

BRIEF CONSIDERATIONS ON NATIONAL LEGISLATION CONCERNING THE SETTING UP OF A MORATORIUM ON PAYMENT OF CREDIT RATES RELATED TO LOAN CONTRACTS IN THE COVID-19 PANDEMIC CONTEXT

Associate Professor PhD Elise Nicoleta VÂLCU, Associate Professor PhD Carmen Gabriela SECARĂ²

¹ Faculty of Economics and Law, University of Pitesti, Romania, elise.valcu@upit.ro

² Faculty of Economics and Law, University of Pitesti, Romania, carmen.secara@upit.ro

The lock-down measures applied in the context of the COVID-19 pandemic have generated a number of negative effects for all Member States of the European Union and felt by both citizens and economic entities (SMEs). In relation to these, the European Union through its legislative institutions has proposed to the Member States exceptional temporary measures to mitigate the impact of the corona virus pandemic, while identifying, together with the Union financial sector, ways to develop best practices to provide additional support. Such a measure consists in postponing the payment of credit rates, in order to protect debtors who encounter difficulties generated either by job loss or by a substantial reduction in income.

In Romania, the aspects regarding the deferral of the payment of the obligations from the loan agreements were regulated by the Emergency Ordinance no. 37/2020 on granting facilities for loans granted by credit institutions and non-bank financial institutions in Romania to certain categories of debtors.

Key words: debtors, credit rates, banking institutions, moratorium, deferred payment.

JEL Classification Codes: K12, K31.

1. INTRODUCTION

On 28 June 2020, the EU co-legislator adopted a Legislative Package entitled “Regulation amending Regulation (EU) No 575/2013 and Regulation (EU) 2019/876 as regards certain adjustments in response to the COVID-19 pandemic, which provides banks with the necessary flexibility to provide individuals and legal entities with as easy access to finance as possible. This legislative package has as main objective:

a) *the early introduction of capital assistance measures for banks under CRR 2, in particular with regard to the preferential treatment of certain loans guaranteed by pensions or salaries and the loans they grant for SMEs and infrastructure;*

b) *the temporary reintroduction of a prudential filter for exposures to sovereign bonds¹;*

c) *postponing the date of application of the shock absorber for the leverage effect indicator, as well as by modifying the way of excluding certain exposures from the calculation of the leverage indicator;*

¹<https://www.consilium.europa.eu/ro/press/press-releases/2020/06/24/covid-19-council-adopts-exceptional-rules-to-facilitate-bank-lending-in-the-eu/>



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d) postponement of payment of credit installments, in order to protect physical and judicial bodies debtors, etc.

In order to harmonize the practices of banking institutions in the EU Member States by postponing the payment of credit rates, the European Banking Authority ("**EBA**") published on 2 April 2020 a Guide on legislative and non-legislative moratoriums, applied to the payment of loans in the context of the COVID-19 crisis entitled "EBA Guide"².

However, although the Member States referred to the "EBA Guide", the measures adopted at state level differ in the following respects: categories of debtors / beneficiaries of these measures (directly or indirectly affected) categories of creditors, binding or not, duration of deferred payment obligations, etc.

For example, Italy, hard hit by the pandemic, has adopted legislation with an extended period of applicability, so in the case of individual debtors, loans can be postponed for a maximum period of 18 months³.

In Portugal, a decree-law came into force on March 27, 2020, which establishes protection measures for bank clients, thus suspending the payment of credit installments for a period of 6 months only in the case of clients who prove that they have been directly affected by the COVID-19 virus. The measure shall not apply in the event of late payment of more than 90 days, insolvency or in certain cases of enforcement, existing before 18 March 2020⁴.

In the Netherlands, measures aimed at suspending rates apply only to consumer credit agreements, for a period of 3 months, during which no interest is calculated, and debtors must prove that they are directly affected by the epidemiological context.

In Hungary, the application of these moratorium measures applies in the case of loan or financial leasing contracts concluded on a commercial basis, between credit institutions and debtors, individuals or judicial bodies. During the suspension period, an interest calculation system is applied, which excludes the capitalization of interest.

2. CLARIFICATIONS REGARDING THE LEGISLATIVE PROVISIONS REGULATED BY GEO 37/2020

What are the categories of contracts considered to be the regulatory field of this ordinance?

We can say without doubt that the field of regulation is the convention concluded between two contracting parties - creditor and debtor.

In the acceptance of the present ordinance, a) *the credit institutions*⁵, respectively b) *the non-banking financial institutions*⁶, as well as c) *their branches* - have the quality of creditors.

