



「COVID-19」

ORDINANCES PRESENTATION

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PRESENTATION OF ORDINANCES

EDITORIAL

Covid-19 Ordinances: A Slowdown in Business Activities in Parallel with a Legislative Rush

The Law No. 2020-290 of 23 March 2020 declared a state of public health emergency in France for a two-month period, expiring on 23 May at midnight [(24 May at zero hours)], which is likely to be extended until 23 July, at the request of the French Prime Minister Mr. Edouard Philippe.

It might be observed that since Gide was founded, almost 100 years ago, the legal profession has not seen such a set of far-reaching measures to protect the population and the economy.

This Booklet, which is up-to-date as at 30 April 2020, endeavors to provide our readers outside of 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, the so-called "Covid-19 Taskforce", from all practice areas and working alongside Gide's Scientific Counsel 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, real estate law, intellectual property and new technologies.

Hyperlinks direct the reader to the original texts (ordinances, reports, decrees, circulars) in order to provide the reader with a very practical tool.

The French legislator has sought, where possible, to suspend the course of time during this unprecedented crisis. An entire set of these exceptional provisions therefore aims at postponing time-limits and deferring the consequences of contractual breaches, such as the opening of insolvency proceedings (procédures collectives), without otherwise undermining parties' rights and obligations.

Whilst we are currently experiencing a dramatic legislative rush, business activities have inevitably slowed down.

The prospect of a softened lockdown, as of 11 May, inspires hope that we will progressively revert to usual laws, but it may nevertheless be expected that the exceptional measures will have a lasting effect - well beyond the end of the health emergency period.

This serves to push us to project ourselves forward into a "world to come" that may not be quite the same as the world as it was before the pandemic.

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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PRESENTATION OF ORDINANCES

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EMERGENCY LAW

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 **labor 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.

TIME-LIMITS, LITIGATION AND PROCEEDINGS

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 (PART I)

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 (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 (article 22)¹.

The following provisions shall apply to judicial courts, which are ruling in non-criminal matters during the period between 12 March 2020 and the expiry of a period of one month as of the end of the state of health emergency, i.e. not earlier than 23 June 2020 included (see [here](#) the debate around it and the latest approach adopted by the *Conseil d'Etat* [here](#) and by the Chancellery [here](#), as to the end date of the state of health emergency) (hereinafter the "**Period**").

SCOPE AND REFERENCE (ARTICLES 1 AND 2)

The Judicial Courts Ordinance recalls that the time limits provided for in the 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 (this ordinance is commented [here](#)).

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 during the Period.

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 exceeding the Period and must be published.

¹ The latter measures relating to co-ownership are described p. 82.

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).
- the court may, upon decision of its president, **rule as a single-judge formation in first instance and on appeal**, in all cases submitted to it, if the presentation of arguments, the disclosure of all relevant information (*clôture de l'instruction*) or the decision to rule according to the procedure without a hearing takes place during the Period (subject to specific provisions applicable to commercial and employment courts).
- 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 debates may take place without having the hearing advertised or in chambers.
- the setting up of dematerialized hearings by means of audiovisual telecommunication allowing to ensure the identity of the parties and guaranteeing the quality of the transmission and the confidentiality of the exchanges between the parties and their lawyers.

In particular, the judge remains the guarantor of the proper conduct of the debates and the respect of the rights of the defense and the adversarial process.

- The possibility of proceedings 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.

- 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 shall be brought to the attention of the parties by any means (without prejudice to the provisions relating to their notification).

Find [here](#) the report addressed to the President of the French Republic ([amendment](#) of 28 March 2020) and [here](#) the circular dated 26 March 2020 presenting ordinance No. 2020-304 of 25 March 2020.



ORDINANCES NO. 2020-305, NO. 2020-306, NO. 2020-405 AND NO. 2020-427 : 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](#).

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

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

On the one hand, when a time-limit for the judge to rule is set, this time-limit will only start running from the 1st day of the 2nd month following the end of the state of health emergency, namely, as of today, 1 July 2020 (subject to exceptions relating to municipal elections or entry and residence of foreigners).

On the other hand, pursuant to [ordinance No. 2020-305 of 25 March 2020 adapting the rules applicable before the administrative courts](#), when the investigation of a case ("*l'instruction*") had to be completed between 12 March 2020 and the end date of the state of health emergency (as of today, set at 23 May 2020, as confirmed by the **ordinance of the Conseil d'Etat No. 439903 of 10 April 2020**), this completion date is automatically postponed until the end of a period of one month following the end of the state of health emergency, without prejudice to the judge's right to postpone the completion date to a later date. As of today, the parties will be able to supplement their submissions at least until 23 June 2020.

However, the ordinance was subsequently amended to specify that the judge may - where the urgency or the status of the case so warrants - set the completion date of the investigation of the case ("*la clôture d'instruction*") to an earlier date. This solution is welcomed in order to avoid inappropriate or far-remote postponements, when the case is ready to be heard or needs to be tried rapidly. The judge will then have to expressly indicate that the postponement rule contained in the [ordinance No. 2020-305 of 25 March 2020 adapting the rules applicable before the administrative courts](#) does not apply.

The administrative judge is granted a similar prerogative as regards investigative measures ("*mesures d'instruction*") setting time-limits for the parties (for instance, to respond to a formal notice, submit a statement of case or a document, or rectify a claim). When the case is ready to be heard or when the urgency of the case so warrants, the judge may, for the purposes of an investigative measure, set a shorter time-limit than that resulting from the application of the special provisions owing to the health crisis. However, the second amending ordinance's wording is unsatisfactory. The first amending ordinance had expressly referred to article 3, 1° 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](#). According to this provision, the investigative measures due to lapse between 12 March 2020 and a period of one month after the end of the state of health emergency are automatically extended by two months after the end of this period (namely until 24 August inclusive, 23 August being Sunday). However, the second amending ordinance deleted the reference to the aforementioned ordinance, whilst still referring to "*the application of these provisions*" without defining them. In order to ensure the effectiveness of this text, one would need to imply that it is implicitly referring to article 3 of the aforementioned ordinance. However, this article has been amended to specify that the judge, taking into account the state of health emergency's restrictions, may modify or discontinue investigative measures or, "*where the interests for which he is responsible so justify*", "*discontinue their application or order new ones, setting a time-limit which he shall determine*". The administrative courts' applicable text, which provides solely for cases of urgency or cases ready to be heard, appears unnecessarily narrower. Let us hope that a future ordinance restores consistency between those texts.

Secondly, hearings may be held behind closed doors, with reduced public access, or by videoconference. If that is technically or materially impossible, the judge may decide to hear parties and their advocates by any electronic

communication means, including by telephone. If the parties are previously informed by way of a reasoned order, applications for summary proceedings may also be tried without a hearing.

