



LEGAL NEWSLETTER

HUNGARY

Content

COVID 19 - CRISIS MANAGEMENT POLICIES IN CENTRAL EUROPE

HUNGARY - No. 2

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COVID 19 - CRISIS MANAGEMENT POLICIES IN CENTRAL EUROPE

HUNGARY

The first set of financial and economic measures taken to mitigate the socio-economic impact of the COVID-19 epidemic in Hungary was set out in the Government Decree No. 47/2020. (III.18.) (hereinafter: the "**Government Decree**") published on 18 March 2020 in the Official Journal.

1. **Moratorium period of credit, loan and leasing contracts**

The Government Decree provides debtors with a moratorium on the payment of capital, interest and other charges in respect of credits, loans and leasing contracts granted, in a professional capacity, by creditors (hereinafter: the "**loan agreements**"). This moratorium period concerns the loan agreements existing as at 18 March 2020 on the basis of which the loans have already been disbursed to the debtors.

The moratorium period has been set to last until 31 December 2020 and, if necessary, its extension may be ordered by the Hungarian Government.

The moratorium period applies automatically unless the debtor and the creditor reach a different agreement.

The deadline for the performance of the contractual obligations set out in the loan agreements and the duration of the commitments will be extended by the duration of the moratorium period. As a result, the securities related to the loan agreements (e.g. mortgages) will also be modified.

However, we are not yet in a position to know precisely whether only the duration of the performance of the securities will be changed or whether the other conditions will also be amended.

It is to be pointed out that this moratorium period does not affect the debtor's right to perform his obligations in accordance with the original terms of the contract. We note that this provision may be interpreted in such a way that the moratorium period applies automatically but then the debtor may decide to return to his original payment conditions.

It remains to be seen what will happen with the interest incurred during the period of the moratorium period.

2. **Ceiling on APR of consumer credits**

The annual percentage rate ('APR') of all consumer credit agreements not secured by a pledge or mortgage and concluded on or after 19 March 2020 shall be capped at the base rate of the National Bank of Hungary plus 5 %.

3. Commercial leases in the most affected areas: prohibition of termination and increase of rent

Commercial leases (i.e. leases of non-residential premises) may not be terminated until 30 June 2020 in the following sectors:

- tourism;
- restaurant services;
- entertainment industry;
- gambling industry;
- film industry;
- performing Arts;
- event planning services; and
- sport services (hereinafter together: the "*sensitive sectors*").

The duration of this prohibition on termination could be extended by the Government until the end of the state of emergency.

It should be noted that, during this prohibition, a lessor could not terminate the contract concluded with a person operating in the sensitive sectors, even in the event of arrears of several months' rent.

For these lease contracts, rents cannot be increased during the state of emergency, even if the provisions of the contract in question allowed the increase.

4. Suspension of the payment of social security contributions in the most affected sectors

The Government exempts companies in sensitive sectors, and employees working in these sectors, from the payment of employer contributions and the majority of employee contributions for the months of March, April, May and June 2020.

(i) Employer contributions

- Employers in these sensitive sectors will be exempted from the obligation to pay all of the following employer contributions : (i) the social contribution tax (in Hungarian: "*szociális hozzájárulási adó*") with a tax rate of 17.5% of the tax base, (ii) the vocational training contribution (in Hungarian: "*szakképzési hozzájárulás*") with a rate of 1.5% of the tax base .

(ii) Employee contributions

- According to the Government Decree, employers in sensitive sectors are not required to deduct from the employee's gross salary and then pay the following levies to the Hungarian tax authority: (i) pension contribution (in Hungarian: "*nyugdíjjárulék*") (10%); (ii) health insurance cash contribution (in Hungarian: "*pénzbeli egészségbiztosítási járulék*") (3%) and (iii) labour market contribution (in Hungarian: "*munkaerő-piaci járulék*") (1.5%).
- In other words, only the health insurance contribution in kind (in Hungarian: "*természetbeni egészségbiztosítási járulék*") remains to be paid for employers in the sensitive sectors, the rate of which is fixed at the monthly amount of health service contribution (in Hungarian: "*egészségügyi szolgáltatási járulék*"): i.e. HUF

7710/month (in other sectors the general rate of 4 % of the gross salary remains applicable).

