

Covid-19: Practical review of the impact of the health emergency laws on procedural and limitation deadlines in civil and commercial matters

By emergency Law no. 2020-290 of 23 March 2020, the French Parliament granted the Government the power to implement, by way of orders, measures relating to Law in order to overcome the Covid-19 outbreak . Article 4 of this Law set the duration of the state of health emergency at two months from the entry into force of the Law, i.e. from 24 March 2020 to 24 May 2020.

Article 11, I, 2. of the Law confers on the Government the possibility to adjust procedural deadlines “in order to overcome the administrative or jurisdictional consequences of the propagation of the Covid-19 epidemic and the measures implemented to limit this propagation”.

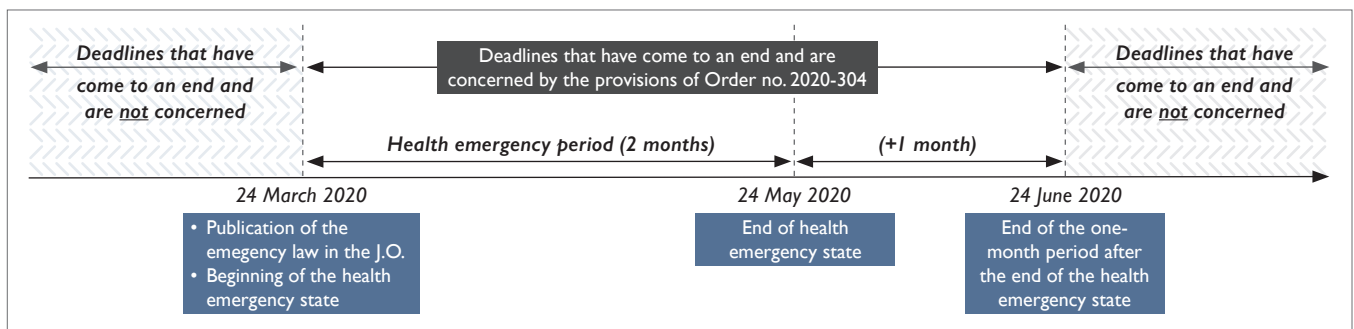
On 25 March, the French Council of Ministers passed the first twenty-five orders related to Covid-19. Concerning more particularly the adjustment of procedural deadlines in civil and commercial matters, the French Ministry of Justice presented two orders:

- Order no. 2020-304 of 25 March 2020 on adjusting the rules applicable to the Courts of the Judicial Order ruling in non-criminal matters and contracts of condominium associations (hereafter, “Order no. 2020-304”); and

- Order no. 2020-306 of 25 March 2020 on the extension of the deadlines coming to an end during the period of health emergency and adjusting proceedings during the same period (hereafter, “Order no. 2020-306”).

Two circulars were also published on 26 March 2020 in order to clarify the effect and scope of some of the provisions of these two Orders.

We will successively analyse the scope of the extensions and suspensions (I), the deferral mechanism of Article 2 of Order no. 2020-306 (II), the extension of jurisdictional measures (III) and the consequences on contractual stipulations (IV).



I. The scope of the extensions and suspensions

I.1. Based on the end date of the deadline

Article 1 of Order no. 2020-306 provides that the deferral applies:

- to deadlines and measures that came to an end or will come to an end between 12 March 2020 and the end of a one-month period from the date of the end of the state of health

emergency, i.e. on 24 June 2020, subject to an extension. For the purposes of reasoning, the date of 24 June 2020 will be taken into account throughout this note.

On the contrary, the Report to the President relating to Order no. 2020-306 specifies that will not be suspended or extended:

- deadlines that came to an end before 12 March 2020;
- deadlines which will come to an end after 24 June 2020.

¹ <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000041746313&categorieLien=id>

² https://beta.legifrance.gouv.fr/jorfi/texte_jo/JORFTEXT000041755577

³ https://beta.legifrance.gouv.fr/jorfi/texte_jo/JORFTEXT000041755644

⁴ For Order no. 2020-306: <http://www.justice.gouv.fr/bo/2020/20200327/JUSC2008608C.pdf>; for Order no. 2020-304: <http://www.justice.gouv.fr/>

⁵ https://www.legifrance.gouv.fr/affichTexte.do?sessionId=EFB73DB-8FA515A6C634BD7834DF5123.tpljfr41s_3?cidTexte=JORFTEXT000041755634&dateTexte=&oldAction=rechJO&categorieLien=id&id-JO=JORFCONT000041755510

1.2 Acts concerned in civil and commercial matters

The provisions of Order no. 2020-306 notably concern:

- “any act, appeal, legal action, formality, registration, declaration, notification or publication prescribed by law or regulation under penalty of nullity, sanction, the action being declared void, debarment, limitation, unenforceability, inadmissibility, lapsing, automatic withdrawal, application of a special scheme, nullity or forfeiture of any right” (Article 2);
- procedural deadlines (by reference from Article 2 of Order no. 2020-304 to Article 2 of Order no. 2020-306);
- “any payment prescribed by law or regulation in view of obtaining or keeping a right” (Article 2);
- jurisdictional measures referred to in Article 3;
- penalties (Article 4), “regardless of their origin” (according to the clarification provided by the Circular concerning Order no. 2020-306). Contractual and jurisdictional penalties are therefore both concerned;
- some contractual clauses referred to in Articles 4 and 5.

