



HUNGARY
BULGARIA
ROMANIA
CROATIA
SERBIA

CEE LEGAL NEWSLETTER Q2/2023

LEGAL NEWS FOR INVESTORS AND ENTREPRENEURS

- HUNGARY: New whistleblowing legislation; mandatory discounts in retail trade; amendments to the Civil Code; new education reform act.
- BULGARIA: Entry into the Eurozone targeted 2025; easier grid access for renewable energy
- ROMANIA: FDI screening regime extended to EU investments; new Law regarding urbanism requirements for renewable energy projects; amendments to the tax evasion legislation.
- CROATIA: Expiration of the restrictions on the acquisition of agricultural land in Croatia by EU nationals and legal entities; mandatory amicable dispute settlement obligation in certain civil proceedings
- SERBIA: New Law on Electronic Communications; mandatory online registration of companies

HUNGARY

LEGAL NEWS

OVERVIEW OF RECENT LEGAL AMENDMENTS AND NEW LAWS AND REGULATIONS

New law on complaints, on whistleblowing, and on rules of reporting abuse

On 23 May 2023, the Hungarian Parliament adopted Act XXV of 2023 on complaints, whistleblowing, and regulations regarding reporting abuse, with a compliance deadline for certain entities of 24 July 2023.

The aim of this legislation is to incorporate the relevant EU directive into the Hungarian legal system. The law facilitates the reporting of workplace abuses and irregularities and requires certain entities to establish an internal reporting system for such abuses.

One of the key obligations introduced by the new law is that employers with 50 or more employees, and in some cases irrespective of the number of employees, must establish an internal reporting system for abuses. This system must ensure effective communication with whistleblowers while maintaining their anonymity.

The internal reporting system allows for reporting of illegal or presumed illegal acts or omissions, as well as other abuses. The scope of reportable behavior includes not only violations of the law but also behaviors classified as illegal in the employer's internal regulations.

Reporting can be made not only by employees but also by former employees, company owners, members of the supervisory board or management, individuals/entities in contractual relationships with the company, or even by interns, volunteers as well as others. In summary, anyone who is or has been in a contractual relationship with the relevant company or entity.

Entities employing 250 or more employees, as well as certain other entities regardless of the number of employees, such as credit institutions, financial enterprises, and auditors, have 60 days from the date of promulgation (until 24 July 2023) to comply with the requirements of the law. However, all other entities that fall within the scope of regulation must establish the reporting system by 17 December 2023.

Mandatory discounts in retail trade

A new decree (Government Decree 162/2023 of 5 May 2023 on the measures necessary to reduce war food price inflation) on mandatory discounts in retail trade came into effect on 6 May 2023. This decree imposes certain obligations on larger food retailers, requiring them to offer discounts of at least 10 percent on at least one product from twenty designated product groups for a minimum duration of one week. The obligatory price reduction spans from 1 June 2023 to 30 September 2023, and applies to stores whose net revenue exceeded 1 billion HUF in 2021.

The main rules outlined in the decree are as follows:

- **Promotional period**

The promotional period starts at 00:00 on Thursday and ends at 24:00 on the following Wednesday. Alternatively, retailers have the option to choose a continuous duration of 168 hours for the promotion.

- **Designated product groups**

The government has identified twenty specific product groups to which the mandatory promotion must be applied. These groups include the categories such as various meat products, dairy products, bakery items, vegetables, fruits, etc.

- **Determining the lowest gross retail price**

When determining the lowest gross retail price, the discounted gross retail price resulting from quality preservation or expiration of the product's consumable period within the preceding 72 hours shall not be taken into account.

- **Prohibition of additional costs or fees**

During the obligatory price reduction, retailers are prohibited from charging any additional costs or fees to customers. They are also required to prominently display information about the promotion in their stores and indicate it on their online platforms related to advertising activities.

- **Adequate quantity of promoted products**

Retailers must ensure the availability of an adequate quantity of products included in the mandatory promotion to maintain uninterrupted service to customers.

- **Penalties for non-compliance**

Violation of the regulations may result in fines ranging from HUF 500,000 to HUF 3,000,000, depending on the specific circumstances of the case.

Entry into force of the new law on the registration of legal entities is delayed

The entry into force of Act XCII of 2021 on the registration and registration procedure of legal entities is postponed for 2 and a half years, with the new effective date being 1 January 2026. The reason for the postponement is the need for more preparation time for the introduction of the new procedural rules. However, at the time of writing this article, the implementing decree of the legislation has not been completed.

