



WHITE PAPER

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European Litigation: COVID-19 Measures at a Glance

As the novel coronavirus (COVID-19) pandemic is spreading around Europe and governments take steps toward slowing down the propagation of the virus, courts are reducing activities. In every jurisdiction, where efforts are being made to prioritise access to justice, the challenge is to strike a balance between protecting fundamental rights and minimising in-person contacts. Can time limitations be satisfied? Can applications and submissions be filed? Can hearings be held online? Will pending cases be processed and judgments delivered? Will interim relief be available?

This *White Paper* offers a quick outlook of the current state of play in seven key European jurisdictions: Belgium, France, Germany, Italy, the Netherlands, Spain and the United Kingdom.

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EUROPEAN LITIGATION: COVID-19 MEASURES AT A GLANCE

Updated April 15, 2020

BELGIUM

Court activity pending COVID-19 crisis	<p>Courts buildings remain accessible, but access is restricted to what is strictly necessary.</p> <p>Pending civil procedures (not administrative or criminal): Oral hearings are cancelled, where originally scheduled between 11 April and 3 June 2020 (or any later date to be decided). A judge shall rule on cases based solely on the parties' written submissions and documents (subject to "Filings, Submissions, Hearings").</p> <p>Within one month of the original hearing date (or after filing exhibits), a judge may request verbal clarification from the parties, possibly by video conference.</p> <p>Notably, according to guidance issued by the national chamber of bailiffs, a summons may be served only in urgent cases.</p> <p>Council of State: Since 16 March and until 19 April 2020, only extremely urgent matters are processed (including conducting oral hearings). All other oral pleadings are postponed.</p> <p>Constitutional Court: Until 5 April 2020, the filing of new appeals shall occur through an online procedure. Pending appeals are suspended (see "Interim Relief").</p>
Limitation Period	<p>Any limitation period or deadline to file new civil procedures (not administrative or criminal) expiring between 9 April and 3 May 2020 is extended by one month, as from 3 May 2020 (or any later date to be decided).</p>
Filings, Submissions, Hearings	<p>Pending civil procedures (not criminal or administrative): Written submission deadlines expiring between 9 April and 3 May 2020 are extended by one month, as from 3 May 2020 (or any later date to be decided).</p> <p>Subsequent procedural deadlines will be adapted accordingly.</p> <p>If the extended deadline falls within the month before the hearing, such hearing will be postponed to a later date.</p> <p>For urgent matters, parties may request to exclude the extension.</p> <p>If all parties agree that the case should remain subject to oral argument, the case is suspended and the pleadings rescheduled or postponed indefinitely.</p> <p>If the parties disagree on the need to orally argue the case, the judge will determine how the case will be handled, based on the file. The judge has broad discretionary authority and can (i) allow the scheduled oral hearing to take place, either physically or by video-conference, (ii) postpone the case indefinitely or until a designated date, or (iii) rule on the case without hearing oral arguments (see "Court Activity Pending COVID-19 Crisis").</p> <p>Administrative procedures: In the Brussels and Walloon regions, statutory (administrative) time limits were suspended, respectively, from 16 and 18 March 2020 for a period of 30 days (suspension may be renewed twice).</p> <p>The same suspension applies to appeals against administrative acts before the Council of State in these regions.</p> <p>Only urgent matters or written applications will be processed. Other cases will be processed after 19 April 2020.</p> <p>Electronic filings are allowed.</p>

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Appeals, Motions and Challenges	<p>Pending civil procedures (not criminal or administrative): Limitation periods and procedural deadlines to file an application (e.g. an appeal) are extended by one month as from 3 May 2020 (or any later date to be decided).</p> <p>In the Brussels and Walloon regions, statutory time limits and delays to file administrative appeals were suspended, respectively, from 16 and 18 March 2020 for a period of 30 days (suspension may be renewed twice).</p>
Interim Relief	<p>Urgent interim relief is not impacted (subject to preceding sections).</p> <p>Pending constitutional procedures: Filing deadlines were suspended from 18 March until 5 April 2020 (subject to automatic extension depending on National Council of Safety decision). The suspension does not concern the filing of new appeals (see “Court Activity Pending COVID-19 Crisis”).</p>
Contractual Remedies	N/A

