



HUNGARY
BULGARIA
ROMANIA
CROATIA
SERBIA

CEE LEGAL NEWSLETTER Q4/2022

LEGAL NEWS FOR INVESTORS AND ENTREPRENEURS

- EDITORIAL of François d'Ornano, Managing Partner
- HUNGARY: Compromise on EU Funds
- BULGARIA: State aids; temporary windfall tax on energy companies
- ROMANIA: Amendments to the labour code; introduction of the single industrial licence
- CROATIA: Changes due to the introduction of the euro; general corporate windfall tax
- SERBIA: Use of electronic promissory notes; electronic invoicing

EDITORIAL

This winter issue does not contain the usual contribution from our Ukrainian colleagues of Vasil Kisił and Partners law firm.

The reasons are obvious: war dominates their daily life with a resumption of the bombardment in the capital which makes it even more difficult for them to exercise their activity as lawyers.

We would like to assure them of our firm and constant support.

The legal news in our region of intervention therefore remains under the influence of the war in Ukraine, but two countries in particular caught our attention this last quarter: Hungary first, with an article which presents the content of the agreement finally found with EU member states, Croatia then which integrates from this year the euro zone.

Two events that are undoubtedly less structuring than the current conflict but which, we hope, herald more serene days.

We wish you all the best in the new year.

François d'Ornano

HUNGARY

LEGAL NEWS

OVERVIEW OF RECENT LEGAL AMENDMENTS AND NEW LAWS AND REGULATIONS

Rule of law: EU member states reached an agreement with Hungary on the suspension of EU funds

As a reminder, on 30 November 2022, the European Commission published a Communication to the Council and a proposal to the Council in which it recommended freezing:

- on the one hand, 5.8 billion euros of the post-Covid-19 recovery plan, representing 70% of the 7.2 billion euros envelope earmarked for Hungary, and
- on the other hand, 7.5 billion euros of cohesion funds, representing 65% of EU funds allocated to Hungary under three operational programs under EU's cohesion policy, i.e. app. 20% of the overall cohesion envelope for Hungary for the 2021-2027 period,

as long as the Hungarian government does not take steps to improve the rule of law. The European Commission considered that Hungary had not made sufficient progress in its reforms to improve the rule of law and therefore recommended the freezing of 13,3 billion euros in funds for Hungary.

Without the approval from the UE executive of its coronavirus recovery plan by the end of the year, Hungary would have irretrievably lost the amount of 5.8 billion euros funds.

The ambassadors of the 27 EU Member States met on 12 December 2022 and reached agreement on 4 issues: the aid package for Ukraine, the minimum tax rate of 15% for multinational companies and two files concerning Hungary: the European recovery plan and the freezing of cohesion funds.

Firstly, the member states decided to approve Hungary's recovery plan, i.e. 5.8 billion euros in grants. With this decision, these funds are therefore not lost, but they remain frozen.

Secondly, the member states decided to reduce the frozen amount of cohesion funds. While the Commission recommended, under the rule of law the conditionality mechanism, the freezing of 7.5 billion of cohesion funds, the member states reduced this sum to 6.3 billion euros (i.e. 55% of funds frozen instead of the 65% recommended by the Commission). Hungary has in response lifted its veto on the proposed minimum tax and its blocking of the 18-billion-euro aid package for Ukraine from the EU budget.

However, to get these 12,1 billion euros (in recovery grants and in cohesion funds), Hungary will still have to fulfill 27 so-called 'supermilestones', including 17 commitments to redress the rule of law and institutional reforms aimed at strengthening the independence of the judiciary.

I. The conditionality procedure activated against Hungary

In order to prevent member states that violate the rule of law and democracy from benefiting from European funds, the European Union has introduced a system that makes the disbursement of European funds conditional on respect for the European values. The Regulation on conditionality was adopted by the Parliament and the Council on 16 December 2020 and entered into force in January 2021.

According to this Regulation, the European Commission initiates the conditionality procedure when it considers that breaches of the principles of the rule of law in a Member State undermine or present a serious risk of undermining the sound financial management of the Union budget or the protection of the Union's financial interests. After a phase of consultation and exchange of views between the Member State concerned and the Commission, the Commission proposes appropriate and proportionate measures to the Council. The Council will then take a final decision on the proposed measures.

