



## WHITE PAPER

April 2020

### European Litigation: COVID-19 Measures at a Glance

As the novel coronavirus (COVID-19) pandemic is spreading around Europe and governments take steps towards 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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## BELGIUM

<b>Court activity pending COVID-19 crisis</b>	<p>Courts and tribunals' buildings remain accessible but access to such buildings must be restricted to what is strictly necessary.</p> <p>Most courts including senior courts have suspended non-urgent hearings.</p>
<b>Limitation Period</b>	N/A
<b>Filings, Submissions, Hearings</b>	<p>In the Walloon region, statutory time limits and delays to file appeals are suspended from 18 March 2020 for a period of 30 days (suspension may be renewed twice). The same suspension applies to appeals against administrative acts before the Council of State in this region. Only urgent matters or paper applications will be processed; other new cases will be processed after 19 April 2020.</p> <p>Electronic filings are allowed.</p>
<b>Appeals, Motions and Challenges</b>	<p>In the Walloon region, statutory time limits and delays to file appeals are suspended from 18 March 2020 for a period of 30 days (suspension may be renewed twice).</p> <p>Court of Appeal of Brussels: two exceptional chambers (one French and one Dutch speaking) are created for extremely urgent matters only. Case documents and legal submissions can be sent electronically.</p>
<b>Interim Relief</b>	<p>Urgent interim relief is not impacted (subject to row 3).</p> <p>Suspension of filing deadlines before the Constitutional Court from 18 March 2020 until 5 April 2020 (subject to automatic extension depending on National Council of Safety decision).</p>
<b>Contractual Remedies</b>	N/A

## FRANCE

<b>Court activity pending COVID-19 crisis</b>	<p>Except for emergency interim relief or other urgent applications, civil courts are closed, no scheduling conferences and no hearings are held and no judgements are delivered.</p> <p>For urgent matters, electronic communications and hearings are in place, as well as simplified rules for the conduct of proceedings in civil and commercial jurisdiction.</p> <p>Administrative courts activities are not suspended but several derogatory measures apply.</p>
<b>Limitation Period</b>	<p>No action shall be barred by statutory limitation periods falling due to expire on or after 12 March and until one month after the official ending of the health emergency period, 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 the period of the health emergency period plus one month.</p>
<b>Filings, Submissions, Hearings</b>	<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 and for as long as the health emergency period will officially last plus one month, will be deemed legally met if the required action is taken during the shorter of the legally imposed time-limit or two months from the official ending of the health emergency period plus one month.</p> <p>Electronic communications and video conferencing are allowed for filings, submissions, hearings and notices.</p> <p>In criminal matters: specific measures aiming 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>

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<b>Appeals, Motions and Challenges</b>	<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 and for as long as the health emergency period will officially last, plus one month, shall be deemed legally met if adequate steps are accomplished during the shorter of the legally imposed time limit or two months, from the official end of the health emergency period plus one month.</p> <p>Criminal matters: time periods for appeals are doubled (and cannot be less than 10 days.)</p>
<b>Interim Relief</b>	<p>In civil and commercial matters, court-ordered interlocutory relief (*) expiring within a month from the official ending of the health emergency period 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>
<b>Contractual Remedies</b>	<p>Default-based liquidated damages, daily fines, termination clauses, acceleration clauses are deemed not to have been triggered if default event occurred on or after 12 March and debtor default shall be excused for a period equivalent to the length of time of the official emergency period plus one month.</p> <p>[Not applicable to clearinghouse netting mechanism.]</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.</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.</p>

## GERMANY

<b>Court activity pending COVID-19 crisis</b>	<p>German courts are reducing their activity wherever possible. Most courts only conduct hearings 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.</p>
<b>Limitation Period</b>	Currently unaffected.
<b>Filings, Submissions, Hearings</b>	Time limits for filings remain unaffected. Courts are rather generous in granting extensions provided that deadlines are extendible.
<b>Appeals, Motions and Challenges</b>	Deadlines for filing appeals, motions and challenges remain unaffected.
<b>Interim Relief</b>	<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>
<b>Contractual Remedies</b>	<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 its obligations because of the COVID-19 crisis and the performance would endanger a decent livelihood/the 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-19 crisis between 1 April 2020 and 30 June 2020. Outstanding payments must be repaid until 30 June 2022.</p>