II. Deferral mechanism for acts and formalities prescribed by law or regulation as well as legal actions and appeals

2.1 Terminology reminders

- The purpose of an **extension** is to defer the end of the deadline and determine a new end date.
- The purpose of a **suspension** is to temporarily stop the countdown to the end date, which will then resume where it stopped once the cause of the suspension has disappeared (as provided for limitations in Article 2230 of the French Civil Code).
- The purpose of **interruption** is to start a new deadline of the same duration as the former, which therefore starts again on the date of the interrupting act (within the meaning of Article 2231 of the French Civil Code).

2.2. Postponement of acts

According to Article 2 of Order no. 2020-306, any act referred to in this Article “will be considered as having been carried out in time if it was carried out within a deadline that cannot exceed, from the end of this period, the deadline that is granted by Law to act, within a limit of two months”.

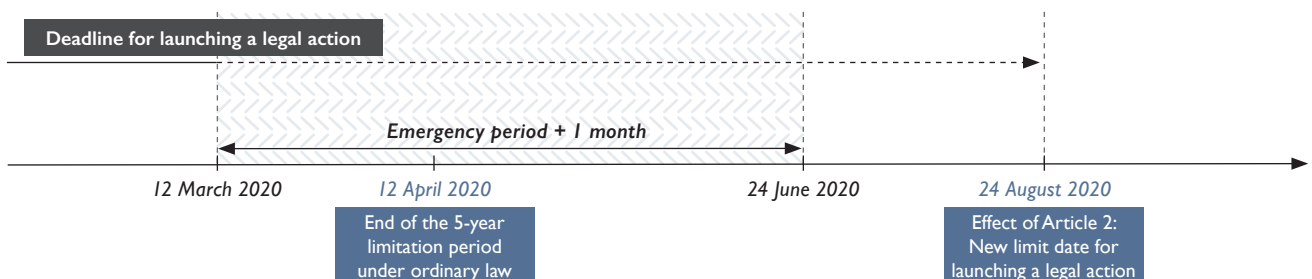
The Report to the President regarding this Order specifies the principle of validity of the performance of acts or formalities during the period of state of health emergency. The Order merely enables to consider as not being late any act carried out within the additional deadline granted. Yet, as regards the act of determining this additional deadline, the wording of the above-mentioned Article 2 has led to questions and confusion as it did not enable to clearly define whether the French Government had wished to suspend or to interrupt the deadlines.

In this respect, the clarifications provided by the Circular of 26 March 2020 are welcome: it is specified that the Order “does not provide for a general suspension nor a general interruption of the deadlines having come to an end during the legally protected period [i.e. between 12 March and 24 June 2020]”. It simply ought to be considered that the time limits are extended with an end date being put into place for this additional deadline, set at two months from the end of the legally protected period, i.e. until 24 August 2020. As mentioned in the Circular, this additional period cannot therefore exceed two months: “either the initial deadline was less than two months and the act has to be carried out within the deadline granted by Law or regulation, or it exceeded two months and must be carried out within two months”.

The examples included hereafter enable to better address the practical extent of these provisions.

Example I – Deadline for launching a legal action:

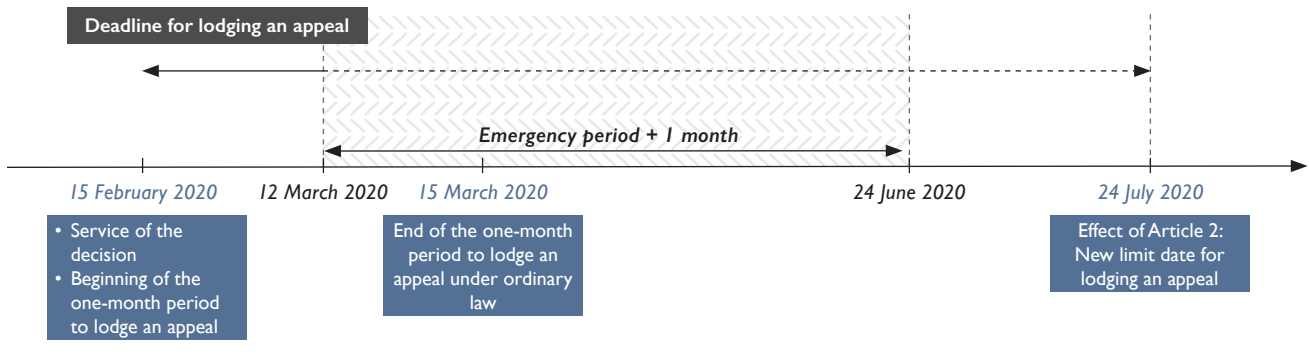
A debt is due since 12 April 2015. The five-year limitation period under ordinary law (Article 2224 of the French Civil Code) should come to an end on 12 April 2020. Effect of Article 2 of Order no. 2020-306: the deadline will start again on 24 June 2020 without however exceeding two months, i.e. until 24 August 2020. The party that wishes to launch a legal action will therefore have until 24 August 2020 to launch it.





