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Legal News
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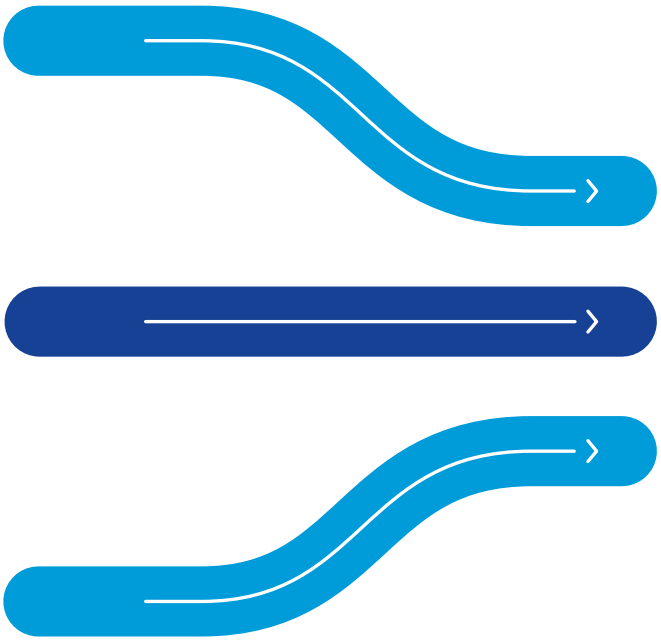
Central- and Eastern Europe



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War in Ukraine – Help for refugees in Hungary

A brief summary of how the Temporary Protection Directive works in Hungary

In response to the wave of refugees resulting from the war raging in Hungary's neighbour, Ukraine, the Council of the European Union has established the applicability of the so-called Temporary Protection Directive No 2001/55/EC (the "**Directive**") in its Implementing Decision (EU) 2022/382 of 4 March 2022 (the "**Decision**"). In practice, this means that, almost without exception, refugees fleeing the war are automatically entitled to temporary protection in the Member States of the European Union.

The Directive only sets out a framework for temporary protection, the specific content of which varies from one Member State to another. This article briefly summarises the most important rights and obligations of asylum seekers in Hungary.

The duration of temporary protection is 1 year, which may be extended to 3 years in justified cases. During this period, the asylum seeker has the right to stay in Hungary, and for this a special pass will be issued to them.

An asylum seeker is entitled to adequate accommodation, food, sanitary items and medical care. The latter includes emergency care and care necessary for the essential treatment of illnesses. Persons enjoying temporary protection who have special needs (e.g. victims of serious psychological, physical or sexual violence), are also entitled to appropriate medical and other assistance, such as psychological help.

For young asylum seekers under the age of 18, Hungary provides access to its education system under the same conditions as for Hungarian students.

In Hungary, asylum seekers can work without a permit in sectors with workforce shortage, and in other sectors according to the general rules for foreigners, i.e. on the basis of a work permit. The state provides financial support to Hungarian employers employing such employees.

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In the case of a separated family, it is possible to reunite the family in the Member State which has taken in one of the family members as an asylum seeker. In other cases, relocation to another Member State is also possible. However, this is not automatic, but depends on the reception capacity and the decision of the designated country and takes time.

It is important to note that Ukrainian citizens who cross the border with a biometric passport but do not apply for asylum in Hungary can, in principle, travel freely between EU Member States for 90 days within 180 days. This means that they have the possibility to choose the most favourable Member State according to their own individual criteria (e.g. employment opportunities, place of residence of relatives or friends) and to apply for asylum there.

Our office has prepared a detailed summary of the rules in all Member States neighbouring Ukraine. Regularly updated information is available here.

Source:
Council Implementing Decision (EU) 2022/382
Council Directive 2001/55/EC
Act LXXX of 2007 on the Right of Asylum
Act IV of 1991 on the Promotion of Employment and Unemployment Benefits
Government Decree No. 86/2022. (III. 7.)

Lithuania allows refugees from Ukraine to start work immediately

The Lithuanian Minister of the Interior has issued a decree that eases the conditions of employment for people who have fled Ukraine.

Ukrainian citizens, their family members and stateless persons residing in Ukraine who have left Ukraine for Lithuania no longer have to obtain a work permit or wait for a decision by the Lithuanian Labour Agency (Užimtumo tarnyba) on compliance of the foreigner's work with the needs of the Lithuanian labour market.

