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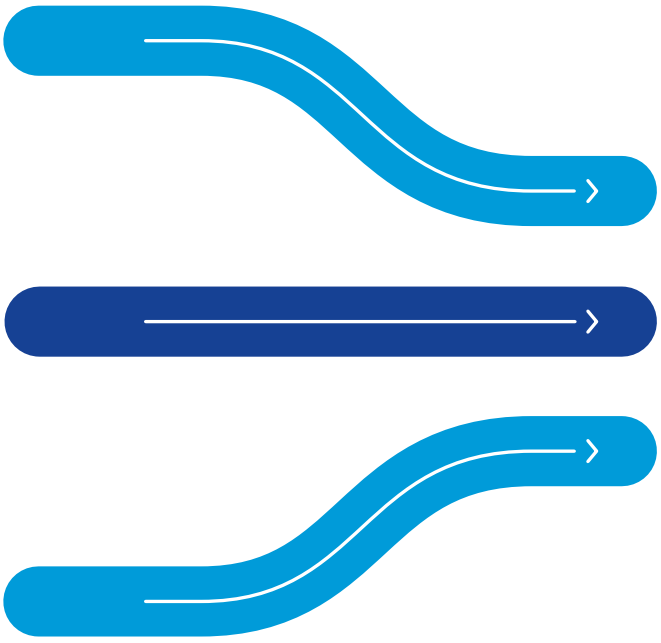
Central- and Eastern Europe



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European Whistleblower Directive: Implementation Deadline Approaching

To Do's for Companies

Protection of whistleblower rights is far from uniform and well-functioning throughout the European Union. To tackle the malfunctions and discrepancies among Member State jurisdictions, the EU has adopted a directive on the protection of persons who report breaches of Union law (**"Whistleblower Directive"**). The deadline for implementation into national law is 17 December 2021.

According to the Directive, persons working in the private or public sector can report breaches of EU law which they acquire in a work-related context and which endangers the public interest. For doing so, they are entitled to protection.

A whistleblower is free to choose from internal (within the organisation concerned) or external (to a competent supervisory authority) reporting channels. If neither of these leads to results, they also have the chance to choose public disclosure.

The Directive requires every public entity and every private organisation which has 50 or more workers to implement their own internal reporting system. Legal entities in the private sector with more than 249 workers will be expected to comply with the new rules until 17 December 2021, and companies with between 50 and 249 workers have a further two years after transposition.

Private entities, besides providing an internal reporting mechanism, must ensure being in line with GDPR laws and keeping the identity of the whistleblower confidential. In addition, they have to designate appropriate personnel to receive and investigate reports – or outsource the task – then confirm receipt of the report and inform the whistleblower about the status of the internal investigation. Furthermore, they are bound to disclose information about the internal reporting process to the personnel and the competent authority. Member States must lay down effective, proportionate and dissuasive penalties for failure to fulfil these obligations – so, the exact legal consequences are not yet set out.

IHR ANSPRECHPARTNER IN UNSEREM BÜRO

dr. Lilla Miklós
ügyvédjelölt
Junior Associate

T +36 1 41 33 400
lilla.miklos@bnt.eu

bnt ügyvédi iroda
Stefánia út 101-103
H-1143 Budapest

Based on these considerations, it is important that companies take due care in terms of complying with the new rules and set out the respective frameworks, enhancing the trust of employees with transparent information and fair handling of their complaints. This is the best way to prevent sanctions or other unpleasant situations and to minimize company expenses.

Source: Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law

Salvage of construction works executed without planning permission

Remedial procedure for compliance with legal requirements and maintenance of construction works executed without a building permit

At present, Article 28 of Law No. 50/1991 regarding the authorization of the execution of the construction works regulates a procedure for entering into legality of construction works that have been executed without a previous building permit or with exceeding the limits of the permit. In this respect, persons who execute or dismantle, in whole or in part, such work are liable to a contravention fine. In addition to this penalty, within the time limit stipulated in the administrative contravention report, measures may be imposed, among other remedies, to ensure that the construction works comply with the law.

In practical terms, the procedure for compliance with legal requirements offered those who had illegally raised or dismantled buildings the chance to remain in the desired situation without having to return to the previous situation if, within the above-mentioned time limit, the building permit had been obtained or changes had been made to the work to ensure that it was in conformity with the regulations in force.