Finally, and thirdly, [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.

This results in an extension of claims' time-limits, which expire between 12 March 2020 and 23 June 2020. More specifically, the texts provide that the time-limit for any claim before the administrative courts which expires "*between 12 March 2020 and the expiry of a period of one month from the date of the end of the state of health emergency*" will be extended. The prorogation will start from the latter date and will last for a period of time equal to the legally-allowed timeframe to act, provided that it does not exceed 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, the claim's time-limit will be extended. Provided that 23 May is chosen as the state of health emergency's end date - as did the *Conseil d'Etat* in its [ordinance No. 439903 of 10 April 2020](#) - claims should therefore be filed no later than Monday 24 August, inclusive.

By contrast, if an administrative act is duly notified or published on 24 April 2020, the time-limit to bring a claim against this act should expire on 25 June 2020 and should not be extended. Indeed, the expiry of the usual two-month clear days' time-limit would occur more than a month after the state of health emergency's end date, provided that it is not extended.

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 exercised within a certain timeframe, and this time-limit is supposed to expire during the aforementioned period, this remedy may validly be lodged up to a date calculated by postponing the starting date of the legally prescribed time-limit to one month after the state of health emergency's end date, 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 jeopardized 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 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 the end of the state of health emergency, namely on 24 May, for the remaining period as of 12 March 2020 and for at least 7 days.

Finally, we note that the scope of the time-limits' derogatory provisions is still susceptible to be adapted. The report to the President of the French Republic accompanying [ordinance No. 2020-427 of 15 April 2020 containing various provisions relating to time-limits to deal with the covid-19 epidemic](#) indicates that the reversion back to the usual rules for calculating time-limits could be implemented more promptly than expected, so as to support the recovery of the economy. One should remain vigilant with regard to future published texts.

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, the report addressed to the President of the French Republic relating to Ordinance No. 2020-405 and [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.



ORDINANCE NO. 2020-306 DATED 25 MARCH 2020 ON THE EXTENSION OF TIME-LIMITS DURING THE HEALTH EMERGENCY PERIOD AND THE ADAPTATION OF PROCEDURES DURING THE SAME PERIOD AND ORDINANCE NO. 2020-427 DATED 15 APRIL 2020 CONTAINING VARIOUS PROVISIONS RELATING TO TIME-LIMITS TO DEAL WITH THE COVID-19 EPIDEMIC

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 (the "**Time-Limits Ordinance**"), which lays down general provisions relating to time-limits, special provisions concerning time-limits in relation to administrative matters and proceedings before administrative courts, as well as tax specific provisions. 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. The Time-Limits Ordinance's specific consequences for this industry are addressed in the Urbanism Q&A².

EXTENSION OF TIME-LIMITS - GENERAL PROVISIONS

Scope of the Time-Limits Ordinance (Article 1)

Subject to certain exceptions, the following provisions shall apply to time-limits and measures that have expired or expire **between 12 March 2020 and the expiry of a one-month period** following the state of public health emergency's end date, namely as of today, until 23 June 2020 inclusive (hereinafter, the "**Period**"). Please note that this end date is calculated according to the method adopted by the law maker when the state of emergency following the 2015 attacks was extended, and as confirmed by the *Conseil d'Etat* on its website (see [here](#) the debate around it and the latest approach adopted by the *Conseil d'Etat* [here](#) and by the Chancellery [here](#), as to the end of the state of 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 avenue*" 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.).

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.

² See p. 67.

Provisions applicable to administrative and judicial measures (Article 3)

Time-limits expiring during the Period **shall be extended automatically for 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.

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 shall produce their effect 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 Period, as defined in the Time-Limits Ordinance. 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 seven days following the state of health emergency's end date.

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 Period defined by the Time-Limit Ordinance (i.e. between 12 March 2020 and the expiry of a one-month period following the end date of the state of health emergency), 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 maintained, 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 will be extended. Provided that the state of health emergency's end date remains the 23 May 2020 - as stated by the *Conseil d'Etat* in [its ordinance No. 439903 of 10 April 2020](#) - claims should therefore be filed no later than Monday 24 August, inclusive.

By contrast, if an administrative act is duly notified or published on 24 April 2020, the time-limit to bring a claim against this act, should expire on 25 June 2020 and should not be extended. Indeed, the expiry of the usual two-month clear days' time-limit, would occur more than a month after the state of health emergency's end date, provided that it is not extended.

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 jeopardized 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 the end of the state of health emergency, namely on 24 May, for the remaining period as of 12 March 2020 and for at least 7 days³.

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 following time-limits (i) shall be suspended from 12 March 2020 until the end of the Period (namely, as of today, 23 June 2020) 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 rescripts, 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 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 Articles 67 D and 345 bis 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*").

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



³ See p. 67 for a detailed analysis of the urban provisions.

ORDINANCE NO. 2020-303 OF 25 MARCH 2020 ON THE ADAPTATION OF THE RULES OF FRENCH CRIMINAL PROCEDURE TO DEAL WITH THE COVID-19 OUTBREAK

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 purpose of this text, which 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*, is “to ensure the continuity of the penal courts’ activity” during lockdown. It is applicable up to expiry of a one-month time limit with effect from the date the state of health emergency is declared over.

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 provides for an amendment of the use of available legal remedies, as follows:

- the time limits set by the provisions of the Code of Criminal Procedure 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.

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, **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.

Find [here](#) the report addressed to the President of the French Republic and [here](#) the circular presenting ordinance No. 2020-303 of 25 March 2020.



ORDINANCE NO. 2020-306 DATED 25 MARCH 2020 : RIGHT OF CREDITORS TO OBJECT TO CORPORATE TRANSACTIONS IN 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 order 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 emergency⁴, 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 - unless the emergency period is further extended - from 24 June next.

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 clerks⁵.

This is not, however, the approach proposed by the Chancery 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 Chancery, the order 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 Chancery is cautiously expressed "subject to the assessment of the courts"⁶, 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 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.

⁴ 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.

⁵ See Ministerial letter 50G-2020 dated 16 April 2020;

⁶ 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.

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.

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.



ORDINANCES NO. 2020-306, NO. 2020-315, NO. 2020-316 AND NO. 2020-427 : 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, declaring a "state of health emergency" for a period extending, at the time of writing, from 24 March to 24 May 2020 (hereinafter the "Emergency Period"), which may be extended by the legislator.⁷ 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.⁸ 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,⁹ amended by [Ordinance No. 2020-427 of 15 April 2020](#).