The conditionality mechanism was activated for the first time in April 2022 against Hungary, due to systematic irregularities in public procurement, as well as deficiencies in the system of prosecution and the fight against corruption.

In September 2022, the European Commission, in a written notification setting out the precise facts and grounds on which its findings are based, gave Hungary a deadline of 19 November to put in place reforms to strengthen the rule of law, the framework for the fight against corruption and the independence of the judiciary, as well as to improve competition in public procurement.

II. The measures implemented by Hungary

In its exchange of views with the Commission, Hungary committed itself to introducing 17 remedial measures, such as i) reinforcing prevention, detection and correction of illegalities and irregularities in the use of Union funds through a newly established integrity authority; ii) establishing an anti-corruption task force; iii) introducing a special procedure for specific offences related to the exercise of public authority or the management of public property; iv) reducing the share of tender procedures with single bids.

Hungary adopted several pieces of legislation between the end of September and the beginning of October 2022. One of the central remedial measures proposed by Hungary is the establishment of the Integrity Authority (in Hungarian: "*Integritás Hatóság*").

According to the new law entered into force on 11 October 2022, the Integrity Authority is an autonomous body of the public administration, independent in the performance of its tasks, subject only to the law and acting independently of any other body. It acts in accordance with its mandate in all cases where it considers that a body with responsibilities and powers in relation to the use or control of EU funds has not taken the necessary measures to prevent, detect and correct fraud, conflicts of interest, corruption and other irregularities or offences prejudicial to the sound financial management of the Union budget or the protection of the financial interests of the EU, or where there is a serious risk that this will occur.

The Authority has different functions:

- The Authority has a role of **analysis and proposal**: it carries out an integrity risk assessment, produces an annual integrity analysis report and issues recommendations.
- It has a function of **investigation and control**: it can investigate, initiate an irregularity procedure with the competent authority, request the competent authority to initiate a procedure (the Authority cannot go to court directly, but it can require the competent authority to act) and bring actions for failure to act before the courts.
- In the context of public procurement procedures, it has the **powers of an administrative authority**, it carries out official controls of public procurements implemented or planned to be implemented with EU funds, and it may impose information obligations. It keeps a register of legal persons, sole proprietorships and individual contractors excluded from public procurement procedures because of certain criminal offences.
- The Authority has a **duty to report** to other competent authorities, including the European Anti-Fraud Office and the European Prosecutor's Office, any suspicion of fraud, conflict of interest, corruption or any other illegal or irregular situation.

The Authority shall act on its own initiative or based on a notification or complaint submitted and using any information available to it. The law provides that where an offence or irregularity within the scope of the Authority is detected, any person may (anonymously) submit a complaint to the Authority.

The Authority is headed by a director and has two vice-presidents (appointed together as the Authority's management board). The management board reports annually to the Parliament on its activities. Its report is transmitted to the European Commission.

The Integrity Authority Act also established a new Anti-Corruption Task Force, a body with analysis, proposal, advisory and decision-making functions, working alongside but independent of the Integrity Authority.

III. The Commission's evaluation

In its Communication, the Commission considers that many reforms have been implemented in a way that fulfils the commitments set by Hungary, such as the establishment of the anti-corruption task force, the strengthening of audit and control mechanisms or the reduction of tender procedures with single bids financed by EU funds.

Nevertheless, Hungary has not sufficiently implemented some key aspects of the 17 remedial measures by the 19 November 2022 deadline.

The Commission's remarks on the Integrity Authority concern, among others, the following points:

- **the lack of a clear rule stipulating that the Integrity Authority will retain its powers after a project has been withdrawn from EU funding**: The last sentence of Section 3 of the Integrity Authority Act, concerning the performance of the Authority's duties, states that *"should a project be removed from European Union financing, this shall not lead to depriving the Authority from its powers if the fraud, conflict of interest, corruption and other illegalities or irregularities affect or seriously risk affecting the sound financial management of the European Union budget or the protection of the financial interests of the European Union"*. Depending on how it is

interpreted, this provision as such should not deprive the Integrity Authority of its powers if a project is withdrawn from Union funding. In the Commission's view, however, the interpretation and application of this provision will depend on decisions by the Hungarian authorities, and it is also possible that such a provision is interpreted in a way that allows the deprivation of the Integrity Authority of its powers as soon as it starts to examine certain public procurement procedures.

