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NEW REGULATION REGARDING PROCEDURAL DEADLINES AND TIME BAR IN FRANCE – COVID 19

A new regulation had been implemented in France, following the difficulties for issuing proceedings during the sanitary emergency period due to COVID-19.

It provides that, the procedural deadline and time-bar which were due to expire between 12th March 2020 and 23rd June 2020 are suspended. After 23rd June 2020, these delays will start running again for their original duration within a maximum limit of 2 months.

The purpose of this presentation is to present the new regulation and its practical consequences for statutory (I) and contractual (II) time limits.

I) STATUTORY TIME LIMITS

The new regulation applies only to statutory time limits.

1. Marine transportation

This new regulation applies to the main claim and any recourse actions which would be issued before French courts.

1.1 Main claim

If the time limit to issue court proceedings expires between 12th March 2020 and 23rd June 2020, the deadline is postponed to 23rd August 2020.

1.2 Recourse action

In application of HVR, marine carriers and freight forwarders have a three months delay to issue recourse action, starting from the date of issuance of the original writ of summons.

If this 3 months delay expires between 12th March 2020 and 23rd June 2020 (ie. if the main writ was issued between 12th December 2019 and 23rd March 2020), the time bar for issuing recourse action will be extended to 23rd August 2020.

If the original writ of summons is issued after 23rd March 2020, the three months delay will not be extended as it will end up after 23rd June 2020.

2. Road carriage

2.1 National carriage in France

This is governed by French internal law and this new regulation undoubtedly applies

(i) Main action

If the one-year period to issue the writ of summons for a damage expires between 12th March 2020 and 23rd June 2020, then the deadline to issue such action will be postponed to 23rd August 2020.

(ii) Recourse action

Under French law, carriers and freight forwarders have a one-month delay to issue recourse actions against their subcontractors starting from the date of issuance of the main writ of summons.

If this one-month delay was due to expire between 12th March 2020 and 23rd June 2020, it will be postponed to 23th July 2020 (one month after 23rd June).

On the contrary, if the main writ of summon is served after 23rd May 2020, the one-month delay will not be extended.

2.2 CMR Carriage

The same rules apply to CMR carriage, provided that the claim is brought before a French Court.

II) CONTRACTUAL TIME LIMITS

This new regulation applies only to the statutory deadlines and time-bar but does not apply to contractual deadlines and time-bar.

The practical consequences are the following.

1) Time extension

As this is a purely contractual agreement, a time extension granted by the carrier to cargo interests could not be suspended by this new regulation.

Therefore, if a time extension granted by a carrier expires between 12th March 2020 and 23rd June 2020, the claim would be time barred if cargo interest did not obtain a further time extension and /or did not issue court proceedings before the expiration of the T/E.

However, there is no precedent on this issue, and a Court could rule that the time extension extends the legal one-year time limit, and as such is also postponed to 23th August (or 23rd July if the time extension was granted for one month only).

2) Charter-party

This new regulation applies only to CP which provides for French law and French jurisdiction (Chambre arbitrale maritime de Paris or French Courts) and which applies the one-year limitation provided for by HVR or French law.

It does not apply to:

- CP which provides for English law and arbitration or any other foreign law,
- CP which provides for French law and jurisdiction, if the parties agreed on a contractual time bar (ie. For example, 18 month). Indeed, the regulation applies only to statutory time limits and not contractual time limit.

III) RECOMMANDATION

This document is a broad presentation of the new regulation in force in France as of 11th June 2020.

As there is no precedent yet, we strongly recommend to comply with the original time limits. This regulation must be used as a safety net only by a party which missed the time bar.

We would be happy to provide you with more information on this specific regulation, in case of need

Best regards

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Disclaimer

This presentation is made on 11th June 2020, based on the available information at this date and does not take into account modification of the regulation which may occurred after this date.

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