Article 1 of the Ordinance first of all establishes a "*legally protected period*" extending between 12 March 2020 and the expiry of a one-month period from the cessation of the state of health emergency (*i.e.*, in the current state of the texts in force, until 24 June 2020).¹⁰

⁷ Law No.2020-290, article 4.

⁸ Law No.2020-290, article 11.

⁹ 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).

¹⁰ According to Article 4 of Law No. 2020-290, the state of health emergency extends from 24 March to 24 May 2020. Article 1 of Ordinance No. 2020-306 provides for the extension of the deadlines that expire between 12 March 2020 and one month after the end of the state of public health emergency, which expires on 24 May 2020, which, in the current state of the legislation in force, brings the extension provided for by the Ordinance to 24 June 2020. The Report to the President accompanying Ordinance No. 2020-427 specifies in this respect that: « According to the procedures for ending the containment which will be defined by the Government, the end of the

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).

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.

"legally protected period » should be adapted accordingly to accompany, if necessary more rapidly than initially planned, the resumption of economic activity and the return to the ordinary law rules for calculating the time limits".

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 behavior 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.¹¹

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.

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.

¹¹ Articles L. 441-10 et seq. of the French Commercial Code.

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. The other Commercial Courts have done the same. Nevertheless, it is likely that the hearings will resume as of the date of the end of the containment measures. In the meantime, only cases relating to companies in difficulty (collective insolvency proceedings, etc.), as well as the most urgent applications, will be dealt with.

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, [here](#) the report relating to Ordinance No. 2020-316 and [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.



SOLIDARITY FUND AND DISTRESSED COMPANIES

ORDINANCE NO. 2020-317 OF 25 MARCH 2020 CREATING A SOLIDARITY FUND FOR COMPANIES SEVERELY AFFECTED BY THE ECONOMIC, FINANCIAL AND SOCIAL CONSEQUENCES OF COVID-19 AND RELATED CONTAINMENT MEASURES

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 a decree n°2020-394 of 2 April 2020 and then by a decree n°2020-433 of 16 April 2020**.

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 company and 29 February 2020).

- The second tranche allows businesses that benefited from the first tranche and that have at least one employee (on a long-term or limited time work contract) 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 and April 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:

Amount of the turnover	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 amount of the aid	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:

- It is subject to:
 - For the first tranche (March), a ban on receiving members of the public implemented between 1 and 31 March 2020; or (ii) 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);
 - For the first tranche (April), a ban on receiving members of the public implemented between 1 and 30 April 2020; or (ii) 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);
- It started its activity before 1 February 2020;
- It is not in judicial liquidation as of 1 March 2020.
- 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);
- 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;

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) 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 an old-age pension and did not receive, during the period from 1 March 2020 to 31 March 2020 (for the first tranche (March)) or from 1 April 2020 to 30 April 2020 (for the first tranche(April)), daily social security benefits in excess of EUR 800;
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;

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)	Third tranche
Application start date	1 April 2020, and at the latest 30 April 2020 (this deadline being extended until 15 May 2020 for artist-authors, members of joint farming groups and business located in Overseas France).	At the latest 31 May 2020.	At the latest 31 May 2020.
Procedure	Businesses will be able to make a request on the French inland revenue website by filing certain information (SIREN, SIRET, bank details, estimate of turnover loss, amount of aid requested, sworn statement (<i>declaration sur l'honneur</i>) 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).		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	<i>Direction Générale des Finances Publiques</i> (Public Finances Directorate General, or the "DGFIP").		
Control mechanisms	The DGFIP will carry out checks before any aid is provided. <i>Ex-post</i> 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.		Unknown.

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.



ORDINANCE NO. 2020-341 DATED 27 MARCH 2020 ADAPTING RULES RELATED TO DIFFICULTIES FACED BY COMPANIES AND FARMS DUE TO THE STATE OF PUBLIC HEALTH EMERGENCY AND AMENDING SOME PROVISIONS OF CRIMINAL PROCEDURE

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 (hereinafter, the "**Insolvency Ordinance**") in order to adapt some provisions of Book VI of the French Commercial Code, especially in relation to applicable time periods, due to the state of public health emergency.

Article 5 provides that the Insolvency Ordinance applies to ongoing insolvency proceedings.

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

PROVISIONS RELATED TO THE OPENING REQUIREMENT OF AMICABLE AND JUDICIAL PROCEEDINGS DUE TO A DEBTOR'S INSOLVENCY (Article 1, I, 1°)

Article 4 of Law No. 2020-290 of 23 March 2020 set the duration of the state of public health emergency (hereinafter the "**Crisis Period**") at two months. It should then end on 23 May 2020.

Insolvency Ordinance provides that, until the expiry of a period of three months after the end of the Crisis Period, as the aforementioned law stands, until 23 August 2020 included¹² (hereinafter, "**Period 1**"), the debtor's insolvency will be assessed as of existing on 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, on 12 March 2020, was not insolvent or had been insolvent for less than 45 days but which would be insolvent for more than 45 days during Period 1 could, during Period 1, may file for the opening of a conciliation proceedings (while it does not meet the required opening conditions, i.e. being insolvent for less than 45 days);
- a debtor which, on 12 March 2020, was not insolvent but becomes insolvent during Period 1, can, during Period 1, may file for the opening of a safeguard proceeding (while it does not meet the required opening conditions, i.e. not being insolvent).

Nevertheless, the Insolvency Ordinance specifies that a debtor may, if he is insolvent during Period 1, file for the opening of reorganization, liquidation proceeding or professional recovery proceeding (insolvency being a requirement for the opening of such proceedings).

Since the opening of these proceedings is not stayed by the Insolvency Ordinance, employees' claims fallen due on the opening date of the said proceeding, could be borne by the employee's claims public insurance guarantee (AGS), within the limits set by the law.

The Insolvency Ordinance 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.

¹² See [here](#) the debate around it and the latest approach adopted by the *Conseil d'Etat* [here](#) and by the Chancellery [here](#), as to the end date of the state of health emergency.

PROVISIONS RELATED TO THE EXTENSION OF AMICABLE AND JUDICIAL PROCEEDINGS DURATION

Provisions specific to the extension of the duration of the conciliation proceeding (Article 1, II)

The Insolvency Ordinance provides that the conciliation proceeding, which duration is set in principle for a maximum period of 5 months, pursuant to provisions of Article L. 611-6 of the French Commercial Code, is automatically extended for a period equivalent to the duration of Period 1.

The Insolvency Ordinance further provides that if a conciliation proceeding fails (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.

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

The Insolvency Ordinance provides that, until the expiry of a period of **one month** after the end of the Crisis Period, as the aforementioned law of 23 march 2020 stands, until 23 June 2020 (hereinafter, "**Period 2**"), the following time periods are automatically extended, for a time period equivalent to that of Period 2 (i.e. 3 months):

- deadlines relating to observation period, plan, simplified judicial liquidation and observation period set by the Court of Appeal pursuant to Article L. 661-9 of 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.