A dilemma which has existed in Romanian civil law cases and which has led to divergent judicial solutions has regarded the consequence of not remedying irregularities within this time limit. Thus, if the steps to bring the building into compliance with the legal provisions were not implemented in time, there was a risk that the building would be automatically dismantled (the most drastic measure that could be applied) on expiry of the deadline set in the administrative contravention report.

The issue was resolved by Decision No. 10/2021 of the High Court of Cassation and Justice, the highest court in Romania, which provided an interpretation of the law that became binding when the decision entered into force on 29 October 2021. According to this decision, the time limit mentioned in the contravention report is a recommended time limit and not a mandatory one, so that measures to comply with the legal provisions can be taken even after this deadline. Consequently, the party concerned may ask the public authorities or the court, in the event of their refusal, to remedy these irregularities so that the construction work desired by the party concerned is not dismantled.

YOUR CONTACT IN OUR OFFICE

Andrada-Ioana Dumitrescu
Junior Associate

T +40 77 117 39 76
andrada.dumitrescu@bnt.eu

bnt Gilescu Valeanu & Partners
69 Dacia Boulevard, 1. Bezirk
RO-020051 Bukarest

bnt Gilescu Valeanu & Partners
Ionel I.C. Brătianu Platz Nr. 1
Bratianu Real Estate, Erdgeschoss
RO-300056 Temeswar

Following these legislative changes, 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: Decision No. 10 of 28 June 2021 of the High Court of Cassation and Justice on the interpretation and application of the provisions of Article 28 of Law No 50/1991 regarding the authorization of the execution of the construction works

Have you fulfilled the obligation to update identification data in the commercial register?

Failure to confirm or complete the data in the commercial register risks a penalty and, under certain circumstances, even deletion from the commercial register.

Anyone authorized to act on behalf of a company for which not all identification data have been submitted to the commercial register must provide new additional data, in particularly on the shareholders and managing directors, together with the next application, filing after **30 September 2021**, but no later than **30 September 2022**.

For instance, date of birth, passport number of a natural person and identification number of a legal entity are considered to be additional identification data.

If a lien has been established on a shareholder's holding in a limited liability company, the information on the lienee (i.e. name, date of birth of the natural person or registered seat and identification number in the case of a legal entity), as well as information on the lien agreement, has to be completed.

However, a company that applies to register a change (e.g. change of registered seat, change of managing director, extension of the scope of business) after **30 September 2021** must supplement the identification data in the application.

If the applicant does not fulfill this obligation, the competent commercial court will request correction of the insufficiencies after receipt of the application; if the new data are not supplemented even after expiry of the deadline, the court will not process the application and will stop the registration proceeding.

If the additional data is not completed after 30 September 2022, a fine of up to **EUR 3.310** may be imposed.

The above information only applies to companies established before 1 October 2020. Newly established companies (as of 1 October 2020) already fulfilled this obligation **upon registration in the commercial register.**

YOUR CONTACT IN OUR OFFICE

Mgr. Nicole Slašťanová
Advokátska koncipientka
Junior Associate

T +421 2 33 10 47 63
nicole.slastanova@bnt.eu

bnt attorneys-at-law, s.r.o.
Cintorínska 7
SK – 811 08 Bratislava

The strictest sanction applies to branch offices, which had until **30 September 2021** at the latest to either **confirm the data** in the commercial register or to **provide new data by a separate application**. If this obligation has not been fulfilled by 30 September 2021, the court, in cooperation with the Ministry of Justice, can delete the branch office from the commercial register.

Since deletion of a company from the commercial register is preceded by a 6-month publication in a public register, you can prevent deletion in time with the help of an experienced lawyer.

Do not hesitate to contact our experts in this regard.

Source:
Act No. 530/2003 Coll.
Act No.198/2020 Coll.

Obligation to provide instructions for use

The Supreme Court of Lithuania establishes case law on the obligation to provide product instructions and safety information in Lithuanian.

In a case brought before the Court of Cassation, the claimant asserted that he was injured while using a scooter because the seller did not provide a user's manual in Lithuanian.

