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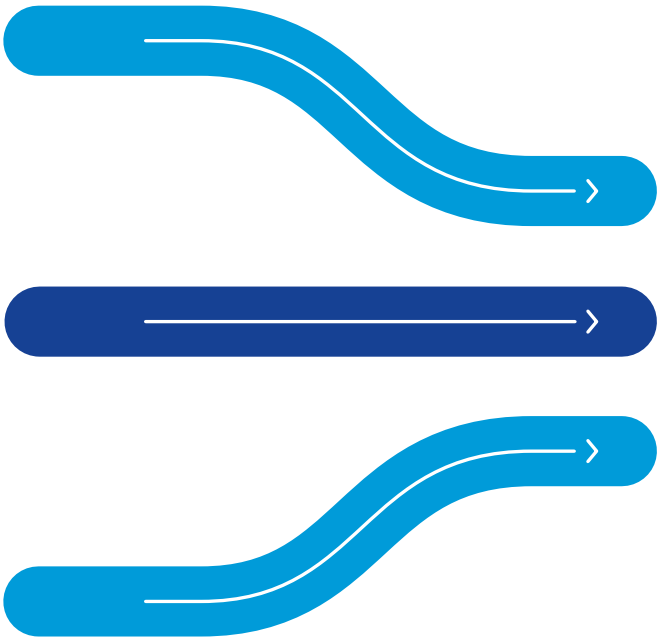
Legal News
June 2018

Central- and Eastern Europe



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Latvia gets ready for the GDPR

Latvian Parliament passes Personal Data Processing Law at first reading

On 12 April 2018, the Latvian Parliament passed the Personal Data Processing Law at first reading. The second – and final – reading is scheduled to take place in the upcoming weeks.

With this legislative act the Parliament is taking the necessary steps towards implementing the new legal framework introduced by the General Data Protection Regulation (GDPR). As of 25 May 2018, the current data protection regime in Latvia – as in other EU countries – will become obsolete and will be replaced by the directly applicable rules and procedures set by the GDPR. Nonetheless, the GDPR still leaves scope for certain national regulatory and implementing measures, such as the composition, functions and investigative powers of the national data protection authority; required qualifications for – and competences of – data protection officers (DPO); or age limits for children to consent to online content. In addition, national parliaments are reserved the right to decide on additional conditions for processing sensitive personal data, or processing personal data in the context of employment relationships or additional sanctions for violation of certain aspects of data protection rules.

The current version of the Personal Data Processing Law adopted by the Latvian Parliament does not make use of these options for making certain aspects of personal data protection even more stringent, nor does it contain any additional requirements or sanctions in the context of personal data processing. In those instances where the GDPR leaves discretion to member states to decide on the severity of a particular regulation, the Latvian legislator seems to follow a path with less restrictive impact (such as choosing the lowest possible age limit – 13 – for a child to be able to consent to data processing).

However, in its current version the Personal Data Processing Law contains some ambiguous provisions which might contravene the GDPR and as such would be invalid. For instance, when looking to appoint a DPO, data controllers or data processors would be allowed to pick not only a person registered as a DPO with the Latvian data protection authority but also “another person”. The requirements applicable to such “other person” – in contrast to the DPO – are not

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defined by law. This raises concerns whether this rule complies with the requirements of the GDPR, i.e., that a DPO should possess specific professional qualities and expert knowledge.

Source: Personal Data Processing Law

GDPR is not a time bomb

In May the new EU data protection regulation comes into force

The general data protection regulation (GDPR) coming into effect on 25 May is causing huge hype in the business world. The rumour is that the authorities will impose gigantic fines on companies once the GDPR enters into force.

Meanwhile, GDPR is not a time bomb, but rather a process requiring a change of mindset on a European level, that applies equally to authorities, businesses and natural persons as well. Currently, uncertainties abound because in Hungary the appropriate legal regulation has not yet been published and the current data protection regulation is not in line with the GDPR. Despite legislative delays, the GDPR is directly applicable in Hungary. This means that companies must start to get ready to comply.

The most important point is that the GDPR applies without exception to all companies that process data of European citizens. In order to comply with the GDPR, business procedures have to be transformed and continuous risk analyses are needed. Companies have to do everything they can in order to minimize data protection risks. They have to audit and re-regulate their entire data processing practices, which clearly requires a considerable amount of time and money.

A major innovation is that companies not only have to comply with the data protection rules, but they have to be able to prove it. At every moment of data processing, compliance has to be demonstrated with relevant documents. This requires constant audit of data processing activities. In order to maintain data security, appropriate measures must be built into these processes and workers must be trained so the GDPR is also applied in practice.

Indeed, the amount of possible fines has increased dramatically, although the chance of receiving a 20 million euro fine is relatively small. According to previous practice by the authority, fines are the last resort: previously the authority would issue a ‘cease and desist’ notice for unlawful operations and draws attention to necessary measures.

This suggests that mass fines will not be imposed on the morning of 26 May.

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Nevertheless, it is advisable to start preparations, analyze risks and seek timely solutions to the most pressing issues involving experts and legal advisers.