Regarding the eligible debtors, the text of the ordinance identifies the following categories:

➤ *Individuals*

²<https://www.zf.ro/opinii/filip-company-europa-pandemia-si-amanarea-platii-ratelor-de-credit-19130007>

³<https://www.imf.org/en/Topics/imf-and-covid19/Policy-Responses-to-COVID-19>

⁴<https://www.bportugal.pt/comunicado/covid-19-entrou-em-vigor-moratoria-para-contratos-de-credito-celebrados-com-clientes>

⁵ Credit institutions defined according to GEO no. 99/2006 on credit institutions and capital adequacy approved with amendments and completions by Law no. 227/2007 with subsequent amendments and completions.

⁶ Non-banking financial institutions defined according to Law no. 93/2009 with subsequent amendments and completions.

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- *Authorized individuals, individual enterprises and family enterprises⁷ as well as debtors exercising liberal professions (professionals-subjects of civil law)*
- *Legal entities*

Regarding the contracts to which the provisions of this ordinance apply, the following are taken into account:

1. Credit agreements for personal property⁸
2. Mortgage contracts⁹
3. “First House” type contracts
4. Leasing contracts¹⁰

On the one hand, one considered those credit contracts which: do not register arrears at the date of the state of emergency, and on the other hand, those contracts for which the debtors were overdue at the date of the state of emergency but pay the outstanding debts until the date of requesting the suspension of the payment obligation¹¹.

What are the criteria considered eligible that debtors must meet in order to be able to use the provisions of this rule in order to benefit from an extension of the repayment of due installments?

We specify that the granting of the facilities inserted in this norm is granted exclusively to the debtors identified above who, however, must fulfill certain conditions, both general and special.

General criteria are considered:

- The situation generated by COVID 19 affected their own or family members' incomes;
- They are unable to pay the installments related to the credit agreements concluded until March 30, 2020, inclusive.

The following *specific conditions* must be met in the case of:

a) *Individual debtors*:

- a.1. to have intervened the dismissal of the debtor / family members;
- a.2. to have intervened to reduce the salary of the debtor / family members;
- a.3. the entry of the family member debtor into technical unemployment as a result of the restriction/ closure of the activity;
- a.4. placing the debtor in institutionalized quarantine or in isolation at home.

b) *Authorized natural persons, individual enterprises and family enterprises as well as debtors exercising liberal professions (professionals-subjects of civil law)*

⁷ See in this sense GEO no. 44/2008 regarding the development of economic activities by authorized individuals, individual enterprises and family enterprises with subsequent amendments and completions.

⁸ See GEO no. 50/2010 regarding consumer credit contracts approved with amendments and completions by Law 288/2010 with subsequent amendments and completions.

⁹ A mortgage loan contract is a contract by which a credit institution or a non-bank financial institution grants a loan to a debtor secured with a mortgage on a real estate, respectively which implies a right equal to a real estate as regulated by GEO no. 52 / 2016 on credit agreements offered to consumers for real estate.

¹⁰ See also GEO no. 51/1997 on leasing operations and republished leasing companies.

¹¹ See art. 2 (5) of GEO37 / 2020.

b.1. total or partial interruption of the activity as a result of the measures taken by the authorities during the state of emergency, having as effect the diminution of the turnover, the restriction of the sales market, the restriction of the number of employees

c) *Legal entities:*

c.1. hold one of the two emergency certificates issued by the Ministry of Public Finance and Business Environment stating:

c.1.1. decrease of incomes or revenues by at least 25% in March 2020 compared to the average of January and February 2020

c.1.2. total or partial interruption of the activity as a result of the measures taken by the authorities during the state of emergency, which led to the decrease of the turnover, the restriction of the sales market, the restriction of the number of employees

c.2. the initiation of the insolvency procedure generated by the impossibility to carry out commercial activities and implicitly the blocking of the business (obligatorily, for these debtors the insolvency procedure must not have been initiated before the date of requesting the suspension of the loan repayment)

What is the period for which the suspension of the payment obligation can be admitted?

According to art.2 (1) and (2), the obligation to pay the due installments related to the loan agreements is suspended at the request of the debtor for up to 9 months, but not more than December 31, 2020. It should be noted that, after the suspension of the suspension, the duration of the loan agreement may be extended with the maximum credit period equal to the duration of the suspension of the payment obligation.

What is the obligation to pay? Did the legislator consider anatocism?

The text of the ordinance clarifies the "obligation to pay due installments" as the sum of the installments of capital, interest and commissions. Is it important to clarify what we mean by "interest"? Is the debtor exempted from paying interest for the period for which the debt was suspended or does it continue to flow?

The Romanian legislator considered the second solution, burdensome for debtors, so the interest related to the due amounts whose payment was suspended is capitalized at the balance of the existing loan at the end of the suspension period, so the increased capital is paid in installments, by renegotiation of the debtor with the creditor, for the remaining duration "until the new maturity of the contract, after the suspension period"¹².

