



## **Deloitte Legal Newsflash**

### Public, Permits and Regulation

## **Public law proceedings during COVID-19: will procedural deadlines be suspended?**

On 20 March 2020, the Flemish Government issued the [Decree on special measures in the event of a civil public health emergency](#). This newsflash discusses the two main pillars of this “Emergency Decree” and its possible and practical impact on public law proceedings during the COVID-19 outbreak.

### **Derogation of environmental permit and notification obligations**

A first eye-catching measure in the Emergency Decree is the possibility to temporarily derogate from the environmental permit and notification obligations contained in the Flemish Zoning Law Code in case of a civil public health emergency.

This derogation applies to constructions, changes of function, and exploitations intended for medicine and medical equipment manufacture. It is also applicable to increase the capacity of hospitals or other care facilities, nursing centres, or research institutions, in order to manage the consequences of the civil public health emergency. Moreover, the derogation can only be validly invoked for 120 consecutive days (as from 20 March until 17 July), with a possibility for the Flemish

Government to extend that period by another and maximum 120 consecutive days.

This measure can be particularly useful in view of the feared capacity crisis in certain hospitals because of the COVID-19 outbreak.

The Flemish Government has therefore not hesitated to acknowledge that the current situation is indeed a civil public health emergency as defined by the Emergency Decree.

## Suspension, interruption and extension procedural deadlines

A second key feature of the Emergency Decree is that, in civil public health emergencies such as the current one, it allows the Flemish government to enact additional rules for the suspension, interruption or extension of procedural deadlines, or the temporary adaptation of procedural or administrative obligations in various decrees and their implementation decisions.

In its [Decision of 24 March 2020](#), the Flemish Government already made use of this possibility and has taken certain measures regarding environmental permit (*omgevingsvergunning / permis d'environnement*) procedures as defined in the [Decree of 25 April 2014 on environmental permits](#).

These measures can be summarised as follows:

- ongoing public investigations were suspended on 24 March 2020 and will resume on 24 April 2020;
- the decision period in the simplified procedure is extended by 30 days (from 60 to 90 days);
- the decision period in ordinary proceedings is extended by 60 days (from 105 or 120 days to 165 or 180 days);
- the decision period in appeal is extended by 60 days; and
- the deadline for filing an appeal is extended by 30 days, from 30 to 60. This also means that the implementation of a permit issued by the municipality can only start after 65 days (35 + 30).

An extension of these measures is possible but cannot exceed the maximum duration of the civil emergency, currently set at 17 July 2020.

The Flemish Government has given some [further guidance](#) on the impact of these measures on the provision of advice, the organization of public inquiries, the holding hearings and information meetings etc.

For complex projects, similar measures were adopted by the Flemish Government in its [Decision of 27 March 2020](#).

Given that the COVID-19 outbreak will continue for some time, it seems likely that in the weeks to come the Flemish Government will make further use of the power granted by the Emergency Decree to suspend and/or extend deadlines, or allow a temporary derogation of certain procedural or administrative obligations in other public law proceedings.

## Contacts

If you have any questions concerning the items in this newsflash, please get in touch with your usual Deloitte Legal - *Lawyers* contact at our office in Belgium or:

- Kathleen De hornois [kdehornois@deloitte.com](mailto:kdehornois@deloitte.com), + 32 2 800 70 60
- Louis Swennen, [lswenen@deloitte.com](mailto:lswenen@deloitte.com), + 32 2 800 71 47

For general inquiries, please contact:

[bedeloittelegal@deloitte.com](mailto:bedeloittelegal@deloitte.com), + 32 2 800 70 00

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