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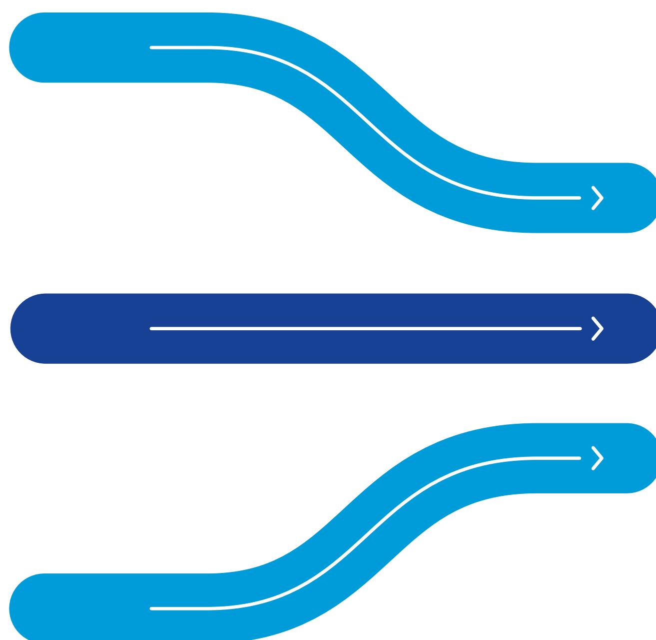
Legal News
June 2021

Central- and Eastern Europe



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New obligations for entrepreneurs in the fuel trade market

Sejm almost unanimously adopts draft amendment to the energy law

The amendment bill will change the rules on security institutions. Currently the grant of a concession by the President of the Energy Regulatory Office (URE) may be conditional on the applicant delivering property security in order to satisfy third party claims that may arise as a result of misconduct of activities covered by the concession, including environmental damage.

Due to the current imprecise regulations, the legislator decided to clarify the rules for applying property security procedures. The entry into force of the act will have a significant impact on entrepreneurs as a result of the emergence of new concession-related obligations.

Entrepreneurs will be required to provide security in the amount of not less than 1/12 of the highest annual revenues planned by the applicant for the next 3 calendar years from the business activity for which the concession is to be granted. In order to calculate the amount of property security, the President of URE would require the applicant to indicate the planned revenues already mentioned within not less than 30 days, at the risk of the form not being processed.

In the event of satisfying claims secured by property, the energy company would be required to supplement the security up to the required amount each time within 30 days from the date of using the security and – within 14 days of receiving notification – to inform the President of URE about submission of a security claim.

Although the Supreme Court, in its opinion on the bill, stated that the amendment contained the necessary solutions, it also expressed some concerns.

The doubts of the Supreme Court may be related to the new competences that the legislator has granted to the President of URE. What is new is that the President of the Energy Regulatory Office would issue decisions regarding property

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security, by which for example he could release the enterprise from property security within 6 months from the date of termination of the concession. Moreover, he could also release the entrepreneur from security obligations before the end of the concession if the amount of the energy enterprise's equity resulting from its financial statements audited by a statutory auditor, exceeded the value of this security.

The amendment is intended to implement the provisions contained in Regulation (EU) 2015/1222 of the European Parliament and of the Council of 24 July 2015.

Source:
Act amending the Energy Law and certain other acts passed at session no. 28 on 15 April 2021

Comprehensive regulation for interim protection in civil proceedings

Amendments to the Civil Procedure Law expand the availability and scope of interim protection measures in civil law matters

Amendments to the Civil Procedure Law entered into force on 20 April 2021, with the aim of improving general and interim protection regulation applicable to all civil disputes. The amendments set the preconditions for more effectively protecting the rights of a party to a court case until the final decision in the case comes into force.

The purpose of interim measures is to ensure both the enforceability of the eventual judgment as well as to protect the rights and legal interests of a person until the entry into force of the final decision in both financial and non-financial cases.

