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CEE LEGAL NEWSLETTER Q4/2023

LEGAL NEWS FOR INVESTORS AND ENTREPRENEURS

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in cooperation with

HUNGARY

LEGAL NEWS

OVERVIEW OF RECENT LEGAL AMENDMENTS AND NEW LAWS AND REGULATIONS

Hungary's judicial reform gains approval from European Commission after amendments

On 3 May 2023, Hungary took a significant stride in its judicial reform efforts as the Hungarian Parliament passed Act X of 2023. This legislative move aimed to amend various laws related to justice, aligning them with the Hungarian Recovery and Resilience Plan. For an in-depth analysis of this pivotal law, readers can refer to our detailed report available [here](#).

Upon its initial adoption, the law faced objections from the European Commission. However, these concerns were addressed and rectified by the Hungarian government in December 2023.

The European Commission engaged in consultations with the Hungarian government within the framework of the procedure on horizontal eligibility criteria for the release of approximately €10 billion in cohesion funds. Two specific questions were addressed in early November: Firstly, what guarantee exists that the automatic case allocation system of the Hungarian Supreme Court, the 'Kúria' can operate seamlessly without human intervention? Secondly, how is the right of Hungarian courts to refer preliminary rulings to the Court of Justice of the European Union ensured without encountering obstacles?

In response to the first query, the Ministry of Justice issued a decree on 7 December 2023. This decree provides for the Kúria to electronically register all initial documents in the order in which they are received, automatically assigning a case number to them without human intervention. Furthermore, the decree stipulates that starting from its effective date on 6 February 2024, the Kúria will weekly publish case allocation data, including the case number, date of arrival, date of registration, date of allocation, the chamber, composition of the chamber, head of case allocation, and, if applicable, the reason for any deviation.

Addressing the second concern, Act LXXXV of 2023 was enacted on 13 December 2023. This legislative measure includes amendments enabling Hungarian judges to refer to the Court of Justice of the European Union for a preliminary ruling without restrictions.

The European Commission, after reviewing these amendments, has accepted Hungary's judicial reform. It deems the elements of the horizontal eligibility criteria on the independence of the judiciary as fulfilled. As a result, a portion of the cohesion funds has been unblocked, allowing Hungary to commence the reimbursement process for approximately €10.2 billion.

Hungary enacts 'Sovereignty' Law to establish the Sovereignty Protection Authority

On 12 December 2023, the Hungarian Parliament passed Act LXXXVIII of 2023, focusing on safeguarding national sovereignty and paving the way for the creation of the Sovereignty Protection Authority, an autonomous agency equipped with its own budget. The aim is to enhance protections for Hungary's constitutional identity.

What does the Sovereignty Protection Authority focus on?

1. Evaluation and Analysis: The Authority assesses how national sovereignty is enforced, collecting information from various organizations.
2. Proposal and Recommendation: It formulates proposals and recommendations to fortify Hungary's sovereignty.
3. Legislation and Research: The Authority can suggest new laws and supports research initiatives.

The Authority's responsibilities extend to identifying and investigating activities that advocate for other countries, foreign bodies, or individuals. It also scrutinizes actions involving manipulation, disinformation, and attempts to influence democratic discussions and decision-making processes. The Authority takes a closer look at organisations receiving foreign funding that may impact elections.

Results of individual investigations will be publicly accessible on the Authority's website. During these probes, the Authority is empowered to request information from public or local government bodies, organizations, or involved individuals. The National Information Centre is obliged to provide information to support the Authority in its tasks.

Beyond the establishment of the Sovereignty Protection Authority, the law introduces amendments to the Criminal Code. It is now expressly illegal to influence voting behaviour, with potential penalties of up to three years in prison for individuals, including members or leaders of organisations, who are found to have used illegal foreign aid or financial advantages to obscure the origin of funds.

Additionally, the law places restrictions on organizations participating in local elections, such as associations. They are barred from accepting foreign funding, anonymous donations, or assets derived from such donations from local entities or organisations without legal status. The law expressly prohibits foreign support from influencing voting behaviour in various elections.

