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LEGAL NEWS
FOR INVESTORS AND ENTREPRENEURS

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HUNGARY

LEGAL NEWS

OVERVIEW OF RECENT LEGAL AMENDMENTS, NEW LAWS AND REGULATIONS

Publication of the details of the implementation of the new ESG Act

The decrees regarding the implementation of the Hungarian ESG Act, which came into force on 1 January 2024, were published in the Hungarian Official Gazette (in Hungarian: "Magyar Közlöny") this August. The decrees issued by the Supervisory Authority for Regulatory Affairs (in Hungarian: "Szabályozott Tevékenységek Felügyeleti Hatósága" or "SZTFH") detail the requirements for compliance with reporting and risk management obligations and also extend to the registration of ESG reports, auditors, and software.

Screening, risk analysis and management

According to the decree of SZTFH issued on 15 August 2024, businesses are required to develop a comprehensive risk management system that identifies risks threatening sustainability in their own activities, as well as in the activities of their subsidiaries and also regarding their supply chains.

In their screening process, businesses must conduct a materiality assessment for their direct suppliers, based on risk evaluation. This process may include a preliminary screening step (i.e., a two-level risk analysis can be conducted), so only the direct suppliers deemed riskier from an ESG perspective need to undergo the detailed screening process.

Direct suppliers involved in the screening process must complete an ESG questionnaire, as specified in the decree. The scope of the questionnaire varies depending on the supplier's location and size and includes both mandatory and voluntary questions.

Additionally, businesses must apply a risk analysis process in which an annual assessment is conducted by June 30 each year, and ad-hoc analyses are carried out whenever an ESG-related risk is reported in their complaint management system. The risk management system must be reviewed at least annually, and businesses must develop their own methodology for risk evaluation, taking into account the potential impact, frequency of occurrence of the identified risks, and the company's capacity to manage them.

Identified harmful impacts must be ranked and analysed by businesses according to their severity and likelihood, and all risks must be addressed, starting from the most serious to the least: by preventing, mitigating, eliminating, or reducing them to a minimum.

The final fulfilment of a company's sustainability screening obligations is the preparation of the ESG report.

ESG report

The SZTFH decree outlines the content and format requirements of the ESG report, as well as the detailed rules for its publication. An ESG report consists of 11 chapters, including sections such as "Presentation of the Company from an ESG Perspective," "Identification and Management of Environmental Risks," and a final section titled "Possible Directions, Results and Objectives of Re-evaluating the Risk Management System and Reporting."

Companies obligated by the ESG Act must submit their ESG report to the SZTFH within six months of the closing of their financial year and publish the submitted report on their website. The SZTFH will also make the report publicly available on its website.

Compliance with the transposed NIS2 Directive in Hungary

The NIS2 Directive, a legislative act aiming to achieve a high common level of cybersecurity across the European Union, has been transposed in Hungary by Act n°XXIII of 2023 – and two of its implementing decrees have been published on 24 June 2024.

The Hungarian Act transposing the NIS2 Directive applies to companies that operate in one of the high criticality sectors (for example, energy, transport, banking or health) or in one of the critical sectors (for example, waste management, manufacturing or production, processing and distribution of food) and employ more than 50 persons or have an annual turnover of more than EUR 10 million. It is estimated that around 2500-3000 companies satisfy these criteria in the country.

Security classification and the relevant security measures

One of the decrees published on 24 June details the requirements for security classification and the specific security measures to be applied for each security class. The decree thus outlines the requirements based on which the preparation of the affected companies for cybersecurity audits can already begin. The cybersecurity audits will start in 2025.

The newly introduced decree is structured around three major components: a risk management framework, a catalogue of security measures, and a threat catalogue.

1. ***Risk management framework***

At the heart of the decree is a robust risk management system. This framework outlines how companies should classify their information systems according to three security levels—basic, significant, and high—each with corresponding cybersecurity measures. This classification allows businesses to prioritize their security efforts based on the risks associated with their information systems.

The decree helps companies without extensive cybersecurity infrastructure understand how to manage risks and implement the necessary safeguards. By following the steps outlined in the framework, businesses can assess their current security status and work towards full compliance by the 2025 audit deadlines.

