

1. Government policy responses

1.1 New legislation

The Austrian legislator has enacted a wide range of new laws since the beginning of the Covid-19 pandemic in order to react to the social challenges, as well as to address the economic impacts of Covid-19. With regard to amendments concerning Austrian insolvency law the most important laws are the following:¹

- (i) Covid-19 Act (*Covid-19 Gesetz*) dated 15 March 2020, Federal Law Gazette (BGBl) I 2020/12, and an additional 21 Covid-19 Acts; the 22nd Covid-19 Act dated 7 July 2020, Federal Law Gazette (BGBl) I 64/2020, was the last of the Covid-19 Acts that became effective;
- (ii) Covid-19 Measures Act dated 15 March 2020, Federal Law Gazette (BGBl) I 2020/12;
- (iii) Covid-19-Fund Act dated 15 March 2020, Federal Law Gazette (BGBl) I 2020/12;
- (iv) First Judiciary Law Accompanying the Covid-19 Law (*1 Covid-19-Justiz-Begleitgesetz*) dated 22 March 2020, Federal Law Gazette (BGBl) I 2020/16;
- (v) Second Judiciary Law Accompanying the Covid-19 Law (*2 Covid-19-Justiz-Begleitgesetz*) dated 4 April 2020, Federal Law Gazette (BGBl) I 2020/24; and
- (vi) Covid-19 Corporate Law Act dated 8 April 2020, Federal Law Gazette (BGBl) I 2020/16.

Of course, the effectiveness and adequacy of these new laws is constantly being monitored by the Austrian legislator, with changes being made on an ongoing basis. This chapter on Austrian Covid-19 measures is a snapshot of the current position that likely will be further changed.

1.2 General fiscal stimulus measures that have been adopted

The Austrian government has adopted a variety of financial support packages (with a total volume of EUR49.6 billion;² approximately EUR31.2 billion already has been disbursed as of 15 January 2021) to support the Austrian economy during the Covid-19 crisis.³ These financial packages are described generally below.⁴

1.2.1 Hardship Fund for one-person companies, micro enterprises and new founders (*Härtefallfonds für EPU und Kleinbetriebe*)

The Hardship Fund is based on the Hardship Fund Act (*Härtefallfondsgesetz*) and is in force until 31 December 2022. The Hardship Fund was set up to help small businesses through the Covid 19 crisis quickly and without red tape. Payments from the Hardship Fund are one-off grants that

do not have to be repaid. The Hardship Fund has a total volume of EUR1 billion, and the funding consists of compensation for loss of revenues and a comeback bonus. The maximum amount of compensation for the loss of revenue is EUR24,000 in total, but at least EUR500. In addition to compensation for the loss of revenue, a comeback bonus of a maximum of EUR6,000 is possible. The maximum total funding (loss of revenue and comeback bonus) is therefore EUR30,000.⁵

1.2.2 Corona Assistance Fund to ensure the liquidity of companies (*Corona-Hilfsfonds*)

(i) Federal Loan Guarantee of the Republic of Austria

If the company's registered office and business operations are in Austria and there is a need for liquidity for the domestic location, the company is eligible for the Federal Loan Guarantee (*Kreditgarantie der Republik Österreich*). The guarantee covers up to a maximum of 90% of the requested loan amount. The maximum term of the loan is five years and can be extended by up to an additional five years. The upper limit for the guarantee is a maximum of three months' sales or a maximum of EUR120 million and can only be increased in justified exceptional cases.

The application for the Federal Loan Guarantee must be submitted to the principal bank of the company. For small and medium-sized companies the application is forwarded to the Austria Wirtschaftsservice Gesellschaft mbH (AWS) and for tourism companies to the Austrian Tourism Bank (ÖHT). For large companies (within the meaning of the Austrian Companies Act) the application is forwarded to the Austrian Control Bank (OeKB). Through these three agencies of the Austrian Federation, the Covid 19 Funding Agency (*Covid-19 Finanzierungsagentur des Bundes*: COFAG) issues the Federal Loan Guarantees for loans made by the principal bank to the respective company.⁶ When submitting its application, the company must plausibly demonstrate and, to the extent possible, prove by means of appropriate documentation the following:

- (a) that the liquidity requirement was caused by the economic impact resulting from the spread of Covid-19;
- (b) which payment obligations are to be met with the secured working capital loan and over what period of time;
- (c) that the payment obligations have been reduced, deferred or avoided to an economically reasonable extent;
- (d) what other public assistance the company will receive on the occasion of the economic impact resulting from the spread of Covid-19; and

1. Pesendorfer, Übersicht über den zeitlichen Anwendungsbereich der Covid-19-Gesetzgebung mit Bezug zum Insolvenzrecht, 25 May 2020, ZIK 2020/72, p. 57-59.

