

The Royal Decree nr. 2 of 9 April 2020 to counter the Covid-19 crisis: does the extension of limitation periods apply to all kind of claims, without restriction?



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1. The Royal Decree

In Belgium, several legal measures were adopted with effect from 18 March 2020 to cope with the crisis caused by the Covid-19 virus. One of those measures is the Royal Decree nr. 2 of 9 April 2020 (hereafter: The Royal Decree) to address difficulties faced by litigants.

The Royal Decree provides for an extension of two types of deadlines: the statutes of limitations and the time limits for legal actions before the Belgian civil courts (for example, the time limit to appeal a judgment).

2. The extension of the statutes of limitations

Article 1 §1 of the Royal Decree provides a one-month extension of the statutes of limitation and the time limits for legal actions before the Belgian civil courts that run out in the period between 9 April 2020 and 3 May 2020.¹

This might lead one to think that all claims and causes of action brought before a Belgian civil court benefit from this extension. But that is not the case.

The majority view of Belgian case law² and legal commentaries³ is that statutes of limitations in civil matters are matters of substantive law. Therefore, claims that are governed by the substantive law of another jurisdiction do not benefit from the one-month extension under article 1 §1 of the Royal Decree.

In that regard, in the Report to the King accompanying the Royal Decree the Minister of Justice expressly notes that the provision does not affect claims that fall under the competences of the regional, international or supranational institutions.⁴

By contrast, the Royal Decree extends the deadlines to file an appeal (or other methods of review) and other deadlines in proceedings before a Belgian court, even if the underlying claim or course of action is governed by foreign law. These particular matters are considered to be inherently tied to the *lex fori*.⁵

3. In conclusion

Claims governed by foreign laws do not benefit from the extension of the statutes of limitations provided by article 1 §1 of the Royal Decree. Practitioners who are instructed to bring a claim before a Belgian court should not assume the extension of the statutes of limitation but should first verify which substantive law governs the claim. The extension will only apply when the claim is governed by Belgian law.

If a claim that falls under the jurisdiction of Belgian courts cannot be brought because of the current pandemic and the Royal Decree does not apply, with as a consequence that the claim risks becoming time-barred, there might still be room for an extension based on the doctrine of force majeure. This needs to be established on a case by case basis.



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¹ Or a later date if the Belgian government decides to extend the current confinement regime after 3 May.

² Tribunal of Ghent 9 September 2009, *tijdschrift@ipr.be* 2010, afl. 2, 38 ; Court of appeal of Antwerp 11 January 2010, *RABG* 2013/10, 626 (with comment); Tribunal of Commerce of Leper 29 January 2001, *RW* 2001-02, 1396 (with comment).

³ E.g. I. CLAEYS, "Bevrijdende verjaring – stuiting schorsing en verlenging", *TPR* 2018/1-2, 835, nr. 119.

⁴ Royal Decree nr. 2, B.S. of 9 April 2020, p. 25728.

⁵ F. RIGAUX and M. FALLON, *Droit international privé*, Brussels, Larcier, 1993, 260, n° 898.