2. Measure catalogue

Perhaps the most critical aspect of the decree is the catalogue of mandatory security measures. These requirements differ based on the system's classification. For example, systems in the "basic" category must comply with over 160 security measures, while those in the "significant" and "high" categories face 300 and nearly 400 mandatory measures, respectively. Additionally, the decree includes 530 optional measures that companies can implement based on their industry and operational needs.

The 19 categories of security measures range from access control and monitoring to business continuity and supply chain security. Successful audits will require not only documented policies and clear role assignments but also organizational and technical readiness.

3. Threat catalogue

The third key section of the decree introduces a catalogue of potential cyber threats that companies must prepare for. This includes both general and sector-specific threats, giving businesses a clear understanding of the risks they may face and how to mitigate them.

In some cases, companies may not be able to fully implement the prescribed security measures due to technical, environmental, or infrastructural limitations. The decree allows for flexibility by permitting companies to use substitute security measures. However, these substitutions must be documented, and companies need to prove that their alternative measures are as effective as the original requirements. Additionally, these measures must be regularly reviewed to ensure they remain relevant as circumstances change.

Cybersecurity auditors

The second decree published on 24 June focuses on the qualifications and responsibilities of auditors who will carry out these cybersecurity audits. Every auditor must have, among others, at least two qualified experts and possess an information security policy, as well as a certified information security management system. Additional requirements depend on the security classification of the systems that will be audited by them.

There are concerns, however, about whether there will be enough qualified auditors to complete the necessary audits by the 2025 deadline. Currently, around 24 companies are listed in the registry, but it remains unclear how many of these are prepared to conduct NIS2 audits.

Reimbursement of attorney fees incurred in litigation and charged to the opposing party

The question of how much courts can reduce attorney fees awarded to the winning party in legal disputes has long been a controversial issue in Hungary. The recent landmark decision by the Kúria, Hungary's Supreme Court, has established new guidelines that will be mandatory for lower courts, potentially altering litigation strategies and the handling of legal costs.

Previously, courts often reduced the attorney fees awarded to the winning party, causing unwarranted financial loss and creating long-term market distortion. In practice, courts typically

reduced the awarded fees for two main reasons: they aligned the attorney fees with the value of the case or deemed part of the billed hours as unjustified. The Kúria's recent decision, however, fundamentally challenges this common practice.

The Kúria's new guidelines

In its landmark decision, the Kúria emphasized that attorney fees should only be reduced in exceptional cases where there is a clear disproportion. The ruling underscores that attorney fees constitute the attorney's business revenue, which covers all necessary expenses associated with their professional activities. Therefore, attorney fees cannot be reduced merely based on the court's subjective judgment; it is only permissible if it blatantly contradicts market conditions and common sense.

According to the Kúria's decision, courts should not assess attorney fees based on the length of submissions prepared by the attorney or the number of hearings that they attended. Attorney work includes time spent on client relations, preparation, document analysis, and other background work that may not always be reflected in the hours spent in court. The courts must provide detailed and specific reasoning for any decision to reduce fees, failing which they would infringe upon the parties' right to a fair trial and the principle of contractual freedom.

Expected impact of the Kúria's decision

The Kúria's decision is expected to increase the number of appeals concerning legal costs, as the new guidelines suggest that the losing party will more likely have to bear all the attorney fees incurred by the winning party. This could particularly affect lower-value cases, which were often economically unviable due to non-recoverable legal costs. The ruling creates a new environment for litigants: prolonging proceedings or raising unwarranted arguments could pose significant financial risks for the losing party.

Furthermore, the new guidelines also emphasize the importance of attorneys meticulously and accurately recording the time spent on each case. Instead of flat-rate agreements, hourly billing may become the preferred method, as it accurately reflects the work and time invested. For the winning party, the Kúria's decision is clearly advantageous, as it makes the recovery of attorney fees more realistic.

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ROMANIA

LEGAL NEWS

OVERVIEW OF RECENT LEGAL AMENDMENTS, NEW LAWS AND REGULATIONS

Romania's new FDI and antitrust screening regime: key developments for EU and non-EU investors

In recent years, Romania has been revising its Foreign Direct Investment (FDI) screening framework to create a more uniform and transparent system for both EU and non-EU investors. The latest updates, set forth by Law No. 231/2024 published on 18 July 2024 (the "New Law") and preceding legislative reforms, aim to ensure equal treatment of all investors, streamline the screening process, and clarify key concepts, including penalties for "gun-jumping" - the unauthorized implementation of investments.

