBLIC PARTICIPATION PROCEDURES UNDERWAY OR TO BE ORGANISED DURING THE STATE OF PUBLIC HEALTH EMERGENCY?

The Ordinance of 25 March 2020, amended by the Ordinances of 15 April 2020 and 13 May 2020 provides for adjustments to public inquiries.

For inquiries of a national scope and urgent nature - already underway on 12 March 2020, or to be held between 12 March and 30 May 2020, where the delay resulting from the interruption of the public inquiry or the impossibility of carrying it out due to the state of health emergency is likely to have consequences that are difficult to remedy, the authority empowered to organise the public inquiry may provide for the public inquiry to continue by electronic means only and adapt the duration of the public inquiry accordingly. The empowered authority may also provide from the outset for the organisation of a public inquiry to be conducted by electronic means alone.

In cases where the duration of the public inquiry exceeds 30 May 2020, the authority empowered to organise it may decide to revert to the usual procedures as from that date.

In any event, the public shall be informed of any decision taken pursuant to the aforementioned article, by any means compatible with the state of public health emergency.

With regard to other public inquiries, that is to say the vast majority of them, **as well as public participation procedures** ("*procédures de participation du public*"), the Ordinance of 15 April 2020 clarifies their regime: the time-limits for public consultation or participation are suspended as from 12 March 2020 until 30 May 2020 inclusive. Thus, they will resume on 31 May 2020.

With regard to participation by electronic means as stipulated in Law No. 2018-202 of 26 March 2018 relating to the organisation of the 2024 Olympic and Paralympic Games, it is provided that the time-limits - which had been suspended from 12 March 2020 - will resume as of the entry into force of Order No. 2020-427 of 15 April 2020, namely as of 17 April 2020.

We note that the Ordinance of 13 May 2020 specifies that time-limits relating to notices, acts, procedures allowing the execution of development operations, works and real estate projects necessary for the preparation, organisation and hosting of the 2024 Olympic and Paralympic Games, will resume as of 24 May 2020.

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Find here the report addressed to the President of the French Republic relating to Ordinance No. 2020-306 (amendment of 28 March 2020) as well as the circular presenting Title I's provisions of Ordinance No. 2020-306 of 25 March 2020, here the report relating to Ordinance No. 2020-427, as well as the circular presenting Title I's provisions of Ordinance No. 2020-427 of 15 April 2020 and here the report relating to Ordinance No. 2020-460 of 22 April 2020, here the one pertaining to Ordinance No. 2020-539 of 7 May 2020, and here the one on Ordinance No. 2020-560 of 13 May 2020.

ORDINANCES NO. 2020-305, NO. 2020-306, NO. 2020-405, NO. 2020-427, NO. 2020-460, NO. 2020-558, NO. 2020-560 AND DECREE NO. 2020-383: ENVIRONMENTAL LAW IMPLICATIONS OF A STATE OF PUBLIC HEALTH EMERGENCY

Several texts adopted since the beginning of the public health emergency period linked to the covid-19 epidemic have had an impact on environmental law, in particular the law on classified installations for the protection of the environment (ICPE). This is notably the case of Ordinance No. 2020-306 of 25 March 2020 *on the extension of deadlines during the health emergency period and the adaptation of procedures during the same period*, and Decree No. 2020-383 of 1 April 2020 *derogating from the principle of suspension of deadlines during the public health emergency period linked to the Covid-19 epidemic*.

Based on article 11 of Law No. 2020-290 *of emergency to deal with the covid-19 epidemic*, Ordinance No. 2020-306 of 25 March 2020 *on the extension of deadlines during the public health emergency period and the adaptation of procedures during that same period* (hereinafter the "**Deadline Ordinance**") has been amended several times since the beginning of the public health emergency, the last of which by Ordinance No. 2020-560 of 13 May 2020 laying down time-limits for various procedures during the public health emergency period.

The provisions of the amended Ordinance No. 2020-306 are applicable "*to measures which have expired or expire between 12 March 2020 and 23 June 2020"* (hereinafter the "**Derogation** Period").

Thus, contrary to the initially adopted logic, the measures prescribed by the Deadline Ordinance are now de-correlated from the period of the public health emergency, which has been extended up to and including 10 July 2020 by Law No. 2020-546 of 11 May 2020.

How do time limits for appeals against environmental permits[41] run?

Article 2 of the Deadline Ordinance provides that "*any act, appeal, legal action, formality, registration, declaration, notification or publication prescribed by law or regulation shall be subject to nullity, sanction, lapse, foreclosure, prescription, unenforceability, inadmissibility, lapse, automatic withdrawal, application of a special regime, nullity or forfeiture of any right whatsoever and which should have been accomplished during the period mentioned in article 1 shall be deemed to have been done in time if it has been done within a period which may not exceed, as from the end of that period, the period legally prescribed for taking action, up to a limit of two months*".

As a consequence, the deadline to appeal against environmental permits for which the original appeal deadline expires during the Derogation Period, is postponed to 24 August 2020 inclusive. For example, the period of four months open to third party litigation against an environmental permit regularly published on 1 February and displayed on 2 February 2020, which was due to expire on 3 June 2020, i.e. during the Derogation Period, is, by virtue of the extension provided for in article 2 of the Deadline Ordinance, extended until 24 August 2020.

However, this deadline extension for appeal is not provided for in the case of environmental permits for which the deadline for appeal will expire immediately after the end of the Derogation Period. This will lead to paradoxical situations where older environmental permits will still be subject to appeal, while newer environmental permits will have become definitive. This interpretation is confirmed by the Circular of the Ministry of Justice of 26 March 2020 (*Circular presenting the provisions of Title I of Ordinance No. 2020-306 of 25 March 2020 on the extension of deadlines during the period of health emergency and the adaptation of procedures during the same period*), in which it is stated in particular that the extension of the deadline does not apply to "*time limits for which the term is set beyond the month following the expiry of the health emergency state* ".

[41] Under the meaning of Article L. 181-1 *et seq*. of the French Environmental Code.

In the absence of specific details on this point, the extension of the deadline for appeal must apply both to contentious appeals by third parties and by operators, as well as to informal or hierarchical appeals by third parties against environmental permits whose initial deadline would have expired during the Derogation Period.

It should nevertheless be recalled, as the Ministry of Justice did in its aforementioned Circular of 26 March 2020, that applicants can always act within the time period initially set for appeals.

Do the deadlines for compliance set by the formal notice orders remain applicable?

Article 8 of the Deadline Ordinance provides in particular that "*when they have not expired before 12 March 2020, the deadlines imposed by the administration, in accordance with the law and the regulations, on any person to carry out inspections and work or to comply with prescriptions of any kind shall, on that date, be suspended until the end of the period mentioned in I of Article 1, except where they result from a court decision. The starting point of the periods of the same kind which should have begun to run during the period referred to in Article 1(I) shall be postponed until the end of that period*".

However, two limits are provided for in the Deadline Ordinance:

- on the one hand, the suspension of deadlines provided for in article 8 does not apply when the obligations result from a court decision (such as in the case of a sentence of remediation);
- on the other hand, article 9 of the Deadline Ordinance provides for the possibility of derogating from the provisions of articles 7 and 8 by decree, in particular for reasons of "*protection of health, public sanitation and preservation of the environment*".

  In this respect, Decree No. 2020-383 of 1 April 2020 *derogating from the principle of suspension of deadlines during the period of public health emergency linked to the covid-19 epidemic* considerably reduces the scope of application of the Deadline Ordinance as it states that, as soon as it comes into force, the deadlines imposed by the administration resume their course, in particular the deadlines concerning the obligation to comply with prescriptions or to carry out controls, analyses or surveillance measures, with the aim of safety, the protection of health and public sanitation and the preservation of the environment (this is in particular the case of all formal notices) or when these deadlines relate to work and prevention measures, reduction and compensation measures prescribed in the context of a derogation for the protection of species.

As a consequence, particularly in the case of classified installations for the protection of the environment, if the deadline for compliance set by a prefectural order giving formal notice to comply with the applicable requirements had not expired before 12 March 2020, it was only suspended until 3 April 2020 and starts to run again on that date.

In the case of a suspension of deadlines, the term resumes to run for the period remaining at the date of suspension.

In any case, it should be noted that Ordinance No. 2020-427 of 15 April 2020 specifies that the provisions of article 8 of the Deadline Ordinance "*shall not prevent the administrative authority from exercising its powers to modify or terminate these obligations or, where justified by the interests for which it is responsible, to prescribe their application or order new ones, within the time period it determines. In all cases, the administrative authority shall, in determining the obligations or deadlines to be respected, take into account the constraints of the state of health emergency*".