The Insolvency Ordinance, also provides that, until expiration of Period 1, 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 equivalent to Period 1, of all the deadlines imposed on them by Book VI of the French Commercial Code.

Provisions specific to the extension of safeguard and reorganization plans (Article 1, III)

The Insolvency Ordinance provides that the duration of a safeguard or reorganization plan under way may be extended under the following conditions:

Until the expiration of Period 1, (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 within the limit of the duration of Period 1 or (ii) the Public Prosecutor's Office may request this extension for a maximum period of one year.

Following the expiration of Period 1 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 the expiry of Period 2, the plan duration is automatically extended for a period equivalent to Period 2 (cf. 1.2.2 above).

PROVISIONS RELATED TO THE REDUCTION OF TIME PERIOD ALLOWING THE TAKE OVER OF EMPLOYEES CLAIMS BY THE AGS (Article 1, I, 2)

The Insolvency Ordinance 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.

Indeed, until the expiration of Period 1, 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.

PROVISIONS RELATED TO THE ADAPTATION OF PROCEEDINGS AND COMMUNICATIONS DUE TO THE STATE OF PUBLIC HEALTH EMERGENCY (Article 2, I)

The Insolvency Ordinance provides that, until the expiry of the Period 2:

- the "intermediate" hearing, scheduled two months after the opening of a reorganization proceeding 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)

The Insolvency Ordinance provides that for farms, until the expiry of Period 1, in the context of an amicable settlement proceeding (*réglement 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.

Find [here](#) the report addressed to the President of the French Republic relating to Ordinance No. 2020-341 and [here](#) the circular presenting articles 1, 2, 3 and 5 of ordinance 2020-341 of 27 March 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 AND OTHER DOCUMENTS AND INFORMATION THAT LEGAL PERSONS AND ENTITIES WITHOUT LEGAL PERSONALITY UNDER PRIVATE LAW ARE REQUIRED TO FILE OR PUBLISH IN THE CONTEXT OF THE COVID-19 EPIDEMIC

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 health emergency, i.e. at the earliest 23 June 2020 included (since the state of health emergency is supposed to last until 23 May 2020 at midnight¹³, 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.

¹³ See [here](#) the debate around it and the latest approach adopted by the *Conseil d'Etat* [here](#) and by the Chancellery [here](#), as to the end date of the state of health emergency.

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 18 million euros 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 November 30, 2019 and the expiry of a period of one month after the end date of the state of health emergency, i.e. at the earliest 23 June 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 health emergency, i.e. at the earliest 23 June 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 health emergency, i.e. at the earliest 23 June 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 health emergency, i.e. at the earliest 23 June 2020.

Find [here](#) the report addressed to the President of the French Republic relating to Ordinance No. 2020-318.



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 ASSEMBLIES 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 assemblies 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*".

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.

This option to hold the assembly 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.

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 IN THE EVENT OF EXCEPTIONAL AND UNAVOIDABLE CIRCUMSTANCES OR *FORCE MAJEURE*

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 included), 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 included, 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.



TAX LAW

ORDINANCES NO. 2020-304, NO. 2020-305 AND NO. 2020-306 OF 25 MARCH 2020 : TAX MEASURES

APPLICATIONS THAT CAN BE FILED WITH A BUSINESS TAX CENTER (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*), and payroll tax (*taxe sur les salaires*).

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*).

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.

These payment deferrals apply to March, April and May instalments. The measure may be extended to future installments.

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.

Extension of the simplification related to paid leave

The French tax authorities extend to the lockdown period the simplification provided for in its guidelines¹⁴ 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.

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 March 25 2020 two Ordinances (no 2020-304 et no 2020-305) adapting the rules applicable to civil jurisdictions¹⁵ (ruling in non-criminal matters) and to administrative jurisdictions¹⁶.

¹⁴ BOI-TVA-DECLA-20-20-10-10 n° 260.

¹⁵ 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*).

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 March, 12 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.

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

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 March 26, 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.

In essence, the 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 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, 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 will be suspended during the reference period:

- 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 December 31, 2020;
- the deadlines relating to the conduct of audit and investigation procedures in tax matters, including the deadlines applicable to tax rulings;
- 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).

It is to be noted that the deadlines that should have started to run during the reference period will only start to run at the end of such period.

However, the Government Ordinance expressly provides that this "mechanism for postponement of term and expiry date" does not apply to tax returns. Please see our article "*Covid-19: Impact on tax returns and certain formalities*" for more information on this subject.

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 March 27, 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 April 2, 2020 to provide further details regarding this measure¹⁷.

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: Engagements imposés aux grandes entreprises bénéficiant de mesures de soutien en trésorerie de l'Etat](#)" for more information on this subject.

REFUSAL OF AID FOR BUSINESSES IN A NON-COOPERATIVE STATE

In a letter dated April 23, 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 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 the 25 March 2020 ordinance no 2020-317.

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

¹⁷ See <https://www.economie.gouv.fr/files/files/PDF/2020/covid-faq-termes-references-dividendes.pdf>

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.

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.



EMPLOYMENT LAW

ORDINANCE NO. 2020-322 OF 25 MARCH 2020 AND DECREE N° 2020-434 OF 16 APRIL 2020 : SUPPLEMENTARY INDEMNITY (ARTICLE L.1226-1 OF THE FRENCH LABOR CODE) AND SUMS ALLOTTED UNDER THE MANDATORY AND OPTIONAL 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 to a vulnerable person) have been added entitling those eligible to 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 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, on condition that they can provide justification for (i) a leave of absence specifically obtained within the scope of the Covid-19 epidemic (e.g., childcare leave [the child must be under 16 years of age] or caregiver leave); 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 n° 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 n° 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;
- from 12 March to the end of the state of 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.

According to a press release from the Ministry of Labor dated 17 April 2020 as of 1 May , employees on leave of absence for childcare or care to a vulnerable person will be placed in a situation of partial activity and will receive a partial activity indemnity of 70% of their gross salary.

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).

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 labor 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 Labor 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.

Find [here](#) the report addressed to the President of the French Republic relating to Ordinance No. 2020-323 of 25 March 2020.



DECREE NO. 2020-325 OF 25 MARCH 2020 RELATIVE TO PARTIAL ACTIVITY, ORDINANCE NO. 2020-346 OF 27 MARCH 2020 AND DECREE NO. 2020-435 OF 16 APRIL 2020 RELATIVE TO THE EMERGENCY MEASURES IN TERMS OF 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 labor 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 EXPANDED 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 reference monthly salary 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.