Example 2 – Deadline for lodging an appeal:

A decision is served on a party on 15 February 2020. The one-month period to lodge an appeal under ordinary law (Article 538 of the French Code of Civil Procedure) was supposed to come to an end on 15 March 2020. Effect of Article 2 of Order no. 2020-306 (by referral from Article 2 of Order no. 2020-304): the one-month period to lodge an appeal will start on 24 June 2020 and the appellant will therefore have until 24 July 2020 to lodge an appeal.



It ought also to be noted that the Circular concerning Order no. 2020-304 specifies that the deferrals also apply to deadlines for filing submissions when they are determined by Law (for example: the 3-month deadline for filing submissions before the Court of Appeal set by Article 908 of the French Code of Civil Procedure is extended by two months, i.e. until 24 August 2020, provided the initial deadline comes to an end during the legally protected period).

Specific case of real-estate foreclosures: by derogation from the application of the deferral mechanism of Article 2 of Order no. 2020-306 to procedural deadlines, deadlines in real-estate foreclosure matters are specifically referred to in Article 2, II, 3. of Order no. 2020-304, which provides that these deadlines are **suspended** during the period from 12 March 2020 to 24 June 2020. As the French National Bar Council has pointed out, only deadlines relating to real-estate foreclosure proceedings are suspended, and not deadlines relating to the distribution of prices⁶.

III. Extension of jurisdictional measures

The legal measures under Article 3 of Order no. 2020-306 include:

- interim measures;
- enquiry measures;
- investigative measures (which include findings, consultations, expert proceedings);
- conciliation or mediation measures.

Jurisdictional measures are **automatically extended** until the expiry of a two-month period following the end of the one-month period after the end of the state of health emergency, i.e. for now,

until **24 August 2020**. It is specified that the courts can modify or end them, but only if they had been ordered before 12 March 2020.

IV. Consequences on contractual stipulations

4.1 The principle: exclusion of contracts from the scope of Article 2

Article 2 of Order no. 2020-306 provides that are concerned “*any act, appeal, legal action, formality, registration, declaration, notification or publication prescribed by law or regulation*”.

On the contrary, and as specified in the Report to the President relating to Order no. 2020-306, acts provided for in contracts cannot benefit from the deferral mechanism described above. The parties are still bound by their contractual obligations, within the deadline provided for by the contract. This means that contractual payments are not impacted by the extension of deadlines and must, therefore, be carried out within the contractual time limits.

However, the parties can benefit from ordinary law provisions, provided that the conditions are met and subject to the court’s discretion, by claiming, for example, the suspension of the statute of limitations, in accordance with Article 2234 of the French Civil Code (“*The statute of limitations does not start or is suspended for the person who is unable to act as a result of a legal or contractual impediment or a case of force majeure*”), or even force majeure, under Article 1218 of the French Civil Code (for a detailed analysis of the possibility of claiming the existence of the current health crisis to justify a breach of contract on the basis of *force majeure* or hardship, see our dedicated note [here](#)).

⁶ https://www.cnb.avocat.fr/sites/default/files/ordonnance_juridictions_judiciaires_cnb.pdf

4.2 Specific case of some contractual stipulations under the special scheme

By derogation from the exclusion of contracts from the deferral mechanism provided for in Article 2 of Order no. 2020-306, some contractual stipulations are subject to a moratorium.

Article 4 of Order no. 2020-306 refers to (i) penalty payments⁷, (ii) penalty clauses, (iii) termination clauses and (iv) forfeiture clauses, the purpose of which is to penalise the failure to fulfil an obligation within a specified deadline. Two situations are considered:

- When the deadline expired during the legally protected period, i.e. between 12 March and 24 June 2020: the above-mentioned penalties and clauses are considered as not having come into force or effect. It is provided that “these penalties come into force and these clauses produce their effects from the expiration of a one-month period after the end of this period if the debtor has not met his/her obligation before this date”. As a consequence, it is only from **25 July 2020**, and if the

debtor has not met his/her obligation before this date, that the deadline will resume and that the clauses will be able to produce their effects.

- Concerning the penalties and the application of the criminal clauses having entered into force before 12 March 2020: they are **suspended until 24 June 2020** and will be resumed on 25 June 2020.

Article 5 of Order no. 2020-306 also provides that “when a contract can only be terminated during a determined period of time or that it is renewed if not terminated within a determined deadline, this period or this deadline are extended if they expire during the period defined in paragraph 1 of Article 1, by two months after the end of this period”.

This means that for any period or deadline expiring between 12 March and 24 June 2020, a party wishing to terminate a contract or object to its renewal will be able to benefit from an additional period to do so until **24 August 2020**.

For any questions you may have, do not hesitate to write to us at info@signaturelitigation.com or any member of our team whom you know.

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⁷ The clarification provided by the Circular concerning Order no. 2020-306 (referred to above) shows that the extension mechanism provided for in Article 4 should apply both to contractual and judicial penalty payments.