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 (General Data Protection Regulation)

Ban on Sunday trading

New restrictions for trading outlets – but with many exceptions

This rule – known in Germany for decades – is now being introduced in Poland where, since the 90s, all shops could set their own opening hours except for national holidays.

However, from 1 March until the end of this year trading will be allowed only on the first and last Sunday of any month, while in 2019 trading will be possible only on every last Sunday of the month. Starting from 2020, shops will be closed on Sundays. Even the smallest sales stands are considered as shops, and the prohibition also includes activity related to organising and preparing for trade, including warehousing tasks and the like.

But the list of exceptions from the above rule is also quite exhaustive. For example, Sunday trading will be allowed without limitations in the following outlets: petrol stations, railway stations, airports, on the Internet, press kiosks, souvenir shops, florists, pharmacies, sweet shops, bakeries and ice cream shops, as well as restaurants. Moreover, other small shops may be open as long as the shop owner stands behind the bar and does business.

Further exceptions from the Sunday trading prohibition concern commercial activities before Christmas and Easter, when trade turnover volume is usually the highest. In particular, trade will be allowed on the last two Sundays before Christmas and on Palm Sunday. Additional “trading Sundays” fall on the last Sunday in January, April, June and August.

All this means that the commercial sector faces a huge challenge and some organizational changes because hitherto the standard in most Polish cities has been a seven-day business week.

Violations may involve heavy fines.

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However, the mandatory Sunday off in the trading sector leads to increased turnover in other sectors of the economy: instead of going shopping at the nearest mall on Sunday, Poles are starting to plan family trips out of town, and visiting restaurants and museums.

Source: Act of 10 January 2018 limiting trading on Sundays and holidays and on some other days (J.L. 2018, item 305)

Stricter controls on work by temporary employees

The criteria that a company must meet to function as a temporary employment agency are confirmed

A temporary employment agency must inform the national Labour Inspection (NLI) about temporary employment and the number of temporary employees.

The activities of these agencies are not licensed in Lithuania. The Lithuanian Government has elaborated criteria for better control over them. Each agency must comply with the criteria in order to function in the temporary employment field.

Part of these criteria is linked to the legality of each company's activity: the activity must not be discontinued or restricted; no bankruptcy or winding-up proceedings may be initiated with regard to the company. Additionally, the agency may not have received more than one penalty for violating the Employment Act within the last year and must have fulfilled all subsequent obligations.

Other criteria are related to administrative and criminal liability of the agency and the managing director or the authorized representative.

No administrative penalty must have been imposed for illegal work and no more than one administrative penalty for violation of labour laws or laws on the protection and health of workers, or for concealing an injury at work. More than two administrative penalties for breach of the calculation and payment of salary, for incorrect working time accounting or working time management amount to a reason for banning operation as a temporary employment company.

Moreover, the company must not owe any debts to the government, the Sodra (social agency) or employees.

Temporary employment agencies that already operate as such and are on the list of temporary employment agencies must send informal confirmation to the NLI no later than 15 July every year that on the day of notification they meet the criteria and wish to continue in their capacity as a temporary employment agency.

Newly-established temporary employment agencies must notify the NLI informally before starting work. In 10 working days The NLI will check whether they meet

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the criteria for a new agency and will decide appropriately. In the case of acceptance the agency will be added to the list of temporary employment agencies, which is published on the internet site of the NLI. If confirmation is declined, the reason for refusal must be justified.

The criteria apply from 1 July 2018.

Source: Government resolution of the Republic of Lithuania no. 151 of 12 February 2018

Old payment service providers in a new guise

Today's qualified (licensed) payment service providers may have their licence withdrawn (revoked) by the Czech National Bank (ČNB) if they fail to prove within a given deadline that they satisfy the conditions for issuing a licence under a new law.

The new Payment Transactions Act came into force on 13 January 2018, transposing EU law rules into Czech law, in particular those of the new (Second) Payment Services Directive ("PSD 2").

The new Payment Transactions Act involves major changes, including a switch (as to the right to provide payment services) from the registration principle to the licensing principle for small payment service providers, and broader requirements which must be fulfilled by those wishing to obtain a licence. The changes are likely to lead to more protracted approval proceedings.

Payment service providers that are already established need to pay the utmost attention to the transitional provisions under the new Act. These provisions allow existing payment institutions to continue to provide their services, based on their current authorization, for another six months from the effective date of the Act. Once this transitional period has elapsed, the current authorization will be considered a licence within the meaning of the new Payment Transactions Act. However, within three months from the effective date of the Act (i.e., no later than by 13 April 2018) the payment institution must prove to the ČNB that they satisfy the requirements for being licensed as a payment institution under the new Act. Failure to do so will result in revocation (withdrawal) of the previous authorization to do business. For small payment service providers, the transitional period for proving compliance with the licensing requirements is nine months from the effective date of the Act.

All the above also applies to issuers of electronic currency.

Source: Payment Transactions Act No. 370/2017 Coll.