Extension of fines to EU investors

The preceding reforms significantly broadened the scope of the regime, formally extending the screening process to EU investors. The New Law extends sanctions for "gun-jumping" to EU investors. Previously, penalties for unauthorized investments primarily applied to non-EU investors, but now, any investor - whether EU-based or from outside the EU - can face penalties of up to 10% of their worldwide turnover for unauthorized investments. These fines apply not only to intentional violations but also to negligent conduct, a notable expansion of the sanctioning regime.

Other amendments to the sanction regime

The New Law also provides that sanctions up to 10% of the investor's worldwide turnover are applicable for providing incorrect, incomplete or misleading information, or for failing to fully and correctly provide all necessary information to the FDI Screening Commission.

Nullity of non-compliant investments and contractual agreements

It has been clarified that any commitments, agreements or contractual clauses related to all types of investments are null and void if such investments have not been previously screened and authorised in accordance with the applicable law.

Investments affecting national security or public order or which are likely to affect projects or programmes of interest to the EU

The New Law provides that if an investment that could affect national security, public order, or key EU projects proceeds without necessary clearance, the FDI Screening Commission may advise the government to impose structural or behavioral remedies to unwind the transaction and restore the pre-investment situation.

Legal professional privilege and dawn raids

The New Law introduces important safeguards for protecting client-attorney privilege during FDI inspections and dawn raids by the Romanian Competition Council (RCC). The New Law provides that undertakings subject to inspections are no longer required to disclose the content of correspondence

they claim is privileged. If inspectors dispute the privileged status of the documents, they must seal the correspondence and submit it to the RCC for a final determination.

Enhanced role for the RCC

The role of the RCC has been significantly expanded under the New Law. In addition to its traditional duties, the RCC is now responsible for establishing guidelines governing the timeline, procedures, and conditions for reviewing FDI. These guidelines are expected to bring much-needed clarity on how the value of investments should be calculated, particularly in complex, multijurisdictional transactions.

National Strategy regarding Artificial Intelligence

The Romanian government officially adopted on 11 July 2024 its National Artificial Intelligence (AI) Strategy for 2024-2027, aligning itself with the European Union's aspirations to become a leading force in global AI development.

The newly approved strategy is designed to bolster the country's access to European funding aimed at integrating advanced technologies. Prime Minister Marcel Ciolacu highlighted that the plan envisions government agencies, with the tax authority (ANAF) taking the lead, utilizing AI for enhanced risk assessment, public procurement processes, and optimizing public expenditures.

In order for Romania to meet the EU's goal of competing with global AI leaders, the country must adapt to current technological trends, establish a regulatory framework, and adopt technologies suited to its national landscape, according to the strategy.

The strategy outlines a comprehensive transformation plan, organized around five key pillars: digital public administration, digital economy, digital education, cybersecurity, digital communications, and future technologies, where AI is highlighted alongside 5G, IoT, quantum communications, robotics, blockchain, and smart cities.

The AI strategy tries to define general objectives at a national level in relation to the use of AI:

- Promoting educational programs focused on research, development, and AI-specific expertise;
- Building a robust infrastructure accompanied by accessible and reusable data sets;
- Enhancing research and development efforts in the field of artificial intelligence;
- Facilitating the transfer of technology from research and innovation sectors to practical applications in production;
- Advancing initiatives that foster the integration of AI into broader society;
- Implementing a governance framework and suitable regulatory measures for the management of AI.

The implementation of the strategy will be overseen by Romania's intelligence services, including the Romanian Intelligence Service (SRI) and the External Intelligence Service (SIE), which will form part of an inter-ministerial commission tasked with executing the plan.

New law on electronic signatures

On 8 July 2024, Romania passed Law no. 214/2024 related to electronic signatures, timestamps and trust services (the "Law"). The Law will come into effect on 8 October 2024 and aims to provide a clear and consistent legal framework for the use and impact of different types of electronic signatures (such as qualified, advanced, and simple signatures). It also aligns Romanian laws with Regulation (EU) No. 910/2014 on electronic identification and trust services for electronic transactions in the internal market.

In Romania, three categories of electronic signatures are recognized, each offering different levels of security and legal standing: simple, advanced, and qualified signatures.

