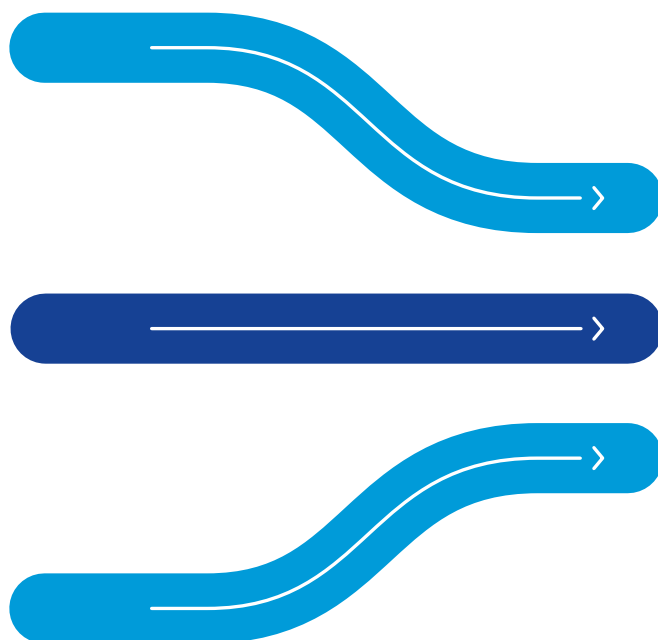


# Legal News

## August 2022

### Central- and Eastern Europe



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# Online GmbH incorporation possible in Germany as of 01 August 2022

From 01 August 2022 there will be the possibility to establish GmbHs in Germany online without visiting a notary on site

The law, which was enacted as part of the implementation of the EU Digitalization Directive, contains a number of innovations in the area of digital procedural law.

In particular, the legal framework conditions for the notarial certification of declarations of intent by means of video communication are created to enable the online formation of the GmbH.

Furthermore, the public certification of qualified electronic signatures by means of video communication by notaries is to be made possible, whereby the registration of branches and the submission of deeds and information can also be done completely online.

There will also be a conversion of the register portals and the retrieval of register data will be simplified. In addition, the cross-border exchange of information on branches in other EU states will be improved and, in particular, the registration of branches will be simplified.

Initially, however, the possibility of online formation will be reserved for so-called cash formations, where the share capital is raised in cash. The scope of application will only be extended from 01 August 2023, and will then also include non-cash formations where the share capital is provided in the form of objects, for example.

From next year onwards, the passing of resolutions within the circle of shareholders will be further simplified. Even though simple resolutions were already partly possible in video conferences or by e-mail, resolutions that were to amend the company's articles of association had to be notarised in person.

From 1 August 2023, shareholder resolutions amending the articles of association - which must be passed unanimously - can also be notarised online. This also applies to capital measures such as capital increases or decreases as well as the corresponding takeover declarations.



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We assume that these innovations will make life considerably easier for our clients based abroad in particular - provided that the necessary digital identification options are available in each case - due to the flexibility gained and will further accelerate the processes relating to company formations in Germany.

Source: Law on the implementation of the Digitalization Directive (DiRUG)

# New insolvency prevention tool now in force in Hungary too!

The restructuring procedure in force from July 2022 offers a flexible mechanism to solve a company's financial problems.

The new rules introduce a procedure aimed at helping companies facing liquidity problems, while not imposing the same strict conditions as bankruptcy proceedings. This can offer a new opportunity to struggling but still economically viable businesses that are coping with the ordeals of the recent pandemic and the current changing economic climate.

The procedure, which is essentially a confidential one, is initiated based on the decision of the debtor. The debtor decides which creditors to include in the procedure and this can only become public at the debtor's initiative.

The advantage compared to bankruptcy proceedings is that the new procedure can be initiated sooner and the restructuring expert assisting the procedure does not limit the representative or management rights of the manager. During the procedure, the debtor can continue to run its business and assume liabilities. Furthermore, possible failure of the restructuring does not automatically lead to liquidation proceedings, with the added bonus that the stigmatizing suffix of a bankruptcy is not applied.

The debtor is not obliged to include all creditors in the proceedings and so must fully meet all payment obligations towards those not included. Besides the general moratorium, the law also provides for the possibility of a so-called selective moratorium for certain creditors, so that the debtor is protected against individual enforcement actions.

