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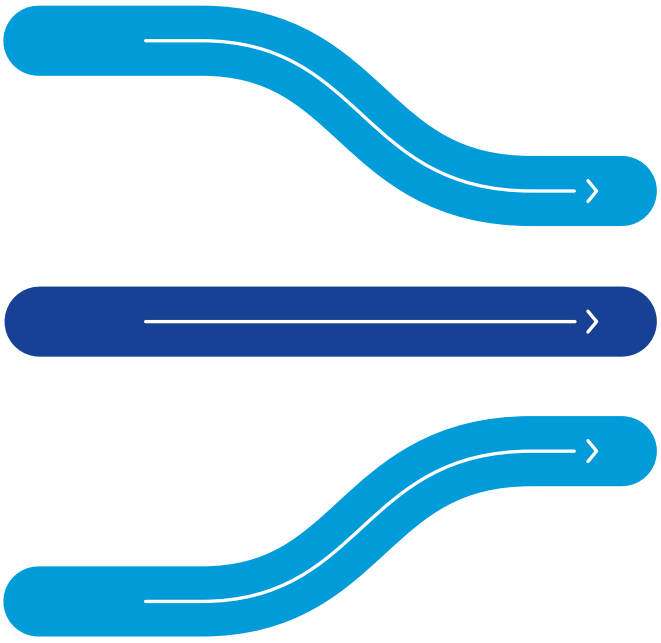
Legal News
December 2020

Central- and Eastern Europe



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Legal action against EU mobility package

Lithuania brings two cases before the ECJ – the first time Lithuania has taken such a step.

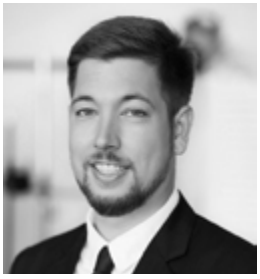
As expected (https://www.bnt.eu/en/?option=com_content&view=article&id=3083&catid=219), the Republic of Lithuania has filed two actions against the new EU mobility package with the European Court of Justice (ECJ). At the same time, a request has been made to suspend the current provisions pending a ruling.

The first action challenges the requirement for vehicles to return to the place of the transport company's establishment every 8 weeks and the four-day "cooling-off" period after cabotage operations (after three cabotage operations, the vehicle must leave the country for at least four days). It is feared that these rules will favour Western European competitors because it is unlikely to be profitable for Eastern European transport companies to serve Western European markets if drivers and vehicles have to return to their home country at such short intervals. On the other hand, Lithuania considers that the EU legislator has not provided sufficiently objective reasons to justify the need for these rules. Furthermore, environmental aspects have not been sufficiently taken into account in the decisions.

In addition, the obligation for drivers to return after three weeks would restrict their freedom of movement by limiting their choice to decide where to spend their free time between journeys.

In the second case, Lithuania is mainly challenging the provisions on the posting of workers. The new rules result in different treatment of international bilateral transport and cabotage transport operations. According to Lithuania, this distinction leads to different rules and social guarantees for employees, even though the nature of the work they carry out is the same.

Moreover, the deadlines set by the legislator for implementing the measures in the package are far too tight.



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Poland, Hungary, Bulgaria, Romania, Malta and Poland have also joined Lithuania in bringing proceedings.

Source:

Regulation (EU) 2020/1055 of the European Parliament and of the Council of 15 July 2020 amending Regulations (EC) No 1071/2009, (EC) No 1072/2009 and (EU) No 1024/2012 with a view to adapting them to developments in the road transport sector

Regulation (EU) 2020/1054 of the European Parliament and of the Council of 15 July 2020 amending Regulation (EC) No 561/2006 as regards minimum requirements on maximum daily and weekly driving times, minimum breaks and daily and weekly rest periods and Regulation (EU) No 165/2014 as regards positioning by means of tachographs

Directive (EU) 2020/1057 of the European Parliament and of the Council of 15 July 2020 laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector and amending Directive 2006/22/EC as regards enforcement requirements and Regulation (EU) No 1024/2012

Hungarian 10-day quarantine rules amended

New quarantine rules, published on 27 October 2020, reduce administration and regulate quarantine violation more strictly.

Under the previous regulation, mandatory official home quarantine for people entering Hungary was to be decided by the administrative authority. However, the frequency of such cases led to an extremely high administrative burden. In order to ease the situation and to provide faster information to those concerned, from 28 October 2020 an official decision on the imposition of quarantine is no longer required, but instead it is necessary to comply with the following rules after a medical examination:

a. the police instruct a person in quarantine to observe a 10-day home quarantine if the preliminary medical examination has not detected any suspicion of infection,

b. a person in quarantine must inform the police – even electronically – 24 hours before the medical examination of the exact location of the quarantine flat to which he will go immediately after the examination,

c. it is also necessary to install so-called “quarantine software” on a suitable device for controlling the quarantine or failing that to allow on-the-spot inspection during quarantine.