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).

Precisions regarding the basis of the partial activity indemnity and compensation

Under Articles R. 5122-12 and R. 5122-18 of the French labor 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 in 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% of 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.

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.

Find [here](#) the report addressed to the President of the French Republic relating to Ordinance No. 2020-385 of 1 April 2020.



ORDINANCE NO. 2020-389 OF 1 APRIL 2020 RELATIVE TO THE EMERGENCY MEASURES TAKEN REGARDING STAFF REPRESENTATIVE BODIES

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.

SUSPENSION OF ONGOING ELECTORAL PROCESSES

The IRP Ordinance provides 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 end of the state of public health emergency being set for 23 May 2020 at midnight¹⁸, ongoing electoral processes are therefore suspended until 23 August 2020 included (unless extension of the state of public health emergency).

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 administrative authority and the judicial judge;
- the timeframe for the administrative authority to decide on these disputes.

Where a claim has been submitted before the administrative authority or where the latter has reached 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. currently from Monday 24 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.

¹⁸ See [here](#) the debate around it and the latest approach adopted by the *Conseil d'Etat* [here](#) and by the Chancellery [here](#), as to the end date of the state of health emergency.

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 where appropriate, 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 allows it.

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 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.

Find [here](#) the report addressed to the President of the French Republic relating to Ordinance No. 2020-389 of 1 April 2020.

PUBLIC LAW AND ENVIRONMENT

ORDINANCES NO. 2020-330, NO. 2020-347 AND NO. 2020-391 : 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 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 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 (public interest groups, independent administrative authorities, etc.).

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

ADJUSTMENTS AFFECTING THE OPERATION OF TERRITORIAL 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 ;
- the executive branch of any territorial 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 (Ordinance n° 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 company (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 Government budget was not adopted by the Parliament, local executive bodies may, without prior authorisation from their respective deliberative bodies, commit, liquidate and mandate the totality of the investment expenditure (excluding debt annuities and programme authorisations) provided for in the Government 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 territorial 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 Government budget was not adopted by the Parliament, 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 the end of the state of 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 (<i>taxes foncières</i>)	15 or 30 April 2020	3 July 2020
Businesses' property tax (<i>cotisation foncière des entreprises</i>)	15 or 30 April 2020	3 July 2020
"GEMAPI" tax	15 or 30 April 2020	3 July 2020
Departmental transfer duties for real property (<i>DMTO des départements</i>)	15 or 30 April 2020	3 July 2020
Local tax on outdoor advertising (<i>taxe locale sur la publicité extérieure</i>)	1 st July 2020	1 st October 2020
Tax on electricity consumption (<i>taxe sur la consommation finale d'électricité</i>)	1 st July 2020	1 st October 2020
Tax for the removal of household waste (<i>redevance d'enlèvement des ordures ménagères</i>)	1 st July 2020	1 st September 2020

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

From 12 March 2020 until the end of the state of health emergency, plus one month:

Use of dematerialized meetings or videoconferencing for the adoption of deliberations of the following institutions :

- 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

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 of the state of health emergency. The extension of office term is until 30 June 2020 at the latest or, where an election must take place, until 31 October 2020.

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, and [here](#) the report relating to Ordinance No. 2020-391 of 1 April 2020.



ORDINANCES NO. 2020-306 OF 25 MARCH 2020 AND NO. 2020-427 OF 15 APRIL 2020 (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*").

Real estate industry players rapidly deemed these measures 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.

Mindful of these arguments, the Government adopted new [Ordinance No. 2020-427 on 15 April 2020 containing various provisions relating to time-limits to deal with the covid-19 epidemic](#), thereby adjusting and supplementing Ordinance No. 2020-306 of 25 March 2020's provisions, particularly 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*¹⁹.

This note has therefore been updated to reflect these modifications.

As a preliminary, we note that the uncertainties surrounding the current end date of the state of health emergency has been resolved by the *Conseil d'Etat*. The latter, in [Ordinance No. 439903 of 10 April 2020](#), settled on 23 May 2020. Similarly, the circular presenting the provisions of Title I of Ordinance No. 2020-427 of 15 April 2020 on various provisions relating to time-limits to deal with the covid-19 epidemic specifies that "*to date, taking into account the provisions of article 4 of the emergency law of 23 March 2020 to deal with the Covid-19 epidemic, the duration of the state of public health emergency is scheduled to end on 24 May 2020 at 00.00 hours, so that the "legally protected period" would end one month later, i.e. on 23 June at midnight*".

As such, the legally-protected period defined by Ordinance No. 2020-306 running from 12 March 2020 to *the expiry of a one-month period from the end-date of the state of health emergency*, will end at midnight on 23 June 2020.

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

- the time-limits for challenging a planning permission due to expire within the legally-protected period (from 12 March 2020 until the expiry of a one-month period from the end-date of the state of health emergency, namely midnight on 23 June), which were previously extended for two months from 24 June 2020, are now only suspended for the state of health emergency's duration and will resume from 24 May 2020. The "buffer" month is thus dispensed with, and the time-limits are suspended and no longer interrupted;
- the time-limits for reviewing ("*le délai d'instruction*") planning permissions and for works' compliance inspection ("*le délai de récolement*") are only suspended until the end of the state of health emergency. They will resume from 24 May 2020, instead of 24 June for the remaining limitation period. The "buffer" month is also dispensed with here.

We note that the time-limits established in this amending Ordinance are still subject to further adjustments and could be potentially reduced. The President of the French Republic's report accompanying this new Ordinance indeed indicates that subject to the conditions as defined by the Government for ending the lockdown, the reversion back to the usual rules for calculating time-limits could be implemented more promptly than expected, so as to support the recovery of the economy. One should remain vigilant with regard to future published texts. Article 23 of Ordinance No. 2020-460 of 22 April 2020 also introduces new measures in the area of town planning. In particular, the regulatory authority can now set, by decree, the resumption of the time limits for processing town planning authorisations under the conditions set by

¹⁹ This addition is the result of Ordinance No. 2020-460 of 22 April 2020 referred to hereafter.

article 9 of the 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.

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

Ordinance No. 2020-427 introduces article 12 bis providing for:

- on the one hand, 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, are suspended - and no longer extended;
- on the other hand, a shorter reference period.

Thus, time-limits to appeal a decision that have not expired before 12 March 2020 are suspended. They will resume once the state of emergency has ended, namely on 24 May 2020 - and no longer at the expiry of a one-month period following the end-date of the state of health emergency - 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 the end-date of the state of public health emergency, is postponed to the end of the public health emergency.