2. Loretz/Pitlik/Schratzenstaller-Altzinger, Budgetsituation angesichts der Hilfsmaßnahmen des Bundes, see: <https://www.wifo.ac.at/news/bundshaushalt-und-staatsschuld-in-der-covid-19-krise>.

3. Corona-Hilfsmaßnahmen: Infos, Entlastungen und Vereinfachungen, see: <https://www.bmf.gv.at/public/informationen/corona-hilfsmassnahmen.html>.

4. Claudia Reissner, Support measures for companies affected by Covid-19, 01/22/2021, see: <https://investinaustria.at/en/blog/2020/03/covid-19-support-measures-companies.php#zwei>.

5. Härtefall-Fonds: Förderrichtlinie für Phase 2, see: <https://www.wko.at/service/haerte-fall-fonds-foerderrichtlinie-phase2.html>.

6. See note 4 above.

- (e) when the company expects to be able to meet its payment obligations again without financial support.

In addition, the company must provide extensive declarations (e.g., no economic difficulties as of 31 December 2019, obligation to limit profit distributions and bonus payments) and grant the COFAG certain rights to information and inspection of the company.⁷

The legal framework for the Federal Loan Guarantees is regulated under: the "Guarantee guidelines for SME's by the Austria Wirtschaftsservice Gesellschaft mbH" (AWS-*Garantierichtlinie für KMU*); the "Guidelines on taking financial measures to maintain solvency and bridge liquidity difficulties of companies in connection with the spread of Covid-19 and the economic effects caused thereby" (*Richtlinien über die Ergreifung von finanziellen Maßnahmen zur Erhaltung der Zahlungsfähigkeit und zur Überbrückung von Liquiditätsschwierigkeiten von Unternehmen im Zusammenhang mit der Ausbreitung des Erregers SARS-CoV-2 und den dadurch verursachten wirtschaftlichen Auswirkungen*); and the "Guidelines for the assumption of liabilities for the tourism and leisure industry" (*Richtlinie der Bundesministerin für Landwirtschaft, Regionen und Tourismus für die Übernahme von Haftungen für die Tourismus- und Freizeitwirtschaft*).⁸

(ii) Fixed Costs Grant (*Fixkostenzuschuss*) – Phase I

In addition to the Federal Loan Guarantees, grants are given to businesses particularly affected by the Covid-19 crisis to cover their fixed costs (e.g., business rent, payments for electricity, insurance premiums).

Eligible businesses for the Fixed Costs Grants in Phase I were those that have suffered a loss of revenues of at least 40% due to the Covid-19 crisis in the period between 16 March 2020 and 15 September 2020 (compared to revenues within the same period in 2019). The Fixed Costs Grant could be claimed for up to three consecutive months. Phase I was set up by the appendix to the Act of the Federal Minister of Finance pursuant to Article 3b(3) of the Guidelines on granting fixed costs by the COFAG. The Fixed Cost Grant is scaled according to the amount of the loss of sales and is limited to a maximum of EUR90 million per company as follows:

- (a) 40%–60% loss of revenue amounts to a 25% Fixed Costs Grant (maximum of EUR30 million);
- (b) 60%–80% loss of revenue amounts to a 50% Fixed Costs Grant (maximum of EUR60 million); and
- (c) 80%–100% loss of revenue amounts to a 75% Fixed Costs Grant (maximum of EUR90 million).

(iii) Fixed Costs Grant (*Fixkostenzuschuss*) – Phase II

Phase II of the Fixed Costs Grant followed Phase I. The requirements for Phase II regarding the Fixed Costs Grant were expanded compared to Phase I by the following points.