- The Authority **does not have the possibility to appeal directly to the courts** and therefore there are doubts about the effectiveness of judicial review of cases in which the contracting authority does not follow the recommendation of the Integrity Authority.
- **Shortcomings in the procedure for the removal of members of the Integrity Authority:** the procedure for dismissing board members is short, only thirty days between the application and the judicial decision at first instance. Such time limit would make it difficult for the board member concerned to organize his or her defense effectively and for the competent court to ensure the exchange of briefs, to hold hearings and to protect the rights of the defense and of the proceedings.
- **The limited scope related to lack of inclusion of all 'high-risk officials'** in the scope of the Integrity Authority's verification powers in relation to asset declarations.
- **The process for selecting members of the Integrity Authority:** the second vice-president of the board of directors was appointed when other candidates scored higher in the selection process.

In addition, the Commission noted that the promised measures concerning special offenses related to the exercise of public authority or the management of public property have not been (or have only been partially) implemented.

Finally, the Commission notes that the Hungarian government's commitment to introduce, by 30 March 2023, a system of asset declarations filed electronically in a digital format, to be stored in a public database that will be searchable without a fee or the need to register, is not yet reflected in the regulatory framework. According to Hungary, the rules on the system will be elaborated and adopted later on, by 31 March 2023.

IV. Hungary's position

The compromise concluded on 12 December was called a "good result" by Hungarian prime minister Viktor Orbán. The Hungarian government said it was ready to convince the EU of its willingness to fight corruption in order to get the rest of these EU funds next year. *"We will put in place the additional measures required and, in 2023, we have no doubt that we will succeed in convincing the Commission (...) that it is not necessary to suspend the funds"* told Tibor Navracsics, the minister responsible for the use of European funds.

BULGARIA

LEGAL NEWS

OVERVIEW OF RECENT LEGAL AMENDMENTS AND NEW LAWS AND REGULATIONS

In October 2022, Bulgaria held parliamentary elections – the fourth in two years after the collapse of the reformist government in June after less than 6 months in office. Not surprisingly, the elections resulted in a complex Parliament with a mix of political fractions. Ironically, the vote afforded slight advantage to the party of the former prime minister, Mr. Borisov – the one ousted in 2020 following mass demonstrations for more transparency and accountability triggering the frenetic cycle of national elections in 2021.

The negotiations to form a coalition government are under way – until it is formed, the legislative activity of the Parliament is effectively restricted to the minimum required for the operation of the current affairs and the implementation of EU initiatives on national level.

State Aid: Business undertakings will receive subsidy to compensate for higher electricity prices

On 11 November, the Parliament authorised the Council of Ministers to implement a state aid program to compensate business undertakings for higher electricity costs. As of 1 January until the end of 2023, the electricity price for non-household end consumers will be effectively capped at approx. 100 EUR/MWh – the difference between the actual electricity price and the cap is to be financed from the funds collected in the Electricity System Security Fund. Initially, the state aid was subject to a number of prerequisites that limited the number of business undertakings eligible to receive it. Following a public backlash on 9 December, the decree was revised and the scope of compensation was extended to all non-household end consumers. However, certain industry experts warn that there might not be sufficient funds to finance such a large-scale state aid.

Temporary Windfall Tax on Energy Companies

On 6 December, the Parliament approved changes to the Corporate Revenues Tax Code to provide for a temporary windfall tax in the form of a 33% solidarity contribution on the surplus profits of energy companies in 2022 and 2023 in implementation of the Regulation (EC) 2022/1854 of the EU Council of 6 October 2022 on an emergency intervention to address high energy prices.

- The energy companies registered in or with permanent establishments in the European Union with activities in the crude oil, natural gas, coal, and refinery sectors, will be obliged to pay a temporary tax on the surplus profits, i.e. windfall generated by high energy prices and surge in demand.
- The solidarity contribution (*временна солидарна вноска*) is payable on the surplus profits for the fiscal years 2022 and 2023 – the difference between the actual taxable profits calculated according to the Bulgarian Corporate Revenues Tax Code, and the average taxable profits for the preceding four fiscal years (2018-2021). The taxable profits are deemed to be surplus profits when they exceed the average taxable profits of the reference years by at least 20%, as defined in Regulation (EC) 2022/1854.