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 state of public health emergency 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, namely one month.
- 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 state of public health emergency 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 1st June (time-limits expiring on Saturdays or Sundays are extended until the next working day).
- Assuming that a planning permission is duly published on 12 May 2020, namely during the state of public health emergency, 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 or Sundays are extended until the next working day).

The Ordinance of 15 April 2020 thus rectifies the paradoxical effect of the Ordinance of 25 March 2020 which allowed planning permissions published in January to be challenged until August, whilst time-limits to challenge planning permissions published in May 2020 would have already expired.

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.

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

The Ordinance of 15 April 2020 does 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 remain in force.

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 2020 and 23 June 2020 inclusive (on expiry of the legally-protected period defined above) 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 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 before 26 March 2020.

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 also appears to be capable of being deferred until 9 July 2020 midnight, as the time-limit for notification expires within the legally-protected period.

On the contrary, 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 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 23 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 two months "*following the end of this period*", i.e. until 24 August 2020.

However, a planning permission which period of validity expired before 11 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?

Ordinance No. 2020-427 introduces Article 12 ter providing for the abridgment of the legally-protected period during which the time-limits for reviewing planning permission's applications ("*demandes d'autorisation*"), town planning certificates ("*certificats d'urbanisme*") and prior declarations ("*déclarations préalables*") are suspended.

Thus, 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 (as opposed to 24 June 2020 as initially set).

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 state of public health emergency 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 during the state of public health emergency but will start running again after its end, namely on 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.

Moreover, Article 12 ter does not seem to apply to the time-limit granted to the administration to request additional documents.

What is the time-limit for requesting additional documents?

Surprisingly, Article 7 of the original Ordinance should still be applicable. The time-limit for requesting additional documents, which is in principle one month from receipt of the planning permission's application, would therefore be suspended as of 12 March 2020 and would only start running again from 24 June 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 July 2020. The time-limit to review the planning permission's application would thus only start running once the additional documents - which themselves must be submitted within three months following such a request - have been received.

Article 12 ter's stated purpose in the French President of the Republic's report accompanying the amending Ordinance of 15 April 2020 to "*revive the real estate sector as swiftly as possible, once the health crisis ends, by delaying as least as possible the issue of planning permissions*" has therefore not been fully achieved. Indeed, despite a shortening of the time-limits for reviewing planning permission's applications, the starting point of those filed between 13 February and 12 March 2020 is postponed by several months, as the time-limit for requesting additional documents expires only after 24 June 2020.

HOW IS THE TIME-LIMIT FOR WITHDRAWING PLANNING PERMISSION'S APPLICATION APPLIED?

Article 7 of the Ordinance of 25 March 2020 continues to be applicable to time-limits for withdrawing planning permission's applications ("*délai de retrait des autorisations d'urbanisme*").

Therefore, the time-limit for withdrawing planning permission's applications is also suspended as of 12 March 2020 and will resume, for the outstanding limitation period, on 24 June 2020.

Similarly, regarding permissions and prior declarations which time-limit for withdrawal was to start running between 12 March 2020 and 23 June 2020, the start date is postponed to 24 June 2020.

Again, it would seem that the Government has not fully achieved its goal. Whilst the stated purpose is to allow the real estate sector to rapidly recover, and, as in this sector, as mentioned by the Government "*the entirety of the process (financing, notarised deeds, construction sites) is (...) blocked*" until the planning permission is final, that is to say, unable to be appealed, and withdrawn, were only shortened the time-limits to appeal and not the time-limits for withdrawal.

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 on the end-date of the state of public health emergency - namely 23 May 2020 - and not one month later.

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 Ordinance of 15 April 2020 provides for adjustments to public inquiries already underway as of 12 March 2020, or to be held between 12 March and 23 June 2020 inclusive.

For inquiries of a national scope and urgent nature, 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 23 June 2020 inclusive, 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 until the expiry of a period of seven days following the end-date of the state of health emergency, namely, as of today, 30 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 as of 12 March 2020 - will resume as of the entry into force of Ordinance No. 2020-427 of 15 April 2020, namely as of 17 April 2020.

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.



ORDINANCES NO. 2020-305, NO. 2020-306, NO. 2020-405, NO. 2020-427 AND NO. 2020-460: ENVIRONMENTAL LAW IMPLICATIONS OF A STATE OF 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**") was amended by Ordinance No. 2020-427 of 15 April 2020 *on various provisions relating to deadlines for dealing with the covid-19 epidemic* and then by Ordinance No. 2020-460 of 22 April 2020 on various measures for dealing with the covid-19 epidemic.

The provisions of the amended Ordinance No. 2020-306 are applicable "*to the deadlines and measures which have expired or which expire between 12 March 2020 and the expiry of a period of one month from the date of cessation of the state of public health emergency declared under the conditions of Article 4 of the aforementioned Law of 23 March 2020*".

According to article 4 of the aforementioned Law, "*the state of health emergency is declared for a period of two months from the entry into force of this law*" and article 22 of the same Law specifies that it "*will enter into force immediately and will be executed as a law of the State*". The law having been published in the Official Journal of 24 March 2020, the state of public health emergency should thus, unless modified²⁰, end on 23 May 2020 at midnight (see *the fact sheet of the Council of State ("Conseil d'Etat") on the adaptation of procedures before the administrative courts* and its ordinance of 10 April 2020, *Syndicat des avocats de France*, No.439903).

Thus, subject to further adjustments, the period during which the derogatory measures provided for by the Deadline Ordinance runs from 12 March to 23 June 2020 at midnight (hereinafter the "**Derogation Period**").

How do time limits for appeals against environmental permits²¹ 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 included (see the aforementioned Council of State ("*Conseil d'Etat*") fact sheet). 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.

The report to the President of the Republic on Ordinance No. 2020-427 of 15 April 2020 does not rule out the possibility of shortening the state of emergency: "*According to the procedures for exiting the confinement, which will be defined by the Government, the end of the "legally protected period" will have to be adapted accordingly to accompany, if necessary more rapidly than initially planned, the resumption of economic activity and the return to the rules of ordinary law for calculating time limits*". But at the time of the publication of this booklet, an extension is being considered.

²¹ Under the meaning of Article L. 181-1 *et seq.* of the French Environmental Code.

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".

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*".

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 (subject to the subsequent modification of the state of health emergency), 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 3-month period set for the prefect to decide expires during the Derogation Period²². The 3-month period is suspended during the Derogation Period and will resume as of 24 June 2020 (subject to the subsequent modification of the state of health emergency).

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 which must be the subject of a public enquiry during the Derogation Period:

"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 23 June 2020 (subject to a subsequent change in the duration of public health emergency), 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 the decision taken on the organizational arrangements for each public inquiry.

²² 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".

