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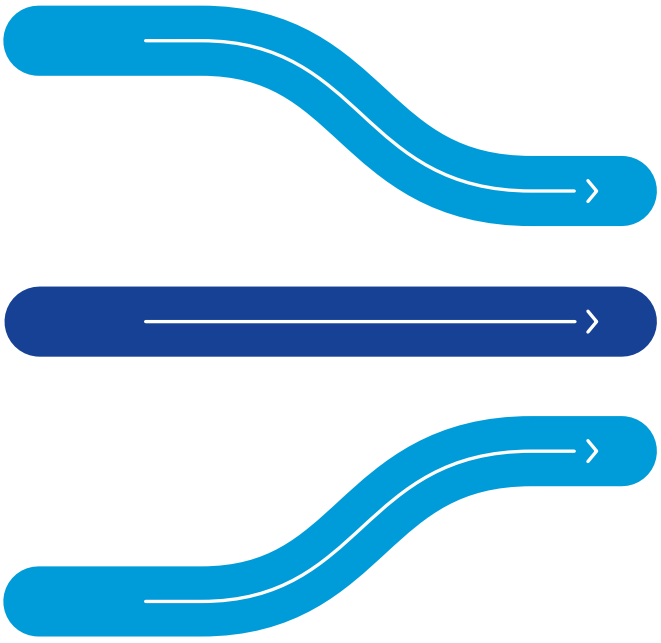
Legal News
April 2021

Central- and Eastern Europe



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Migration procedures now faster and easier

New rules for residence permits and employment of foreigners came into force on 1 March 2021.

Since 1 March 2021, foreigners applying for a temporary residence permit only have to submit a written declaration of residence. An official commitment by the owner of the property to be rented to provide suitable living space is no longer required as before.

In addition, a work permit is no longer required if a foreigner works full-time remotely from abroad under an employment contract with a company operating in Lithuania.

For highly qualified employees, the hiring process has also become much more flexible, as they can start working even before a residence permit is issued. A foreigner who is legally residing in Lithuania and has applied for a temporary residence permit on the basis of a highly professional job can now start working:

- after the Labour Office has decided whether foreigner's work is eligible, in line with with the needs of the Lithuanian labour market, or

- from the date of submitting an application for a temporary residence permit (if a decision by the Labour Office is not required).

Moreover, foreigners who are participants in start-ups can now extend their temporary residence permit more than twice if they present a document confirming that the company established by a foreigner and of which he/she is a participant has attracted an investment of at least EUR 30,000 since its foundation.

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In addition, international Master's students now have the opportunity to work full-time in Lithuania during their studies. Previously, only PhD students were allowed to work more than 20 hours per week. The restriction also does not apply to foreigners who have completed studies or training in Lithuania during the period of validity of a temporary residence permit.

Source:
Law on the Legal Status of Aliens of the Republic of Lithuania

Changes in corporate law

Belarus cancels restriction on participation of one-shareholder company in another one-shareholder company as well as limitation on number of CJSC shareholders

Introduced in 2016, the restriction on participation of a one-shareholder company in another one-shareholder company was a hurdle, including for foreign investors who were not interested in shareholding with other persons.

From entry into force of the new version of the Law on companies, this restriction is cancelled and one-shareholder companies are able to be a sole shareholder of other companies.

Moreover, closed joint-stock companies («CJSC») are able to maintain this status with any number of shareholders. This became possible due to cancellation of the restriction on the number of CJSC shareholders, which previously should not have exceeded 50.

From entry into force of the new version of the Law on companies, the number of CJSC shareholders is not limited. However, such a restriction may be established in a CJSC's Articles of association. In that case, as before, if such a limit is exceeded, CJSC is either subject to reorganization or its type should be changed within one year. If the number of shareholders does not decrease to the limit established by the Articles of association of this CJSC after that period, CJSC is subject to liquidation in court.

A joint-stock company may change its type by a resolution of the general shareholders' meeting adopted by a qualified majority of votes (at least three-quarters) of persons who took part in the meeting. Shareholders who voted against the resolution to change the type of joint-stock company or who were not duly notified about holding of the general shareholders' meeting at which the resolution was adopted, have the right to demand reacquisition of their stocks.

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Furthermore, at the moment shareholders agreements cannot be concluded between all shareholders. The new version of the Law on companies cancels this restriction.

These changes come into legal force from 28 April 2021.