Thus, prefects may, for example, lift or issue orders giving formal notice to comply with the legislation relating to classified installations for the protection of the environment during the state of health emergency; in the latter case, however, the obligations and deadlines must take into account the constraints linked to the state of health emergency.

What are the implications for ongoing projects?

On the one hand, pursuant to article 7 of the Deadline Ordinance, the period "*at the end of which a decision, agreement or opinion of one of the bodies or persons mentioned in article 6 may or must be reached or is implicitly acquired and which have not expired before 12 March 2020 shall, on that date, be suspended until the end of the term mentioned in I of Article 1*".

Thus, for example, administrative opinions which must be collected within a given period during the investigation of an environmental permit's file will not be considered as implicitly acquired during the Derogation Period; during this period, the said terms are suspended and will start to run again, starting on 24 June 2020, for the remaining period.

Similarly, the application of article R. 181-42 of the French Environment Code, according to which "*silence maintained by the prefect at the end of the deadlines provided for in article R. 181-41 for ruling on the application for environmental permit shall be deemed to be an implicit decision of rejection*" is suspended during the Derogation Period, under the conditions described above.

In the same way, a request for authorization to change operator under articles L. 516-1 and R. 516-1 of the French Environmental Code shall not be considered as having been granted if the three-month period set for the prefect to decide expires during the Derogation Period[42]. The three-month period is suspended during the Derogation Period and will resume on 24 June 2020.

On the other hand, the Deadline Ordinance adapts the rules applicable to public inquiries:

- article 12 of the Deadline Ordinance regulates the situation of projects of both national interest and urgency, for which a public inquiry was underway on 12 March 2020 or was to be organized between that date and 30 May 2020:

  "*When the delay resulting from the interruption of the public inquiry or the impossibility of carrying it out due to a state of health emergency is likely to have consequences that are difficult to remedy in the implementation of projects of national interest and urgency, the authority competent to organize the public inquiry may adapt the modalities:*
  1° By providing that the public inquiry in progress shall continue using only dematerialized electronic means. The total duration of the inquiry may be adapted to take into account, if necessary, the interruption due to the state of health emergency. Previously collected observations shall be duly taken into account by the investigating commissioner;
  2° By organizing a public inquiry from the outset conducted solely by dematerialized electronic means ".

  Thus, for projects of both national interest and urgency, and provided that a delay in the public inquiry may lead to consequences that are difficult to remedy, public inquiries may be dematerialized.

  However, where the duration of the public inquiry extends beyond 30 May 2020, article 12 provides for the possibility of returning, for the remaining duration of the inquiry, to the organizational arrangements under ordinary law.

  In any event, the public shall be informed by any means compatible with the state of public health emergency of

[42] Pursuant to article R. 516-1 of the French Environment Code: "[...] *The application for authorization to change operator, to which are annexed the documents establishing the technical and financial capacities of the new operator and the provision of financial guarantees, shall be addressed to the Prefect.*

This application is processed in the manner provided for in Articles R. 181-45 and R. 512-46-22.

For the installations mentioned in 1°, 2° and 5°, the opinion of the competent departmental consultative commission is not required. In the absence of notification of an express decision within a period of three months, silence kept by the Prefect shall be deemed to constitute an authorization to change the operator".

the decision taken on the organizational arrangements for each public inquiry.

- for other projects (i.e. that do not meet the conditions of national interest and urgency), article 7 of the Deadline Ordinance applies, which provides that: "*Subject to the provisions of article 12, the time limits provided for public consultation or participation are suspended until* 30 May 2020 inclusive.

What about proceedings before the administrative courts?

The situation of administrative proceedings in progress is not directly regulated by the Deadline Ordinance, but by Ordinance No. 2020-305 of 25 March 2020 *adapting the rules applicable before the administrative courts*, modified by Ordinance No. 2020-405 of 8 April 2020 *adapting various rules applicable before the administrative courts*, last amended by Ordinance No. 2020-558 of 13 May 2020.

Ordinance No. 2020-305, as amended, provides in particular that:

(i) the closures of investigations, the date of which was initially set between 12 March 2020 and 23 May 2020 inclusive "are extended by operation of law to 23 June 2020 inclusive, unless extended by the judge"; however, the judge may, "*where the urgency or the state of the case so justifies*", set a date for the closure of the investigation prior to the date of the aforementioned postponement; in this case, the order for closure of the investigation must state that the postponement does not apply (Article 16, II of Ordinance No. 2020-305 as amended);

(ii) the time limit for the investigative measures prescribed by the administrative courts (for example, to regularize an appeal, to produce a document or written pleadings), whose term expires between 12 March 2020 and 23 June 2020 are automatically extended until 24 August 2020 inclusive (23 August being a Sunday), unless the judge sets a shorter time limit on the grounds that "*the case is ready for trial or that the urgency justifies it*"; in the latter case, the judge must indicate that the postponement does not apply (Article 16, I of Ordinance No. 2020-305 as amended);

(iii) the deadlines for the production of a pleading or an exhibit provided for by a legislative or regulatory text and which end during the Derogation Period, start to run again from the end of this period for their initial duration, up to a limit of two months (article 15 of Ordinance No. 2020-305 which refers to article 2 of the Deadline Ordinance).

The holding of hearings is also adapted, as are the procedures for the transmission of procedural documents and decisions.

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Find here the report addressed to the President of the French Republic relating to Ordinance No. 2020-305, here the report relating to Ordinance No. 2020-306 (amendment of 28 March 2020) as well as the circular presenting Title I's provisions of Ordinance No. 2020-306 of 25 March 2020, here the report addressed to the President of the French Republic relating to Ordinance No. 2020-405, here the report relating to Ordinance No. 2020-427, as well as the circular presenting Title I's provisions of Ordinance No. 2020-427 of 15 April 2020 and here the report relating to Ordinance No. 2020-460 of 22 April 2020, here the report on Ordinance No. 2020-558 of 13 May 2020, and here the one on Ordinance No. 2020-560 of 13 May 2020.

ORDINANCE NO. 2020-319, 2020-460 AND NO. 2020-558 ON VARIOUS MEASURES TO ADAPT THE RULES FOR THE AWARD, PROCEDURE OR EXECUTION OF CONTRACTS SUBJECT TO THE FRENCH CODE OF PUBLIC PROCUREMENT

In accordance with the authorisation given by French Parliament, Ordinance No. 2020-319 of 25 March 2020 (the "Public Contracts Ordinance") provides for various measures to relax the rules applicable to public contracts, the award or performance of which would be compromised by Covid-19. The Ordinance No. 2020-460 of 22 April 2020 has clarified certain aspects and Ordinance No. 2020-560 of 13 May 2020 adjusts its application time-limits.

SCOPE OF APPLICATION

The Public Contracts Ordinance applies to contracts subject to the French public procurement code (public procurements and concessions), ongoing or entered into during the period between 12 March 2020 and 23 July 2020 inclusive.

In its initial version, the Public Contracts Ordinance was applicable until the end of the state of public health emergency, extended by two months, i.e. until 23 July inclusive. The Ordinance of 13 May 2020 thus allowed the initially stipulated temporal scope of application to be maintained, despite the extension of the state of public health emergency until 10 July 2020 by Law No. 2020-546 of 11 May 2020. In light of the expected economic recovery, the application of the Public Contracts Ordinance's measures beyond this date no longer seemed justified.

Its original version stated that it also applied to contractual provisions relating to the payment, performance and termination of other public contracts. A careful reader could understand that the authors of the text were mainly targeting, by this formulation, those contracts permitting the occupation of the public domain. This is one of the points confirmed by the Ordinance of 22 April 2020.

CONTRACTING PROCESS

The Ordinance on Public Contracts contains provisions relating to tendering processes. A public authority will be able to extend the deadlines for the receipt of applications and bids and adjust the competitive tendering processes.

CONTINUITY OF SUPPLY

Other measures aim to guarantee the continuous supply of government bodies. In particular, contracts coming to an end during the public health emergency period may be extended until the end of this period, extended by the period of time needed to restart the tendering process and to enable suppliers to submit competing bids. Similarly, contracting authorities may to enter into substitute contracts should a contractor no longer be able to perform its obligations.

PROTECTION OF ECONOMIC ACTORS

Lastly, several measures have been taken to avoid adverse effects on economic actors unable to perform their obligations as a result of the epidemic:

- the removal of the limit on the amount of advance payments;
- the extension of deadlines;
- the release of liability and the obligation to remedy the breach in case of an impossibility to execute the contract;
- the compensation for expenses incurred by the contractor in the event of termination of a contract as a result of measures taken in the context of the state of public health emergency;
- the immediate payment under the procurement contract in the event of suspension of a lump-sum procurement contract;
- the interruption of the concession fee's payment by the contractor to the contracting authority, and the possibility of receiving an advance payment on sums due from the contracting authority;

- the compensation of the contractor in the event of a significant change in the performance of its obligation by the grantor.