- 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 the expiry of a period of seven days following the date of cessation of the state of public health emergency declared under the conditions of article 4 of the above-mentioned Law of 23 March 2020"*, i.e. - unless the duration of the state of public health emergency is modified - until 30 May at midnight.

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*.

This Ordinance, as amended, provides in particular that :

- (i) the closures of investigations, the date of which was initially set between 12 March 2020 and the date of the end of the state of public health emergency, shall be automatically extended by one month after the end of the state of emergency (i.e. until 23 June 2020 included, subject to the further modification of the state of public health emergency), unless this period is postponed 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 limits for the investigative measures prescribed by the administrative courts (for example, to regularize an appeal, to produce a document or written pleadings) are automatically extended until 24 August 2020 included (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.

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.



ORDINANCE NO. 2020-319 OF 25 MARCH 2020 ON VARIOUS MEASURES TO ADAPT THE RULES FOR THE AWARD, PROCEDURE OR EXECUTION OF CONTRACTS SUBJECT TO THE FRENCH CODE OF PUBLIC PROCUREMENT AND PUBLIC CONTRACTS THAT DO NOT FALL UNDER IT DURING THE HEALTH CRISIS RESULTING FROM THE COVID-19 EPIDEMIC

In accordance with the authorisation given by 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.

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 the end of the state of health emergency declared by article 4 of the law of 23 March 2020, extended by two months.

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, the 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 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 are authorised 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 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.

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](#)).

Find [here](#) the report addressed to the President of the French Republic relating to Ordinance No. 2020-319 and [here](#) the report relating to Ordinance No. 2020-460 of 22 April 2020.



ORDINANCE N°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

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.

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.

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.

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.

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 prefectural 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.

Find [here](#) the report addressed to the President of the French Republic relating to Ordinance No. 2020-391 of 1 April 2020.



REAL ESTATE LAW

ORDINANCE 2020-304 OF 25 MARCH 2020 ON ADJUSTMENTS TO THE RULES APPLICABLE TO COURTS OF LAW RULING IN NON-CRIMINAL MATTERS AND TO CO-OWNERSHIP PROPERTY MANAGER CONTRACTS (PART II)

Passed by the French government pursuant to the emergency law in response to the Covid-19 epidemic, Ordinance 2020-304 of 25 March 2020 as amended by Ordinance 2020-460 of 22 April 2020 (the "**Ordinance**") adjusts 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 matters²³. The adjusted rules are applicable from 12 March 2020 until two months after the state of public health emergency has been lifted.

Article 11(I)(2)(j) of the emergency law in response to 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 for 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, among other matters. The purpose of the Ordinance's provisions in this regard is to ensure continuity in managing co-ownerships throughout the health crisis.

CO-OWNERSHIP PROPERTY MANAGER CONTRACTS

The Ordinance provides that "*if a property manager's contract expires or has expired over the period [between 12 March 2020 and the end of two months after the state of public health emergency has been lifted], 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 furthermore specifies that a new contract must enter into effect "*no more than eight months after the end of the state of health emergency*". As things currently stand, the state of public health emergency will not be lifted until midnight on 23 May 2020 at the very earliest.

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 after 12 March 2020 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 awarded by the next co-owners' general meeting (the Ordinance moreover providing that such meeting must be held "*within no more than eight months after the end of the state of health emergency*").

Moreover, the Ordinance 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.

²³ This part of the Ordinance is analysed p. 8.

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 the end of two months after the state of public health emergency has been lifted], it shall be renewed until the next co-owners' general meeting"*, it being reiterated that such general meeting must take place *"within no more than eight months after the end of the state of health emergency"*. 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]"*.

You will 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 and [here](#) the report addressed to the President of the French Republic relating to Ordinance No. 2020-460 of 22 April 2020.



ORDINANCE 2020-316 OF 25 MARCH 2020 ON THE PAYMENT OF RENT AND WATER/GAS/ELECTRICITY BILLS FOR PROFESSIONAL PREMISES LEASED BY BUSINESSES AFFECTED BY THE SPREAD OF THE COVID-19 EPIDEMIC

Emergency law 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 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 has subsequently added to the Business Premises Ordinance (Decree 2020-378 of 31 March 2020, available [here](#)). It incorporates, by reference, certain provisions of Decree 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**”) since amended by Decree 2020-394 of 2 April 2020 (and Decree 2020-433 of 16 April 2020 and available [here](#)). As a result, in order to ascertain which businesses can benefit from the Government’s new measures, we need to consult all three of the above-mentioned decrees.

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 “private individuals [or] legal entities operating an economic activity” and satisfying all of the following criteria:

1. Tax resident in France;
2. Business established prior to 1 February 2020;
3. Not in compulsory liquidation at 1 March 2020;
4. No more than ten employees (calculated as set out under Article L.130-1(I), French Social Security Code);
5. Revenue 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);
6. Business not controlled (as defined under Article L.233-3, French Commercial Code) by a commercial company;
7. 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) in point 7 above as being cumulative: Article 1 of Decree 2020-378 of 31 March 2020 refers to subsections 1 “and” 2 of Article 2 of Decree 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 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 criteria and are therefore eligible for the protective measures of the Business Premises Ordinance, individuals and legal entities must 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, businesses must not only be eligible for aid from the Solidarity Fund but have actually applied for such aid. Applications must be submitted online by 31 May 2020, 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 Government had initially said that microenterprises (as defined under Decree 2008-1354 of 18 December 2008: i.e. enterprises with fewer than 10 employees and annual revenue or a balance-sheet total of less than €2 million) would be able to benefit from the specific measures on payment of rent and tenancy charges, the conditions of the Business Premises Ordinance and the above-mentioned implementing decrees (despite having been relaxed by Decree 2020-433 of 16 April 2020) significantly restrict the application of these measures.

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 23 July 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 unless extended).

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 23 May 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.

Thus, Article 4 of ordinance 2020-306 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 the end of one month after the state of public health emergency has been lifted, i.e. 23 June 2020 inclusive at the earliest]”. 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 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 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 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 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.

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 purpose is to extend the length of the winter ban on tenant evictions –the so-called “winter truce”– by two months, i.e. up to 31 May 2020.

CONSEQUENCES ON THE EXTENSION OF THE WINTER BAN ON TENANT EVICTIONS

The so-called “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”*²⁴.

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 31 May 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”*²⁵ (the case of “squatters”).

This two-month extension also concerns the French overseas departments and regions, as well as Wallis-and-Futuna, for which –owing to specific climate constraints– the period chosen as the “winter truce” is set by the prefects. Furthermore, a second ordinance to come will determine the cases of Saint-Martin, Saint-Barthélemy and Saint-Pierre-et-Miquelon, after consultation of the concerned collectivities, in compliance with the organic laws that apply to them.