In the event of an association violating these rules during an election, the court, acting on the advice of the State Audit Office, has the authority to terminate its public benefit status. Furthermore, the tax authority is empowered to remove it from the list of organisations entitled to a percentage of personal income tax.

Amendment to the Fundamental Law of Hungary

On 12 December 2023, the Hungarian Parliament ratified the 12th amendment to the Fundamental Law, the country's constitution, introducing key changes that impact both national security and digital governance.

Central to this amendment is the establishment of the Sovereignty Protection Authority, an autonomous agency tasked with safeguarding Hungary's constitutional identity. Furthermore, the amendment declares the defence of the homeland as a paramount national cause.

One of the notable provisions of this amendment, effective from 1 July 2024, empowers the government to establish by decree the rules regarding the basic rights and obligations of professional members of the Hungarian Defence Forces concerning their legal status. Additionally, it explicitly prohibits the formation or operation of trade unions in connection with the status of the members of professional armed forces.

Another crucial change, also taking effect from 1 July 2024, pertains to the prioritization of digital case management in Hungary. The Fundamental Law will underscore the importance of digital case handling, and the state will facilitate this transition by providing every citizen with a unique digital identifier. The state will oversee the management of the data required for efficient digital case handling.

Overhaul of electoral laws sparks controversy ahead of local elections

The Hungarian Parliament passed an amendment to the electoral law on 12 December 2023, ushering in a significant shift in the rules governing the upcoming local elections in the capital, just six months before the scheduled event.

Historically, since the 2014 municipal elections, the 33-member General Assembly of the Capital comprised 23 mayors elected from Budapest's districts, nine members from the compensation list, and the directly elected Mayor of Budapest.

The recent change stipulates that in the forthcoming municipal elections, 32 members of the General Assembly of the Capital will once again be elected based on votes cast on party lists, as before. Simultaneously, the Mayor of Budapest will continue to be directly elected. The election results for parties securing at least 5% support will be compiled in a table (the d'Hondt matrix), and seats will be allocated among them according to a predetermined formula.

Criticism has emerged from various quarters, with several politicians and non-governmental organisations questioning the timing of the amendment. They argue that such a substantial change should not have been adopted less than six months before the municipal elections. Some contend that it would have been more prudent for the amendment to come into force after the elections had taken place.

Additionally, the amendment includes provisions barring by-elections until the 2024 municipal elections. Furthermore, any previously called by-elections must be cancelled unless campaigning had already commenced.

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BULGARIA

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Bulgaria signed off 2023 with two significant achievements following years of efforts and hopes – one of them is the admission to the Schengen Zone and the other is the amendment of the Constitution intended to trigger a judicial reform. Both have been subject to discussion as the admission is by sea and air only and the revision of the Constitution is now challenged by the President before the Constitutional Court of Bulgaria in last minute attempt to prevent it. Notwithstanding, Bulgaria enters the new year of 2024 with relative optimism and lower inflation than expected hoping that by the end of the year both full admission to the Schengen Zone and tangible judicial reform will be achieved.

Admission to the Schengen Zone by sea and air

As of March 2024, Bulgaria, together with Romania, will be admitted to the Schengen zone by sea and air. In the last months of 2023, the Netherlands withdrew its veto imposed more than a decade ago and Bulgaria had managed to overcome the opposition of Hungary by waiving a gas transmission fee imposed earlier in the year in attempt to cover its rising energy costs. However, the Austrian veto remains in place, leading to this partial solution. Considering the rise of nationalist movement, Austria is firmly against the admission of Bulgaria and Romania disregarding the fact that the European Commission has repeatedly confirmed that Bulgaria and Romania comply with the admission criteria and have been eligible to join the Schengen Zone for years. The partial admission is not likely to have any tangible effect, since the main reason for both countries to seek this admission has been to facilitate cargo traffic through land borders. The full admission to the Schengen Zone remains a highly politicized issue; hence, the hopes for achieving it by the end of 2024 seem rather optimistic with the new Belgian presidency of the Council of EU for which this issue is not a priority.