Source:
National legal internet portal of the Republic of Belarus (NLIP) 27.01.2021, 2/2815

Changes in Latvian Labour Law to enhance posted workers' rights

Recent changes in the Labour Law: posted workers' rights are strengthened following implementation of EU Directive

On 5 January 2021, changes in the Labour Law to implement an EU Directive on posting of workers entered into force. The aim of the Directive is to establish a balanced framework with regard to freedom to provide services and protection of posted workers, which is non-discriminatory, transparent and proportionate.

Changes apply to foreign employers who send their employees to work in Latvia, to Latvian employers who send employees to work outside Latvia, and to temporary employment agencies where an employee was sent to work.

One of the new changes is that a labour service provider (temporary employment agency) can be considered as an employer and hence subject to all the rules on posting of an employee. The labour service provider is obliged to provide employees sent to Latvia with the same conditions of work and the same conditions of the employee-employer relationship as if the same work was performed by a worker directly hired by a labour service provider.

If an employee is sent from another Member State of the EU or EEA to work in Latvia, the employer must notify the State Labour Inspectorate before sending the employee. Without a notification, the person for whose benefit work is to be performed should not allow the employee to work. Additionally, regardless of the law applicable to the employment contract and employment relations Latvian working conditions and employment regulations apply.

If an employee is sent outside Latvia, either to another EU Member State or EEA country to work there, the employer must provide them with working and employments conditions that comply with collective agreements recognized as universally binding. However, the law of the state to which the employee was sent to work regulates reimbursement of expenses related to business trips. In

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addition, the employer must comply with the administrative requirements of the state to which the employee is posted.

Among other changes, the employer must pay the posted employee a daily allowance of 30 per cent of the daily allowance norm specified in the law of the state where the employee is posted. The only exceptions are if the employee is provided with meals three times a day or the remuneration paid to the employee is the same as that of a comparable employee in the country to which the employee is posted to work. A daily subsistence allowance is considered as compensation for expenses.

Source:
Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018;

Amendments to the Labour Law entered into force on 5 January 2021;

Draft Law “Amendments to the Labour Law” annotation

New reason for termination in Slovak labor law

The wording of an amendment to the Labour Code surprised the business community as well as lawyers.

The reason for termination that had been discussed for years, which was supposed to go hand in hand with an employee reaching retirement age, has become a reality. As of January 1, 2022, an employer can legally terminate an employee who has reached the age of 65 and at the same time has fulfilled the requirements for entitlement to a retirement pension. The employee has a statutory right to severance pay in the event of such termination.

The Act also further modernized the "home office" rules, mainly due to the current widespread trend of working from home. A new definition regarding "working from home" was introduced. The place and type of work performed, as well as the rules on working hours, have been specified. In addition, the employer must bear the employee's demonstrably increased costs incurred in connection with use of the employee's own working equipment. This applies to working equipment required to work in the "home office," such as costs for BYOD, electricity, high-speed Internet, etc. These must be agreed in writing with the employee.

In addition, the amendment now allows the employee to choose between a meal voucher (gastro ticket) and a financial contribution for meals. This choice can be made by the employee once in a 12-month period. The law recommends that employers regulate this new employee choice in an internal employer policy.

Employers will undoubtedly also welcome two important changes in collective labour law. The first is the introduction of the principle of representativeness in the local collective bargaining agreement (i.e., where there is only one company). According to the new law, the employer is obliged to allow activity by trade unions in the workplace only if there are active trade union members of that union among the employees in the company. The second change is the abolition of the automatic scope of application of sectoral collective agreements for employers where their effect was automatically introduced ex lege.

In addition, the Act simplifies temporary assignment of employees within a group.

Source: Act No 76/2021 Coll.

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New holding law in Poland

Interests and relationships in a holding company, i.e. in a group of companies within the meaning of the new legislation, are to be given a legal framework.

For several months now, work has been going on in Poland to introduce into the Polish system provisions on holding law, i.e. the law on groups of companies (conglomerate law), which regulates the private-law relations between the parent company and its subsidiaries, so as to take into account the interests of creditors, members of corporate bodies and small shareholders of a subsidiary.

Currently there is actually only one provision in the Commercial Companies Code relating to the relationship between parent companies and subsidiaries. The legislator wants to expand the regulations, though in a rather limited scope consisting in regulating "only those issues from the scope of functioning of factual holdings, the legal regulation of which is really necessary".