According to the previous regulation, home quarantine can be replaced by 2 negative SARS-Cov-2 PCR tests with at least a 48-hour difference in between is required. For the examination, a person in quarantine may leave the quarantine flat if they notify the police of the place and time at least 24 hours before the examination, and will receive electronic confirmation. The person concerned may be released from quarantine if he sends the results of the tests, i.e. the two negative tests, electronically to the police and receives an acknowledgment of receipt.

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Quarantine violators should expect high fines from 12 November 2020. Besides leaving the quarantine flat, quarantine rules can also be violated by someone, who

a. unreasonably interrupts their journey to the quarantine flat,

b. deletes the quarantine software before the end of the quarantine, or

c. hinders an on-the-spot check.

Violation of the rule attracts a fine between 5 000-150 000 HUF (approximately 14-400 EUR), and in the case of a repeat violation on the same day, a maximum fine of 600 000 HUF (approximately 1 700 EUR) can be imposed, against which no appeal is possible.

In the case of returning home or entry from abroad, it is worthwhile informing yourself about the above changes in advance.

Source:

Act CIV of 2020 laying down certain rules relating to epidemiological measures and amending certain Acts relating to epidemiological measures

Government Decree 408/2020 (VIII.30.) on travel restrictions during the period of a state of epidemiological preparedness

Use of unregistered medicines has been authorised

The New Regulation of the Ministry of Healthcare establishes the procedure and conditions for use of unregistered medicines as a new treatment method

Formation of the regulatory base for the new Law "On circulation of medicines" (hereinafter – “Law”) continues in Belarus.

In addition to the new conditional registration procedure, the Law provides that original medicines that are in the process of clinical trials can be used to ensure early access by patients to new treatment methods, if:

- they are intended for the treatment, medical prevention or diagnosis of life-threatening or severe disabling diseases;
- there are no effective methods of providing medical care to patients with these diseases;
- there are no registered medicines used to provide medical care to patients with these diseases;
- the benefits of the medications used exceed the risk to the life and health of patients with these diseases.

In turn, the Ministry of Healthcare has laid down that the medical use of these medicines is carried out on the basis of a program developed by the manufacturer of the medicines or its representative office in the Republic of Belarus.

The program is submitted by the manufacturer of medicines or its representative office in the Republic of Belarus to the Ministry of Healthcare.

The program is a set of activities and should contain information about:

- the name of the medical product, indications for its medical use, dosage frequency and method of use;
- clinical trial results of the medical product;
- risk-benefit ratio of the medical product;
- sequence and timing of implementation of the program activities;

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- the number of patients and inclusion and exclusion criteria;
- quantity of medical products;
- healthcare organizations participating in the program;
- the procedure for informing the patient and/or their legal representative about the absence of a therapeutic alternative, emerging risks, restrictions and benefits that a medical product can bring;
- arrangements for patient monitoring and pharmacovigilance measures;
- the supply chain of medical products;
- measures of responsibility for each of the parties involved in implementing the program in cases of violation of terms.

Based on the results of consideration of the program by a special commission of the Ministry of Healthcare, within 1 month from the date of submission, a decision is made on approval or rejection.

It is also worth noting that import of these medical products to the Republic of Belarus is carried out on the basis of a permit issued by the "Center for Examinations and Tests in Health Service".

The Regulation comes into legal force from 20 November 2020.

Source: National legal internet portal of the Republic of Belarus (NLIP) 27.10.2020, 8/35960

Main changes in Slovak commercial law

Companies that have neglected compliance can be deleted from the Commercial Register.

Changes in the Commercial Register

Existing representation restrictions for managing directors, which triggered only internal liability issues, must newly be deleted from the Commercial Register. Deletion of value thresholds or similar restrictions on acting on behalf of a company must be filed for when applying for other changes of registered data in the Commercial Register after 1 October 2020, and in any event no later than 30 September 2021.

Effective from 1 October 2020, applications can only be filed electronically.

Prohibition on establishing a limited liability company for persons against whom enforcement is conducted

The legislator doubts the ability of a person unable to manage their own finances to manage the assets of a company economically and with professional diligence.

Under the amendment, a person registered as a debtor in the Register of authorizations to perform enforcement can neither establish a limited liability company as a shareholder nor transfer their share in the company to a third person.

The legislator has spared us possible speculation and expressly stated that the prohibition also extends to the transfer of shares to other company shareholders.

Enforcement also affects managing directors. A person against whom enforcement is being conducted cannot be appointed managing director.

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New reasons for company dissolution by Court

Based on the Commercial Code amendment, missing the statutory deadline to submit financial statements to the Collection of Deeds by 6 months is sufficient grounds for the company to be dissolved by the Court.