On this point, the Ordinance of 22 April 2020 provides an important clarification: it confirms that it is possible for a concessionaire to suspend any payment to the grantor when the performance of the concession has been interrupted, not only by decision of the grantor, but also by virtue of an administrative police measure, which may for example be applicable to establishments receiving the public such as concert halls, stadiums or congress centres, whose existence is seriously affected by the health crisis.

In addition, the Ordinance of 13 May 2020 provides for the ability to remove the threshold on the amount of advances for ongoing contracts or contracts concluded during the period from 12 March 2020 until the end of the state of public health emergency proclaimed by Article 4 of the Law of 23 March 2020, extended by two months. The application of this measure is thus not limited to 23 July 2020 inclusive.

SCOPE OF THE PUBLIC CONTRACTS ORDINANCE

As stated in the introductory report to the Public Contracts Ordinance, the application of these provisions requires a case-by-case analysis and the contracting parties must justify the need to resort to them.

In addition, together with the Public Contracts Ordinance, the French Ministry for the Economy and Finance also announced that the epidemic would be interpreted as a *force majeure* event for the purpose of enforcing the State's public procurement contracts and encouraged local authorities to show flexibility in their own contracts (to read the relevant document, please click here).

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Find here the report addressed to the President of the French Republic relating to Ordinance No. 2020-319 of 25 March 2020, here the report relating to Ordinance No. 2020-460 of 22 April 2020, and here the report on Ordinance No. 2020-558 of 13 May 2020.

ORDINANCE NO. 2020-391 OF 1ST APRIL 2020 TO ENSURE THE CONTINUING OPERATION OF LOCAL INSTITUTIONS, LOCAL AUTHORITIES AND LOCAL PUBLIC ESTABLISHMENTS (ÉTABLISSEMENTS PUBLICS) DURING THE COVID-19 EPIDEMIC MODIFIED BY ORDINANCE NO. 2020-562 OF 13 MAY 2020

This Ordinance was published in the Official Journal of 2 April 2020 pursuant to article 11 of the emergency law 2020-290 of 23 March 2020 to tackle the Covid-19 epidemic. This Ordinance introduces flexible measures adopted on a temporary basis, in order to ensure the continuing operation of local authorities and associated bodies, in the context of the state of public health emergency.

Following the extension of the state of public health emergency until 10 July 2020, pursuant to Law No. 2020-546 of 11 May 2020, Ordinance No. 2020-562 of 13 May 2020, which *aimed at adapting the functioning of local institutions and the exercise of the powers of local authorities and local public establishments to the extension of the state of public health emergency in the context of the covid-19 epidemic*, supplemented and clarified certain provisions of Ordinance No. 2020-391 of 1 April 2020.

DEROGATIONS FROM THE RULES GOVERNING DELEGATIONS GRANTED TO LOCAL EXECUTIVES

Article 1 of the Ordinance provides the mayor, without the need for any "deliberation", (as per the report to the President of the Republic NOR: COTB2008607P), with all the powers set out in article L2122-22 of the *code général des collectivités territoriales* (CGCT) which could normally be delegated by the municipal council by virtue of a deliberation, with the notable exclusion of "loans intended to finance investments provided for in the budget, and financial operations for the management of loans, including operations to hedge against interest rate and exchange rate risks" (Article L. 2122-22, 3° of the CGCT).

The exercise of these powers by local executive governments without the prior authorization of the deliberative body, remains, however, subject to (i) informing the elected local representatives "without delay and by any means" as soon as the decisions taken on this basis come into force, and (ii) potential legal review by the prefectural authority (*contrôle de légalité*).

In any event, this outright delegation of powers may be cancelled or modified in whole or in part by a decision of the municipal council, "subject to acquired rights" (*droits acquis*) according to the terms of the report to the President of the Republic. Such decision must be placed on the agenda of the first meeting of the municipal council following the entry into force of the aforementioned Ordinance.

This derogatory and transitional regime will be applicable to all local executive governments and this until 10 July 2020, pursuant to Article 7 of the aforementioned Ordinance No. 2020-562 of 13 May 2020. The presentation report to the President of the Republic of this Ordinance thus specifies that *"Newly elected mayors after the municipal and community councilors elected in the first round take office will benefit from the standard delegation system"*.

EASING OF QUORUM RESTRICTIONS FOR DELIBERATIVE BODIES

Article 2 of the Ordinance sets at one-third (instead of one-half in principle) the quorum of members required for a meeting of the deliberative body of any of the following: (i) local authorities or associated groups, (ii) standing committees of local authorities and (iii) offices (*bureaux*) of public establishments for inter-municipal cooperation (EPCI) having their own tax system.

The quorum of all these bodies will be assessed on the basis of the members present or represented.

The Ordinance also specifies that the members of these deliberative bodies will be able to hold two powers (instead of one in principle).

EASING OF RULES RELATING TO TELECONFERENCE MEETINGS OF THE DELIBERATIVE BODIES

Article 3 simplifies the process of calling a meetings of a deliberative body of any local authority. It does so by reducing to one-fifth the proportion of members required to call a meeting of a deliberative body (for any local authority or associated group). When a request is made, the head of the executive of the local authority or group shall have six days to organise and set up the meeting.

This easing is extended to the municipalities of Alsace-Moselle and is effective until 10 July 2020, under Articles 5 and 7 of the aforementioned Ordinance No. 2020-562 of 13 May 2020.

The ordinance nevertheless specifies that one member of a deliberative body must not submit more than one request per two-month period during the state of health emergency.

Article 6 authorises remote meetings of deliberative bodies of local authorities and associated groups in the form of videoconferencing or, failing that, audioconferencing. If this new option is used, the head of the local executive government must use all the means at his disposal to convene the members of the deliberative body and specify the technical arrangements for the meeting.

At any teleconference meeting, only open voting shall be used (i.e., by roll call or the casting of an electronic ballot). If a request for a secret ballot on an item of the agenda is adopted, it must necessarily be postponed to a later meeting, which shall not be held by electronic means.

In this instance, the quorum shall be assessed on the basis of members both physically present at the meeting and present through electronic means.

For deliberative bodies subject to an obligation of publicity (whether a local authority, or an EPCI with its own tax system), this obligation is deemed satisfied if and when a live transmission of the debate is accessible electronically by the public.

Article 9 of Ordinance No. 2020-562 of 13 May 2020 supplements this provision by offering the option, during a state of health emergency, to convene the municipal council at any location, including at a venue outside the territory of the municipality. The report to the President of the Republic states that "This provision will facilitate council meetings (essential in particular for the election of the mayor), which may be held in places where social distancing can be better respected". The mayor must nevertheless inform in advance the department's State representative of the venue chosen for the council meeting.

Article 10 also allows the mayor, the president of a local authority or of a public establishment for inter-municipal cooperation with a specific tax system to decide, prior to the meeting of the municipal council, that the meeting will take place without the attendance of the public or with a limited number of people adapted to the room and to the respect of social distancing measures.

The public nature of the meeting may nevertheless be ensured by its live transmission. However, the Ordinance specifies that reference must be made to this decision when convening the deliberative body.

SIMPLIFICATION OF THE CONDITIONS RELATING TO TRANSMISSION FOR LEGAL REVIEW AND ELECTRONIC PUBLICITY

Article 7 relaxes the modalities for the transmission of acts subject to legal review by the prefectural authority, by authorizing their transmission by e-mail until the end of the state of health emergency. In order to be valid, this method of transmission by electronic means must, however, meet several requirements. This includes, in particular, a requirement to identify the electronic addresses of both the competent prefectoral authority and the issuing local authority. However, each electronic transmission for legal review must contain no more than one decision.

Moreover, Article 7 also facilitates the accomplishment of formalities for the publication of regulatory acts of local authorities by specifying, by way of derogation, that regulatory acts may be published in electronic form. Such electronic publication must be made on the website of the local authority (or group of local authorities as the case may be). In addition, in order to be binding, these acts must also be published:

- in their entirety;
- in an unalterable format;
- under conditions which ensure their preservation, guarantee their integrity and allow them to be downloaded.

Article 7 of Ordinance No. 2020-562 of 13 May 2020 specifies that this simplification is effective until 10 July 2020.