## ITALY

<b>Court activity pending COVID-19 crisis</b>	<p>Law Decree no. 18, dated 17 March 2020, Articles 83, 84 and 91.</p> <p>Court activities are suspended until 15 April 2020 (term subject to changes), with certain limited exceptions concerning urgent matters (family, criminal law, urgent interim relief in administrative courts).</p> <p>From 16 April 2020, to 30 June 2020, each court may adopt special remote working measures to carry on proceedings and court activities.</p> <p>Until 30 June 2020, “e-trial” is generally favored for any type of court activity.</p>
<b>Limitation Period</b>	<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 up until 30 June 2020 (also applicable to criminal and administrative court proceedings).</p>
<b>Filings, Submissions, Hearings</b>	<p>From 9 March 2020, to 15 April 2020, all time limits concerning civil, criminal, tax, military and administrative 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 1).</p> <p>If a procedural term starts running between 9 March and 15 April, its first day of accrual is postponed to 16 April 2020.</p> <p>Most hearings are postponed after 15 April 2020 (further postponement after 30 June 2020 possible).</p> <p>E-proceedings via online platform (filings, submissions, evidence, notices, judgment delivery) operates in most of the civil and administrative court activities. Online hearings possible (e.g., on Skype for Business).</p>
<b>Appeals, Motions and Challenges</b>	<p>All suspended according to the terms and under the conditions illustrated in the previous row 3.</p>
<b>Interim Relief</b>	<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>
<b>Contractual Remedies</b>	<p>Observance of the emergency measures shall be considered when assessing a contractual default—total, partial or temporary—to the end of establishing liability exemptions also with respect to contractual terms determining forfeiture of rights and/or contractual penalties.</p>

## THE NETHERLANDS

<b>Court activity pending COVID-19 crisis</b>	<p>Court buildings are accessible, but limited to reception desk and, as far as hearings are concerned, to urgent cases only. Judges and other personnel work from home</p>
<b>Limitation Period</b>	<p>N/A</p>
<b>Filings, Submissions, Hearings</b>	<p>All live court hearings are cancelled, with the exception of very urgent ones. 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.</p>

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<b>Appeals, Motions and Challenges</b>	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.
<b>Interim Relief</b>	Interim relief is possible, but restricted to urgent ones only.
<b>Contractual Remedies</b>	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.

## SPAIN

<b>Court activity pending COVID-19 crisis</b>	Under the state of alarm (in force from 14 March to 11 April 2020), court activities are closed (except for any legal action that is necessary to avoid irreparable damage); 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 and procedure, family and employment matters.).
<b>Limitation Period</b>	The statutes of limitations and the expiration terms are suspended for the period the state of alarm is in force.
<b>Filings, Submissions, Hearings</b>	Time limits and hearings which are not related to the exceptions described in the first row are suspended.
<b>Appeals, Motions and Challenges</b>	Suspended in the same terms as the rest of the filings.
<b>Interim Relief</b>	The adoption of interim relief is not affected by the suspension.
<b>Contractual Remedies</b>	N/A

## UNITED KINGDOM

<b>Court activity pending COVID-19 crisis</b>	<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.</p> <p>Skype for Business has been installed on all judges' laptops.</p> <p>Arrangements are in place so that recorded hearings will be broadcast publically 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>
<b>Limitation Period</b>	N/A

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<b>Filings, Submissions, Hearings</b>	<p>CE-Filing is continuing for filings and submissions.</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 onwards.</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>
<b>Appeals, Motions and Challenges</b>	<p>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>
<b>Interim Relief</b>	<p>Applications for injunctions and committal are considered urgent 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>
<b>Contractual Remedies</b>	N/A

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