The financial settlement between debtor and creditors is based on the restructuring plan. The plan must be voted on by the creditors and can then be approved by the court. The plan must meet the "best interests of creditors" test, i.e. that creditors who vote "no" would not be worse off with a restructuring plan than if they had pursued their claims in liquidation proceedings.



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The new procedure aims to find a golden mean between informal contractual restructuring and formal insolvency proceedings and to provide timely rescue assistance to businesses in distress. In the spirit of the emerging "rescue culture", European legislators have also felt the need to build a fair and trust-based system, as it is more cost-effective from an economic point of view to rescue an existing business – with its machinery, well-established processes, skilled employees and partners –with expert assistance and mutually beneficial solutions than to liquidate it and start from scratch.

Source:

Act LXIV of 2021 - on restructuring and amending certain acts for the purpose of legal harmonization

EU Directive 2017/1132 on restructuring and insolvency

# Remote working will be permanently introduced into the Labour Code

The Sejm is working on a project to introduce rules and obligations for employers and employees concerning remote working.

Remote work was introduced into the legal system as an ad hoc temporary solution during the COVID-19 epidemic. The parties to the employment relationship recognized the advantages of this form of working - and the legislator decided to regulate the issue in more detail in the Labour Code.

According to the proposed definition, remote work may be performed wholly or partly in a place indicated by the employee and agreed with the employer in each case, including at the employee's home address, in particular using means of direct remote communication. The agreement on this way of working may be made both on conclusion of the employment contract and during employment (at the employer's initiative or at the employee's request).

In special circumstances, the employer will be able to instruct the employee to work remotely, e.g., in a state of emergency, an epidemic and in times when due to force majeure the employer cannot ensure safe and hygienic working conditions. The order will only be effective if the employee states (on paper or electronically) that they have the premises and technical conditions to work remotely. The employer will be able to withdraw the order at any time (with at least one day's notice).

As a general rule, the employer will have to grant a request for remote working from, e.g., a pregnant employee or an employee-parent of a child under 4 years of age, unless remote working is not possible due to the type of work or its organization.

The introduction of rules for remote working requires an agreement with trade unions, and if no trade union representation is present at the employer, these rules must be set out in regulations after consultation with employee representatives. If there is no agreement or no specified regulations for remote work, the principles are specified in the order to work remotely (provided that conditions exist enabling issuance of the order) or in a separate agreement concluded with the employee.



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A novelty is the explicit obligation of the employer to cover the costs of remote work. However, the Act leaves the parties free as to these arrangements. In addition, the employer will have the right to control performance of remote work as well as to control work safety and data protection - on the principles set out in the agreement, regulations, order or individual agreement with the employee, respectively.

Source: Government Bill amending the Labour Code Act and certain other acts

# Better conditions for employing highly skilled foreigners

Recent legislative amendments in Lithuania ease recruitment of foreign workers and offer incentives for both employees and employers

At the end of June 2022, the Lithuanian parliament passed amendments to the Law on the Legal Status of Aliens and the Law on Employment. The amendments aim to facilitate and encourage recruitment in Lithuania of foreigners with high professional qualifications, thus addressing the problem of talent shortages in Lithuania's workforce.

Under the new rules, high professional qualifications will be proven not only by a higher education diploma or equivalent professional experience of at least 5 years, but also by professional experience of at least 3 years in the field of information and communication technology services acquired in the last 7 years, equivalent to a higher education diploma.

The amendments reduce the obligation to employ a highly qualified foreigner from one year to 6 months. This makes it easier for foreign workers to change jobs.

The amendments also introduce lower financial obligations when recruiting highly skilled workers: employers will no longer have to pay workers who meet legal requirements a salary of at least 3 times, or in individual cases, 1.5 times the average monthly salary of employees in the last quarter of the previous year, and no less than 1.5 times the average monthly gross wage of the calendar year. Employees on a list approved by the Minister for Economic Affairs and Innovation will be paid a salary of at least 1.2 times the monthly gross wage.

These changes to the law are expected to attract highly skilled mid-level workers, while allowing employers to be more flexible in setting wages in response to labour market needs.

To obtain a temporary residence permit in Lithuania in line with the requirements of the EU Blue card, the amendments also abolish the additional requirement for individual groups of employees to apply to the Employment Service for confirmation that their position is in high demand in the Lithuanian labour market. Applications



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for temporary residence permits will continue to be considered by the Migration Department.