Until now, the Civil Procedure Law allowed interim protection only in certain categories of cases, such as infringements and protection of intellectual property rights; protection of trade secrets; challenging decisions by a company shareholders' meeting; interim protection against violence; company insolvency; and cases arising from family legal relations.

The need for regulation was clearly evident, for example, in cases involving labour disputes, "servitudes", infringements of honour and respect, breaches of data protection, contesting decisions of a residents' association, evictions, and in cases involving self-reliance or threats to health and life.

The new interim protection regulation applies to all categories of cases. It is available as an effective measure of interim legal protection for a claimant against an infringer or violator of their rights and introduces certain means of interim protection: distraint on a defendant's movable property; entry of a prohibition or other mark in the Land Register, the relevant register of movable property or other public register; the obligation for the defendant to

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perform certain activities within a given deadline; prohibiting a defendant from performing certain activities; suspension of enforcement.

The amendments to the Civil Procedure Law set the State fee for an application for interim protection at EUR 70. Until now, the State fee payable for an application for interim protection has been 0.5 % of the amount of the claim, but not less than EUR 70.

Source: 6 April 2021 Amendments to the Civil Procedure Law

Reorganization in case of emergency

Companies in imminent insolvency can start reorganization proceedings at the Metropolitan Court of Justice until 22 May 2021

From 17 April 2021, a new procedural possibility has been opened on a temporary basis until 22 May 2021 to help businesses in financial difficulty to continue operating. The purpose of reorganization is to enable a debtor to reach an agreement with creditors involved in the procedure within the framework of a reorganization plan.

The decision to initiate the procedure, and which creditors to involve in the procedure, can be taken by the decision-making body of the company. However, if the debt is overdue, the creditor(s) must be involved. The Metropolitan Court of Justice will decide on initiation of proceedings within 10 working days from filing an application.

The assistance of a reorganization expert is mandatory. On the basis of the expert's preliminary opinion, the court will impose a moratorium of 90 days (which may be extended by 60 days) during which the company's executive officer may only make legal declarations or commitments relating to the assets of the company or its economic activities that go beyond the scope of day-to-day management with the expert's prior written approval.

As a result of reorganization, contracting parties with whom the undertaking has a long-standing civil-law relationship ensuring its production and operation may not suspend performance of an outstanding contract, terminate it or unilaterally modify it in any way on terms less favourable to the undertaking solely on the grounds that reorganization has been decided, ordered or a moratorium has been imposed.

As a rule, the procedure and the data relating to it are not public, as they only concern the creditors involved, and the order granting reorganization need not be published. The decision-making body may, however, decide to open the procedure to the public, in which case the order will be published. In a public procedure, the reorganization plan is deemed to be approved by the creditors if 60% of

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votes are in favour of the reorganisation plan in proportion to the total number of votes of all creditors with voting rights, with the condition that that no creditor may receive less than 60% of its capital claim.

A successful reorganization concludes with approval of the reorganization plan by creditors and then by the court, with a maximum of two years for implementation. However, an unsuccessful reorganisation does not automatically lead to liquidation.

Source:

Government Decree 179/2021 (IV. 16.) on the reorganization of enterprises in an emergency situation

Changes to rules on relocation of workers to Lithuania

The amendments aim at facilitating relocation of employees of foreign companies to Lithuania.

The Ministry of Economy and Innovation has registered with the Lithuanian parliament draft amendments to the laws on (a) Investment, (b) Employment and (c) Legal Status of Aliens. The amendments would create special business and investment conditions for foreign investors relocating their business and employees to Lithuania. Under the proposed amendments, foreign investors will be able to benefit from a simplified procedure for obtaining a temporary residence permit in Lithuania after concluding an investment agreement with the government for:

- employees of the investor or the investor's group of companies;
- the investor or a participant of the investor who owns at least 1/10 of the authorized capital of an enterprise established in Lithuania and the funds invested in this enterprise amount to at least EUR 14,000;
- family members of these persons.