- The loss of revenue must be at least 30% (in Phase I: 40%) regarding the period between 16 September 2020 and 30 June 2021 at the latest. The Fixed Costs Grant of Phase II is based on the Act of the Federal Minister of Finance pursuant to Article 3b(3) of the Guidelines of granting limited fixed costs up to EUR800,000 by the COFAG. The replacement rate in Phase II is calculated on a linear basis and corresponds to the percentage of lost sales, i.e., for 75% lost sales, 75% of the fixed costs are replaced (up to 100% of the lost sales). Companies with sales of less than EUR120,000 at the time of their application can apply for a flat rate of 30% of the lost sales as a Fixed Cost Grant.
- The maximum amount per company is limited to EUR800,000; the lower limit of the subsidy amount is EUR500.

(iv) Bridge Finance Guarantees / Direct Loans (*Überbrückungsgarantien / Direktkredite*)

The objective is to facilitate working capital loan financing for companies whose sales and earnings performance has been impaired by order and delivery shortfalls or other market changes due to the Covid-19 crisis. The funding agencies of the Austrian Republic are the AWS, the ÖHT and the OeKB, depending on the size and industry of the respective company.⁹

(a) Bridge Finance Guarantees of the AWS

For companies that are not classified as "companies in difficulty" according to EU regulations, a guarantee rate of 100% is possible for a loan amount of up to EUR500,000 and a guarantee rate of 90% is possible for a loan amount of up to EUR27.7 million. If a company does not meet the requirement from the Corona Assistance Fund, a guarantee rate of 80% may be approved under certain circumstances for a loan amount of up to EUR1.5 million. The maximum guarantee period for all variations is five years.

(b) Bridge Finance Guarantees for tourism

A guarantee rate of 100% is possible from the Corona Assistance Fund for tourism companies that are not to be classified as "companies in difficulty" according to European Union regulations for a loan amount of up to EUR500,000 and a guarantee rate of 90% for a loan amount of up to EUR1.5 million. The maximum guarantee period is five years.

(c) Bridge Finance Guarantees for large companies

7. Coronavirus: Unter welchen Voraussetzungen werden Garantien aus dem Corona-Hilfsfonds vergeben? See: https://www.auditreu.at/steuernews/mai_2020/coronavirus_welche_richtlinien_gelten_f%C3%BCr_die_garantieergabe_aus_dem_corona_hilfsfonds.

8. Garantien im Rahmen der Covid-Krise, see: <https://www.bmf.gv.at/public/informationen/covid-garantieprodukte.html>.

9. See note 4 above.

The OeKB handles Bridge Finance Guarantees for large companies as part of the Corona Assistance Fund. The guarantee covers 90% of the loan amount. The loan amount is based on the actual liquidity needs of the company and is capped at twice the company's annual payroll or 25% of annual sales (or otherwise based on special justification).¹⁰

1.2.3 Measures to reduce liquidity shortages regarding tax and social security contributions

(i) Special tax regulations concerning Covid-19

The Austrian Federal Ministry of Finance has adopted special tax regulations.

Taxpayers who had been affected by a loss of income due to the Covid-19 crisis could apply for a reduction of advance income or corporate tax payments for the calendar year 2020 until 31 October 2020 (Article 45(4) and (5) of the Austrian Income Tax Act (EStG)). In this application, the taxpayer has to substantiate the expected reduction of the tax base based on the specific manner of being affected. The application can be submitted electronically via FinanzOnline.

The tax authority (*Finanzamt*) has to reduce the advance payments for the calendar year 2020 accordingly. If no tax advance is expected for the calendar year 2020, the tax authority must set the advance payments for the calendar year 2020 at EUR0. If the taxpayer is affected by the consequences of the emergency caused by the Covid-19 pandemic in terms of liquidity in such a manner that it cannot pay the advance payment in the amount to be determined pursuant to Article 45(4) of the EStG, the taxpayer may request its tax authority not to determine the advance payments of income tax or corporate tax for the calendar year 2020 in their entirety or to limit the determination to an amount lower than the expected tax for the year 2020.

Beyond that, no deferral interest will be imposed between 15 March 2020 and 31 March 2021 (Article 212(2) of the Austrian Federal Tax Code (BAO)). In this regard, the tax authority must *ex officio* refrain from imposing deferral interest for the calendar year 2020 pursuant to Article 212(2) of the BAO, if the reduction or the omission of the advance payments for 2020 in the assessment of income tax or corporate tax for 2020 results in deferral interest.¹¹

(ii) Social security contributions

A number of other supporting measures were also introduced such as the deferral of contributions (see section 4.2.1 below), payment of contributions by instalments, reduction of the contribution basis and deferral of interest in arrears, suspension of enforcement and insolvency applications.