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Find here the report addressed to the President of the French Republic relating to Ordinance No. 2020-391 of 1 April 2020, and here the report on Ordinance No. 2020-562 of 13 May 2020.

REAL ESTATE LAW

ORDINANCE NO. 2020-304 AS AMENDED BY ORDINANCES NO. 2020-460 AND 2020-595 ON CO-OWNERSHIP PROPERTY MANAGER CONTRACTS AND CO-OWNER GENERAL MEETINGS

Issued by the French government pursuant to the emergency law to tackle the Covid-19 epidemic, Ordinance No. 2020-304 of 25 March 2020 adapting the rules applicable to courts of law ruling in non-criminal matters and to certain co-ownership property manager contracts (accessible in French here) successively amended by Ordinance No. 2020-460 of 22 April 2020 and Ordinance No. 2020-595 of 20 May 2020 (the "**Ordinance**"), adjusts, on account of the state of public health emergency, the rules applicable to certain co-ownership property manager contracts (*contrats de syndic de copropriété*) and mandates entrusted to members of co-owners' committees (*conseil syndical*). It also adjusts the rules applicable to courts of law ruling in non-criminal matters[43].

Article 11(I)(2)(j) of the emergency Law to tackle the Covid-19 epidemic authorised the French government to introduce measures "*to adapt the law on co-ownership of buildings to take into account, in particular the appointment of managing agents, the impossibility or difficulty of convening general meetings of co-owners*".

In this respect, the Ordinance introduces measures regarding co-owners' general meetings that should have been held during the epidemic to (i) appoint a new property manager further to expiry of the existing manager's contract and/or (ii) appoint new members of the co-owners' committee further to expiry of the existing members' mandates, amongst other matters. The purpose of the Ordinance's provisions is to ensure continuity in managing co-ownerships throughout the health crisis.

Lastly, Ordinance No. 2020-595 of 20 May 2020 (accessible in French here) aims to decorrelate the duration of certain initial provisions of the Ordinance from the sliding duration of the state of public health emergency to end it on a fixed date, and to allow the holding of fully dematerialised general meetings of co-owners.

CO-OWNERSHIP PROPERTY MANAGER CONTRACTS

The Ordinance provides that "*if a property manager's contract expires or has expired [between 12 March 2020 23 July 2020 inclusive], it shall be renewed on its existing terms until entry into effect of the new property manager's contract awarded by the next co-owners' general meeting*".

The Ordinance thus introduces an exception to the principle that co-ownership property manager contracts are fixed-term agreements that cannot be renewed tacitly. This exception allows for the "automatic renewal" of any contracts expiring between 12 March 2020 and 23 July 2020 inclusive if the co-owners' general meeting that was to award a new property management contract cannot be held.

Under these circumstances, and in accordance with the Ordinance, acting property managers' contracts shall be renewed until entry into effect of the new manager's contract appointed by the next co-owners' general meeting. The Ordinance moreover provides that such general meeting must be held at the latest on 31 January 2021.

The Ordinance also provides that the lump-sum remuneration awarded to the property manager for the current period must be calculated according to the terms of the expired contract, pro rata to the duration of its renewal.

Lastly, it should be noted that the Ordinance specifies that the above-mentioned provisions "*shall not apply where a general meeting held before* [26 March 2020] *appointed a property manager whose contract enters into effect after 12 March 2020*". Indeed, the objective is not to override any appointments validly approved at a general meeting held before publication of the Ordinance.

[43] This part of the Ordinance is analysed p. 11.

CO-OWNERS' COMMITTEE MEMBER MANDATES

The Ordinance introduces similar rules for mandates of co-owners' committee members. Their role mainly consists in assisting the property manager and overseeing its management of the co-ownership, and consulting on tenders and contracts to be executed by the co-ownership association.

Accordingly, the Ordinance provides that "*if a mandate entrusted to a co-owners' committee member by resolution of the general meeting expires or has expired between 12 March 2020 and 23 July 2020 inclusive, it shall be renewed until the next co-owners' general meeting*", it being specified that such general meeting must take place at the latest on 31 January 2021. The above-mentioned provisions do not apply "*where a co-owners' general meeting was held and appointed new co-owners' committee members before* [26 March 2020]".

ORGANISATION OF FULLY DEMATERIALISED CO-OWNERS' GENERAL MEETINGS

Due to the Covid-19 epidemic and related prohibitions large meetings, many co-ownerships are materially unable to hold general meetings under normal conditions.

As this situation is likely to continue beyond the term of the state of public health emergency, the Ordinance provides for a certain number of measures to allow the holding of fully dematerialised general meetings of co-owners, which is not allowed by the law of 10 July 1965 and its implementing decree.

These measures are mainly as follows:

- possibility for the co-ownership property manager to convene a general meeting without the physical presence of the co-owners, who can then participate in the meeting by videoconferencing or email voting before the general meeting is held, it being specified that:
    - in cases where the use of videoconferencing is not possible, the co-ownership property manager may stipulate that decisions will be taken solely by means of a postal vote;
    - the co-ownership property managers who have already convened a general meeting may have recourse to these new possibilities, provided that the co-owners are informed of it at least fifteen days before the general meeting is held;
    - the rules for convening (information on the place of the meeting and the procedures for participation, etc.) and holding general meetings (certification of the attendance sheet, signing of the minutes, etc.) provided for in the decree implementing the law of 10 July 1965 are adjusted accordingly;
- possibility for a co-owner, as a representative, to receive more than three voting delegations provided that the total of the votes he himself and his principals have together does not exceed 15% of all co-owner votes (as opposed to 10% under normal circumstances);
- possibility for the co-ownership property manager to decide on the technical means enabling the organisation of a general meeting without physical presence (video conference, audio conference, etc.), without the prior need for the general meeting to have decided upon the use of such technical means.

It should be noted that the measures referred to above relating to the organisation of fully dematerialised general meetings of co-owners are applicable from 1 June 2020 (the date on which the provisions relating to postal voting provided for by Ordinance No. 2019-1101 of 30 October 2019 reforming co-ownership law come into force) until 31 December 2020 (the date until which the other derogatory provisions relating to co-ownership provided for by the Ordinance will apply).

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You will find here the report addressed to the President of the French Republic relating to Ordinance No. 2020-304 of 25 March 2020 (amendment of 28 March 2020), here the report addressed to the President of the French Republic relating to Ordinance No. 2020-460 of 22 April 2020, and here the report on Ordinance No. 2020-595 of 20 May 2020.

ORDINANCE 2020-316 OF 25 MARCH 2020 ON THE PAYMENT OF RENT AND WATER/GAS/ELECTRICITY BILLS FOR PROFESSIONAL PREMISES AND OF ITS IMPLEMENTING DECREES

Emergency Law No. 2020-290, adopted on 23 March 2020 to tackle the Covid-19 epidemic, authorises the French government to introduce measures "enabling microenterprises […] affected by the spread of the epidemic to defer in full or spread the payment of rent and water, gas and electricity bills for professional or commercial premises without suffering the financial penalties and suspended, interrupted or diminished service normally applicable in the event of non-payment" (Article 11(I)(1)(g)). The emergency law specifies that the Government can make these measures applicable retroactively to 12 March 2020 where necessary and can legislate in such respect by means of ordinances.

Accordingly, on 25 March 2020, the Government issued Ordinance No. 2020-316 (available here) (the "**Business Premises Ordinance**"). Under the Business Premises Ordinance, provided they satisfy certain conditions, tenants of professional or commercial premises can benefit from special protective measures regarding the payment of: (i) rent and tenancy charges owed under their leases, and (ii) their electricity, gas and water bills.

An implementing decree was subsequently added to the Business Premises Ordinance (Decree No. 2020-378 of 31 March 2020, available here). It incorporates, by reference, certain provisions of Decree No. 2020-371 of 30 March 2020 on the solidarity fund set up for businesses particularly affected by the economic, financial and employment repercussions of the Covid-19 epidemic (the "**Solidarity Fund**"). This latter Decree was amended by Decree No. 2020-394 of 2 April 2020 then by Decree No. 2020-433 of 16 April 2020 (available in French here), and most recently by Decree No. 2020-552 of 12 May 2020 (available in French here). As a result, in order to ascertain which businesses can benefit from the Government's new measures, we need to consult all the above-mentioned decrees.

Furthermore, and in accordance with subsection I of Article 1 of the Law No. 2020-546 of 11 May 2020, the state of public health emergency declared by Article 4 of the Law No. 2020-290 of 23 March 2020 to tackle the Covid-19 epidemic has been extended until 10 July 2020 inclusive.