FRANCE

Court activity pending COVID-19 crisis	<p>Except for emergency interim relief or other urgent applications, civil courts are closed, no scheduling conferences and no hearings are held, and no judgments are delivered.</p> <p>For urgent matters, electronic communications and hearing are in place, as well as simplified rules for the conduct of proceedings in civil and commercial jurisdiction.</p> <p>Administrative court activities are not suspended, but several derogatory measures apply.</p> <p>The current health emergency period will be effective until 24 May 2020 (unless it is extended). The lockdown is currently effective until 11 May 2020.</p>
Limitation Period	<p>No action shall be barred by statutory limitation periods falling due to expire on or after 12 March 2020 and until one month after the official ending of the health emergency period (i.e. 24 June 2020), if legal action is commenced within the immediately following two-month period (or any shorter legally applicable time period).</p> <p>Criminal matters: As from 12 March 2020, suspension of the limitation period of (i) the prosecution and (ii) the conviction, during all the period of the health emergency period plus one month (i.e. 24 June 2020).</p>
Filings, Submissions, Hearings	<p>Time limits imposed by law or regulations under any penalty (including nullity, limitation, loss of right, inadmissibility, bar, estoppel) that fell due on or after 12 March 2020 and for as long as the health emergency period will officially last plus one month (i.e. 24 June 2020), will be deemed legally met if the required action is taken during the shorter of the legally imposed time limit or two months from 24 June 2020.</p> <p>Electronic communications and videoconferencing are allowed for filings, submissions, hearings and notices.</p> <p>Criminal matters: Specific measures aimed at easing communication with courts apply—registered mail or e-communications; hearings can be held via video or telephone conferencing; other steps are taken to facilitate access to court activities (e.g. single judge decisions) and defense work (e.g. remote access to detainees).</p>
Appeals, Motions and Challenges	<p>Time limits imposed by law or regulations under any penalty (including nullity, limitation, loss of right, inadmissibility, bar, estoppel) for filings and submissions that expired on or after 12 March 2020 and for as long as the health emergency period will officially last, plus one month (i.e. 24 June 2020), shall be deemed legally met if adequate steps are accomplished during the shorter of the legally imposed time limit or two months, from 24 June 2020.</p> <p>Criminal matters: Time periods for appeals are doubled (and cannot be less than 10 days).</p>

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Interim Relief	<p>In civil and commercial matters, court-ordered interlocutory relief* expiring within a month from the official ending of the health emergency period (i.e. on or before 24 June 2020) is extended by two months following that period, subject to court’s power to lift said orders.</p> <p>*Protective measures (freezing orders, arrests of bank accounts and other receivables, liens, mortgages), evidence preservation orders, fact-finding investigation or assessment measures, injunctions, restraining orders or suspensions).</p>
Contractual Remedies	<p>Default-based liquidated damages, daily fines, termination clauses and acceleration clauses are deemed not to have been triggered if default event occurred on or after 12 March 2020, and debtor default shall be excused for a period equivalent to the length of time during which contract performance was impacted by the government response to the official health emergency of the official emergency period plus one month (not applicable to clearinghouse netting mechanism).</p> <p>Regarding only non-pecuniary contractual obligations falling due after the end of the official health emergency period (i.e. after 24 June 2020), a grace period equivalent to the length of time during which contract performance was impacted by the government response to the official health emergency will apply to penalty clauses, liquidated damages and termination clauses.</p> <p>Default-based penalty clauses and liquidated damages triggered before 12 March 2020 are stayed until the official ending of the health emergency period plus one month (i.e. 24 June 2020).</p> <p>Contractual renewal notices that must be given on or after 12 March 2020 can be sent until the official ending of the health emergency period plus one month (i.e. 24 June 2020).</p> <p>Parties may contract out of the above provisions on contractual remedies.</p>