2. Legislative reforms impacting on stakeholders dealing with companies in financial distress

2.1 Employees

To support employees during the Covid-19 crisis, based on the Covid-19 Act the Federal Directive on Short-Time Working Aid (*KUA Covid 19*) was adopted on 19 March 2020. This Federal Directive regulates the possibility of applying for short-time working (*Kurzarbeit*) as a consequence of the Covid-19 crisis. Short-time working allows for the reduction of regular working hours for a short period of time (from 10% to a maximum of 90%), while at the same time the employee's salary is reduced due to the difficult economic situation of the employer. The loss of salary is covered by the Public Employment Service Austria (AMS) up to an amount of 80%. Thus, both employers and employees benefit from the expansion of short-time work due to the Covid-19 crisis.

The termination of employment contracts during short-time work is not allowed.

Additionally, the termination of an employment contract is not allowed within one month following the end of the short-time working period.¹² From a practical point of view, reference should first be made to the Early Warning System (*Frühwarnsystem*) pursuant to Article 45 of the Austrian Labour Market Promotion Act (*Arbeitsmarktförderungsgesetz*). Employers must notify the competent regional office of the AMS by means of written notification if they intend to terminate employment contracts within 30 days that meet any of the following conditions:

- at least five employees in companies with normally more than 20 and less than 100 employees;
- at least 5% of employees in companies with 100 to 600 employees;
- at least 30 employees in companies with normally more than 600 employees; or
- at least five employees who are over the age of 50.

The AMS may shorten this period if the employer claims important economic reasons. If consent is not granted, a notice must be issued, which may be opposed. Terminations of employment relationships breaching the procedure described in Article 45 of the Austrian Labour Market Promotion Act are legally ineffective. If an employee organisation has been established, the employer must also comply with the preliminary procedure in accordance with Article 105 of the Austrian Labour Constitution Act (*Arbeitsverfassungsgesetz*) and notify the employee organisation.¹³

10. Welche staatlichen Garantien zur Kreditbesicherung gibt es? See: https://www.auditreu.at/steuernews/mai_2020/staatliche_garantien_zur_liquiditaet_sicherung_von_unternehmen.

11. Steuerliche Sonderregelungen betreffend Coronavirus, Retrieved from: <https://www.bmf.gv.at/presse/pressemeldungen/2020/maerz/sonderregelungen-coronavirus.html>.

12. Angermair, Artner, Brandstetter, Kessler, Kulmer, Pimmer, Schöller, Zahradnik, Covid-19-Gesetze: Ausgewählte für Unternehmen relevante Regelungen – Von Arbeitsrecht bis Zivilprozess, 14 May 2020, NZ 2020/38, Magazine 4/2020, page 121.

13. Wiesinger, Die Bedeutung der Covid-19-Gesetze für das Arbeitsrecht, 6 April 2020, ASoK 2020, 122, Magazine 4/2020, page 122.

It is important to note that most of the economic stimulus measures outlined above – and also the temporary suspension of the obligation to file for insolvency proceedings in the case of over-indebtedness – are also indirectly intended to support the situation of employees, as they aim to secure jobs and prevent mass dismissals.

2.2 Lenders

Article 2 of the Second Judiciary Law Accompanying the Covid-19 Law provides an extension of loan repayments due to the economic impact of the Covid-19 crisis. However, the extension of loan repayments applies only to micro enterprises (companies with less than 10 employees and a total revenue of less than EUR2 million).

With regard to credit agreements concluded before 15 March 2020, claims of the lenders for repayment, interest or principal payments due between 1 April 2020 and 31 January 2021 had to be deferred for a period of 10 months upon the occurrence of the due date, if the borrower had a loss of income due to the exceptional circumstances caused by the spread of the Covid-19 pandemic. The regulation only applies to consumer credit agreements concluded by corporations as lenders.