ELIGIBILITY

Based on the relevant legislative instruments, as detailed above, it transpires that the protective measures of the Business Premises Ordinance regarding payment of rent and water/fuel bills are in fact only available to tenants that are "French tax resident private individuals or legal entities operating an economic activity" and that satisfy the conditions and criteria defined under 1° and 3° to 8° of Article 1 and under 1° and 2° of Article 2 of Decree No. 2020-371 aforementioned.

However, it should be noted that paragraphs 1°, 6° and 8° of Article 1 of this Decree have been repealed, so that for these private individuals or legal entities to benefit from the provisions set out in the Business Premises Ordinance, they shall meet the following cumulative conditions:

1. Not be in compulsory liquidation as of 1 March 2020;
2. Have no more than ten employees (threshold calculated as set out under Article L.130-1(I), French Social Security Code);
3. Have a turnover of less than €1,000,000 in the last financial year (or, for businesses that have yet to complete a full financial year, average monthly revenue of less than €83,333 between their date of establishment and 29 February 2020);
4. If constituted as an association, be subject to corporate tax or employ at least one employee;
5. Not be controlled by commercial company (as defined under Article L.233-3, French Commercial Code);
6. Business either (i) banned from opening to the public between 1 March 2020 and 31 March 2020, or (ii) having suffered revenue losses of at least 50% (down from the 70% initially announced) over the period between 1 March 2020 and 31 March 2020 as compared to:

- the same period in 2019; or
- for businesses established since 1 March 2019: their average monthly revenue over the period between their establishment and 29 February 2020; or
- for individuals who were on sick leave or maternity leave between 1 March 2019 and 31 March 2019;
- or legal entities whose owner was on sick leave or maternity leave over the same period: their average monthly revenue between 1 April 2019 and 29 February 2020.

It is in theory possible to interpret the two conditions indicated by (i) and (ii) under point 6 above as being cumulative: Article 1 of Decree No. 2020-378 of 31 March 2020 refers to subsections 1 "and" 2 of Article 2 of Decree No. 2020-371, despite the fact that they appear in this latter Decree as alternative conditions (separated by "or"). However, in view of the Government's objectives and the wording of Article 2 of Decree No. 2020-371 of 30 March 2020, we believe they should be treated as alternative rather than cumulative conditions.

In order to demonstrate that they satisfy the above cumulative conditions and are therefore eligible for the protective measures provided by the Business Premises Ordinance, individuals and legal entities aforementioned shall produce:

i. a sworn statement affirming that:
   - the business satisfies the above criteria,
   - all information declared is accurate, and
   - the business was up-to-date with all of its tax and social security payments at 31 December 2019 (unless it had agreed a payment plan with the relevant authorities); and

ii. acknowledgement of receipt of an application for financial aid from the Solidarity Fund.

In view of the second point above, in order to be able to benefit from the Business Premises Ordinance, private individuals and legal entities must not only be eligible for aid from the Solidarity Fund but also have applied for such aid. Applications should have been submitted online at the latest on 30 April 2020 (unless exceptions apply), together with the above-mentioned sworn statement, an estimate of the business's revenue losses and its bank details.

Any "private individuals or legal entities operating an economic activity" whilst in bankruptcy, safeguard or insolvency proceedings can still benefit from the measures of the Business Premises Ordinance provided they supply a statement from one of their court-appointed administrators. The criteria for such cases and the documentation to be supplied requires further analysis.

Note that although the French Parliament had initially specified that microenterprises (as defined under Decree 2008-1354 of 18 December 2008: i.e. enterprises with no more than 10 employees and annual turnover or a balance-sheet total of less than €2 million) would be allowed to benefit from the specific measures on payment of rent and tenancy charges, the Business Premises Ordinance and its first implementing decrees have added conditions that significantly restrict the scope of application of these measures. However, Decree No. 2020-433 of 16 April 2020 and Decree No. 2020-552 of 12 May 2020 have relaxed eligibility criteria for the Solidarity Fund and, consequently, the conditions for benefiting from the provisions of the Business Premises Ordinance.

PAYMENT OF RENT AND TENANCY CHARGES

The Business Premises Ordinance provides that "financial penalties, late-payment interest, damages, fines termination or penalty clauses or clauses providing for the forfeiture or activation of any security deposits or guarantees" will not apply to any eligible businesses that fail to pay rent or tenancy charges (i) on their professional or commercial premises when (ii) payable between 12 March 2020 and the end of two months after the state of public health emergency has been lifted. This corresponds to midnight on 10 September 2020 at the very earliest, given that emergency law 2020-290 of 23 March 2020 stipulated that the state of public health emergency would be lifted at midnight on 23 May 2020, this has been extended by the Law No. 2020-546 of 11 May 2020 until 10 July 2020 inclusive, subject to a new extension or early termination.

Accordingly, although the Business Premises Ordinance does not expressly authorise tenants to miss rent payments, it protects them if they do so, by preventing landlords from implementing the remedies or guarantees available to them under the relevant lease for any non-payment of rent or tenancy charges over the period in question, thus overriding any lease terms in this respect.

We also note that:

- the Government has expanded the scope of this measure to encompass “tenancy charges” (whereas the emergency law referred solely to “rent”), but does not clarify the practical terms for the deferral or spreading of payments;
- the Business Premises Ordinance does not specify whether the landlord’s remedies for non-payment will be “unblocked” at a later date (and if so, when). It is in fact entirely possible that landlords may end up having to forfeit any unpaid rent and tenancy charges for the above-mentioned period.

PAYMENT OF ELECTRICITY, GAS AND WATER BILLS

On a similar basis, the Business Premises Ordinance also prevents utility suppliers from suspending, interrupting or diminishing service or terminating contracts for the supply of electricity, gas or drinking water to the above-mentioned eligible businesses further to any non-payment by the latter of their bills between 26 March 2020 and the end of the state of public health emergency (i.e. midnight on 10 July 2020 at the earliest). Moreover, it prohibits electricity suppliers from reducing the wattage supplied to such businesses over the same period.

One point on which the provisions of the Business Premises ordinance on payment of water and fuel bills differ from those regarding rent and tenancy charges is that suppliers are required to grant any requests from eligible business clients for deferral of payment instalments due between 12 March 2020 and the end of the state of public health emergency and cannot claim any financial penalties, costs or compensation from their clients in such respect. In such cases, payment of the deferred sums is to be spread equally between the subsequent instalments owed over a period of no less than six months starting from the end of the month after the state of public health emergency is lifted.

Note: in respect of rent and water/gas/electricity bills for business premises, in addition to the above-mentioned provisions and the legal mechanisms available under ordinary French law on private contracts (i.e. *force majeure*, statutory hardship (*imprévision*), good faith, court-ordered payment extensions, etc.), ordinance 2020-306 of 25 March 2020 on the extension of deadlines and adjustments to legal proceedings during the state of public health emergency, as amended by ordinance 2020-427 of 15 April 2020 (available here) lays down a general provision that is not, in theory, subject to any conditions in terms of eligibility and by the Ordinance No. 2020-560 of 13 May 2020 (available in French here).

Thus, Article 4 of Ordinance No. 2020-306 of 25 March 2020 (as amended by Ordinance No. 2020-560 of 13 May 2020) provides in particular that “any fines or penalty, termination or forfeiture clauses, when applicable in the event of non-performance of an obligation by a specified deadline, will be deemed ineffective or not triggered for any deadlines falling [between 12 March 2020 and 23 June 2020 inclusive]”. It also specifies that "if the debtor fails to perform its obligation, any such fines or clauses will only resume their full force beyond such date after a period i.e. from 24 June 2020, equal to that between 12 March 2020 (or the date on which the obligation was created, if later) and the date on which the obligation should have been performed."

Ordinance No. 2020-306 nonetheless stipulates that its provisions do not apply “to any deadlines or measures that are already covered by other adjustments made under or resulting from the emergency law adopted on 23 March 2020 to tackle the Covid-19 epidemic”.

We note in particular that:

- under Ordinance No. 2020-306, landlords seeking to apply contractual remedies for non-payment of any sums due under their leases can in theory still do so, but the effects of such remedies will be postponed until after 24 June 2020 on a *pro rata* basis (as opposed to after a "fixed" period of two months as from the date on which the state of public health emergency is lifted, as had previously been decreed);

- paradoxically, the provisions of Ordinance No. 2020-306, to which tenants that do not satisfy the eligibility criteria for the Business Premises ordinance may turn, are actually more accessible and simpler to implement than the Government's measures designed specifically to protect the VSBs most affected by the crisis.

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Find here the report addressed to the President of the French Republic relating to Ordinance No. 2020-316 and here the report relating to Ordinance No. 2020-306 (amendment of 28 March 2020) as well as the circular presenting Title I's provisions of Ordinance No. 2020-306 of 25 March 2020.