GERMANY

Court activity pending COVID-19 crisis	<p>German courts are reducing their activity wherever possible. Most courts conduct hearings only to the extent they cannot be postponed due to the urgency of the matter.</p> <p>Most hearings are being rescheduled to an unspecified date or to the next open date of the respective chamber, mostly at the end of 2020/beginning of 2021.</p>
Limitation Period	Currently unaffected.
Filings, Submissions, Hearings	Time limits for filings remain unaffected. Courts are rather generous in granting extensions provided that deadlines are extendable. Most courts postpone all hearings that are currently scheduled, except for very urgent matters. The hearings will have to take place at a later point in time after the COVID-19 restrictions have been lifted, which will likely lead to a backlog for several months.
Appeals, Motions and Challenges	Deadlines for filing appeals, motions and challenges remain unaffected.
Interim Relief	<p>Oral hearings in interim relief proceedings are, in practice, the exception and, thus, interim relief proceedings are affected only to a lesser degree.</p> <p>Germany has a strict urgency requirement. Applications for interim relief must be filed within one to two months (depending on the respective court) after knowledge is gained about the relevant circumstances. To date, we are not aware that courts are deviating from this requirement due to the COVID-19 crisis.</p>
Contractual Remedies	<p>On 25 March 2020, the German Parliament passed an act that would allow consumers and SMEs to refuse performance of contracts if the consumers/SMEs are unable to perform their obligations because of the COVID-19 crisis and the performance would endanger a decent livelihood/economic existence.</p> <p>Rental and lease agreements relating to residential and commercial real estate may not be terminated based on outstanding payments accrued because of the COVID-10 crisis between 1 April 2020 and 30 June 2020. Outstanding payments must be repaid until 30 June 2022.</p>

ITALY

<p>Court activity pending COVID-19 crisis</p>	<p>Law Decree no. 18, dated 17 March 2020, Articles 83, 84 and 91, as amended and supplemented by Articles 36 and 37, Law Decree no. 23, dated 8 April 2020.</p> <p>Civil and Criminal court activities are suspended until 11 May 2020 (term subject to changes), with certain limited exceptions concerning urgent matters (mainly, family and criminal law).</p> <p>From 12 May 2020 to 30 June 2020, each court may adopt special remote working measures to carry on proceedings and court activities.</p> <p>Administrative court activities are suspended until 15 April 2020. From 16 April 2020 to 3 May 2020, terms to commence new administrative court proceedings are further suspended.</p> <p>Until 30 June 2020, “e-trial” is generally favored for any type of court activity.</p>
<p>Limitation Period</p>	<p>Statutory limitation periods and forfeiture terms are tolled in the period of time over which the commencement of court initiatives is prevented, from 9 March 2020 until 30 June 2020 (also applicable to criminal and administrative court proceedings).</p>
<p>Filings, Submissions, Hearings</p>	<p>From 9 March 2020 to 11 May 2020, all time limits concerning civil, criminal, tax and military proceedings are suspended (e.g. criminal investigations, adoption of judgments or equivalent, the commencement of new proceedings on the merit or enforcement actions and, in general, all procedural terms falling within the frame of court proceedings), with limited exceptions (see row no. 1).</p> <p>If a procedural term starts running between 9 March 2020 and 11 May 2020, its first day of accrual is postponed to 12 May 2020.</p> <p>The above applies to administrative court proceedings until 15 April 2020. From 16 April 2020 to 3 May 2020, terms to commence new administrative court proceedings are suspended.</p> <p>E-proceedings via an online platform (filings, submissions, evidence, notices, judgment delivery) operate in most of the civil and administrative court activities. Online hearings possible (e.g. on Microsoft Teams or Skype for Business).</p>
<p>Appeals, Motions and Challenges</p>	<p>All suspended according to the terms and under the conditions illustrated in the previous row no. 3.</p>
<p>Interim Relief</p>	<p>Subject to exceptions for urgent matters, pending proceedings for provisional relief are suspended.</p> <p>Interim relief in administrative matters, where allowed, must follow a simplified, two-step procedure.</p> <p>The effectivity of orders that require specific procedural steps to be taken during the health emergency period is extended in accordance with the suspension time.</p>
<p>Contractual Remedies</p>	<p>Observance of the emergency measures shall be considered when assessing a contractual default—total, partial or temporary—with the goal of establishing liability exemptions with respect to contractual terms determining forfeiture of rights and/or contractual penalties.</p>

THE NETHERLANDS

Court activity pending COVID-19 crisis	Court buildings are accessible, but limited to reception desk and, as far as hearings are concerned, to urgent cases only for which the parties cannot reach agreement on written submissions only. Hearings are in principle conducted through digital means. Judges and other personnel work from home.
Limitation Period	Currently unaffected
Filings, Submissions, Hearings	All live court hearings are cancelled, with the exception of urgent ones that will in principle be conducted digitally. However, written submissions (briefs) can still be issued within the usual time frames, and judgments are also rendered generally as usual. New cases can still be commenced as usual. Attorneys may now communicate with the courts and submit briefs in a safe mail environment based on ZIVVER.
Appeals, Motions and Challenges	Appeals, motions and challenges may still be sought and submitted as usual. In appeal, requests for postponement of due dates for submission of briefs are generally granted, and postponement is also granted ex officio in appeal.
Interim Relief	Interim relief is possible in new and ongoing procedures but is restricted to urgent ones only. Conservatory attachments may still be requested, but the court will assess the coronavirus situation and may ask for additional support for the initial request.
Contractual Remedies	N/A, with the exception of housing rental agreements, regarding which renewals of temporary agreements will be made possible and protection against eviction will be put in place, at least until 1 July 2020.