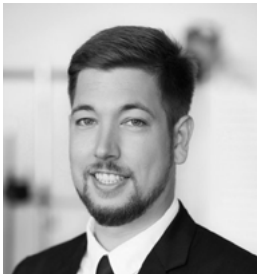
This applies both to foreigners who are exempt from the visa requirement or who have a residence permit or a (Schengen) visa on humanitarian grounds, and to asylum seekers. The latter are already entitled to work from the time of registration of their asylum application.

In addition, persons entering Lithuania from Ukraine may be exempted from the obligation to possess a valid travel document, health insurance and other documents entitling them to enter and stay in the Republic of Lithuania, as well as from the requirements for issuing national visas or residence permits in the Republic of Lithuania, if they cannot or could not fulfil these requirements for objective reasons. They are then issued a certificate of registration as an alien until the issue of their legal status in the Republic of Lithuania is resolved.

The issuance of visas or residence documents as well as examination of applications is free of charge for these persons.

In addition, these foreigners have the right to receive emergency medical assistance and other necessary personal health services free of charge. The costs are borne by the Lithuanian health insurance fund.

Source: Decree on the issuance of national visas, temporary residence permits in the Republic of Lithuania, alien registration certificates, the right of aliens to work in the Republic of Lithuania and health care services 28 February 2022 No 1v-145



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New compliance measures in Latvia: Whistleblowing Directive

On 4 February 2022, a new Alert Raising Law, adopted in line with the EU Whistleblowing Directive, came into force

As a result, the old version of the Alert Raising Law, which was in force as of 1 May 2019, is replaced by a new law. The need for the new law is linked to Latvia's obligation to transpose the EU Whistleblowing Directive, which required extensive amendments to be made.

In the private sector, the law extends the obligation to set up an internal alert system and provides that companies subject to EU regulation, regardless of the number of employees, must set up an internal alert system. At the same time, in the private sector, the internal alert system can be outsourced to third parties. As such, entities subject to law may merge and establish a common internal alert system. In addition, from now on, a company must identify responsible persons (employees) who will be reviewing alert reports.

As regards reporting, the law extends areas and violations of particular concern and in relation to which an alert report can be brought. The list has been supplemented, for example, by breaches of transport safety, animal welfare, protection of privacy and personal data, and actions affecting climate change. At the same time, the law clarifies that this list is not exhaustive - a whistleblower is entitled to report an infringement that harms the public interest in any area.

Actions that are not considered to be alarm-raising have also been clarified. The new law adds to that list, for example, breaches of confidentiality of communications between a sworn advocate and a client, a doctor and a patient, disclosure of information on consultation with employee representatives or trade unions, and information between parties to a collective agreement, insofar as information necessary for conclusion or amendment of the collective agreement is concerned.

The law extends the range of persons provided with guarantees of protection. In addition to the whistleblower himself and his relatives, related parties linked to the whistleblower are also protected if they may suffer adverse consequences. The list of actions considered as causing adverse consequences has also been extended.

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Finally, the new law provides administrative liability for disturbing an alarm by imposing a fine on a natural person from 15 to 350 euros, and on a legal person – between EUR 35 and EUR 7 000.

Source:
Alert Raising Law, adopted on 20 January 2022.

Amendments concerning consumer rights in contracts for sale of goods

Main amendments to the legal guarantee of conformity and commercial guarantees in consumer sales contracts

On 1 January 2022, the emergency ordinance transposing the European directive regulating consumer guarantees when concluding contracts for the sale of goods entered into force.

The new legislative framework introduces the following changes concerning the legal guarantee of conformity and commercial guarantees:

- Introduces the consumer's right to opt for a specific corrective measure within 30 days of delivery.
- Introduces a guarantee for goods with digital elements. Under the new legal provisions, when purchasing a product with digital elements: if digital content and/or digital services are provided for a certain period, but less than 5 years (i) for products with an average duration of use of up to 5 years, consumers benefit from a legal guarantee of 2 years from the date of delivery; (ii) for products with an average duration of use of more than 5 years, consumers benefit from a legal guarantee of 5 years from the date of delivery. Furthermore, where digital content and/or services are provided for longer than 5 years, consumers benefit from a legal guarantee equal to the contractual period established for provision of the digital elements.
- Extends the duration of the legal presumption of non-conformity to 2 years, except for second-hand products where a guarantee period and/or duration of the legal presumption of non-conformity of at least one year from the date of delivery of the product can be established.
- Establishes situations where consumers may request termination of the contract and/or a price reduction.
- Introduces the obligation (i) to provide consumers with a guarantee certificate at the latest at the time of delivery of goods, and (ii) to include in the commercial guarantee certificate a clear delimitation of consumers' rights regarding the legal guarantee of conformity, the name and address of the guarantor, the conditions under which the commercial guarantee is granted, the products to which the commercial guarantee relates, the procedure to be

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followed by the consumer to enforce the commercial guarantee.