Companies that have not performed euro currency conversion of share capital and shareholder contributions by 1 October 2020 at the latest will be published in the Official Journal for six months. Subsequently, the courts in cooperation with Ministry of Justice will delete these companies from the Commercial Register.

Changes to Liquidation Procedure

Under the new rules, a company's liquidation becomes effective only with the liquidator's registration in the Commercial Register.

Before the liquidator is registered in the Commercial Register, an advance payment of EUR 1,500 must be deposited with a notary.

Source: Law no. 390/2019 Coll.

Significant steps for the reduction of business environment bureaucracy

New law simplifies transfer of shares in limited liability companies and registration with the Trade Registry.

Based on the need to stimulate the economy by simplifying and reducing the bureaucracy of registration with the Trade Registry, Company Law no. 31/1990 has been amended and a new version entered into force on November 5th, 2020.

The amendments mainly concern transfer of shares and payment of the share capital of limited liability companies ("LLC"), as well as declaring registered offices.

Regarding transfer of shares to persons who are not a shareholder in an LLC, the condition of non-exercise of the opposition right of the creditors of the LLC has been abolished. Until now, transfer of shares was carried out in two stages, so as to give creditors the opportunity to exercise their opposition right within 30 days from publication of a decision of the general meeting of shareholders in the Official Gazette.

If creditors objected, registration was blocked until a final decision of the court rejecting opposition. Thus, at present, transfer of shares will become effective upon completion of registration with the Trade Registry (in one step), without the need to wait until expiry of the 30-day period or a final court decision.

Another significant change is represented by the shareholders' possibility to provide within the company statutes that transfer of shares is to be carried out also on the basis of agreement between shareholders that together hold less than ¾ of the share capital.

Regarding share capital, the minimum thresholds of RON 200 as well as proof of payment of the share capital for establishing an LLC are abolished. Thus, the shareholders will be able to deposit the share capital after establishment.

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According to the website of the Trade Register, the minimum total value of the share capital is currently 1 RON, which is motivated by the obligation of the shareholders to divide the share capital into equal parts. However, the interpretation of the Trade Registry on the legal provisions imposing this obligation is not immune from criticism, as they do not require the existence of a minimum value of a share or a minimum number of shares for establishing an LLC, but only equal distribution between shareholders.

Finally, after abolishing the condition of non-overlapping of registered offices, the obligation to register the document certifying the right to use the registered office with the Fiscal Authority at the time of registering a company and / or when changing the registered office was also waived.

Source:

Law no. 223/2020 for the simplification and reduction of bureaucracy on transfer of shares and payment of share capital by amending Companies Law no. 31/1990;

Company law no. 31/1990, republished, with subsequent amendments and completions

Trade Registry official website

Important set of construction law changes

Long-awaited changes to construction law now in force.

Recent amendments to construction law introduce important new regulations after a 6-month wait between adoption and coming into force in September.

The changes had been planned well ahead of the pandemic, but to a certain extent answer current extraordinary needs; especially the need for simplified procedures, lessened burdens and fewer reasons for punishing investors and site owners. In particular, the new rules are aimed at considerably simplifying the construction process and releasing investors and real estate owners from certain obligations.

The most important changes include:

- new division of a construction design project, outlining its three parts,
- prohibition of declaring construction permits invalid after 5 years from issue
- simplified procedure for legalizing construction arbitrage,
- waiving the duty to obtain a construction permit for some constructions (ATMs, package delivery machines and other small automated devices, electric vehicle charging points, home conservatories and terraces).

The construction design project is divided into the following three parts (instead of a single mixed-content document which it had been before):

1) land or area development project,

2) architectural-construction project,

3) technical design.

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The authority granting a permit will now be entitled to agree to certain project variations and even bending the technical requirements, in strictly defined cases, also after issuing a building permit (but prior to issuing an amending permit).

Considerable paperwork simplification is a result of the lawmaker no longer requiring to follow a unified construction permit decision template. Now the permit must simply abide by the general rules of the Code of administrative proceedings (referring to all sorts of decisions), and by construction law principles. The minister will however no longer issue (and change every now and then) a strict template of the decision itself.

Source:
Act amending the Act - Construction Law and certain other acts (Journal of Laws of 2020, item 471)

Way clear for controversial Estonian pension reform

Freedom of choice vs. risk for Estonian workers

The Estonian pension system is facing reform. It currently consists of three pillars. The first pillar is the statutory pension. In addition, there is a second pillar, which is a funded compulsory pension. This is financed by mandatory employee contributions amounting to 2% of salary, plus 4% from social tax, which is added to the second pillar instead of the first. The third pillar is a voluntary additional pension plan.