To boost attraction of highly qualified foreigners, the amendments also suggest financial incentives for both employees and employers of lump-sum payments up to EUR 5 300.

The amendments are expected to increase Lithuania's competitiveness in the international labour market and help attract highly qualified talent to Lithuania.

Source:

Republic of Lithuania: Law on amending the Law on the Legal Status of Aliens No IX-2206

Consolidated version of the Law of the Republic of Lithuania on Employment No. XII-2470 (effective from 1 July 2022)

## Company in crisis – new rules

As of July 17, 2022, the legal definition of a “company in crisis” will change. More importantly, the general obligation of the statutory body to overcome the crisis will be lifted. On the other hand, some new obligations for the company/its statutory body will be introduced.

According to the latest amendment to the Commercial Code, a company is in crisis if

1. the ratio of its equity to its liabilities is less than 8 to 100
2. it is threatened with insolvency or
3. it is insolvent.

If a company is in crisis only due to fulfilment of the first condition, the major consequence is a ban on repayment of so-called equity replacing resources. In other words, equity replacing resources (together with accessories and contractual penalties) cannot be reimbursed if a company is in crisis or would get into crisis as a result. But the statutory body is no longer bound to the obligation to take all appropriate measures to overcome the crisis.

However, if the company is in crisis due to fulfilment of the second or third condition, additional rules apply.

A company threatened with insolvency (in particular when it can be reasonably assumed that during the upcoming 12 months the company will become illiquid) is legally obliged to prevent insolvency. It must constantly review its financial situation and take appropriate and proportionate measures to avert insolvency. Concrete measures depend on the actual circumstances (e.g., enforcing its own receivables, increasing the equity). It can also ask for authorization for so-called preventive reorganization.

If the company is insolvent (i.e., illiquid or overindebted), the statutory body is obliged, in particular, to file for bankruptcy within 30 days from the date on which it/they became aware or could have become aware of the company’s insolvency. As of July 17, 2022, this obligation applies not only to illiquidity but also to over-indebtedness.

Should you need tailor-made information to find out if your company is in crisis and what practical steps to take, do not hesitate to contact us.



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# Romania encourages development of renewable energy projects

[Amendments to Romanian legislation that positively impact development of renewable energy projects](#)

**Law no. 159/2022 amending Law no. 50/1991 on authorizing construction works entered into force on May 30, 2022.** Under the new provisions, building permits may be issued without previously approved land management and urban planning documentation in the case of land plot prospecting and research works - drilling and quarrying - required for carrying out electricity and hydrogen production capacities from renewable sources, as well as other operations.

**The Parliament adopted the Draft law amending and supplementing Territorial Fund Law no. 18/1991 and other normative acts.** According to the draft, in quality classes III, IV and V agricultural lands for arable use, pasture, vineyards and orchards, as well as those with land improvement works, located outside the incorporated area, undertaken on the basis of a building permit and approval of permanent or temporary exclusion from agricultural use, specific investment facilities for production of electricity from renewable sources may also be established: solar, wind, biomass, bioliquids and biogas energy production installations, electricity storage units, conversion stations or other similar systems which may be located outside the incorporated area agricultural lands, with a maximum surface area not exceeding 50 ha.

As a corollary of the new law, in principle, individuals would no longer have to go through the procedure for approval of Regional Urban Planning for the purpose of incorporating these investment facilities in a built-up area, which would result in a simpler procedure for obtaining the necessary authorization for such projects.

The draft will enter into force after its promulgation and publication in the Official Gazette and will produce legal effects for a limited period, namely until December 31, 2026.

We would also mention that **on June 30 2022, Emergency Ordinance no. 104/2022** came into force, amending and supplementing Law no. 17/2014 on certain measures regulating the sale of agricultural land located in the

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countryside, which mainly clarifies the method of calculation and payment of the 80% tax due on disposal of agricultural land before the expiry of 8 years from purchase.

In the case of sale of agricultural land by means of a sale contract, the 80% tax will be calculated and collected by the notary public prior to authentication of the sale contract. Moreover, the 80% tax is a non-deductible expense when determining the taxable result.

Source:

Law no. 159/2022 amending Law no. 50/1991 on the authorization of construction works

Territorial Fund Law no. 18/1991

Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources

Emergency Ordinance no. 104/2022

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