The new law includes several innovations. It harmonizes the registration of legal entities, which is currently regulated by different laws for companies and for non-governmental organisations. It introduces automated decision-making without human intervention in most company procedures.

It places greater emphasis on supervisory proceedings, considering the expected outcomes of the new regulations: simplification of court work and reduction of workload. New terminology is also introduced, and the rules on the publicity of the register are becoming stricter.

Amendments to the Civil Code

More than thirty laws, including the amendment of the Civil Code, are included among the legislative modifications adopted to enhance the competitiveness of the economy.

The decade-long application of the Civil Code has necessitated the reassessment of numerous provisions, which has been carried out by the Parliament through the enactment of this legislative package. The amendments specifically address provisions relating to liens, emphyteusis rights (such as rights in rem), the position of a third party performing on behalf of the entitled party, the position of an assignee (as contractual legal positions), and detachment (as a specialized form of corporate separation).

- **Emphyteusis right**

In addition to the review of provisions concerning the enforcement of lien rights and sub-pledge over mortgage (a special lien construction in Hungarian private law), the reintroduction of the so-called emphyteusis right is once again brought forth, albeit with slightly different content compared to its historical antecedents. According to the Civil Code, the owner is already granted the possibility, by means of a unilateral declaration, to separate the ownership rights of the land and the structure, and to individually dispose of them. The regulations pertaining to the emphyteusis right provide an additional option, or more precisely, an alternative, alongside the aforementioned regulations, for encumbering real estate with limited rights in rem for the purpose of constructing buildings.

The emphyteusis right is a limited right in rem pertaining to immovable property, capable of transfer, subject to inheritance, and susceptible to encumbrance. It arises through an agreement between the owner of the immovable property and the beneficiary of the emphyteusis right (hereinafter referred to as the emphyteusis right holder), by means of registration in the land register (with constitutive effect), imposing a burden on the property for which the right is registered. The emphyteusis right bears resemblance to the right of usufruct concerning immovable property; however, it confers upon the emphyteusis right holder more extensive rights beyond mere use and utilization. Under the terms of the agreement with the owner, the emphyteusis right holder is granted the right to dispose of all buildings and their constituent parts created or erected within the scope of exercising the emphyteusis right. Unlike the right of usufruct, the building right is transferable, can be encumbered, and subject to inheritance, thereby constituting a more substantial and valuable property right.

The amendment entered into force on 24 June 2023.

- **Detachment**

In the process of a detachment, the ownership of a segregated asset pool from the legal entity of the predecessor is transferred to a distinct legal entity that is organized and registered as the owner of the asset pool. The ownership does not pass to the members of the legal entity of the predecessor;

rather, it vests in the separate legal entity itself, which continues to operate or dispose of the asset pool in its new form. The amendment will enter into force on 1 January 2024.

New education reform bill

On 4 July 2023, the Hungarian Parliament adopted a new education reform bill that was dubbed a 'revenge law' by critics as it was drafted after several strikes led by teachers and students.

In early 2022, teachers' unions began organizing a strike to protest against, among other things, heavy centralization, shrinking autonomy, low wages and growing workload. As a reaction, the Government emptied out teachers' right to strike in a government decree, after which teachers turned to civil disobedience, resulting in retaliatory dismissals throughout the autumn of 2022.

It was in this context that the Government put forth the proposal related to public education.

According to the new bill, the school year may be extended until 15 July if, for unforeseeable and unavoidable reasons, teaching cannot be provided, a teacher may be transferred to another school within a district until the end of the semester without his/her consent, provided that the daily travel time by public transport between the new place of assignment and the place of residence does not exceed three hours. Although a pay raise will be given to teacher from December 2023, a performance-related pay will be applied.

The European Commission raised concerns regarding this bill, among others, they proposed to change the wage system, as well the possibility to transfer teachers to teach in other institutions.

On 4 July 2023, when the bill was adopted, several strikes were held in the country, and about 5,000 teachers have indicated that they will leave the profession because of it.