ORDINANCE NO. 2020-331 OF 25 MARCH 2020 RELATIVE TO THE EXTENSION OF THE WINTER BAN ON TENANT EVICTIONS

Passed by the French government pursuant to the emergency law to deal with the Covid-19 epidemic, Ordinance no. 2020-331 of 25 March 2020 (the "***Ordinance***") is part of the provisions aimed at dealing with the social consequences of the current health crisis. Its initial purpose was to extend the winter ban period on tenant evictions –the "winter truce"– by two months, i.e. up to 31 May 2020. However, Article 10 of Law No. 2020-546 of 11 May 2020 extending the state of public health emergency in France (the "**Extension Law**") itself extended the winter truce until 10 July 2020.

CONSEQUENCES ON THE EXTENSION OF THE WINTER BAN ON TENANT EVICTIONS

The "winter truce" is the period during which *"any measure of tenant eviction is suspended between 1 November of each year and 31 March of the following year"*, and this, *"including if such measure is taken in application of a final court order on the eviction in question"*[44].

In other words, this is a period during which no person or family may be evicted from his/her/their place of residence of which he/she/they is a tenant/are tenants, even if ordered by a court decision. This period, which starts on 1 November and in principle ends on 31 March of the following year, has thus been extended to 10 July as an exceptional measure for 2020 only.

It must be recalled that the law provides for two exceptions to the tenant eviction truce during the winter season, which are of course not modified by the Ordinance: first, there is the case where *"the concerned individuals' re-lodging is guaranteed in conditions that ensure the family's unity and needs"*; second, there is the case of *"individuals who entered the premises illegally and whose eviction has been ordered"*[45] (the case of "*squatters*").

The "winter truce" is extended by four months in the French overseas departments and regions, as well as in Wallis-and-Futuna, and by two months only in Saint-Martin, Saint-Barthélémy and Saint-Pierre-et-Miquelon. In these latter areas, the period chosen as the "winter truce" is set by the competent prefects owing to specific climate conditions.

CONSEQUENCES ON UTILITY SERVICE SHUT-OFFS

Also with a view to dealing with the social consequences of the current health crisis, this Ordinance an the Extension Law extend up to 10 July 2020, as an exceptional measure for 2020 only, the period (which, in principle, runs from 1 November of each year to 31 March of the following year) during which *"electricity, heating and gas suppliers cannot shut off the supply of electricity, heating or gas to persons or families in their main place of residence, including by terminating the contract, due to unpaid utility bills"*[46].

However, it must be noted, on the one hand, that electricity suppliers do nonetheless have the possibility to lower the amount of electricity supplied, unless the consumers benefit from an energy allowance (*"chèque énergie"*), and, on the other hand, that water suppliers are prohibited all year long from cutting off the water provision to delinquent payers. The Ordinance does not amend these provisions.

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Find here the report addressed to the President of the French Republic relating to Ordinance No. 2020-331 of 25 March 2020.

[44] Paragraph 1 of Article L.412-6 of the French Code of Civil Enforcement Procedures.

[45] Paragraphs 1 and 2 of Article L.412-6 of French Code of Civil Enforcement Procedures.

[46] Article L.115-3 of the French Social Action and Family Code.

THE RESUMPTION OF CONSTRUCTION WORKS (PRIVATE MARKETS) SUBJECT TO THE HEALTH MANAGEMENT OF THE COVID-19 EPIDEMIC

New article since the first English edition of this booklet

Greatly affected by the Covid-19 epidemic, the construction sector alone accounts for 13.84% of partial activity requests according to the latest estimates of the French Ministry of Labour as at 14 April 2020.

In order to support and supervise the progress of construction sites during the state of public health emergency period, the Government as well as construction companies and public works professional bodies have undertaken to promote the implementation of practical measures, embodied in the publication by OPPBTP on 2 April 2020 of a "Guide to health and safety recommendations for the continuity of construction activities during the Covid-19 epidemic".

This guide provides a check-list of health recommendations (compulsory wearing of individual masks and glasses when impossible to respect social distancing, implementation of a CISSCT (*Collège Interentreprises de Sécurité, de Santé et des Conditions de Travail*, or Inter-company body for occupational health & safety) for work sites where the volume of work exceeds 10,000 people/day, etc.) and requires the formalisation of the health measures before work can resume.

Since then, a new set of general recommendations - and thus of subsidiary application - was drafted and circulated by the French Ministry of Labour on 5 May 2020, via a "National end of lockdown protocol for companies to ensure the health and safety of employees".

The protocol recommends the implementation of collective protective measures, including sequencing of activities and staggered working hours to limit the number of workers on site. It also provides for the application of a 4 m² space " gauge" for each worker in the offices (and site facilities). Lastly, it indicates the procedures for dealing with workers showing symptoms similar to those of Covid-19 (isolation in a dedicated room, involvement of the Covid-19 contact, alerting the professional medical practitioner or emergency health services depending on the seriousness of the symptoms observed etc.).

However one might question the scope of this guide, which transfers to the project owner obligations that are legally those of construction professionals and which could be used by certain companies, taking advantage of the situation, to evade some of their obligations. One might also question the scope of the protocol, as many of the provisions are unsuitable for the execution of construction works. However, the legal binding nature of the guide and a fortiori of the protocol has not been yet established.

In pursuit of the same goal, the Government also introduced various measures to restrict contractual penalties applicable to works contracts through Article 4 of Ordinance No. 2020-427 of 15 April 2020, amending Article 4 of Ordinance No. 2020-306 of 25 March 2020 as usefully indicated by article 1 of Ordinance No. 2020-560 of 13 May 2020 after a period of hesitation. Henceforth, if a works contract entered into prior to 12 March 2020 provides for the handover of a work on a date later than 23 June 2020, the penalty clause sanctioning any failure to fulfil this obligation will only take effect on a date that is postponed by a period equal to the duration of the legally protected period (i.e. between 12 March 2020 and 23 June 2020 inclusive).

One might think that the decision to take such measures is justified by the fact that no total and objective impediment seems to be able to be argued by a contractor to justify a work stoppage or delay.

Indeed, it appears unlikely that the Covid-19 epidemic as such would be considered a case of *force majeure* (Article 1218 of the French Civil Code) preventing the progress of construction sites. Indeed, the French courts have, up until now, taken a restrictive interpretation to *force majeure*, considering that various epidemics could not be qualified as such.

It is equally doubtful whether the theory of unforeseeability ("*théorie de l'imprévision*") (Article 1195 of the French Civil Code) - which allows a contractor to request a contractual renegotiation due to a change of circumstances, unforeseeable at the conclusion stage, having rendered its performance more onerous - can be applied to fixed-price works contracts (Article 1793 of the French Civil Code) - which implies setting a "fixed" (Cass.C., 3rd civ. Chamber, 23 November 1994, No. 93-11278) and "*irrevocable*" price (Cass.C., 3rd civ. Chamber, 23 May 1978, RDI 1979 obs. Malinvaud and Boubli)

previously agreed - which seem to exclude its application in principle. Moreover, we note that a first judgment has been handed down to that effect (Douai Court of Appeal, 23 January 2020, No. 19/01718).

INTELLECTUAL PROPERTY AND NEW TECHNOLOGIES

ORDINANCES NO. 2020-306 OF 25 MARCH 2020 AND NO. 2020-560 DATED 13 MAY 2020 (TIME-LIMITS): CONSEQUENCES IN TERMS OF INTELLECTUAL PROPERTY

In the context of the current health crisis, the Government has issued provisions postponing practically all statutory procedural time-limits.

The state of health emergency entered into force on 24 March 2020 for a duration of two months, namely until 23 May at midnight (see here the debates around it and the *Conseil d'Etat*'s converging position (Ordinance No. 439903 of 10 April 2020) and that of the Minister of Justice (Circular of 17 April 2020). Ordinance No. 2020-306 of 25 March 2020[47], amended by Ordinance No. 2020-427 of 15 April 2020[48] and clarified by two circulars of 26 March 2020 and 17 April 2020 provides, in substance, that the time-limits that expire between 12 March 2020 and one month after the end of the state of health emergency (the "*legally protected period*") are postponed, that is to say will resume running for the remaining statutory time-limit required to act, up to a limit of two months.

The Law of 11 May 2020[49] extends the state of health emergency until 10 July 2020 inclusive . Nonetheless, the Government considered that the economic activity resumption due to the lockdown ease as of 11 May, now allows economic actors to comply with the acts and formalities prescribed by law. It therefore decided, through Ordinance No. 2020-560 of 13 May 2020[50], to replace the sliding reference date based on the end of the state of health emergency with the fixed date of 23 June 2020 at midnight, as the end of the legally protected period.