- The due amount is to be reported in the annual tax declaration. It shall qualify as current expense for accounting purposes and can be paid in advance or with the annual payment of the corporate tax.

One of the largest energy companies required to share its abnormal profits is the Lukoil Neftochim Burgas Refinery – the largest oil refinery in South-eastern Europe, which currently works predominantly with imported Russian crude oil. In November, the Lukoil management had announced that the company plans to relocate its entire business related to the oil refinery from Switzerland to Bulgaria for tax purposes as of 2023, which would generate substantial tax income for the state budget. The move was an attempt to secure an exemption from the EU export ban, which the Bulgarian government was trying to negotiate with the European Commission arguing that, while the crude oil was imported from Russia, the petroleum products manufactured of it in the refinery should be deemed as Bulgarian and thus exempt from the sanctions.

Eventually, on 2 December, the caretaker government adopted a decree, which allows the refinery to export its products until 5 March 2023, i.e. until the deadline set out by the Council Regulation (EU) 2022/2367 of 3 December 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine.

Furthermore, the Parliament approved in principle an option for the government to take over temporarily the management of the refinery in case of energy emergency with an amendment of the Act on Administrative Regulation of Economic Activities, related to Crude Oil and Products of Petroleum Origin. The bill entitles the State to appoint a special representative of a company operating critical energy infrastructure of significance for the national security for up to two consecutive periods of 6 months each – alike similar measures in Germany and Italy.

The Parliament is to hold a second vote on the bill after a second round of discussions, which will review in detail and polish the amendment of the law.

Off-shore Wind in Black Sea

In October 2022, the first Marine Renewable Energy Bill was filed with the Parliament aiming to set out the framework for development of offshore wind and other renewable energy projects in the Bulgarian maritime zone of the Black Sea. As one of the most progressive legislative initiatives in the energy sector, it intended to incentivise sustainable and efficient harvesting of the energy production potential of the area, estimated at 100 GWh.

Since Bulgaria is one of the few EU Member States in CEE with maritime space, investors have been increasingly interested in exploring the potential of the Black Sea for renewable energy projects. In line with the EU energy policy, offshore energy plants would help achieve the 30.33% low carbon energy in the electricity sector and compensate for the decommissioning of the coal power plants, which is to be done until 2038 at the latest.

In early November, the Energy Committee of the Parliament approved in principle the bill following a review of a supportive statement by the relevant ministries and the Wind Europe Association. A few weeks later, the Association of Fishery Products Producers filed an objection claiming that all offshore development would have substantial negative impact on marine fauna.

D'ORNANO

PARTNERS

January 2023

Hence, on November 29, 2022, the bill was withdrawn and all discussion on it in Parliament was suspended. Considering the energy production potential of the offshore spaces, though, it is likely that the Parliament will have to deliberate again on that subject within the mandate of the next government and hopefully find a feasible solution.



Author:
Georgi Popov & Co | Sofia, BULGARIA
in cooperation with D'ORNANO PARTNERS

ROMANIA

LEGAL NEWS

OVERVIEW OF RECENT LEGAL AMENDMENTS AND NEW LAWS AND REGULATIONS

AMENDMENT: Amendments to the Labour Code

The Romanian Labour Code has been substantially amended by Law no. 283/2022 which entered into force on 22 October 2022. This law transposes Directive (EU) 2019/1152 and Directive (EU) 2019/1158.

New mandatory elements of the employment contract

Employment contracts must include the following additional terms:

- if the employee does not have a fixed work location, whether the travel between different workplaces is covered or reimbursed by the employer;
- the method of salary payment;
- conditions for performing and compensating overtime and, where applicable, how work in shifts is organised;
- conditions of the probation period;
- the benefits in cash or in kind to be granted (e.g. private pensions or private health insurance covered by the employer);
- professional training provided by the employer.