Companies that are not micro enterprises benefit from Article 3 of the Second Judiciary Law Accompanying the Covid-19 Law. In this regard the legislator set a cap of 4% for default interest for companies that lack liquidity and fulfil certain requirements.¹⁴

In addition, all companies (regardless of their size) which are in default of performance because they are unable to run their business due to the Covid-19 crisis do not have to pay a contractually agreed penalty, even if such penalty does not require culpability. This provision only applies to contractual relationships entered into before 1 April 2020 and is in force until the end of June 2022 (Article 4 of the Second Judiciary Law Accompanying the Covid-19 Law).¹⁵

2.3 Third parties

With respect to third parties (e.g., suppliers), the legislator has not enacted any particular Covid-19 regulations. Nevertheless, the view is generally held that, according to the general civil law in Austria, companies do have the option to withdraw from a contract or terminate a contract for exceptional reasons. According to the prevailing opinion, the Covid-19 pandemic is such an exceptional reason. In any case, the legal consequences mentioned above may apply to “old contracts”, i.e., those that were concluded when no one knew of the outbreak of Covid-19 or could grasp its effects. A different assessment will have to be made if the contract is now newly concluded or was concluded at a time when the effects of the current crisis on the ability to provide services were already foreseeable.¹⁶

3. Legislative reforms for companies in financial distress

3.1 Extension of time frame to file for insolvency proceedings

In Austria, generally the debtor is insolvent and therefore obliged to file for insolvency proceedings if the debtor is unable to pay its debts (*Zahlungsunfähigkeit*) or is over indebted (*Überschuldung*) according to Article 69(2) of the Austrian Insolvency Act (IO). The application must be filed no later than 60 days from the date of the entry of the inability to pay or over-indebtedness (the 60 days can be used in case of demonstrable restructuring efforts). Due to the Covid-19 crisis, the legislator has extended the deadline to file for insolvency from 60 days to 120 days (Article 69(2a) of the IO). However, the extended deadline applies only to those debtors who suffer from a strained economic situation because of the Covid-19 crisis. The extended deadline does not apply to debtors that were already insolvent when Covid-19 arose (before 31 December 2019). Under the Second Judiciary Law Accompanying the Covid-19 Law, this provision has been extended until 31 March 2021.¹⁷

3.2 Suspension of obligation to file for insolvency proceedings

The legislator has also suspended the obligation for a company to file for insolvency proceedings temporarily in case of over-indebtedness (*Überschuldung*), if the over-indebtedness occurred between 1 March 2020 and 31 March 2021 (Article 9(1) of the Second Judiciary Law Accompanying the Covid-19 Law). If the debtor is over-indebted after 31 March 2021, the debtor has to file for insolvency proceedings within 60 days after 31 March 2021 or within 120 days after the occurrence of the over-indebtedness, depending on which of the time periods ends later. However, the suspension of the obligation to file for insolvency proceedings does not apply to the case of inability to pay debts (*Zahlungsunfähigkeit*).¹⁸

3.3 Liability of managing directors

The obligation to file for insolvency proceedings is closely connected with the liability of the companies' managing directors, according to Article 69 of the IO. With the occurrence of insolvency of a company, the managing directors must obey the corporate rule of “interdiction of payment” (*Zahlungsverbot*). Therefore, only payments that are necessary for the continued operation of the company are allowed.

Due to the Covid-19 crisis, the legislator has retracted the liability of the management board members of stock corporations with regard to the obligation to file for insolvency under Article 84(3) of the Austrian Stock Corporation Act for the period of time of the suspended obligation to file for insolvency proceedings. It is assumed that the retraction of liability is to be applied

14. See note12, page 121.

15. Kolmasch, 4. Covid-19-Gesetz – Zivilrecht, January 2021, LexisNexis.

16. See note12, page 121.

17. Schneider, Covid 19: Änderungen im Insolvenzrecht, 7 April 2020, CuRe 2020/30.

18. Grösswang/Gassner/Welten/Wabl, Coronavirus – Insolvenzen vermeiden, October 2020, LexisNexis.

analogously to the managing directors of a limited liability company according to Article 25(3) of the Austrian Limited Liability Companies Act. Nevertheless, in case of inability to pay its debts (*Zahlungsunfähigkeit*) the “interdiction of payment” (*Zahlungsverbot*) continues to apply with all possible resulting liability risks.¹⁹