The lower courts in the case held that the consumer had the opportunity to read the instructions in a foreign language and, acting as a careful person, if he saw that the user's manual was not provided in a language which he understands, he was obliged to look for such information himself before using the product. However, he did not do so and, having decided to use the product without reading the user's manual, he must also bear the risk of negative consequences.

The Supreme Court of Lithuania, in its ruling in the case on 13 October 2021, stated that in assessing whether a trader has properly fulfilled the duty of disclosure, the circumstances of provision of the user's manual in a foreign language and knowledge by a specific user of that foreign language are irrelevant, as the standard to be applied is that of an average user and not that of a specific user. Providing information to the consumer in a language other than the official language - Lithuanian - is considered to be the same as not providing it at all.

Failure to provide certain information may lead not only to a breach of the duty to inform, but also to a breach of the duty to provide the consumer with a safe and high-quality product. Without such information, the consumer will not be able to use the product safely, i.e. to assess the risks inherent in the product and to take precautions to avoid those risks. Therefore, selling a product without providing the consumer with this information also constitutes sale of an unsafe product.

This case law of the Court of Cassation confirms that entrepreneurs selling goods in Lithuania have an obligation to provide consumers with instructions

YOUR CONTACT IN OUR OFFICE

Dr. Andrius Juškys
Advokatas
Senior Associate

T +370 5 212 16 27
andrius.juskys@bnt.eu

bnt Heemann APB
Embassy House
Kalinausko 24, 4th floor
LT-03107 Vilnius

for use in Lithuanian. Otherwise, they may be held liable for damages to the buyer because the latter was sold an unsafe product.

Source: Ruling of the Supreme Court of Lithuania of 13 October 2021 in civil case No 3K-3-246-1075/2021

Big changes for crypto market

Registration requirement for crypto brokers came into force on 31.10.2021. Limit for anonymous transactions lowered to EUR 1.000

As of 31.10.2021 providing various services relating to cryptocurrencies requires an entry in a newly created register.

The registration requirement applies to the following services:

a. exchange between virtual currencies and fiat currencies;

b. exchange between virtual currencies;

c. intermediacy in exchanges mentioned under a and b above;

d. custodian wallets.

The prerequisites for obtaining an entry in the register are:

a. no criminal record with regard to the following crimes: against state and local government, against the administration of justice, against the credibility of documents, against property, against business and property interests in civil law transactions, against trading in currencies and securities;

b. experience or knowledge in the area of virtual currencies.

The experience prerequisite is deemed to be met by those conducting activity in the field of virtual currencies for at least one year.

The knowledge condition is deemed to be met by those who have completed training or a course covering legal or practical issues related to activity in the field of virtual currencies.

Both experience and knowledge must be evidenced by appropriate documentation. The law does not define more precisely the criteria which training and courses should meet to be acknowledged by the registration authority.

YOUR CONTACT IN OUR OFFICE

Michał Brach
Radca prawny
Associated Partner

T +48 22 373 65 50
michal.brach@bnt.eu

bnt Neupert Zamorska & Partnerzy sp.j.
ul. Chłodna 51
PL - 00 867 Warsaw

The requirements for registration apply to natural persons who provide virtual currency services as sole entrepreneurs and in the case of companies to managing directors.

The changes are accompanied by a new KYC ("know your customer") threshold for transactions with virtual currencies. Previously, the threshold was EUR 15.000. As of 31.10.2021 customers have to be identified in the case of transactions over EUR 1.000. This change will mainly affect crypto ATMs. At the moment withdrawals are allowed only up to EUR 1.000 anonymously, whereas previously the amount was EUR 15.000.

Source: Act amending the Act on Prevention of Money Laundering and Financing of Terrorism and certain other acts of 30.03.2021 (Journal of Laws of 2021, item 815)

Latvia tightens link between Covid-vaccination and employment.

Important amendments to employment regulation introduced in Latvia linking vaccination requirements and employment.

The ongoing Covid pandemic has brought about significant changes to the regulation of employment relationships in Latvia. Having one of the most employee-friendly employment laws in the EU so far, Latvia has now introduced a number of legislative measures restricting employees' discretionary rights as regards vaccination against Covid and allowing for – or even de-facto necessitating – unilateral termination of employment agreements by employers.