The rights of new employees

- Introduction of the prohibition of dismissal or any adverse treatment of an employee for having requested or exercised his or her legal rights or for having lodged a complaint or initiated proceedings to enforce legal rights, and introduction of the right of the victim of adverse treatment to bring an action before the competent court for compensation and, where appropriate, for the restoration of status quo ante.
- The employee remains entitled to perform work for different employers or for the same employer based on multiple employment agreements, however without the possibility of overlapping work schedules. The employer cannot treat such employee less favourably based on these grounds.
- The employee with at least six months' service with the same employer may request a transfer to a vacant position offering more favourable working conditions. The employer will have to provide the employee with a written reasoned answer within 30 days of the receipt of the employee's request.
- The employee can request individualised work schedules. The employer must give written reasons for any refusal within 5 working days of receiving the request.

Permitted absence from work in case of unforeseen situations

The new law introduced the right of the employee to be absent from work in case of unforeseen situations caused by a family emergency due to illness or accident, which makes the immediate presence of the employee indispensable, for a period of maximum ten business days/year, subject to prior notification to the employer and with recovery of the period of absence.

Introduction of carer's leave

The employers must grant to employees carer's leave for the purpose of providing personal care or support to a relative or a person living in the same household as the employee who is in need of care or support as a result of a serious medical condition.

Increased paternity leave

The duration of leave is increased from 5 to 10 working days.

Dismissal

The employee cannot be dismissed during paternity leave, carers' leave or during absence from work for family emergencies.

New rules regarding the internal regulation

In addition to the current provisions, the internal regulation has to include also:

- a) rules regarding the notice period;
- b) information related to the general policy on professional training, if any.

The employer has to inform each employee regarding the provisions of the internal regulation on their first day of work and provide evidence of this. The internal regulation may be communicated on paper or in electronic form, provided that, in the latter case, the document is accessible to the employee and can be stored and printed by him or her.

NEW GOVERNMENT EMERGENCY ORDINANCE: introduction of the single industrial license

The Government Emergency Ordinance no. 140/2022 regarding the single industrial license ("GEO 140/2022") was published in the Official Gazette on 20 October 2022 and entered into force on its publication date.

GEO 140/2022 aims to simplify the procedure for obtaining licenses, authorisations, approvals, prior approvals, and permits, required for carrying out a number of industrial activities.

The single industrial license is defined as the unilateral administrative deed granting the applicant the permission to carry out one or more industrial activities.

The Office for Industrial License is the newly established institution that will deal with the granting, amendment, renewal, suspension and withdrawal of the single industrial license.

The application (together with the underlying documentation) must be submitted via the Single Electronic Point of Contact for Industrial Licenses (the "Single Electronic Point") to the Office. This IT system is intended to interconnect the information systems of the authorities involved in order to facilitate data sharing.

GEO 140/2022 sets a maximum time limit of 180 days from the date on which the application is considered validly filed for the processing of the application.

AMENDMENT: New rules on registrations with the Trade Registry and amendments to the Company Law

Law No. 265/2022 of 26 July 2022 regarding the Trade Registry and amending and supplementing other legal enactments having impact on registrations with the Trade Registry entered into force on 26 November 2022. This new law brings important changes to Romanian company law. For a detailed presentation of the amendments, please consult our CEE Newsletter Q3/2022 here: <https://dornano-partners.com/en/cee-legal-newsletter-q3-2022/>

Author: D'ORNANO PARTNERS

CROATIA

LEGAL NEWS

OVERVIEW OF RECENT LEGAL AMENDMENTS AND NEW LAWS AND REGULATIONS

Amendment: Conversion of the share capital due to the introduction of the euro

Due to the introduction of the euro in Croatia, the Croatian Companies Act was recently amended in order to determine the new minimum values of share capital in euro for companies established in Croatia as of 1 January 2023, as well as the method of converting the share capital from kuna to euro for the already established companies.

According to the amendment, the lowest amount of share capital amounts to:

- (i) EUR 25,000 (previously: HRK 200,000), with the minimal value of a share set at EUR 1 (previously: HRK 10) for a joint-stock company (in Croatian: "dioničko društvo" or "d.d.");
- (ii) EUR 2,500 (previously: HRK 20,000) with the minimal value of a share set at EUR 10 (previously: HRK 200) for a limited liability company (in Croatian: "društvo s ograničenom odgovornošću" or "d.o.o."), and
- (iii) EUR 1 (previously: HRK 10), with the minimal value of a share set at EUR 1 (previously: HRK 1) for a simple limited liability company (in Croatian: "jednostavno društvo s ograničenom odgovornošću" or "j.d.o.o").