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BULGARIA

LEGAL NEWS

OVERVIEW OF RECENT LEGAL AMENDMENTS AND NEW LAWS AND REGULATIONS

The new Bulgarian government took office on 6 June, following several months of political regrouping after the national elections in April 2023 did not yield convincing parliamentary majority for any political party. It is an uneasy coalition based on a key priority list agreed between the former opponents – the party of the evicted prime minister Borisov and the reformist parties, which emerged from the protests that led to his eviction. Notwithstanding, the end of the series of caretaker governments is a positive development after almost two years of political instability. The main objectives of the new government are to affirm the EU and NATO allegiance of the country, reassure foreign investors and achieve admission of Bulgaria in the Eurozone by 2025. Respectively, the newly elected Bulgarian Parliament aims to advance with long delayed legislation including the judicial reform and legal amendments intended to facilitate business and investments.

Updated target: Admission to the Eurozone by 2025

The adoption of the euro in Bulgaria, which has been already delayed for several years, is still possible by 1 January 2025 provided that the government succeeds in keeping the country within the stricter state budget. The budget has already been agreed with the unions and the employers' associations despite the very conservative social spending; it is to be voted on by the Parliament before 1 August 2023. The new Ministry of Finance concedes the presumption of the annual growth rate of the Bulgarian economy of 1.8% for 2023 and the average annual inflation rate of 8.7% based on the estimation of the caretaker government. However, the expected revenues and costs are restructured to result in a relatively low state deficit as the government plans to collect more revenues through taxes by closing tax loopholes and limiting the grey economy by stricter accountability rules.

Easier grid access for renewable energy

The national energy regulator updated the rules for grid connection to facilitate the access of newly installed renewable energy plants to the distribution and transmission electricity grid. The applications for connection to the grid have increased substantially recently as a result of the renewed investor interest and the planned capacity largely exceeds the capacity available on the current grid. The energy regulator moved to change the rules by providing a temporary grid access plan, which could clear the way to commissioning approximately 1,000 MW of renewable energy.

Key commercial law guidelines by the Supreme Court of Cassation

While the Parliament is yet to clear the backlog of delayed bills, in the meantime the Supreme Court of Cassation issued several mandatory guidelines (*тълкувателни решения*) solving a number of issues for entrepreneurs and investors accumulated in the court practice.



- **Solving issues related to limited liability companies.**

The Supreme Court of Cassation has issued a number of guidelines intended to achieve uniform application of the commercial law regarding one of the most popular forms of commercial company in Bulgaria – the limited liability company. After 3 years of deliberation, the Court provides mandatory interpretation of the law on eight questions related to the registration and the operation of these companies. It is also directed to state officers in charge of the Trade Register aiming to achieve uniform practice throughout Bulgaria.

- **Statute of limitations regarding enforcement proceedings.**

The issue of conflicting interpretation regarding the statute of limitations applicable to enforcement proceedings has been deliberated by the courts for over a decade. The preceding guidelines issued on 26 June 2015 provide that a period of 5 years as of the date of the last enforcement action to collect the dues shall prescribe the claim and make it unenforceable. While this guidance is sufficiently clear for future proceedings, it proved to be less than unequivocal for pending enforcement proceedings resulting in conflicting court practices. Eventually, in response to a demand by the Bar Association, the Supreme Court of Cassation issued the current guidelines stating that for enforcement proceedings initiated before 26 June 2015 the statute of limitations shall not run as long as the enforcement is still ongoing. In effect, this act of the Supreme Court will provide solution to clear the backlog of dormant proceedings with pending injunctions and security attachment, which remain registered despite the effective surrender of the creditors.



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ROMANIA

LEGAL NEWS

OVERVIEW OF RECENT LEGAL AMENDMENTS AND NEW LAWS AND REGULATIONS

FDI screening regime extended to EU investments

The Romanian FDI legislation has been amended by Law No. 164/2023, which entered into force on 10 June 2023.

- **EU investors are now covered by the FDI legislation:**

According to the amendments, investments occurring in a sensitive sector and exceeding a value of EUR 2,000,000, notified as economic concentrations in accordance with Competition Law No. 21/1996, will be subject to examination and authorisation by the Commission for the Examination of Foreign Direct Investments (in Romanian: "Comisia pentru examinarea investițiilor străine directe" – "CEISD"), *regardless of whether they are carried out by foreign investors or investors from the European Union.*

- **Investment value:**

The Romanian Competition Council will issue secondary legislation on how the investment value should be determined.