These conditions will apply to investors if the annual turnover of the group of companies and/or the investor in at least one financial year of the last three years amounts to at least EUR 2,500,000 and the investor undertakes in Lithuania to:

- invest at least EUR 1.45 million;
- to create at least 20 jobs;
- to pay employees at least 1.5 times the average wage in the municipality where the investment is made (currently the average wage in Lithuania is about EUR 1 514).

The investor's employees transferred under the investment agreement will have a right to work in Lithuania from the date of applying for a temporary residence permit. The Lithuanian Employment Service will not assess the

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foreigner's compliance with the needs of the Lithuanian labour market and the foreigner will be exempted from the obligation to obtain a work permit.

A temporary residence permit will be issued for three years.

These benefits will apply not only to new investors, but also to companies that have already moved their business to Lithuania. These companies will have a right to apply to the government for amendments to their existing investment contracts within 6 months of these amendments coming into force.

The amendments are expected to come into force in the third quarter of this year and will encourage the business development of Belarusian companies already operating in Lithuania, as well as companies still assessing the investment environment in Lithuania.

Draft bill for an Act on the Digital Transformation of Healthcare in Czechia

Overshadowed by the pandemic, a fundamental healthcare law has been in the making.

Digitization of the healthcare sector is a hot topic not only in the Czech Republic but also in other EU Member States.

The Act on the Digital Transformation of Healthcare is designed to provide a comprehensive legal framework for digitizing the field by bringing modern telecommunication and information technology into the fold, and stipulating the rights and obligations of patients, healthcare providers, and other stakeholders. While certain self-contained elements of digitization in healthcare have previously been introduced by existing laws, such as electronic prescriptions ("eRecept") and sick notes ("eNeschopenka"), the sector is in need of a coherent act of law to establish well-defined outlines for the digital transformation of healthcare.

The draft bill anticipates the creation of a basic infrastructure – which it calls Integrated Data Interface, and which will represent an information system of public administration. It will consist of a backbone of basic registers with master data and related services branching off of them. Among the registers to be created, there will be master databases for patients, healthcare professionals, and healthcare service providers. Patients will have access to their data via an electronic healthcare portal.

The digital transformation of healthcare entails the processing of humongous volumes of personal data of patients, including the special category of personal data related to people's medical history and health status. This is a sensitive area, and the Czech Data Protection Office brought a host of proposals for changes and adjustments to the bill during the inter-departmental commenting process.

The bill ought to be written into law effective as of 1 January 2022, though a number of provisions will only come into force after a transition period. It is during the very last stage, i.e., as of 1 January 2032, that healthcare providers will

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be obliged to conform to the standards of electronic healthcare. A ten-year period between promulgation of a law and its coming into force may be unusual, but appears justified in this particular case, considering the need for implementation of numerous instruments which have yet to be brought into existence. Thanks to the fact that the various parts of the law will come into force on a staggered schedule of six stages, healthcare providers and other stakeholders will be able to familiarize themselves with their new obligations in due time and make the necessary preparations on their part (whereas the obligation, for instance, to use the above-mentioned master data and to ensure compatibility of one's information system with the Integrated Data Interface, will apply already as of 1 July 2023).

The second reading of the bill in the House of Deputies is scheduled for later this month. It is fair to assume that the proposed effective date for the bill to become law can be kept and – let us hope – will not be further postponed.

Source: Parliamentary press No. 1163, government bill for an Act on the Digital Transformation of Healthcare

New currency regulation and control law in Belarus

Significant changes to procedure for doing business abroad

The new law on currency regulation and control (hereinafter – “the Law”) introduces the definition of “currency agreement”: namely, an agreement (contract) or other document on the basis of which currency transactions are carried out.

From now on, residents must register currency agreements on a special portal. Registration rules are set forth in regulations of the National Bank adopted under the Law.

Moreover, the Law cancels the division of currency transactions into current ones and those related to movement of capital, as well as requiring permission from the National Bank in order to conduct currency transactions.