The reform law affects the second pillar. This part of the pension plan will become voluntary.

Employees who were part of this pillar can continue to remain in it and do not have to change anything. Those who were not part of this pillar can also join. In addition, there is the possibility of transferring the previous assets of the 2nd pillar to a pension investment account to be set up without income tax. Investment decisions are now made by the owner.

It is also possible to stop paying into the pillar or withdraw the amount in full minus 20% income tax. The amount is available for free use. Approximately 20% plan to make use of it. Re-entry is only possible after ten years.

The reform is intended to promise individuals greater control over and flexibility for their finances. The fear is that this will lead to greater poverty in old age over the long term. The possibility of many simultaneous withdrawals could cause funds to lose value. In the short term, taxing withdrawals could generate higher government revenues. Moreover, free availability could stimulate the economy in the short term. Employees must weigh up the advantages and disadvantages of entering and leaving the fund.

There are time limits in the case of desire for payouts. The first runs from 01 January to 31 March 2021, with payment being made five months later. The first payouts are thus made in September.

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At the request of the President, the Estonian Supreme Court, the Riigikohus, recently dealt with the law. In constitutional terms, the main issue was violation of the basic rights to property, equality, freedom of enterprise and state assistance in the case of old age. The judges did not regard the reform law as unconstitutional. After the decision was announced, the draft law was signed by President Kersti Kaljulaid and will now enter into force.

Source:

Riigikohus, decision of 20 October 2020, case number 5-20-3;

Law on Amendments to the Law on Financed Pensions and Related Legislation (mandatory reform of financed pensions)

Truck toll in Germany - repayment claims in the millions

The European Court of Justice has ruled that the calculation of the German truck toll is partly in breach of EU law.

The ECJ ruled that the calculation of the German truck toll was probably incorrectly excessive since at least 2007.

This decision was preceded by an action brought by a Polish freight forwarder for repayment of more than EUR 12,000 overpaid truck toll from 2010 and 2011.

The European Court of Justice has now ruled that the inclusion of costs for traffic police in the toll calculation is not compatible with the European infrastructure costs directive, as these are not so-called "infrastructure costs". However, only such "infrastructure costs" may be used for the calculation of the toll. Furthermore, there are doubts as to the correctness of the interest rates used in the calculation of the cost of capital.

In total, the calculated toll for trucks could have been between 3.8% and 6% too high.

The decision of the referring court, the Oberverwaltungsgericht (OVG) NRW, is still pending. Nevertheless, claims for reimbursement in the millions of euros are already to be assumed for haulage companies which have been operating in Germany in recent years.

Irrespective of the outcome of the proceedings still pending before the OVG NRW, the decision of the ECJ shows that a review of the truck toll paid in the past may result in substantial repayment claims for many companies.

We will keep you informed about further developments.

Source: ECJ C-321/19

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Using video conference calls in civil court proceedings in the Czech Republic

2020 is all about keeping one's distance – specifically, the (public health) practice of social distancing. Are civil court procedures amenable to the current situation?

In September 2017 – long before the current pandemic became a concern – an amendment to the Code of Civil Procedure came into force which made it possible for the civil courts to use technology for audio and video transmission in court proceedings. Video conference technology can thus be used to arrange for the presence of the parties (i.e., the plaintiff and the defendant) or of an interpreter, or to hear witnesses, experts or the parties. Evidence may also be presented and heard remotely in a video conference.

The court may only take recourse to video conference technology upon the request of one of the parties, or if the use of such technology appears apt for the given purpose – e.g. because the presence of a witness or a party is required who is currently incarcerated or hospitalized, making it difficult to ensure their physical presence in the courtroom. By contrast, hearing a key witness via videoconference would not be expedient if their personal attendance of the court hearing is important in order to be able to assess their credibility.

Each such video conference must be preceded by verifying the identity of the participant. In practice, their identity will be established by an authorized court clerk or prison official, with the approval of the presiding judge. During the introductory instruction, the judge will explain the procedural aspects to the participant, i.e., in particular, their right to object at any time to the insufficient quality of the audio or video stream. The official who checked the identity of the participant is expected to remain with them in the same room throughout the entire video conference, so as to ensure that the video conference will have the proper weight. More generally, the video conference is still a judicial procedure and as such should be endowed with a sufficient degree of dignity and formality. All video conferences will be recorded; this audiovisual footage serves as proof of the course of proceedings.

Remote hearings are ultimately a welcome element of the continuing drive toward digital justice (and public administration in general), and are useful not only in times of crises such as the current one. One of the numerous benefits of the option to hold virtual court hearings is that it expedites proceedings and makes

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the administration of justice more efficient (e.g. because court hearings don't have to be adjourned repeatedly because participants are not available).

Source: Code of Civil Procedure (Act No. 99/1963 Coll., as amended)

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