- **Cancellation of the investment:**

The CEISD may propose to cancel the direct investment in case of breach of the FDI Legislation, or national security and public order concerns or if it is likely to affect projects or programmes of interest to the European Union. The Government may subsequently order the cancellation of the investment.

New Law regarding urbanism requirements for renewable energy projects

Law No. 166/2023 of the Romanian Parliament, which entered into force on 10 June 2023, aims to simplify and accelerate the process of obtaining the necessary authorizations for renewable energy projects in Romania.

- Previously, only projects covering an area of less than 50 hectares and located outside urban areas were exempt from the condition relating to the existence of an urban zoning plan. The new law extends this exemption to projects located in urban areas.



- Investors can now obtain several building permits for different projects on the same land, on the basis of a single urbanism certificate, provided that the constructions are clearly delimited in the technical documentation of the building permit.

Amendments to the tax evasion legislation

Law no. 125/2023, which amends Law no. 241/2005 for the prevention and combatting of tax evasion and entered into force on 25 May 2023, introduced a new criminal offence that targets cross-border fraudulent scheme resulting in a loss of at least EUR 10,000,000 from the European Union budget.

This law transposes into the Romanian legislation Article 3(2)(d) of Directive 2017/1371 of the European Parliament and of the Council on the fight against fraud to the Union's financial interests by means of criminal law, dated 5 July 2017.

According to the law, the new criminal offence is constituted by any action or omission committed within cross-border fraudulent schemes resulting in a loss of at least EUR 10,000,000 from the European Union budget, including:

- the use or presentation of false, incorrect, or incomplete declarations or documents regarding VAT;
- the non-disclosure of VAT-related information when such information must be disclosed according to the law;
- the submission of accurate VAT declarations with the fraudulent intention of avoiding payment or obtaining unjustified VAT refunds.

This specific fraud is punishable by imprisonment from 7 to 15 years and the prohibition of exercising certain rights. Attempted fraud is also subject to punishment.

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CROATIA

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Restrictions on the acquisition of agricultural land in Croatia by EU nationals and legal entities has expired

The Croatian Agricultural Land Act stipulates that foreign legal entities and natural persons cannot be holders of ownership rights to agricultural land in the Republic of Croatia, unless an international agreement and special regulations stipulate otherwise. However, foreigners can acquire ownership rights to agricultural land by inheritance, subject to reciprocity.

According to its Act of Accession of 2011 and the subsequent Commission Decision (EU) 2020/787, Croatia could maintain such restrictions in force towards nationals and legal entities of another Member State or an EEA State, for a 10-year transitional period following its accession.

Since this 10-year transitional period expired on 30 June 2023, nationals and legal persons of another Member State or an EEA State are no longer bound by the above-mentioned restrictions from the Agricultural Land Act and will be able to freely acquire agricultural land in Croatia from now on. On the other hand, the acquisition restrictions from the Agricultural Land Act still apply towards third country nationals and legal persons.

Amendment: Partial Sunday shopping ban introduced in Croatia

According to the amendments of the Croatian Trade Act (in force as of 1 July 2023), retail stores will in general no longer be able to work on Sundays.

The Sunday ban does not however apply to all of the retail stores, with e.g., stores located within railway and bus stations, airports and ferry ports, hospitals, hotels, cultural and religious institutions, as well as sale of own agricultural products at markets, occasional sales at fairs and public events, and distance selling, being seen as exceptions.

Moreover, all of the retailers covered by this Sunday ban were given the right to independently designate up to 16 Sundays per year as working days.

Failure to comply with the provisions on the non-working Sunday entails fines of EUR 660 to EUR 39,810 for a legal entity, and additionally EUR 530 to EUR 9,290 for a responsible person in that legal entity, while a natural person may be fined between EUR 530 to EUR 9,290 (up to EUR 13,270 if is a craftsmen).



New law: Mandatory amicable dispute settlement obligation in certain civil proceedings

The Croatian Amicable Dispute Settlement Act entered into force on 29 June 2023, bringing forth changes aimed at establishing a functional framework for conducting mediation and similar dispute settlement procedures.

One of the most significant changes is the introduction of a mandatory procedural obligation of the parties to try to settle the dispute amicably, before initiating civil proceedings for the compensation of damages. This pre-litigation obligation does not however apply to proceedings for damages arising from employment relationships.