Before this Law, only the qualified electronic signature had broad legal recognition under Romanian law, giving it the same status as a handwritten signature. Advanced electronic signatures were only acknowledged in specific instances regulated by special laws. However, obtaining a qualified electronic signature was a complicated process, leading most Romanian companies to continue using handwritten signatures, unlike other countries where e-signatures are commonly used in place of traditional signatures.

Main amendments

1. ***Simple electronic signatures will have the same legal effects as a handwritten signature in the following cases:***

- Acknowledgment by the other party: If the opposing party explicitly acknowledges it or if their behavior clearly indicates recognition, such as fulfilling contractual obligations;
- Low-value documents: Acts valued at less than half the gross minimum wage (around RON 1,700 or EUR 340 at signing);
- Agreement between professionals as defined by Law no. 287/2009: If both parties are business entities (professionals) and have agreed to this in a separate document signed with a handwritten or qualified electronic signature.

2. ***The Law now allows certain types of electronic signatures to have the same legal standing as handwritten signatures, provided certain conditions are met:***

- For legal documents that require a written form to be valid (such as mortgage contracts or employment agreements), an electronic document satisfies this requirement if signed with a qualified or advanced electronic signature, both of which are considered equivalent to handwritten signatures.
- For legal documents that only require a written form for evidentiary purposes (e.g., storage contracts, legal consultancy agreements), any type of electronic signature, including simple electronic signatures, will be sufficient. This change means that all types of electronic signatures are now admissible as evidence in court.

3. ***Advanced electronic signatures will be treated as equal to handwritten signatures in the following cases:***

- Certified provider: When the signature is backed by a certificate from a public authority, institution, or a qualified trust service provider;
- Acknowledgment by the other party: If explicitly acknowledged by the opposing party or inferred through their actions, such as fulfilling contractual duties;
- Agreement between parties: If both sides agree in a separate document signed with either a handwritten or qualified electronic signature.

In cases where notarisation is required, traditional authentication processes will still apply, as this Law does not cover such instances.

The validity of an electronic signature is determined at the moment of signing. Even if the certificate associated with the signature later expires, this does not affect the document's validity. If the legality of a qualified electronic signature or seal is disputed, the court will examine its validity. The party challenging or asserting the validity of the signature bears the burden of proof.

New tax amnesty

On 6 September 2024, the Romanian government enacted Emergency Ordinance no. 107/2024 (the "GEO"), establishing a nationwide tax amnesty.

1. **Cancellation of interest, penalties and additional charges for debts as of 31 August 2024**

The amnesty covers outstanding debts as of 31 August 2024, which include:

- budgetary liabilities for which the due date or payment term has been met on or before 31 August 2024;
- Differences established by tax decisions communicated by 31 August 2024, as well as those related to tax inspections for which the tax decision was not issued by 6 September 2024;
- Budgetary obligations resulting from the submission of the rectifying tax returns or for tax returns submitted after the legal deadline, starting with 1 September 2024, for tax obligations with maturities before and including 31 August 2024;
- Ancillary obligations related to principal tax liabilities due before and including 31 August 2024, that have been settled by this date;
- Other budgetary obligations included in enforceable titles.

To qualify for the tax amnesty, which waives late payment interest and penalties, taxpayers must meet the following conditions:

- ✓ Submit the amnesty application before 25 November 2024;
- ✓ Settle all principal tax liabilities as of 31 August 2024, as well as any taxes due after 1 September 2024, by the time of the amnesty application;
- ✓ Ensure that all relevant tax returns are correctly filed before the amnesty application is submitted.

2. Discount for payment of profit tax

Businesses subject to profit tax and microenterprises may receive a 3% discount on their annual profit/income tax for fiscal year 2024. For tax groups, the discount will be applied to the annual profit tax declared by the entity responsible for the group.

To be eligible for the discount, taxpayers must:

- ✓ Submit all mandatory tax returns on time;
- ✓ Pay their annual profit/income tax for fiscal year 2024 in full by the legally required deadlines;
- ✓ Have no other outstanding tax or budgetary liabilities by the time the annual profit/income tax return is submitted.

The discount is not refundable but will be applied to reduce the tax liabilities of qualifying taxpayers. However, the discount does not apply to businesses subject to the domestic minimum turnover tax at the end of fiscal year 2024.