We wonder if the legislator also took into account the situation of guarantees, in the sense of exemption from payment for the same period recognized to the main debtor?

The answer is affirmative in the sense that the effects of the extension of the repayment of the due installments also apply to the co-debtors, guarantors and other guarantors who guaranteed the obligation of the main debtor, only with their prior consent¹³.

Regarding the procedure regarding the analysis of the request for suspension of the payment of the due installments, the creditor has in view the declaration on his own

¹² See art. 4 (1) of GEO 37/2020

¹³ See art.16 paragraph (7) of the Norms for the application of the provisions of GEO no.37 / 2020 approved by GD no.270 / 2020

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responsibility of the debtor regarding the fulfillment of at least one of the conditions specially presented above in this article.

Of course, each creditor makes his own analysis (verification) regarding the classification of each debtor in one of the causes considered eligible. Following the analysis, the creditor communicates to the debtor his decision to approve or reject the request for suspension. As the conditions of admission are inserted in the Norms, we are of the opinion that in most of the situations, the creditors considered that the eligibility criteria regarding the debtor were met only if he/she sent the declaration on his/her own responsibility.

How will the debtors pay the amounts accumulated and unpaid during the suspension period?

In the case of the unsecured creditor (Flexicredit), the amounts representing the interest accrued during the suspension of the payment of due installments will be added to the credit balance, from the date of expiration of the suspension period, so that the new balance will be rescheduled for the rest of the credit period. for months for which the suspension was allowed. (maximum 9 months)

In the case of real estate loans, the interest accrued during the suspension of the payment of due installments, represents a distinct and independent receivable in relation to the outstanding balance, but which will not bear interest and commissions, to be paid by the client in installments within 60 equal installments, starting with the month immediately following the end of the suspension period.

Mentions regarding -participants in the Credit Bureau System- regarding the suspension of the obligation to pay the due installments by the natural persons to whom this facility was approved by the creditors.

In accordance with the provisions of Emergency Ordinance no. 37/2020, the participants - banking or financial banking institutions - in the Credit Bureau System have the obligation to make the corresponding records regarding the repayment stage of loans granted to individuals payment of outstanding installments.

Thus, for all these loans registered at the Credit Bureau and suspended from payment, the creditors will register the comment "Suspension of payment". information

We mention that, for the entire period of suspension of payment, the creditors will transmit to the Bureau, at each due date, the information regarding the fact that "the rate and value paid are zero".

Regarding the "credit score", it will not be affected by the mention "suspension of payment" because it does not influence the calculation algorithm.

What is the purpose of this mention, however? We are of the opinion that such a registration is necessary in order to objectively reflect the credit situation for the entire period of suspension of payment, provided that the legal framework regarding the assessment of creditworthiness and the reduction of credit risk is observed.

Processing of personal data in order to process requests for suspension of payment of due installments.

The banking institutions, as operators and on the basis of the legitimate interest, have the obligation to process the personal data for the purpose of a correct management of the contractual relations, implicitly of the debtors' requests regarding the suspension of the payment of the due installments. Thus, the operator will process all relevant data regarding the requesting

debtor including the mentions related to his health. Thus, the debtor must specify the reason for the request, and the illness with COVID-19 may be indicated.

3. CONCLUSIONS

We can mention, without doubt, that, due to the wide range of debtors included, the significantly longer duration of suspension of payment, in relation to the more restrictive legislations of other states (3 months – e.g. the Netherlands, Germany, Poland regarding the granting of similar citizens, the more relaxed conditions of application and the binding nature of the creditor, this rule is a real benefit for debtors, so it is significantly different from the regulations of countries such as the United Kingdom or Austria, where the institution of the moratorium is rather the result of negotiations between debtor and creditor.

REFERENCES

1. Guidance on legislative and non-legislative moratoriums on loan payments in the context of the COVID-19 crisis "EBA Guide".
2. Emergency Ordinance no. 37/2020 on the granting of facilities for loans granted by credit institutions and non-bank financial institutions in Romania to certain categories of debtors.
3. The norms for the application of the provisions of GEO no. 37/2020 approved by GD no. 270/2020.
4. Regulation (EU) 2019/876 of 20 May 2019 amending Regulation (EU) no. 575/2013 as regards the leverage ratio, the net stable financing indicator, the requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to CCPs, exposures to collective investment undertakings, large exposures and reporting and disclosure requirements, and Regulation (EU) no. 648/2012.
5. Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms.
6. GEO no. 52/2016 regarding the credit contracts offered to consumers for real estate.