YOUR CONTACT IN OUR OFFICE

Karlis Svikis
Partner

T +371 6616 44 11
info.lv@bnt.eu

Jensen & Svikis Legal
Antonijas iela 24-7
LV-1010 Rīga

In order to combat the overwhelming rise of Covid-19 infections in the country, the Latvian government has introduced a number of temporary rules aimed at limiting the number of personal contacts and spread of the virus. Among others, these measures encompass: compulsory home-office for all employees, save for cases where in-presence work is indispensable due to the nature of the work; vaccination requirement for those working in-presence; one-month transitional period for the unvaccinated, provided testing is ensured every 72 hours; compliance with safety rules, such as distancing and other epidemiological safety measures.

The transition period has been introduced in order to allow employees to obtain a vaccination certificate. If an employee does not comply with this requirement, yet vaccination is needed due to the type of work, refusal to be vaccinated is a sufficient reason to consider that that person does not conform to their work (position). An employer who is not able to transfer that employee to another suitable job or to ensure performance of their working duties remotely has the right to suspend the employee from work or establish downtime due to the employee's fault, without payment for the suspension or downtime period. However, suspending an employee from work for a period longer than three months is prohibited.

In addition, recent amendments to the law on anti-Covid measures have transformed the vaccination requirement from a temporary measure into a permanent obligation. From January 2022 onwards, only vaccinated employees will be allowed to engage in any activity requiring personal contact. Employees

without a valid vaccination certificate will have to be withdrawn from their duties and their employment contracts will be eligible for unilateral termination by the employer.

Source:

Amendments to the Regulations of the Cabinet of Ministers of 28 September 2021 No. 662 "Epidemiological precautions to control the spread of the Covid-19 infection" adopted on 4 November 2021.

Amendments to the Law on the Management of the Spread of COVID-19 Infection adopted on 4 November 2021.

Law on data protection

From 15 November 2021 provisions aimed at data protection come into legal force in Belarus

The Law on data protection dated 7 May 2021 No. 99-Z (the "Law") is aimed at ensuring protection of personal data ("PD"), rights and freedoms of individuals when processing their PD.

Personal data is any information relating to an identified (or identifiable) individual.

The main condition required to process PD is the consent of the PD subject that should be received by the operator. At the same time, PD operators include, for example, state authorities, legal entities of the Republic of Belarus, other companies, individuals (individual entrepreneurs), who independently or jointly with others mentioned above organize and (or) process PD. The Law sets forth the criteria under which consent is deemed to have been duly received. Thus, the consent of PD subject should be a free, clear, informed expression of their will, through which they allow processing of their PD. The purpose of processing should be commensurate with the purpose stated for processing as well as ensuring a fair balance of interests among all interested parties at all stages of processing. Purposes should be legal, specific, and specified in advance. In the case of changes in the originally specified purposes, the operator should receive a new consent. At the same time, storage of PD should not be longer than the specified purposes of PD processing require it.

Prior to receiving a PD subject's consent, the operator has to inform the PD subject about the following:

- name and location of PD operator;
- purposes of PD processing;
- list of PD;
- period for which consent is given;

YOUR CONTACT IN OUR OFFICE

Daria Martinovskaya
Associate

T +375 17 203 94 55
daria.martinovskaya@bnt.eu

bnt legal and tax
Revolutsionnaya str. 9A-40
BY - 220030 Minsk

- authorized third parties;
- list of actions with PD;
- other information required to ensure the transparency of PD processing.

At the same time, receiving the consent of a PD subject is not required in cases established by the Law.

Consent can be expressed in writing, in the form of an electronic document or in another electronic form (ticking off on an Internet resource, receiving a code to an e-mail address, by SMS).

PD to third parties can be transferred only on behalf of the operator or in its interests on the basis of agreement provided that it includes the conditions set forth by the Law. Cross-border transfer of PD is prohibited if there is no adequate level of data protection on the territory of a foreign state. However, the Law sets forth some exceptions. The list of countries providing an adequate level of protection of rights of PD subjects has not yet been determined. The list is expected to include countries that have ratified the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data No. 108 (concluded in Strasbourg on 28 January 1981).