3.4 Facilitation of restructuring plan

The legislator has also facilitated the application for a restructuring plan within insolvency proceedings that are conducted as restructuring proceedings. Under prior law, the debtor had to offer creditors a minimum quota of 20% (restructuring proceedings without self-administration) or 30% (restructuring proceedings with self-administration) when applying for the conclusion of a restructuring plan, payable in each case within a maximum period of two years. Under Article 11a of the Second Judiciary Law Accompanying the Covid-19, the payment deadline has been extended to three years according to Article 141(1) and Article 169(1) of the IO if the application for the restructuring plan has been submitted by 31 December 2021.²⁰

3.5 Deferral of payment plan instalments

Pursuant to Article 11 of the Second Judiciary Law Accompanying the Covid-19 Law, the debtor may file an application for deferral of payment plan instalments from the restructuring plan if, as a result of measures taken to prevent the spread of Covid-19, its income and asset situation has changed adversely in such a manner that it is unable to meet payment plan obligations. The deferral generally requires the consent of the majority of the insolvency creditors entitled to vote. A corresponding deferral request must be published in the Austrian Edicts Archive (*Ediktsdatei*).²¹ This regulation expires on 30 June 2021.

4. Financial and regulatory measures

4.1 Financial sector measures (regulators)

The Austrian Financial Market Supervision (“FMA”) as well as the European Central Bank strongly recommend that banks refrain from dividend payments and share buybacks.²² Further, the FMA, together with the European Insurance and Occupational Pensions Authority, strongly recommends insurance undertakings to refrain from the distribution of dividends as well as share buybacks.²³ Both recommendations were issued in April 2020 at the beginning of the Covid 19 crisis in specific press releases. The European Systemic Risk Board confirmed these recommendations in its decision dated 15 December 2020 for a time period until 30 September 2021.²⁴

Beyond that, the Austrian National Bank (*Oesterreichische Nationalbank*) considers it necessary due to the Covid-19 crisis to request liquidity information pursuant to Article 70(1) of the Austrian Banking Act at a higher frequency than before.²⁵

4.2 Specific measures that have been implemented

4.2.1 Deferral of social security contributions

Article 43 of the Second Covid-19 Act provides relief from social security contributions for employers. Accordingly, social security contributions for the periods February, March and April 2020 are deferred without interest for businesses that are subject to an entry ban or that are affected by operational restrictions or closures. Companies not covered by this scheme may also apply for a deferral of social security contributions for these periods without interest on arrears if it can be credibly shown that the social security contributions cannot be paid due to the Covid 19 crisis for reasons of company illiquidity. The social security contributions deferred must be paid, free of default interest, by no later than 30 June 2021.^{26, 27}

4.2.2 Exception for short-term shareholder loans

The Fourth Covid-19 Act created an exception from the legal consequences of the Austrian Equity Substitution Act (EKEG) for short term shareholder loans. Accordingly, a shareholder loan is not to be deemed as equity replacing within the meaning of Article 1 of the EKEG if it was granted to the company for no more than 120 days in the period between 5 April 2020 and 31 January 2021 and the company has not provided a pledge or comparable security.^{28, 29}

4.2.3 Exclusion for the challenge of repayments

Article 10 of the Second Judiciary Law Accompanying the Covid-19 Law excludes the possibility of challenging repayments of loans to banks. In this regard, the legislator has excluded the possibility of challenging the repayment of a loan to a bank that was made immediately after the receipt of Covid-19 short-time work financial assistance pursuant to Article 37b of the Labour Market Service Act, if the loan was not secured by the borrower’s assets and the bank was not aware of the borrower’s inability to pay its debts.³⁰

5. Specific measures for micro and small businesses

Besides the extension of loan repayments described above, no particular provisions addressing small business insolvencies have been adopted by the legislator.

19. See note 17 above.

20. *Mohr*, Covid-19-Update zu den insolvenzrechtlichen Regelungen, 30 December 2020, ZIK 2020/260, Magazine 6.

21. See: <https://www.edikte.justiz.gv.at/>.

22. News release of FMA, see: <https://www.fma.gv.at/en/ecb-and-fma-urgently-recommend-banks-to-refrain-from-dividend-distributions-and-share-buy-backs>.

23. News release of FMA, see: <https://www.fma.gv.at/en/eiopa-and-fma-urgently-recommend-insurance-undertakings-to-refrain-from-the-distribution-of-dividends-as-well-as-share-buy-backs>.

24. News release of FMA, see: <https://www.fma.gv.at/en/fma-implements-the-european-systemic-risk-boards-esrb-recommendations-of-distribution-policy-in-light-of-the-covid-19-crisis>.