As a result, and subject to further amendments, the time-limits which were supposed to lapse between 12 March and 23 June 2020 will start running again from that date and lapse by 23 August 2020 at the latest. In this respect, a distinction should be established between instances where the initial time-limit was two months or more and instances where the initial time-limit was less than two months. In the first instance, the time-limit will lapse on 23 August 2020. In the second instance, the time-limit will lapse earlier, once the initial time-limit has expired (e.g. on 23 July if the initial time-limit was one month)[51].

The abovementioned Ordinance[52], which is general in scope, applies in particular to the civil time limits provided for by French law on intellectual property[53].

Simultaneously, intellectual property offices and courts are adapting their organizations and/or postponing the time limits for administrative and judicial proceedings.

INPI

Despite the lockdown ease, INPI maintains the closure of its sites to the public beyond 11 May 2020 and at least until 2 June 2020. The examination, issuance of industrial property titles and dissemination of the National Register of Commerce and Companies (RNCS) by the INPI (French National Institute of Intellectual Property) are still being carried out remotely.

Online services remain available for all of the following procedures: filing of patents, trademarks, designs and models, e-Soleau; renewal of trademarks; payment of patent annuities; registration; geographical indications, etc. Thanks to

[47] Ordinance No. 2020-306 of 25 March 2020 on the extension of time limits during the period of health emergency and the adaptation of procedures during the same period.

[48] Ordinance No. 2020-427 of 15 April 2020 laying down various provisions on time limits for dealing with the covid-19 pandemic

[49] Law No. 2020-546 of 11 May 2020 extending the state of health emergency and supplementing its provisions

[50] Ordinance No. 2020-560 of 13 May 2020 setting the time-limits applicable to various procedures during the state of health emergency crisis.

[51] Due to the complexity of the rules on computing time-limits, there could be an uncertainty margin of one day, as the additional time-limit may start running from the day after the end of the legally protected period.

[52] However, the Ordinance excludes from the scope of its provisions, time limits and measures resulting from the application of rules of criminal law and criminal procedure, as well as some other specific time limits not related to intellectual property matters.

[53] With the exception of those resulting from international agreements or European texts.

procedures' dematerialization, INPI continues to examine and issue industrial property titles through working remotely. Until at least 2 June 2020, official copies of documents are provided only in PDF format with authentication by electronic signature. Moreover, despite the health crisis, INPI was able to implement within the planned schedule, the reforms that came into force on 1 April 2020: the introduction of an administrative procedure for trademark invalidity or revocation and of a procedure to oppose a patent.

By decision of 16 March 2020, the INPI had decided that the time limits subject to its discretion, which had not expired as of 16 March 2020, were all (with the exception of trademark opposition proceedings) extended to 4 months. However, Decision No. 2020-33 of 26 March 2020 revoked these initial provisions, due to the intervention of the aforementioned Ordinance of 25 March 2020, which therefore also applies to the time-limits set by the INPI. According to a press release from the INPI, the postponement thus concerns the time-limits for opposing a trademark, renewing a trademark, extending a design and benefiting from the corresponding grace period, filing an administrative or judicial appeal, replying to a notification from the INPI, paying a patent annuity, etc.

On the other hand, the priority periods for an international extension, the payment periods for filing a patent application and the periods for filing a supplementary protection certificate (which are subject to supranational provisions) are not concerned.

EUIPO

The EUIPO (European Union Intellectual Property Office) ensures that, **as far as possible, its business continues as usual**.

In other words, trademark and design applications continue to be received, examined and published, and the EUIPO continues to send communications and set deadlines. Bulletins continue to be published.

By decision of the Executive Director of EUIPO No EX-20-3 of 16 March, all time limits expiring between 9 March 2020 and 30 April 2020 affecting all parties before the Office have been extended until 1 May 2020 (i.e. in practice until Monday 4 May 2020, given that 1 May is a public holiday). A new decision (No EX-20-4) published on 29 April 2020 extends until 18 May 2020 all time limits expiring between 1 May 2020 and 17 May 2020. On 15 May 2020, the Office indicated that there would be no further extensions. In order to assist users facing persistent difficulties due to the Covid-19 pandemic, the Office issued a note summarizing the relevant procedural provisions on time-limits: extension of time-limits in adversarial and non-adversarial proceedings, suspension of proceedings, *restitution in integrum.*

EPO

The EPO (European Patent Office) reports that its search, examination and opposition divisions continue to operate.

The Boards continue to issue written decisions, notifications and summons to oral proceedings.

With regard to examination proceedings, a Decision of the President of the EPO, dated 1 April 2020, established the principle that oral proceedings are now held in the form of videoconferences before Examining Divisions. This rule applies to all oral proceedings for which the summons is served on or after 2 April 2020, as well as to those served before that date and which are to be held after 17 April 2020 or for which the applicant has agreed to be held by videoconference. A pilot project is planned to extend this principle to the opposition procedure.

With regards to proceedings before Opposition Divisions, a pilot project also allows, on a voluntary basis, for oral proceedings to be held by videoconference. With the exception of proceedings held by videoconference already confirmed, the EPO is postponing until further notice the oral proceedings scheduled until 14 September 2020. As of now, it intends to maintain the oral proceedings scheduled to be hosted in the EPO's premises, after 15 September 2020.

As from 18 May 2020, Appeal chambers shall resume the holding of oral proceedings in their premises, to a limited extent. Oral proceedings before the Appeal chambers may also be conducted by videoconference, with the agreement of the interested parties.

Finally, deadlines expiring on or after 15 March 2020 were initially extended to 17 April 2020 and then to 4 May 2020. These deadlines are subject to a further extension until 2 June 2020.

WIPO

In two communiqués of 16 and 17 March 2020, the WIPO (World Intellectual Property Organization) announced that it continues:

- to process applications filed through its global intellectual property services;
- to process applications filed under the PCT, the Madrid System for the International Registration of Marks and the Hague System for the International Registration of Industrial Designs;
- to administer other intellectual property and related systems, including the WIPO's Arbitration and Mediation Center.

In addition, WIPO indicated in a communiqué of 9 April 2020, on PCT patent applications, that it considered the current pandemic to be a case of *force majeure* which could be invoked in the event of failure to comply with a time-limit before the Office. In a communiqué of 21 April 2020 on international trademark applications, it indicated that it would receiv favorably any request submitted under Rule 5 of the Regulations (request to excuse a failure to meet a time-limit) referring to difficulties relating to Covid-29, without requiring the applicants, holders or offices to provide proof of such difficulties. In general, WIPO has also compiled relevant information on the remedies available against disruption or failure to meet a time limit for the PCT, Madrid and Hague systems.

FOREIGN NATIONAL INTELLECTUAL PROPERTY OFFICES

INPI maintains a table[54] of Covid-19-related provisions taken by various foreign national intellectual/industrial property offices (the latest version on line is dated 29 May 2020). This table covers about thirty-five countries as well as the African Intellectual Property Organization (OAPI) and the African Regional Intellectual Property Organization (ARIPO)..

FRENCH JURISDICTIONS

Since Monday 16 March 2020, all civil or commercial cases have been postponed until further notice, except for litigation considered essential (criminal hearings in particular) which does not include intellectual property litigation.

Hearings of cases pending before the specialized chambers of the Paris Judicial Court (the 3rd), or the Paris Court of Appeal (division 5), applications for seizure for counterfeiting, the *assignations en référé* (summons for urgent proceedings), etc., are thus postponed until further notice.

The files that were to be examined at these hearings have been or will be referred to a waiting list. The parties will be informed of the date of such referral as soon as the situation returns to normal.

Ordinance No. 2020-304 of 25 March 2020[55] provides that for most civil cases, the courts may decide that the proceedings will take place without hearings. Parties have 15 days to oppose such a decision, except for certain procedures (notably summary proceedings). On 27 April and 29 May 2020, the President of the Paris Judicial Court issued orders stating that in most cases where the pleadings were scheduled for the 16 March - 10 July period, the judgment will be rendered without an oral hearing, failing opposition by a party, thereby generally resulting in the postponement of the hearing to a later date. Other Ordinances taken by the President of the Paris Judicial Court dated 7 and 29 May 2020, specified that summary proceedings regarding intellectual property matters, to be heard at hearing scheduled between 17 March and 1 June, will be decided on without any oral submission, and that hearings scheduled between 2 June and 10 July 2020 may be decided without oral submission. Since 11 May 2020, it is possible to file submissions for infringement seizures in court. These are dealt with without a hearing, as the magistrate reaches out to the counsel by mail or telephone if he deems it necessary to obtain further information. As regards the first president of the Appeal Court, he issued an Ordinance on 23 April, indicating that pleadings scheduled for the 16 March - 24 May period would be processed without hearings, subject to one of the party's objection.