Judicial reform through amendments of the Constitution

The judicial reform has been in the heart of the Bulgarian politics for the last several years. In December, following heated discussions, it finally got launched with an amendment of the Bulgarian Constitution. The procedure for amendment requires large-scale political agreement which has been extremely difficult to achieve for years. Some of the main changes are as follows:

- The prerogatives of the chief prosecutor are now limited – they will no longer include the controversial general compliance oversight which has been heavily criticized as abuse of power;
- The court is proclaimed as the holder of judiciary power, i.e., the court is the key player in charge while the prosecution and the investigation are only one of the participants in the proceedings.
- The power of the president to appoint a caretaker government has been curtailed – this is no longer an absolute prerogative of the president (who had the full discretion to appoint the last several caretaker governments in the last few years).
- Dual citizenship is no longer predicament to be elected as member of the Parliament or government minister.

Currently, the amendments are being challenged by the President before the Constitutional Court for mainly political reasons, hence the appeal is not very likely to be successful. As soon as they become effective, the Parliament will need to take on the successive amendment of the relevant laws and procedural rules that, if executed well, will result in tangible judicial reform.

Amendment: Minimum wage increase

The minimum wage is increased as of 1 January 2024 with almost 20% reaching approximately 477 EUR. Many of the SMEs in Bulgaria will be affected by the change as the majority of them officially pay their employees the statutory minimum and hand over additional unaccounted cash payments to them. According to the Employment Code, the wage increase can be done unilaterally by an order of the employer and companies should bring their documentation into compliance before the end of January 2024. The change is significant also for all who are self-employed and act on civil contracts or exercise a liberal profession. Their social payments will increase substantially as their thresholds are tied to the minimum wage rate.



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ROMANIA

LEGAL NEWS

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Extension of the Romanian FDI screening regime to EU investors

Government Emergency Ordinance no. 108/2023, abbreviated as GEO 108/2023, introduces significant changes to Romania's legal framework concerning foreign direct investment (FDI). The FDI regulations underwent a substantial overhaul in April 2022 and experienced additional amendments in June 2023. Effective from 6 December 2023, GEO 108/2023 encompasses several noteworthy modifications, outlined below:

1. EU investments under FDI screening: GEO 108/2023 broadens the scope of FDI screening to include investments from the EU. The updated definition of an EU investment pertains to any investment made by an EU investor, aiming to establish or maintain lasting and direct connections with the enterprise to which these funds are intended, in order to perform economic activity in Romania. This includes investments allowing an effective participation in the management or control of a venture. Unlike the previous criteria, all EU investments, regardless of whether they are subject to merger control procedures or not, are now subject to FDI screening if the investment exceeds EUR 2 million and falls within the sensitive sectors listed in CSAT Decision no. 73/2012.

2. New procedural timelines: GEO 108/2023 introduces revised procedural timelines. Foreign or EU investors are required to furnish all necessary information to the Commission for Examination of Foreign Direct Investments (CEISD) within 15 calendar days of the request. CEISD is mandated to provide its opinion within 60 calendar days upon receiving a complete filing. If the opinion is positive, the Competition Council will issue clearance within 10 calendar days for EU investments and 30 calendar days for other foreign investments.

3. FDI screening fee: The ordinance establishes a screening fee for FDI, including EU investments, set at EUR 10,000. The calculation is based on the exchange rate provided by the National Bank of Romania on the last day of the month preceding the application submission. This fee is payable upon filing and is refundable if CEISD determines that the FDI screening conditions for the specific investment are not met.