The key concept of the new regulations will be the "interest of a group of companies" and a "group of companies" comprising a parent company and its subsidiary(ies), guided - in accordance with the articles of association or statutes of each subsidiary - by a common economic strategy (the interest of a group of companies), enabling the parent company to exercise uniform management over the subsidiary(ies).

The draft of the new amendments introduces an extensive - as much as three-step - regulation of the influence of the parent company on a subsidiary and the liability of the parent company dependent on the degree of involvement of the parent company in its subsidiaries. The protection threshold for subsidiaries, their shareholders and creditors is also lowered in comparison to solutions adopted in foreign legal systems, as well as in comparison to results that could be achieved using general rules of contractual and tort liability (with development of the concept of liability for indirect damage).

The solutions of the draft have been criticized, and it is even argued that the liability of a parent company for damage caused by carrying out binding instructions given by the parent company to its subsidiary creates possibilities for legal drainage of assets of subsidiaries without the possibility for them or other

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injured parties to obtain due compensation, not to mention broader compensation for the negative effects of such actions.

On the occasion of the aforementioned amendment, it is planned to introduce to the Commercial Companies Code new regulations increasing the effectiveness of supervisory boards of companies and ordering and adjusting the regulations concerning capital companies.

Source:
Draft Act on amendments to the Commercial Companies Code and certain other acts of 05/08/2020 as amended; legislative work stage: arrangements at the Government Legislation Centre

Essential amendments of bankruptcy law

Bankruptcy proceedings more efficient in the new year

On 1 February 2021, the Bankruptcy Act Amendment Act entered into force. The amendment seeks to ensure faster, more cost-effective and transparent bankruptcy proceedings and higher payments to creditors.

The most important changes are creation of an insolvency service and specialization of courts in insolvency cases.

Current practice shows that more than half of bankruptcy proceedings in Estonia are terminated due to lack of funds necessary to investigate the causes of insolvency. As a result, one important goal of bankruptcy proceedings is not fulfilled - to find the causes of insolvency. To change the situation, an insolvency service will be established as of January 2022. The Insolvency Service will supervise the activities of bankruptcy if suspicion exists that the debtor has acted unlawfully in causing the insolvency. The role of the new service will be to detect malicious behaviour, make bankruptcy proceedings more transparent, investigate the causes of unlawful insolvency, and increase the rate of payments to creditors. Altogether, a fairer business environment will be created. The service will contribute to the investigation of bankruptcy offences and develop common practice in the field of insolvency. In addition, the service would exercise administrative supervision over trustees in bankruptcy.

As a result of the service's activities, debtors should file for bankruptcy on time. That way, when bankruptcy is declared, the debtor has more assets from which to pay creditors' claims. The attraction of discontinuing insolvency for lack of assets should also be reduced. The work of the service will also facilitate criminal prosecution in bankruptcy cases.

The amendment also provides flexible opportunities for restructuring of companies.

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In order to speed up bankruptcy proceedings in court, jurisdiction in insolvency matters of company debtors will be transferred to the county courts of Harju and Tartu, and it will be ensured that all county courts have judges specializing in insolvency, assisted by appropriately trained judicial officers.

One essential change concerns the circle of bankruptcy petitioners: in the absence of a management board, the application must be submitted by persons who normally must ensure the existence of a management board. These are, for example, in the case of a private limited company, the shareholders or members of the supervisory board.

Source:

Riigi Teataja – www.riigiteataja.ee; RT I, 04.01.2021, 49

Justiitsministeerium -www.just.ee

The growing trend of GDPR fines in Hungary

Stiffer GDPR fines from the Hungarian data protection authorities are becoming more common

A new era of data protection began in the EU when the General Data Protection Regulation of the European Parliament and of the Council, commonly known as the GDPR entered into force. More than two-and-a-half year later, it seems that the national authorities have had enough time to set up an effective control mechanism for the regulation.