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Incoming goods inspection – admissible type and scope

The type and scope of an incoming goods inspection must not involve requirements that are too high and too general.

Many sellers are concerned to give the buyer of their goods concrete guidelines on how and to what extent the buyer must check the goods for defects. The reason for this is that under § 377 German Commercial Code (HGB) a product is considered free of defects if the buyer has not inspected it immediately after delivery and has not reported any defects. In this case, the buyer loses the right to assert his warranty rights.

In their own general terms and conditions, sellers tend to set quite high or general requirements for the type of inspection of incoming goods at the customer's premises as well as the scope of inspection. Frequently, the customer does not comply with these requirements and the seller can rely on absence of testing if defects occur later and thus avoid liability.

Once again, the German High Court (BGH) has set limits and clarified that the requirements for incoming goods inspection must bear a reasonable relationship to the circumstances of the individual case. Very high and general requirements can therefore place the buyer at an unreasonable disadvantage and may therefore be invalid overall.

Indications of appropriateness include, for example, the costs and time required for an inspection, technical inspection options, the purchaser's own technical knowledge or the need to have the inspection carried out by third parties.

In the specific case before the Court, a clause which always required complete examination of the goods for all defects – also for those not immediately detectable – and left no room for deviations was invalid.

Sellers must therefore take care to provide concrete guidelines regarding the properties to be investigated and the methods to be applied. On the other hand, deviations must also be permitted insofar as these are caused by the circumstances of the individual case. A requirement to always call in an external expert for testing will generally be invalid.

Source: BGH, Urteil vom 06.12.2017, AZ: VIII ZR 246/16

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Notarial certification without a notary?

The Notarization Act and related Acts are to be amended in order to add a new – remote – form of notarial certification.

It is no secret that Estonia is well known for her innovative solutions. Several projects have been launched in recent years creating access to state e-services for Estonian citizens and e-residents while abroad. The Estonian e-state concept is constantly developing and being supplemented with new projects. In that context a proposed amendment to the Notarization Act and related Acts will expand the concept of notarial certification and add the possibility of remote certification via a video connection.

A number of operations require notarial certification. Performing these operations normally requires the personal presence of the individual or their authorized representative at the notary's office. The proposed amendments aim to simplify the procedure for notarial certification especially for Estonians living abroad and e-residents.

The main novelty will be that notarial certification will be via distant video connection. The quality of the connection must be good enough to enable the notary to identify the person and their intention. The notarial act will be signed digitally through the notary's electronic information system and the original will be saved in digital form. In that way, the notary can confirm the validity of a digital signature. This is possible by means of a confirmation sheet attached to the digitally signed document. The place of the notarization will in such cases be Estonia.

Security is essential in this context. The video connection will to start with be established from the premises of external representations of Estonia (e.g. embassy, consulate) where the identity of the individual will be checked and the necessary hardware put at their disposal. As the whole process will be digital, the person must have an Estonian ID or e-resident card.

The service is to start as a pilot project in the embassies in London, Helsinki, Stockholm, Brussels and New Delhi. We will keep you updated about the start of the project.

Source: Ministry of Justice

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Slovak Supreme Court on transfer of economic ownership

The Difference Between the Commercial Code and Tax Regulations

The Slovak Supreme Court used the case law of the European Court of Justice in Halifax as a guideline for its interpretation of the term “transfer of economic ownership”. This is of vital importance with regard to the right to input tax deduction, when the exact moment of ownership transfer has to be determined.

According to the Supreme Court, a party that wants to claim input tax deduction during import of goods has to prove that the economic ownership was transferred to the buyer within the taxable transaction. This means that it is necessary to prove that the right to dispose of tangible property as the owner was transferred from the supplier to the buyer. However, acquisition of legal ownership by the buyer under the Commercial Code is not sufficient evidence that the goods were actually delivered, even if supported by a handover and takeover certificate. The factor that entitles a party to deduct input tax is the fact that the buyer can, in fact, dispose of goods as the owner.

Presumably all courts and tax authorities will decide in line with this decision from now on.

Source: Judgment of the Slovak Supreme Court

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Launch of Eurasian Economic Union (EAEU) medicines registration procedure.

EAEU-level registration opens new possibilities in the single market for medicines

The first applications under EAEU requirements have been filed. The integrated information system for medicines in the EAEU is under way.

During the transitional period until 2021 both national and EAEU procedures are available for applicants. After the transitional period ends, only medicines registered under the EAEU procedure will be authorised for circulation throughout the whole EAEU market or even on the territory of one member state. Medicines registered under national procedure are only allowed on the territory of that particular member state. To be allowed on the market following the transitional period, all registrations must be aligned with EAEU requirements under a special procedure by the end of 2025.

No single centralised registration is envisaged. Instead, mutual recognition and decentralized procedure are provided for. Both are conducted on the member-state level by authorised governmental bodies.

These procedures are based on corresponding procedures existing in the EU.

Initial registration is valid for 5 years. Subject to confirmation of registration (re-registration) a registration certificate can be issued for an indefinite term.

Source: http://www.eurasiancommission.org

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