Important changes to the Romanian Fiscal Code

On 27 October 2023, Law no. 296/2023 regarding certain fiscal budgetary measures with the purpose of ensuring long term financial sustainability for Romania was published in the Official Gazette. Most of the provisions of the law entered into force on 1 January 2024, others in November 2023. The most important amendments include the followings:

1. Corporate Income Tax / Minimum Tax on Turnover

- Companies exceeding a turnover of EUR 50 million will now be obliged to pay a minimum turnover tax of 1%, applicable when the calculated quarterly/annual corporate tax falls below this threshold or when the quarterly/annual tax result (excluding recovery of losses from previous years) shows a deficit.

- Credit institutions face an additional tax, separate from corporate income tax. This new tax, based on turnover, is set at 2% for the period from 1 January 2024 to 31 December 2025, and subsequently reduces to 1% starting from 1 January 2026.

- In the oil & gas sectors, companies with a turnover exceeding EUR 50 million will now encounter an extra 0.5% turnover tax alongside the corporate income tax for the years 2024-2025. From 2026 onward, these entities will also be subject to the aforementioned minimum turnover tax. It's worth noting that this tax exemption excludes taxpayers involved in the distribution, supply, or transmission of electricity and natural gas, regulated or licensed by the Romanian National Energy Regulatory Agency.

- For microenterprises, the tax rates change as follows:

- 1% for microenterprises that achieve revenues that do not exceed EUR 60,000 and do not perform activities listed by the law;
- 3% for microenterprises that have revenues over EUR 60,000 or conduct activities corresponding to certain CAEN codes.

2. Salary income

- Previously enjoying exemptions from income tax, employees engaged in software development will now only benefit from this exemption for gross monthly wages up to RON 10,000 (approximately EUR 2,000).

- Employees in the construction, agriculture, and food industries will no longer be exempted from health insurance contributions.

3. Special tax on immovable and movable assets with high value

A new tax has been introduced for high-value real estate owned by private individuals and high-value movable property owned by companies or individuals.

4. VAT

- Application of the reduced 9% VAT rate for the following transactions that currently qualify for the 5% VAT rate: supply of housing as part of the social policy, with some exceptions, supply and installation of photovoltaic panels, solar thermal panels, heat pumps, and other high-efficiency heating systems that meet specific parameters, supply and installation of components for repairing and/or extending the above-mentioned systems, services consisting of allowing access to fairs, amusement parks and recreational parks, trade fairs, exhibitions, cinemas and cultural events, services consisting of allowing access to sports events.

- Application of the standard 19% VAT rate for the following supplies of services that currently qualify for the 5% VAT rate: the right to use sports facilities, the transportation of individuals for tourism or recreational purposes using specific trains or vehicles.

- Elimination of high-quality food products from the application of 5% reduced VAT rate and implicitly, application of 9% reduced VAT rate or of standard 19% VAT rate, depending on the added sugar value.

- Application of standard 19% VAT rate for the following deliveries of goods which currently qualify for the 9% VAT rate: non-alcoholic beer, food with added sugar (minimum 10g/100g product), with some exceptions.

Romania partially integrates the Schengen area

After 12 years of negotiations to reach an agreement with Brussels, Romania (and Bulgaria) will join the Schengen area by air and sea from 31 March 2024.

New obligations for employers relating to preventing and combating harassment in the workplace

Commencing 17 October 2023, a set of fresh regulations has been enforced with the primary objective of fortifying the prevention and combatting of gender-based harassment and moral harassment within the workplace. These regulations emanate from the recently enacted Government Decision no. 970/2023.

The implementation of these new rules signifies a notable shift in employers' responsibilities concerning workplace harassment. Among the noteworthy changes, employers are now mandated to establish a comprehensive methodology within their organisations, specifically addressing the prevention and combatting of gender-based harassment and moral harassment in the workplace.

Some of the most important obligations imposed by this new decision are the following:

- the obligation to collect and analyze data and information regarding gender equality and equal treatment between women and men;
- the obligation to develop reports, studies, analyses, and/or forecasts concerning the application of the principle of equal opportunities and equal treatment between women and men in the specific field of activity;
- the obligation to establish internal procedures for recruiting and selecting new employees;
- the obligation to establish internal procedures for promotions, including the appointment to decision-making positions, in the boards of administration and supervision of private companies;
- the obligation to provide a framework for continuous training and career development, the organization of work, working conditions, work environment and ensuring equal treatment regarding occupational safety and health;
- the obligation to define concrete roles and responsibilities for the prevention of harassment, both on the part of the employer and the employees;
- the obligation to inform and provide annual training regarding the provisions of the methodology to all employees by organizing training courses.