All existing companies must convert the amounts of their share capital and shares from kuna to euro at the time of the first change of share capital, merger, division or exchange of shares, but not later than by 1 January 2024 in case of joint stock companies and by 1 January 2026 for (simple) limited liability companies.

Companies that fail to comply with the conversion obligation may be subject to a deletion procedure initiated by the Registry Court of the respective Commercial Court.

Amendment: Increase in tax-free payments to employees

According to the amendments to the Croatian Personal Income Tax Regulation (in force as of 1 October 2022), the amounts of certain payments arising from the employment relationship, that can be paid to employees tax free, were increased. Accordingly, the employer may pay the employee up to HRK 5,000 per year (previously: HRK 3,000) for a Christmas bonus; up to HRK 5,000 per year (previously: HRK 7,500) for a reward for working results; up to HRK 1,000 per year (previously: HRK 600) for a gift in kind; etc. – all tax free.

New law: Windfall tax introduced across all sectors in Croatia

Pursuant to Council Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices, the Croatian Government presented a bill for the Windfall Tax Act, that was adopted by the parliament on 16 December.

Unlike the EU Regulation, which envisaged the new tax, i.e. solidarity contribution to be paid only by the energy sector, the Croatian government proposed a general corporate windfall tax to be levied across all economic sectors.

This windfall tax therefore encompasses all Croatian companies subject to corporate tax that have a revenue of over HRK 300 million (ca. EUR 40 million) in 2022. Any profit higher than 20% of the average taxable profits generated in the four fiscal years 2018 to 2021 is taxed at a rate of 33%.

SERBIA

LEGAL NEWS

OVERVIEW OF RECENT LEGAL AMENDMENTS AND NEW LAWS AND REGULATIONS

Use of electronic promissory notes planned for the first half of 2023

The National Bank of Serbia is in the final phase of preparing a system that would allow the use of promissory notes in electronic form which could be used as securities in the procedure of credit approval.

Use of promissory notes in electronic form would allow further digitalization of the financial sector, and potentially make the process of credit approval more efficient.

The National Bank of Serbia is cooperating with commercial banks in Serbia in order to introduce this new possibility in their business operations. The plan is start using this new possibility during the first half of 2023.

Full implementation of mandatory electronic invoicing

As from 1 January 2023, the full introduction of mandatory electronic invoicing should start also among eligible companies in the private sector (most notably companies that are in the VAT system).

New increased tolls in Serbia

Based on the Amendments to the Decision on the amount of special fees for the use of a public roads, parts of roads and road facilities (tolls), tolls in Serbia are increased by around 9% on all major roads in Serbia.

In addition, the discounts for the use of electronic devices for the payment of tolls have changed as well.

This change is effective immediately.

Maintenance of restrictions on exports of certain commodities

Due to the global crises caused by the war in Ukraine, the Government has further prolonged the restrictions on the export of certain fuels (e.g. certain wood products that are of importance for the upcoming heating season, diesel fuel). The restrictions are only temporary.



Author:
Atanasković I Božović | Belgrade, SERBIA
in cooperation with D'ORNANO PARTNERS

D'ORNANO

PARTNERS

January 2023



About D'ORNANO PARTNERS

D'ORNANO PARTNERS is an international law firm with offices in Paris, Bucharest and Budapest.

Well-established in Central and South-East Europe and France, our lawyers offer in-depth knowledge of local markets combined with unparalleled international experience.

We promote an integrated, multi-disciplinary and cross-border approach, based on our strong capabilities and the synergy between our European offices which work closely together. We provide tailored legal assistance in the following main sectors.

Expertise

- **Transactions: Mergers & Acquisitions**
- **Real Estate**
- **Strategic Litigation**
- **Projects & Structural Investments**
- **Legal Support**

Chambers Global Guide has recognized Managing Partner François d'Ornano for high-end capability and expertise in M&A in Central and Eastern Europe (Chambers and Partners 2022)