25. *Damm*, Aufsichtsrecht und Risikomanagement, 1 May 2020, ÖBA 2020, 299, Magazine 5/2020, page 299.

26. *Mader*, Covid-19-Pandemie: Umfangreiche Änderungen im Insolvenzrecht, 22 July 2020, DRdA-InfAS 2020, 288, Magazine 4/2020, page 288.

27. Amendment of Social Security Act (*Änderung des Allgemeinen Sozialversicherungsgesetzes*) dated 26 February 2021, Federal Law Gazette (BGBl) I Nr. 35/2021.

28. See note 12 above.

29. *Reisch*, Epidemische Maßnahmen, 5 January 2021, ÖGSW, Magazine 4/2020, page 10.

30. *Dokalik*, Die gesetzlichen Begleitmaßnahmen zum Covid-19-Shutdown im Wirtschaftsrecht, 10 June 2020, DJA 2020/20, Magazine 2/2020, p. 64.

5.1 Reforms adopted for personal bankruptcy

Besides the stated measures (e.g., facilitation of restructuring plan and deferral of payment plan instalments that also apply to personal bankruptcy proceedings), no particular provisions addressing personal bankruptcy have been adopted by the legislator.

6. Measures introduced by the courts to deal with increased insolvency cases

The Eighth Covid-19 Act amended Article 3 of the First Judiciary Law Accompanying the Covid-19 Law and allowed for the possibility of holding a court hearing using suitable technical means of communication for the transmission of words and images.

For insolvency proceedings, a special provision was created in Article 3(3) of the First Judiciary Law Accompanying the Covid-19 Law. The insolvency court must determine whether it wishes to conduct the hearing by videoconference. The consent of the parties is not required. However, a stakeholder to be heard or a stakeholder entitled to participate in the hearing may certify that he or she does not have the necessary technical means. If the certification is successful, the hearing cannot be conducted via videoconference. Thus, there is no basis for a “partial videoconference”.^{31,32}

The Second Judiciary Law Accompanying the Covid-19 Law also stipulates that in court proceedings in general, and therefore also in insolvency proceedings, all procedural deadlines (both statutory and judicial deadlines) that had not expired on 22 March 2020 or those deadlines that began to run between 22 March 2020 and 30 April 2020 had their expiry interrupted until 30 April 2020 and began to run again on 1 May 2020.

7. Other pending reforms

7.1 Directive on restructuring and insolvency

In 2021, the Austrian legislator is obliged to implement Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (Directive on restructuring and insolvency). This Directive was already adopted before the occurrence of the Covid-19 crisis and is therefore not directly related to the Covid-19 crisis. However, many of the provisions contained in the Directive are also effective means of supporting companies in coping with the economic effects of the Covid-19 crisis.

The aim of this Directive is to preserve jobs and to support the economy in Europe. The preventive restructuring framework is to be implemented through a partial court restructuring proceeding. The restructuring proceeding is primarily intended as a pre-insolvency proceeding: It requires a probable insolvency, above all when the existence of a company is threatened; despite the threat to the company's existence, it must be able to continue as a going concern.

The debtor is entitled to self-administration under the Directive. However, in most cases the debtor will be supervised by a restructuring officer. The core of the procedure is a restructuring plan, which contains the restructuring measures, in particular a reduction of creditors' claims, which comes about with the consent of the majority of creditors and confirmation by the court.³³

31. See note 17 above; *Schneider*, Covid-19: Änderungen im Insolvenzrecht, ÖJZ 2020/68, p. 486/487.

32. *Mohr*, Geplantes zum Exekutions-, Insolvenz- und Restrukturierungsrecht, Die Entwürfe GREx und RIRL-UG sowie ein Überblick über noch geltende durch Covid-19 veranlasste Bestimmungen, 14 De-cember 2020, ÖRPf 2020 H 2, 22, Magazine 2/2020, page 22.

33. *Mohr*, Geplantes zum Exekutions-, Insolvenz- und Restrukturierungsrecht, Die Entwürfe GREx und RIRL-UG sowie ein Überblick über noch geltende durch Covid-19 veranlasste Bestimmungen, 14 De-cember 2020, ÖRPf 2020 H 2, 22, Magazine 2/2020, page 22.