It is incumbent upon employers to conduct a thorough evaluation of their existing rules, procedures, and policies to ascertain whether any modifications are necessary to align with the stipulations of the newly instituted rules. This proactive approach is crucial in ensuring compliance with the updated regulatory framework.

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CROATIA

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Tax debtors prevented from becoming company shareholders and directors

The latest amendments to the Companies Act (in force as of 10 November 2023) introduced, among other things, important changes regarding the explicit prohibition of acquisition of shares in a company and appointment as management board members for persons with outstanding debts.

Thus, a legal or natural person will no longer be able to acquire shares in a company, nor will a natural person be able to be appointed as a management board member in the company if (i) that person, (ii) a limited liability company in which that person has shares that represents 25% or more of the share capital, (iii) a joint-stock company of which that person is the only shareholder, and (iv) other company of which that person is a shareholder who is personally liable for the company's obligations, has outstanding debts on the basis of public tax payments, or has been published on the list of employers who do not pay salaries.

It is further stipulated that a legal or natural person will not be able to acquire shares in a company if, in the period of one year before submitting the application for acquiring shares in a new company, that person was a shareholder of the company under (ii) to (iv) above or a responsible person of a company that was deleted in bankruptcy procedure with outstanding debt on the basis of public tax payments.

Changes in the Income Tax System

From 1 January 2024, significant amendments to the Income Tax Act will come into force. One of the most important changes is the abolition of the city surtax, which will no longer be calculated when paying salaries and other taxable income. Due to the abolition of the surtax, local municipalities and cities are enabled to independently prescribe the amount of the personal income tax rates in such a way that the previous lower rate of income tax (currently 20%) will range from 15% to 23.6%, and the higher rate (currently 30%) will range from 25% to 35.4%.

Other significant changes include the increase in the amount of the basic personal allowance from the current EUR 530.90 to EUR 560 and the reduction of the basis for the calculation of contributions for the first pillar pension insurance.

According to the newly adopted amendments to the Income Tax Ordinance (in force as of 1 January 2024), the amounts of awards, allowances and other material rights that employers can pay to their employees tax-free, are increasing.

The occasional bonus (e.g. for Christmas, Easter, vacation) will, for example, rise from EUR 663.62 to EUR 700. Monetary awards for work results, on the other hand, will increase from EUR 995.42 to EUR 1,120, and the lump sum allowance for the cost of food from EUR 796.44 to EUR 1,200.

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In general, the maximum yearly amount of average non-taxable income per employee of EUR 2,920.02 in 2023 will increase to EUR 3,553.00 in 2024.



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SERBIA

LEGAL NEWS

OVERVIEW OF RECENT LEGAL AMENDMENTS AND NEW LAWS AND REGULATIONS

Extension of tax incentives for hiring new employees

The amendments to the Law on personal income tax and the Law on social security contributions, entered into force on 1 January 2024, extended the incentives for hiring unemployed persons until the end of 2024. These incentives were originally supposed to expire on 31 December 2023.

These incentives entitle employers to receive reimbursement for personal income tax and social security contributions as follows:

- 65% if they hire a minimum of 1, but no more than 9 new employees,
- 70% if they hire a minimum of 10, but no more than 99 new employees,
- 75% if they hire a minimum of 100 new employees.

Furthermore, micro and small legal entities, as well as entrepreneurs hiring a minimum of two new individuals, are eligible for a 75% refund of income tax and social security contributions for these newly employed individuals.