The GDPR entrusts imposition of effective, proportionate and dissuasive penalties for breaches of the GDPR to the national authorities, in Hungary to the National Authority for Data Protection and Freedom of Information (NAIH). The authority's fining practice has changed since the initial, milder phase. Nothing proves this better than the 100 million HUF (280 000 EUR) fine imposed by NAIH in 2020 against the domestic subsidiary of a global telecommunications company. This was the highest domestic fine in Hungary to date. It is important to know that not only dominant economic operators can expect large fines for breaches of the GDPR. NAIH also keep tabs on the data protection activities of micro, small and medium-sized enterprises. As a concrete example, in the case of a medium-sized enterprise, the authority imposed a fine of 8 million HUF (23 000 EUR) for a breach of data management obligations

Companies dissatisfied with the decision imposing a fine can appeal through an administrative lawsuit. In practice, in most cases the courts find the authority's procedure and the amount of fine imposed to be rightful and legitimate. Therefore, if the appeal is unsuccessful, the court will order the appellant to pay not only the fines imposed but also the legal costs incurred.

The increasing amount of higher fines is not only typical in Hungary: this practice is noticeable throughout the EU. For example, the German data protection authority fined a fashion company 35 million EUR for recording the personal data of its employees illegally.

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In summary, with the end of the initial milder, transitional period, the authorities are monitoring GDPR compliance more strictly, across the whole of the EU. Accordingly, companies must also be more careful when it comes to data protection.

In order to avoid fines- whatever the amount - it is necessary to act consciously, both as a private individual and as a company. It is more cost-effective to bear the cost of setting up a GDPR operation and preparing the necessary documentation than to pay millions in fines!

Source:

REGULATION (EU) 2016/679 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (Text with EEA relevance)

Safety requirements when parking loaded trucks in Germany

Contractual regulations on where loaded vehicles may be parked are permissible

The clause in the General Terms and Conditions of a consignor according to which loaded vehicles must be parked under surveillance or where sufficient security is guaranteed does not impose any duty of care on the carrier that goes beyond what is required by law.

This requirement is formulated so openly that it can also be understood in a way that does not go beyond what is already required of a carrier by law. According to this, the greater the risks associated with the carriage of goods, the greater the demands to be made on the safety measures to be taken. Of considerable importance in this context is whether the transported goods are easily marketable and thus particularly at risk of theft, what value they have, whether the carrier should have been aware, due to a particular risk situation, that the theft of the transported goods could occur if the loaded transport vehicle is parked unguarded, and what concrete possibilities there are for a secured interruption of the journey in order to comply with prescribed pauses.

Carriers are therefore already obliged by law to park a loaded truck in a safe place. This applies especially if there is an additional contractual agreement to this effect (also in the general terms and conditions).

In practice, however, this should not infrequently cause difficulties, as there are only an insufficient number of guarded parking spaces in many regions in relation to the constantly increasing volume of traffic.

Source: Urteil vom 23.07.2020 – I ZR 119/19

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New fiscal facilities for employees and employers

Employers can grant money to their employees for teleworking and for the education of their children under seven years

Starting from 2021, Romanian employers can grant money to employees for the expenses necessary to carry out their teleworking activity, as well as for covering the costs generated by the early education of their children.

Under an employment contract or through internal regulations and within a monthly ceiling of 400 lei (approximately 82 EUR) corresponding to the number of days in a month in which the employee carries out their activity in a teleworking system, employers may provide money to support the utilities expenses of the place where the employees are carrying out their activity. From the amounts received, employees may be able to cover the costs generated by services such as electricity, heating, water or internet subscription, but may also purchase office equipment or furniture needed to carry out their teleworking activity. It should be mentioned that these amounts can be granted without the need to provide supporting documents from the beneficiary employees.

The expenses thus incurred by the employer are, according to the new legal provisions, deductible expenses for determining the tax result.

Furthermore, employers may provide a monthly amount to their employees in order for them to cover the costs of the early childhood education establishments in which one or more of their children are enrolled. The term early education means that part of the national pre-university education system consisting of pre-school level (1 – 3 years) and preschool education (3 – 6 years). The maximum amount that can be granted by employers is 1 500 lei / month (approximately 308 EUR) for each child of the employee. However, the amount can only be offered taking into account the expenses actually incurred by the employee.

Companies that grant money for early education will be able to deduct the costs from profit tax due, and if the amount exceeds the profit tax, the rest of it may

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be deducted, in order, from payroll tax, from VAT due and, finally, from excise duties owed by the company.

From the point of view of employees, it is important to mention that these amounts are not considered taxable income nor are they included in the monthly basis of social security contributions.

Source: Law no. 296/2020 for the amendment and completion of Law no. 227/2015 regarding the Fiscal Code.

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