Deliberations scheduled during this period will be extended to a date to be communicated at a later date.

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[54] Available at https://www.inpi.fr/fr/internationales/covid-19-les-dispositions-prises-l-international-par-les-offices-de-propriete-intellectuelle

[55] Ordinance No. 2020-304 of 25 March 2020 adapting the rules applicable to judicial courts ruling in non-criminal matters and to co-ownership management contracts.

Find here the report to the President of the French Republic on Ordinance No. 2020-306 (amended on 28 March 2020), here the circular presenting Title I's provisions of Ordinance No. 2020-306 of 25 March 2020, here the report addressed to the President of the French Republic relating to Ordinance No. 2020-427 of 15 April 2020 and the circular on the provisions of Title I of Ordinance No. 2020-427 of 15 April 2020, and here the report on Ordinance 2020-560 of 13 May 2020.

ORDINANCE NO. 2020-320 OF 25 MARCH 2020 ON THE ADAPTATION OF TIME FRAMES AND PROCEDURES APPLICABLE TO THE INSTALLATION OR MODIFICATION OF ELECTRONIC COMMUNICATIONS EQUIPMENT, AS AMENDED BY ORDINANCE NO. 2020-560 OF 13 MAY 2020

The implementation of containment measures and the resulting significant increase in digital use has pushed electronic communications networks to their limits.

To help ensure the consistent availability of electronic communications services and networks throughout the state of public health emergency, Ordinance No. 2020-320 of 25 March 2020 (the "**Electronic Communications Equipment Ordinance**"), introduced by the French Minister for Economic affairs and Finance, provides measures adapting certain timeframes and procedures applicable to the installation or modification of electronic communications equipment.

Later, the Electronic Communications Equipment Ordinance was amended by Ordinance No. 2020-560 of 13 May 2020 in order to adapt the applicable deadlines following the entry into force of Law No. 2020-546 of 11 May 2020 extending the state of public health emergency to 10 July inclusive.

These measures are however (i) strictly limited up to and including 23 June 2020[56] and (ii) only apply provided that the building, installation, development or modification of a radio equipment is made strictly necessary to ensure the consistent availability of electronic communications services and networks.

The Electronic Communications Equipment Ordinance is intended to adapt the following four administrative procedures.

OPERATION OR MODIFICATION OF RADIO EQUIPMENT

The obligation to provide an information document to the local authority for the operation or modification of radio equipment is suspended, by way of derogation from article L.34-9-1(II.B) of the French Postal and Electronic Communications Code.

Nevertheless, the operator is required to inform, in advance and by any means, the relevant local authority of such planned operation or modification, and shall update its situation up to and including 23 July 2020[57].

ESTABLISHMENT OF A RADIO STATION IN FRANCE

By way of derogation from article 43 of the French Postal and Electronic Communications Code, the operator of a radio station may now decide to establish a radio station without the prior authorisation of the National Frequencies Agency (*Agence National des Fréquences*, or "ANFR"), insofar that such establishment is strictly necessary to ensure the consistent availability of electronic communications services and networks.

The operator is nonetheless required to inform the ANFR, in advance and by any means, of such planned establishment, and shall update its situation up to and including 23 September 2020[58].

APPLICATIONS FOR ROADWAY AUTHORISATIONS

The time limit to process authorisation applications for the installation of temporary electronic communications equipment or in the context of urgent interventions that are strictly necessary to ensure the consistent availability of electronic communications services and networks, has been reduced to 48 hours. Upon expiry of this time limit, a lack of response from the authorities constitutes acceptance.

[56] These measures were initially limited to the state of public health emergency period.

[57] The update was initially supposed to take place within a period of one month after the end of the state of public health emergency.

[58] The update was initially supposed to take place within a period of three months after the end of the state of public health emergency.

TEMPORARY INSTALLATIONS AND ADAPTATIONS

Any temporary construction, installation or adaptation necessary for the continuity of electronic communications networks and services is exempted from the formalities required by the French Urban Planning Code pursuant to its article L421-5 section b, and may remain in place up to and including 23 August 2020[59] in order to enable their removal.

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Find here the report addressed to the President of the French Republic relating to Ordinance No. 2020-320 of 25 March 2020, and here the report on Ordinance No. 2020-560 of 13 May 2020.

[59] The installation was initially possible for a period of up to two months after the end of the state of public health emergency.

ORDINANCE NO. 2020-353 OF 27 MARCH 2020 ON EXCEPTIONAL AID TO HOLDERS OF COPYRIGHTS AND NEIGHBOURING RIGHTS

In addition to the first support measures for the cultural industry announced by the Ministry of Culture on March 18th 2020, the Government introduced by Ordinance No. 2020-353 of 27 March 2020 (the "**Copyrights and Neighbouring Rights Ordinance**") a system of exceptional aid for holders of copyrights and neighbouring rights.

The measures provided by this Ordinance are designed to support the individual cultural and creation actors, who are directly affected by the Covid-19 epidemic and by the measures taken to limit its spread, particularly in view of the reduction in the exploitation of works resulting in particular from bans on gatherings, and closures of cultural venues and schools.

SYSTEM OF EXCEPTIONAL AID TO COPYRIGHTS AND NEIGHBOURING RIGHTS HOLDERS

The system provided by the Copyrights and Neighbouring Rights Ordinance is based on the - temporary and derogatory - ability entrusted to the collective management organisations of copyrights and neighbouring rights ("**CMO**"), to use a portion of the funds collected in the course of their missions to offer **direct financial aids to copyrights and neighbouring rights holders affected by the Covid-19 epidemic** and/or measures taken to limit its spread.

Resources of the CMO concerned by the system result from the funds mentioned by Article L.324-17 of the French Intellectual Property Code, which are in theory allocated to the funding of actions for helping the creation, dissemination of the performing arts, the development of artistic and cultural education, and the training of artists. It includes (i) 25% share of the funds collected under the private copying remuneration; and (ii) all of the funds considered "impossible to reallocate", i.e. funds collected by CMO which could not be reallocated to right holders, either for lack of international convention to which France is a party for foreign works, or because the beneficiaries of the works in question could not be identified or located.

According to the last annual reports of the Permanent Commission for Control of Royalties Collecting and Distributing Societies (*Commission permanente des Sociétés de Perception et de Répartition des Droits* or CPC SPRD) which is attached to the French Court of Auditors (*Cour des Comptes*), the abovementioned sums currently represent, for all of the concerned CMO:

- **73 million euros** in respect of the 25% share of the sums deriving from private copying remuneration; and
- **80 million euros** in respect to funds designated as "impossible to reallocate", noting that these funds are - under normal circumstances - blocked for a period of 3 to 5 years before they can be released by the CMO to financially support actions for helping the cultural industry.

Until **31 December 2020**, the various CMO (SACEM, SACD, SCAM, ADAGP, ADAMI, SPEDIDAM, SAIF, etc.) will therefore have the ability to immediately release significant resources to proceed to the payment of direct financial aid to the authors and artists affected by the current situation.

ELIGIBILITY AND PROCEDURES FOR ALLOCATING EXCEPTIONAL FINANCIAL AID

The Copyrights and Neighbouring Rights Ordinance remains silent as to the specific conditions for the payment of the financial aids it provides for.

Regarding the eligibility criteria, the Copyrights and Neighbouring Rights Ordinance only states that the aid will be intended for copyrights and neighbouring rights holders "whose income from the exploitation in France of protected works is seriously affected as a result of the health crisis caused on national territory by the covid-19 virus or the implementation of measures taken to limit the spread of the virus".

With regard to the allocation conditions of the financial aids, and insofar as no subsequent implementing Decree appears to be expected (neither according to the Ordinance on Copyrights and Neighbouring Rights nor according to the information available to us at the moment), it should be understood that the allocation procedures and rules will have to

be determined by each CMO according to the requests made by their respective members, under the supervision of the Minister of Culture and the Prime Minister.

The CMO are also subject to a permanent control by the French Court of Auditors.

Considering the differences in resources between the different CMO, it remains to be seen whether they will spontaneously organise themselves to pool the system and the processing of applications for financial aid, or whether they will ask the Ministry of Culture to organise such pooling.

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Find here the report addressed to the President of the French Republic relating to Ordinance No. 2020-353 of 27 March 2020.

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