Within the framework of these legislations, a newly employed individual is defined as someone who (i) has entered into an employment agreement with the employer, (ii) is registered with the Central Registry of Mandatory Social Insurance, and (iii) was previously registered as unemployed with the National Employment Agency continuously for a duration of at least 6 months, or 3 months in the case of an intern, before being employed by the employer.

New obligations of electronic archiving for companies

The Law on Archival Material and Archival Activity came into force in February 2021, but the implementation of specific bylaws, such as the one regulating e-archiving was postponed for a transitional period for the state administration and businesses to prepare. Specifically, the implementation of the Regulation on Electronic Archival Activities (the "Regulation") started on 1 January 2024.

The Regulation applies to all creators and holders of archival material and documentary material in electronic form, both in the public and private sectors. The Regulation does not apply to documents created in a state other than electronic (paper or printed form). It does not impose the obligation to scan and further electronically store, keep, and archive such documents.

The public sector performs electronic archiving in the eArhiv software solution, while the private sector can select a software solution, i.e. information system for reliable electronic storage that they wish to use.

Creators and holders of documentary material in electronic form are obliged to render a list of categories of archival material and documentary material with retention periods and submit the same in electronic form to the competent public archive via the eUprava portal.

Additional obligations of the creator and holder of documentary material in electronic form determined by the Regulation are:

- adoption of internal rules that will be followed in the preparation of documentary material for reliable electronic storage;
- application of protection measures of the selected software solution;
- preparation of documentary material for electronic archiving;
- classification of documentary material in accordance with the list of categories of archival material and documentary material and determination of the term of storage;
- recording information about the creator in the selected software solution;
- determination of metadata about the documentary material;
- confirmation of trueness to the original documentary material and the accuracy of the metadata with a qualified electronic signature, i.e. a stamp;
- keeping records of actions undertaken in the preparation process for electronic storage and electronic archiving;
- storage of documentary material in formats suitable for long-term storage;
- maintaining an archive book in electronic form.

Amendments to the Law on Public Procurement

On 26 October 2023, the Serbian Parliament adopted important amendments to the Law on Public Procurement, that entered into force on 1 January 2024. These modifications encompass several noteworthy changes, with a focus on elevating the standards of public procurement practices. Key alterations include a shift towards prioritizing quality over price in service and goods selection, the integration of environmental protection principles, and a more defined framework for penalizing the illegal expenditure of public procurement funds.

One of the outstanding revisions involves the introduction of the environmental protection principle, mandating that contracting authorities opt for goods, services, or works with minimal environmental impact. This aligns with the objectives outlined in the Green Agenda for the Western Balkans and other pertinent public policy documents. The responsibility to specify the application of environmental aspects in determining technical specifications, criteria for selecting business entities, and awarding contracts lies with the Public Procurement Office ("Office").

The composition of the Public Procurement Commission undergoes adjustment, with a certified public procurement official becoming mandatory member when the estimated value of the procurement exceeds RSD 3,000,000 (around EUR 26,000).

Further changes pertain to specific service categories, namely (i) the development of computer programs, (ii) architectural, (iii) engineering, (iv) translation, and (v) advisory services. In these cases, price is no longer the primary criterion for awarding the contract, in line with EU directives that emphasize the procurement of higher-quality services where professional qualifications play a pivotal role.

A significant development is the expanded access of the Commission for Protection of Competition ("CPC") to the public procurement portal database. This shift holds significance, given the CPC's frequent involvement in proceedings against bidders within public procurement processes.

The amendments provide for mandatory electronic communication in the legal protection procedure. Requests for the protection of rights and appeals against decisions must be electronically submitted through the Public Procurement Portal, replacing the previous provision that allowed for written submissions. Moreover, decisions of the Republic Commission for the Protection of Rights will be communicated through the Public Procurement Portal.

The amendments empower state authorities overseeing the legality of public spending to initiate misdemeanor proceedings when they identify a violation of the Law on Public Procurement within their jurisdiction, potentially constituting grounds for misdemeanor liability.

The implemented modifications align with the relevant EU directives, striving to elevate service quality and environmental safeguards within public procurement processes.

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October-December 2023



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