The Law enshrines a set of rights granted to PD subjects, including the right to withdraw consent, the right to demand termination and/or deletion of PD processing, as well as the right to receive information about PD processing.

Illegal processing, violation of rights of a PD subject or PD protection rules may lead to administrative liability. Thus, an individual (director) or a company can be fined up to 200 basic units (approx. 2 050 Euro).

From entry into legal force of the Law, new duties are imposed on PD operators – legal related to receiving and processing of PD, such as appointing a person responsible for PD protection, bringing into line with the Law / developing company policy in the field of PD protection, familiarization and training of employees who directly process PD, etc.

From 15 November 2021, a new Ukaz of the President of the Republic of Belarus on measures to improve protection of personal data dated 28 October 2021 No. 422 also comes into legal force. This Ukaz establishes the National data protection center of the Republic of Belarus (NDPC) and also its competence and authority. The NDPC becomes an additional controlling authority in Belarus as far as it is empowered to control data processing by operators (authorized persons).

bnt Minsk office is here to provide legal assistance in drafting documents required to bring your company's activities into compliance with the new legislation on data protection.

Source: National legal internet portal of the Republic of Belarus (NLIP), 13.05.2021, 2/2819

Our Offices

BELARUS

bnt legal and tax
Revolutsionnaya str. 9A-40
BY - 220030 Minsk
Tel. +375 17 2039455
Fax: +375 17 2039273
info.by@bnt.eu

BULGARIA

bnt Neupert Ivanova & Kolegi adv.dr.
Gladstone 48
BG - 1000 Sofia
Tel.: +359 2 980 1117
Fax: +359 2 980 0643
info.bg@bnt.eu

CZECH REPUBLIC

bnt attorneys-at-law s.r.o.
Slovanský dům (building B/C)
Na příkopě 859/22
CZ - 110 00 Prague
Tel.: +420 222 929 301
Fax: +420 222 929 309
info.cz@bnt.eu

ESTONIA

bnt Advokaadibüroo OÜ
Tatari 6
EE-10116 Tallinn
Tel.: +372 667 62 40
Fax: +372 667 62 41
info.ee@bnt.eu

GERMANY

bnt Rechtsanwälte GbR
Leipziger Platz 21
D - 90491 Nuremberg
Tel.: +49 911 569 61 0
Fax: +49 911 569 61 12
info.de@bnt.eu

HUNGARY

bnt ügyvédi iroda
Stefánia út 101-103
H - 1143 Budapest
Tel.: +36 1 413 3400
Fax: +36 1 413 3413
info.hu@bnt.eu

LATVIA

Jensen & Svikis Legal
Antonijas iela 24-7
LV-1010 Rīga
Tel.: +371 25 23 20 22
info.lv@bnt.eu

LITHUANIA

bnt Heemann APB
Embassy House
Kalinausko 24, 4th floor
LT - 03107 Vilnius
Tel.: +370 5 212 16 27
Fax: +370 5 212 16 30
info.lt@bnt.eu

POLAND

bnt Neupert Zamorska & Partnerzy sp.j.
ul. Chłodna 51
PL - 00 867 Warsaw
Tel.: +48 22 373 65 50w
Fax: +48 22 373 65 55
info.pl@bnt.eu

ROMANIA

bnt Gilescu Valeanu & Partners
69 Dacia Boulevard, 1st District
RO-020051 Bucharest
Tel.: +40 21 311 12 13
Fax.: +40 21 314 24 70
info.ro@bnt.eu

bnt Gilescu Valeanu & Partners
No. 1 Ionel I.C. Brătianu Square
Bratianu Real Estate, ground floor
RO-300056 Timisoara
Tel.: +40 35 600 70 33
Fax: +40 35 600 70 34
info.ro@bnt.eu

SLOVAKIA

bnt attorneys-at-law, s.r.o.
Cintorínska 7
SK - 811 08 Bratislava
Tel.: +421 2 57 88 00 88
Fax: +421 2 57 88 00 89
info.sk@bnt.eu

BNT NETWORK OF COOPERATIVE LAW OFFICES

Bosnia and Herzegovina, Croatia,
Macedonia, Montenegro, Russian Federation,
Serbia, Slovenia, Ukraine

further information:
www.bnt.eu