If the court determines in civil proceedings that the parties did not try to settle the dispute amicably before starting the civil proceedings, and that there is no justified reason for this, it will instruct the parties to participate in an informational meeting on mediation, to initiate mediation or take some other action for the peaceful resolution of the dispute within a determined period.



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SERBIA

LEGAL NEWS

OVERVIEW OF RECENT LEGAL AMENDMENTS AND NEW LAWS AND REGULATIONS

New Law on Electronic Communications

New Law on Electronic Communications entered into force in May 2023. In preparing the new Law, numerous authorities have been engaged, like Regulatory Authority for Electronic Communications and Postal Services, Regulatory Authority for Electronic Media, Foreign Investors Council, etc.

Some of the new solutions include that all service providers on the market should have equal access to the already built and established infrastructure (like antennas, towers, pillars, etc.). The idea behind this is to reduce the costs and increase the efficiency of the use of resources. Also, this should ensure more competitive and fair environment on the market.

One of the novelties is the introduction of obligatory registration of existing and new prepaid users of mobile telephones. The intention is to achieve higher legal security and safety, and to try to prevent misuses and criminal offences performed by using mobile phones.

Also, one of the new solutions is that now the general rule is that the providers of electronic communications services have the obligation to issue invoices in electronic form, whereas invoices in paper form will only be issued upon users request or if it is not technically possible to deliver invoice in electronic form.

Mandatory online registration of companies starting 18 May 2023

Starting from 18 May 2023, the establishment of companies, including limited liability companies and joint-stock companies, must be done exclusively in electronic form. This procedure shall be carried out through an application provided by the Serbian Business Registers Agency (SBRA). All documents accompanying the application must be submitted in electronic form and signed with an electronic seal.

For other legal forms of companies, requests can be filed either through traditional means or electronically. They will also be registered with the Serbian Business Registers Agency.

However, requests for modifying company data still need to be submitted in paper form. The director of the Serbian Business Registers Agency has announced that these requests will also be available in electronic form in the near future.



There are four important prerequisites to submit an electronic application. The applicant must have the following:

- A qualified electronic certificate (electronic signature) issued by a certification authority in the Republic of Serbia.
- An electronic card reader and the NEXU application for electronic signature.
- The ability to make electronic payments using Visa, Dina, or MasterCard.
- An account opened in the system of the Serbian Business Registers Agency to access the application.

A document not created in electronic form can be scanned and converted into electronic form, with certification through an electronic signature or seal from the issuing entity (authority, notary public, or Serbian lawyer).

To obtain a qualified electronic signature, applicants must be physically present in Serbia, but they can also act through representatives such as law firms that have an account with the SBRA and a qualified electronic certificate.

Regarding foreign individuals, they must approach a certification authority in Serbia to obtain electronic certificates, under the same conditions as Serbian nationals. Electronic documents issued by foreign authorities are not accepted unless they are certified to ensure their authenticity within the process. Qualified electronic certificates are issued by certification authorities in Serbia, and currently, five such authorities are registered: the Post's certification authority, the Serbian Chamber of Commerce, the Ministry of Interior, as well as Halcom and E-Smart Systems.

The objective of this change is to simplify the process of the establishment of companies by reducing processing times and associated costs. This initiative aligns with the overall digitization of Serbian economic operations, in accordance with the amendments made to the Law on Registration Procedure with the Business Registers from 2021.

It is also worth noting that these changes harmonize the Serbian company law with that of the European Union, which has witnessed a significant trend toward digitization in the past decade, aiming for greater efficiency.

New service of Republic Geodetic Authority – e-Archive

The Republic Geodetic Authority announced that it launched the e-Archive service, an application that allows citizens and legal entities, including lawyers, notaries public and other professional users of the land register, to access documents from the database of the Digital Archive of Republic Geodetic Authority free of charge. With this system, the plan is that notaries public and lawyers have complete insight into history of ownership over the immovable properties. Since this new system has only just entered into force, it is yet to be seen how it will work in practice.



Use of tags for the electronic toll collection in neighboring countries

Final preparations for enabling the system for the use of tags for the electronic toll collection in neighboring countries are performed. Based on this new system, users of electronic toll collection from Serbia, North Macedonia and Albania would be able to use their existing tags in all of these countries and perform the payment electronically without stopping.

Also, this new system is planned to be expanded to Croatia in the near future, whereas negotiations are started with Greece as well. It is expected that this new system will enable more efficient traffic and payment of tolls.



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