However, the National Bank sets the procedure for registration of currency agreements, the list of currency transactions that require registering a currency agreement, as well as threshold amounts of obligations under a currency agreement above which a currency agreement must be registered.

Registration is carried out by residents individually or with assistance from banks via the National Bank portal.

Note: residents should obtain authorization on the portal ahead of the Law’s entry into legal force. From now on, registration covers a wide range of contractual relationships, not only agreements on transfer of goods.

In connection with the Law’s entry into legal force:

- currency transactions using foreign currency in cases listed by the currency legislation until the Law’s entry into legal force are permitted until the obli-

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gations under those currency transactions are performed;

- agreements signed before the new Law’s entry into legal force and providing for such transactions need not be changed in line with the Law; however, in some cases they may need re-registration;

- at the same time, such agreements should be reworded in line with the requirements of the Law if they are prolonged;

- permissions issued by the National Bank are cancelled as of the Law’s entry into legal force.

The Law enters into legal force from 9 July 2021.

Source:
National legal internet portal of the Republic of Belarus (NLIP) 08.07.2020, 2/2755

Sale of critical infrastructure companies

Slovak Republic - just don't be surprised that after 1 March 2021 you need Slovak Government approval to sell your company

As of 1 March 2021, Slovakia has joined the growing number of countries that require consent for the sale of a business, whether in the form of a share deal or an asset deal. Critical infrastructure refers to various elements or linear constructions, such as in particular: roads, motorways, railways and flight paths as well as energy distribution systems ranging from electricity, oil, gas, water and sewage to nuclear facilities and also heavy industry. Existing arrangements remain for the obligations of critical infrastructure elements in relation to the security plan or familiarizing employees.

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New as of 1 March 2021, the state has reserved the right to review transfers of business interests, shares or the sale of a business, or creation of a lien, that have a nexus to a critical infrastructure element, regardless of the law governing such transactions. Transactions which directly or indirectly involve a change in a person who holds 10 % participation in the share capital or voting rights, or has the possibility of exercising influence over the management of the critical infrastructure operator commensurate with that share, will be subject to review.

An operator, mortgagee, liquidator, receiver, receiver, executor or other person entitled to transfer a critical infrastructure element, or whoever is to acquire the element, must request the competent Ministry to review the transfer – in advance and in writing.

The requirement for approval applies to critical infrastructure undertakings that fall within the energy (including mining) and industrial (pharmaceutical, metallurgical and chemical) sectors. The application is first assessed by the relevant line ministry (usually the Ministry of Economy) in terms of disruption of public order or Slovakian national security, or another Member State or the interests of the European Union. The result of this examination is to be communicated by the Ministry within 60 days of receipt of the application. If security risks are identified,

the Ministry will propose to the Slovak Government Republic to withhold consent to the transfer or transfers in question or to grant consent with conditions.

As the assignment of critical infrastructure elements is carried out in a classified regime, there are no publicly available lists of companies for which investors can verify the need to obtain state consent. With an experienced attorney, however, you can manage the risks associated with this in a timely and effective manner. Contact bnt for your acquisition or sale.

Source: Act No. 72/2021 Coll.

Clear rules for lobbying in Estonia

New State Employee Lobbying Guidelines

Lobbying and active participation by interest groups are part of democratic decision-making. Lobbying is direct or indirect, structured and organized activity by a lobbyist with public officials, policy makers or their representatives to influence policy decisions and represent their interests. Lobbying and interest-representative relationships must adhere to principles in order to be transparent and comprehensible to all.

Lobbyists can be attorneys, consultants, PR specialists, chambers of commerce and industry, professional and trade associations, trade unions, voluntary and interest groups, other organizations, associations and individuals. They usually represent the interests of economic operators or citizens.

On 11.03.2021 the Estonian Government adopted Lobbying Guidelines for Public Employees prepared by the Ministry of Justice. These were developed on the basis of recommendations by the Council of Europe Group of States against Corruption (GRECO).