- Removes the obligation for consumers to notify non-conformity within 2 months of identifying it. This gives consumers the right to notify the seller of non-conformity at any time within the legal guarantee period.

- Explicitly regulates the durability guarantee offered by the manufacturer. Under the new legal provisions, the durability guarantee is the guarantee by which the manufacturer undertakes for a certain period to repair or replace products that fail to maintain their required functions and performance during normal use. Also, a manufacturer that offers such a guarantee to consumers is directly liable to the consumer for replacement or repair of the product – and the conditions of the legal guarantee of conformity are applicable in this case as regards how repair and replacement are carried out.

Source:
Directive (EU) 2019/771 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the sale of goods, amending Regulation (EU) 2017/2394 and Directive 2009/22/EC, and repealing Directive 1999/44/EC;
Governmental Emergency Ordinance no. 140/2021 on certain aspects of contracts concerning the sale of goods.

Owners' obligations concerning environmentally polluted land in Slovakia

From 1 June 2022, landowners could become liable for removal of pollution, regardless of whether they are the actual polluters.

A recent amendment to the Environmental Pollution Act broke the current 'polluter pays' principle that the polluter is responsible for environmental pollution of land and bears the cost of removal, bringing uncertainty with regard to the legal position of landowners, who were only obliged to perform an environmental clean-up at their own expense in exceptional cases.

The amendment, coming into force on 1 June 2022, changes the existing regulations and may impose a significant financial burden on landowners.

The amendment establishes the principle that if the state pays the cost of removal of the pollution, it has to demand compensation / repayment of such costs from the owner.

As an alternative to repayment of the costs of an environmental clean-up, landowners can establish a lien over the land to secure the state's claim.

However, the law does not contain a clearly formulated obligation for owners to reimburse the costs of environmental clean-up after a lien has been established. Landowners are neither restricted in their possibilities of disposal, nor does the law establish an obligation to satisfy the state's claims from remuneration for the transfer of the encumbered land. Furthermore, landowners do not have a recourse claim against the polluter.

Experts point out the inadequacies of the amendment and their negative impact on the rights and obligations of landowners in Slovakia. In light of these points, enforcing the amendment to the Environmental Pollution Act in the future is questionable. Nevertheless, an environmental due diligence when purchasing real estate in Slovakia is recommended even more strongly than ever.

Source: 409/2011 Coll.
Act on Certain Measures in the Field of Environmental Pollution

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Facilitating activity by holding companies in Poland

Lawmakers work on changes to liability rules in holding companies

The Polish legislator has finally noticed that group companies are not separate, independent entities, but may pursue a common interest.

Under draft amendments to the Polish Commercial Companies Code, capital companies that are related to one another or in which one exerts a decisive influence on the others, may declare pursuit of a common interest and form a group.

This will be done on the basis of resolutions by their shareholders and notification of the fact to the court register (in the case of foreign parent companies - only to the register of subsidiaries).

The fact of establishing a group will also have to be disclosed on the letterhead of group companies with their registered office in Poland.

This means that formation of a group will not be automatic, but will be a decision of those companies.

Disclosure of the group in the register will mean, for example, that members of the management board of the Polish company will be able, under certain conditions, to accept binding instructions from the parent company in order to pursue a common interest.

In principle, this will be possible even if the subsidiary suffers damage as a result, as long as this does not lead to its insolvency or threat of insolvency.

Management board members who carry out these binding instructions will not be liable for any damage caused to the company as a result - either in civil or criminal proceedings.

Besides, lawmakers want to mitigate the liability of management board members in all capital companies (not only those belonging to groups). They

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will be able to defend themselves on the grounds that they followed their business judgement and did not exceed permissible risk.

However, no changes are planned to the liability of management board members for tax obligations or in penal and fiscal liability, e.g. for understating the income of Polish subsidiaries and transferring that income abroad. In the case of such allegations, execution of binding instructions is unlikely to be an effective means of defence.

Exemption from liability of management board members for carrying out binding instructions is to be balanced by the liability of the parent company towards the subsidiary, minority shareholders and third parties - creditors.

Liability towards a subsidiary will, in practice, only come into play in the event of insolvency, with minority shareholders but also in the event of a change in structure. Regulation of liability for execution of binding instructions will therefore have to be borne in mind when selling companies.

Source:
Draft Act of 9 February 2022 amending the Commercial Companies Code and certain other acts - text as submitted to the Senate

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