CONSEQUENCES ON UTILITY SERVICE SHUT-OFFS

Also with a view to dealing with the social consequences of the current health crisis, this Ordinance extends up to 31 May 2020, as an exceptional measure for 2020, 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 principal place of residence, including by terminating the contract, due to unpaid utility bills”*²⁶.

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.

Find [here](#) the report addressed to the President of the French Republic relating to Ordinance No. 2020-331 of 25 March 2020.



²⁴ Paragraph 1 of Article L.412-6 of the French Code of Civil Enforcement Procedures.

²⁵ Paragraphs 1 and 2 of Article L.412-6 of French Code of Civil Enforcement Procedures.

²⁶ Article L.115-3 of the French Social Action and Family Code.

INTELLECTUAL PROPERTY AND NEW TECHNOLOGIES

ORDINANCES NO. 2020-306 OF 25 MARCH 2020 AND NO. 2020-427 OF 15 APRIL 2020 (TIME-LIMITS): CONSEQUENCES IN TERMS OF INTELLECTUAL PROPERTY

In the context of the current health crisis, the Government has issued an ordinance postponing practically all procedural deadlines to a maximum of three months after the lifting of the state of emergency.

The state of health emergency entered into force on 24 March 2020 for a duration of two months, which may be modified. Ordinance No. 2020-306 of 25 March 2020²⁷, amended by Ordinance No. 2020-427 of 15 April 2020²⁸ and clarified by two circulars of 26 March 2020 and 17 April 2020 provides, in substance, that the deadlines that expire between 12 March 2020 and one month after the end of the state of health emergency are postponed for the duration of the period that was legally required to act, up to a limit of two months.

To propose a concrete example of the mechanism established by the Ordinance, we will assume that the state of emergency actually ends on 23 May 2020 at midnight²⁹. In such an assumption, the deadlines supposed to end between 12 March and 23 June 2020 would be postponed to 23 August 2020 at the latest. In this respect, a distinction should be made between cases where the initial deadline was two months or more and those where it was less than two months. In the first case, the deadline would be 23 August 2020. In the second case, the deadline would be earlier, once the initial deadline had expired (e.g. 23 July if the initial deadline was one month³⁰). In its Report to the President of the Republic³¹ published on 16 April 2020, the Government points out that the date for the completion of this exceptional regime is set only provisionally and that, in view of the presidential address of 13 April 2020 indicating that the end of the lockdown should be organised as from 11 May 2020, *"it will be necessary to adapt the end of the 'legally protected period' accordingly to accompany, where appropriate more quickly than initially planned, the resumption of economic activity and the return to the ordinary rules for calculation of time limits"*. On 28 April 2020, it was announced that the state of health emergency will probably be extended until 23 July 2020.

The abovementioned ordinance³², which is general in scope, applies in particular to the civil time limits provided for by French law on intellectual property³³.

At the same time, intellectual property offices and courts are adapting their organizations and/or postponing the time limits for administrative and judicial proceedings.

INPI

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 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.

By decision of March 16, 2020, the INPI had decided that the time limits under its authority, which had not expired as of March 16, 2020, were all (with the exception of trademark opposition proceedings) extended to 4 months. However,

²⁷ 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.

²⁸ Ordinance No. 2020-427 of 15 April 2020 laying down various provisions on time limits for dealing with the covid-19 pandemic

²⁹ See [here](#) the debate around it and the latest approach adopted by the *Conseil d'Etat* [here](#) and by the Chancery [here](#), as to the end date of the state of health emergency.

³⁰ Due to the complexity of the rules for calculating time limits, there is a margin of uncertainty of one day, linked to the fact that the additional time limit could start to run the day after the state of emergency ceases.

³¹ Report to the President of the Republic on Ordinance No. 2020-427 of 15 April 2020 on various provisions relating to deadlines for dealing with the covid-19 pandemic

³² 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.

³³ With the exception of those resulting from international agreements or European texts.

Decision No. 2020-33 of March 26, 2020 revoked these initial provisions, due to the intervention of the aforementioned ordinance, 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.

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 summonses to oral proceedings.

On the other hand, the EPO is postponing, until further notice, all oral proceedings scheduled until 30 April 2020 in examination or opposition proceedings, except those for which the holding of the oral proceedings by videoconference has already been confirmed or accepted by the applicant.

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.

Deadlines expiring on or after 15 March 2020 were initially extended to 17 April 2020. These deadlines are subject to a further extension until 4 May 2020.

WIPO

In two communiqués of March 16 and 17, 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 April 9, 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. 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 table³⁴ of Covid-19-related provisions taken by various foreign national intellectual/industrial property offices (the latest version on line is dated April 27, 2020). This table covers about thirty countries as well as the African Intellectual Property Organization (OAPI).

FRENCH JURISDICTIONS

Since Monday, March 16, 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 *assignments 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 provides that in certain civil cases, the courts may decide that the proceedings will take place without hearings. Parties have 15 days to oppose such a decision. On 27 April 2020, the President of the Paris Judicial Court issued an order stating that in most cases where the pleadings were scheduled for the 16 March - 24 June period, the judgment will be rendered without an oral hearing, failing opposition by a party. On 23 April, the Paris Court of appeal had issued a similar order concerning the pleadings scheduled for the 16 March - 24 May period.

Deliberations scheduled during this period will be extended to a date to be communicated at a later date.

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.



³⁴ Available at <https://www.inpi.fr/fr/internationales/covid-19-les-dispositions-prises-l-international-par-les-offices-de-propiete-intellectuelle>

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 TO ENSURE THE AVAILABILITY OF ELECTRONIC COMMUNICATIONS SERVICES AND NETWORKS

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.

These measures are however (i) strictly limited to the period during which the state of public health emergency is declared, 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 within a period of one month after the end of the state of public health emergency.

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 Nationale 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 within a period of three months after the end of the state of public health emergency.

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.

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 for up to two months after the end of the state of public health emergency in order to enable their removal.

Find [here](#) the report addressed to the President of the French Republic relating to Ordinance No. 2020-320 of 25 March 2020.



ORDINANCE NO. 2020-353 OF 27 MARCH 2020 ON EXCEPTIONAL AID TO HOLDERS OF COPYRIGHTS AND NEIGHBOURING RIGHTS ON ACCOUNT OF THE CONSEQUENCES OF THE SPREAD OF THE COVID-19 VIRUS AND THE MEASURES TAKEN TO LIMIT SUCH SPREAD

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 NEIGHBORING 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.

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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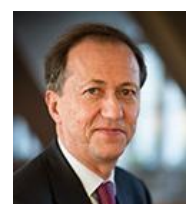
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