The guidelines on dealing with lobbyists apply to members at management level of ministries, heads of other government agencies as well as their deputies. Responsibility for implementing, complying with and controlling this practice lies with the head of the office. The document defines and clarifies the terms "lobbying" and "lobbyist".

A public officer or a person associated with them must not accept or solicit gifts or other benefits from a lobbyist or the person the lobbyist represents, except as a matter of common courtesy. Public officers must report publicly in detail on meetings with interest groups and lobbyists that take place in the course of professional activities.

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A public officer who was acting as a lobbyist or on behalf of an interest group immediately prior to taking up office must not take any action or decision in relation to that lobbyist or interest group for a period of one year.

In addition, a public officer may not lobby their former office or colleagues on behalf of lobbyists or interest groups on which that officer made decisions in the last year of their term of office for at least one year after the end of their term of office.

For the first time, the guidelines create clear rules for Estonian public employees in terms of lobbying.

Source: www.just.ee

New legislative amendments in labour relationships

New legislative acts have been adopted with the main objective of making labour relationships more flexible and adapting them to the current socio-economic reality.

On 6th May, 2021, two new emergency ordinances entered into force, namely (i) GEO 36/2021 and (ii) GEO 37/2021.

Adoption of these legislative acts introduces amendments aimed mainly at regulating use of electronic signatures in labour relationships, simplifying conduct of teleworking (including employee training), as well as labour relationships within micro-enterprises. The following amendments apply:

- electronic signatures can now be used in employment relationships;
- employers may now prove completion of employee health and safety at work training in electronic or paper format;
- Teleworking
  - teleworking is redefined;
  - the need to include place(s) of teleworking in individual employment agreements is cancelled;
  - checking work done by teleworkers using information technology is now regulated;
  - confidentiality for teleworkers is now mandatory;
  - changes related to the health and safety training of teleworkers are now in force.

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Several changes concern micro-enterprises. Among these, the following should be mentioned:

- a job description is no longer compulsory, and employers can specify job duties to employees verbally but must do so in writing at the written request of the employee;

- records of daily hours worked by employees shall be kept by the employer under conditions agreed with employees in writing;

- internal regulation is not mandatory.

The bnt team in Romania is at your disposal for further information, assistance in implementing the new legal provisions, as well as in drafting necessary documents.

Source:

Emergency Ordinance no. 36/2021 on the use of advanced electronic signature or qualified electronic signature accompanied by an electronic timestamp or qualified electronic timestamp and the qualified electronic seal of the employer in the field of labour relations, and for amending and supplementing certain regulatory acts ("GEO 36/2021");

Emergency Ordinance no. 37/2021 amending and supplementing Law No 53/2003 - Labour Code ("GEO 37/2021").

Amazon merchants must check images regularly

Merchants who sell goods via Amazon must regularly check whether the images displayed correspond to the products.

Amazon's programme algorithm automatically assigns images of a product category to corresponding product offers. This can result in images being assigned to a product that do not display the product completely accurately.

In the specific dispute, an offer for printer cartridges that were sold without original packaging was automatically provided by the algorithm with images of the same printer cartridges, but with original packaging.

The plaintiff, who sold the printer cartridges with packaging, had already obtained an injunction against the competing company. The dispute then arose again over the question of whether a fine was to be paid on the basis of the injunction in the case of continued misleading depiction.

The Frankfurt Higher Regional Court confirmed this. According to the court, Amazon merchants have a duty to regularly check the presentation of their own offers to see whether the images assigned by the algorithm really do represent their own product correctly. If this is not the case, Amazon merchants must take action, as the representation is then misleading and thus anti-competitive.

The decision shows how extensive the obligations of Amazon merchants are and that violations of these obligations can have expensive consequences for merchants.

Source: OLG Frankfurt, decision of 18.03.2021 – 6 W 8/18

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