In addition to the provisions concerning the suspension of the payment of social security contributions, the Government also ordered that, for the period from 1 March to 30 June 2020, the tourism development contributions (in Hungarian: "*turizmusfejlesztési hozzájárulás*") would not be paid by persons subject to the payment of the said contribution.¹

Nevertheless, the Government Decree leaves several questions unanswered: (i) the non-collection of the pension contribution raises the question whether or not this period will be taken into account in the calculation of seniority and pension fund, (ii) it is also unclear whether an employee whose health insurance contribution in kind is set at HUF 7710, will be entitled to the payment of unemployment benefit after 30 June 2020.

5. Suspension of the payment of the lump-sum tax for microenterprises (in Hungarian: "KATA").

In the passenger transport sector (e.g. taxis), enterprises that have opted for the lump-sum tax for microenterprises (in Hungarian: "*kisadózó vállalkozások tételes adója*", abbreviation: "KATA"), will be exempted from their payment obligation for the months of March, April, May and June 2020.

This exemption concerns only the payment of KATA by passenger transport operators, while operators in other sectors remain obliged to pay all taxes in accordance with the rules in force.

6. Extraordinary rules concerning working conditions

The Government Decree establishes extraordinary measures of a provisional nature in the field of labour law: these provisions will be applicable only until the 30th day following the end of the state of emergency (hereinafter the "**temporal scope of application**").

- According to the Labour Code, the employer may change the working hours, which he had previously communicated to the employee, if unforeseeable management or operational events occur. Such a change in working hours must be made at least 96 hours before the start of the daily work. If the employer changes the working hours without observing this period of at least 96 hours, the work performed by the employee will be considered as extraordinary work.

The Government Decree provides that, henceforth, the employer may modify at any time the working hours that have been communicated to the employee, by

¹ The tourism development contribution is taxed on the provision of meals and non-alcoholic beverages prepared on the spot, and on commercial accommodation services, provided that VAT is applicable to the activity in question. Its rate is 4 % of the value, excluding VAT, of the service provided to which the tourism development contribution is applied.

derogating from the above-mentioned provisions. Consequently, the alteration of working hours will not result in the performance of extraordinary work.

- **Working from home and teleworking can be ordered by the employer.**

A distinction should be made between these two ways of working:

- (i) Teleworking is an "atypical" employment relationship, which must be established by mutual consent of the parties (i.e. in the employment contract, the parties must agree on the employee's commitment to telework). By derogation from this provision, the employer now has the power to order an employee to telework;
- (ii) While working from home is another form of remote working. Although the Labour Code does not mention this notion of "*working from home*", it provides for the possibility that the employer may order the employee to carry out his work in premises other than those of his usual place of work (which may be the employee's home). This form of employment may have a maximum duration of 44 working days per year. The Government Decree, therefore, does not make any change in this respect, since, prior to the adoption of the Government Decree, this form of work had to be unilaterally ordered by the employer.

- **The employer is authorised to implement all measures necessary to protect the health of its employees.**

The Government Decree does not specify detailed rules in this regard; they will have to be specified in future legislation.

The provisions of collective agreements which are contrary to the new extraordinary provisions mentioned above, cannot be applied during the application of the Government Decree. However, the employer and the employee may derogate from these new provisions by mutual consent.

D'ORNANO

PARTNERS

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About D'ORNANO PARTNERS

D'ORNANO PARTNERS is an international law firm with offices in Paris, Bucharest, Belgrade and Budapest.

Deeply rooted in Central and Eastern Europe, our lawyers have in-depth knowledge of local markets and unparalleled international experience.

We promote an integrated, multidisciplinary and cross-border approach, based on our strong expertise and the synergy between our European offices, which work in close cooperation. We provide tailored legal assistance in the following main areas.

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- **Legal aid**

François d'Ornano, from D'ORNANO PARTNERS, acts for French clients and their Hungarian subsidiaries in the context of M&A transactions. An impressed client says he is "always available and he produces high-quality work" before adding: "We trust his judgement and opinions on matters, he has a very good knowledge of the local laws and situations".

François d'Ornano is a practitioner based in Paris, estimated for "always being available and producing high-quality work". Clients also point out that he "has a very good knowledge of the local laws" in Central Europe. D'Ornano assists French companies and their Hungarian subsidiaries in transactions in the agricultural, real estate and pharmaceutical sectors.

Ranking Chambers 2020

+36 1 411 7400
budapest@dornano-partners.com