SPAIN

Court activity pending COVID-19 crisis	Court activities officially resume effective 15 April 2020, following a period of general closure from 14 March 2020 to 11 April 2020, during which only legal action that was necessary to avoid irreparable damage was permitted. Fixed-term periods and procedural deadlines are suspended or interrupted with limited exceptions for the protection of fundamental rights and certain urgent priorities (including a number of criminal law procedures and family and employment matters).
Limitation Period	The statutes of limitation and the expiration terms are suspended for the period during which the state of alarm is in force.
Filings, Submissions, Hearings	Time limits and hearings that are not related to the exceptions described in the first column are suspended.
Appeals, Motions and Challenges	Appellate activities resume effective 15 April 2020. Stay of procedural terms remains in place.
Interim Relief	The adoption of interim relief is not affected by the suspension.
Contractual Remedies	N/A

UNITED KINGDOM

<p>Court activity pending COVID-19 crisis</p>	<p>The English Courts are currently maintaining a business-as-usual approach. New Practice Direction 51Y is in force confirming remote hearings will be conducted by audio, telephone or video during the COVID-19 pandemic. Skype for Business has been installed on all judges' laptops. Arrangements are in place so that recorded hearings will be broadcast publicly—but note that applications to follow proceedings in real time must be made in writing to the judge's clerk. Where a hearing is held in private, it must be recorded where practicable, in a manner directed by the court. The courts are issuing daily updates to the guidance.</p>
<p>Limitation Period</p>	<p>N/A</p>
<p>Filings, Submissions, Hearings</p>	<p>N/A—CE-Filing is continuing for filings and submissions.</p> <p>On 2 April 2020, Practice Direction 51ZA came into force relating to extension of time limits and clarification of Practice Direction 51Y. It allows the parties to agree to an extension up to 56 days without formally notifying the court (rather than the current 28 days), so long as that does not put a hearing date at risk.</p> <p>Any extension of more than 56 days needs to be agreed by the court.</p> <p>The court is required to take into account the impact of the pandemic in considering such applications, as well as applications for adjournment and relief from sanction.</p> <p>This Practice Direction also clarifies that a person seeking permission to listen to or view a recording of a hearing may do so by request and is not required to make a formal application under the Civil Procedure Rules.</p> <p>The Practice Direction ceases to have effect on 30 October 2020.</p> <p>Very few matters currently listed for hearing in court are proceeding as planned, but so long as people coming to court do not have a confirmed coronavirus infection diagnosis and do not have to self-isolate in line with NHS advice, hearings are proceeding. This is subject to daily updated guidance issued by the judiciary.</p> <p>In the Insolvency and Companies Court, all matters currently listed for hearing are adjourned generally with liberty to restore on an urgent basis only.</p> <p>All listed winding-up petitions are adjourned to be heard from June 2020 onward.</p> <p>Swearing Statutory Declarations in the Insolvency and Companies Court can be done remotely by video conference with a person authorized to administer the oath, provided that the declaration states it was sworn in accordance with the Temporary Insolvency Practice Direction dated 6 April 2020.</p> <p>The Foreign Process Section which deals with new applications for obtaining evidence for foreign courts is closed until further notice. Only urgent applications for Foreign Process may be sent to the judge.</p>
<p>Appeals, Motions and Challenges</p>	<p>N/A—The Supreme Court of the United Kingdom cases are being conducted entirely by video conferencing. All cases and judgment hand-downs will continue via web-based video conferencing until further notice.</p> <p>Proceedings will be available to the public and media via the court's website. Footage will be available to view on demand within 48 hours of the live broadcast.</p>
<p>Interim Relief</p>	<p>N/A—Applications for injunctions and committal are considered urgent and so will be prioritised. Where a client is self-isolating and is unable to provide a sworn statement or signed document in accordance with the court rules, the court will apply the time limits flexibly. Further, an application can be made for permission to submit the court documents in approved form until the original documents can be provided.</p>
<p>Contractual Remedies</p>	<p>N/A</p>

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