

The image shows a construction site at sunset or sunrise, with a warm orange and yellow sky. In the foreground, several large rolls of blueprints are stacked. In the background, two large tower cranes are visible, and the skeletal structure of a building under construction is seen against the sky.

# CERHA HEMPEL

CONSTRUCTION PAPERS



## **Ministry Decree on List of Products for Price-Based Contract Modification and on the Related Evaluation Procedure Issued**

As we [previously reported](#), the Hungarian government, in order to bring clarity to the recoverability of extra costs incurred by contractors due to war inflation, issued a Government Decree to add new cases where contracts concerning government construction projects can be modified.

On the basis of the authority granted in the Government Decree, the products that can serve as the basis for such a modification of a construction contract are listed in Decree No. 4/2023 (II. 23.) of the Government Minister responsible for the construction industry ("Ministry Decree"). The Ministry Decree also includes the rules of how the Minister's opinions applicable to such modifications must be adopted.

### **The relevant construction materials**

- [1] Under the Government Decree, increases in the market prices of products that are affected by the Russia-Ukraine war can be used as grounds for requesting the modification of a construction contract. The list of the relevant products and materials is determined by the Minister responsible for the construction industry on the basis of the authority granted in the Government Decree.
- [2] The products and materials are listed in Annex 1 to the Ministry Decree. The list includes such key construction materials as steel, asphalt, cement, timber, ESP and XPS insulation, sand, gravel, sandy gravel and lime. It also includes masonry, roofing, cladding and stone veneer products, environmental structures, gates, doors, windows and loadbearing structures. Under Annex 1, construction products as well as other

products and services that are created or supplied with the use of any of the listed products and materials can also serve as grounds for a contract modification if their price increases.

- [3] The products listed in the Ministry Decree and any increases in their price has a fundamental significance in the determination of what qualifies as a cost increase within the realm of normal business risk. It is also important that contractors can seek the recovery of extra costs via a contract modification on the basis of increases in the prices of the products and materials listed in the Ministry Decree.

### **Rules concerning the Minister's opinion**

- [4] The Government Decree states that if requested, the Minister responsible for the construction industry will, in the light of the features of the underlying contract, issue an official opinion on what cost increases fall within the category of normal business risks and on the price of the relevant products. The detailed rules of how such opinions must be issued are included in the Ministry Decree.
- [5] Under the Ministry Decree, the Minister responsible for the construction industry may request relevant information from the competent contracting entity and from any other person or entity having information that is relevant in the evaluation of the request, and may also rely on the assistance of an expert if necessary.
- [6] The Ministry Decree states that if such assistance is indeed necessary, the organisation appointed to act as the expert is KTI Magyar Közlekedéstudományi és Logisztikai Intézet Nonprofit Korlátolt Felelősségű Társaság, a public research institute. It also states that the Minister must use the construction production price index published by Hungary's Central Statistical Office for the purposes of its opinions.
- [7] Contractors can file a request for an official opinion by submitting the form included in Annex 2 of the Ministry Decree to the e-mail address stated on the website of the Ministry responsible for the construction industry.
- [8] If the relevant construction project does not meet the requirements specified in the Government Decree or the request is not submitted with reference to the modification of a relevant contract initiated by the contractor, the opinion will not be issued.
- [9] If the request does not include all the information necessary for the opinion, the Minister will send a notice to the contracting authority and request it to provide the missing information within five business days, and will also state the consequences of missing the deadline in the notice. Requests for additional information may be issued no more than twice. If the deadline pertaining to the second request is missed, the opinion will not be issued.



- [10] If a request for the determination of whether the relevant cost increases qualify as being within the limits of normal business risk and of the price of the products and materials as at the time when the relevant tenders were submitted is made by a contracting entity, the Minister may request the contracting entity to provide certain additional information identified by the expert acting in the case.
- [11] The Minister is required to issue the official opinion within 30 days after the contracting entity provides the information or the expert opinion is obtained, if one is needed.

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