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CROATIA

LEGAL NEWS

OVERVIEW OF RECENT LEGAL AMENDMENTS, NEW LAWS AND REGULATIONS

New Accounting Act

As a way of transposing the Directive (EU) 2022/2464 of The European Parliament and of the Council as regards corporate sustainability reporting ("CSRD"), the Croatian government has passed a new Accounting Act on 27 July 2024 emphasizing on sustainability and the obligation to audit annual financial reports.

The new provisions introduced changes in the companies subject to audit, i.e. the thresholds for becoming subject to audit, based on a classification of entrepreneurs as per the categories of micro, small, medium and large entrepreneurs, their income and the number of employees registered by the entrepreneur. The companies that exceed the indicators in at least two of the following three conditions become subject to audit:

- Total assets of EUR 2,500,000 (previously EUR 1,990,842.13)
- Revenue of EUR 5,000,000 (previously EUR 3,981,684.25)
- Average number of employees during the financial year of at least 25.

Additionally, the thresholds for classifying the size of entrepreneurs have also been increased.

Furthermore, the circle of those obligated to report on sustainability has been expanded, so that it now includes all large entrepreneurs, small and medium-sized enterprises whose securities are listed on the regulated market of the European Union, and entrepreneurs from third countries who carry out significant activities in the European Union.

Proposal for an amendment to the Value Added Tax Act

The Government has presented a proposal for an amendment to the Value Added Tax Act regarding the threshold for mandatory VAT registration. The current threshold for mandatory VAT registration is currently at EUR 40,000 and if the proposal for the amendment is accepted, the new threshold would be EUR 60,000.

In view of the economic situation and the growth of inflation, the proposal aims to relieve small entrepreneurs and taxpayers and provide them with better conditions for growth and development with durable business costs.

The proposal also refers to the Council Directive (EU) 2020/285 (amending Directive 2006/112/EC on the common system of value added tax as regards the special scheme for small enterprises and Regulation (EU) No 904/2010 as regards the administrative cooperation and exchange of information for the purpose of monitoring the correct application of the special scheme for small enterprises) which

enables member states to set the threshold for entry into the VAT system up to EUR 85,000, precisely in order to provide better working conditions for small entrepreneurs.

Implementation of EU regulation on Digital Services

The Government has presented a proposal for a new Act on Implementation of Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (the "Regulation"). The Regulation aims to establish a single and universal legal framework at the EU level that governs digital services.

The new Act will apply to all digital services, with an emphasis on internet platforms.

One of the novelties stated in the Regulation is the obligation of member states to appoint a national Coordinator for digital services, whose role is to ensure the effectiveness of the rights and obligations established in the Regulation. In Croatia, the Croatian Regulatory Agency for Network Activities has been appointed as Coordinator as of February 2024.

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SERBIA

LEGAL NEWS
OVERVIEW OF RECENT LEGAL AMENDMENTS, NEW LAWS AND REGULATIONS

Free Trade Agreement between Serbia and China

The Free Trade Agreement between the Republic of Serbia and the People's Republic of China (PRC) entered into force on 1 July 2024. This Agreement establishes a new phase in the economic cooperation between the two nations, providing enhanced access for Serbian companies to the Chinese market under preferential terms.

The Agreement provides for the elimination of tariffs on a wide range of goods, with immediate zero tariffs applied to 60% of products. Additionally, further tariff reductions are scheduled to be phased in over the next five to ten years, ultimately encompassing 30% more goods.

Product coverage
The Agreement applies to more than 20,000 products in total. Specifically, it covers 10,412 Serbian products and 8,930 Chinese products, categorized under respective tariff lines.

Customs duties
As of the effective date, 60% of the products are exempt from customs duties. Additional products will benefit from tariff exemptions over a five to ten-year period.

Local content requirement
For a product to benefit from the Agreement's provisions, it must be demonstrated that 50% of the value of the product was created in the exporting country (either Serbia or China).

The implementation of the Agreement aims to reduce logistical costs and streamline procedures for exporters from both countries. The Chamber of Commerce of Serbia (PKS) will facilitate the dissemination of information through its regional network, providing guidance to Serbian businesses on how to leverage the Agreement, including instructions on compliance with relevant procedures.

Agricultural and food industries are expected to be among the first sectors to experience the positive impacts of the Agreement, with immediate tariff benefits available for a majority of their products.

Detailed information regarding the terms of the Agreement, including the specific products covered and the procedural requirements, is available on the official website of the Ministry of Domestic and Foreign Trade of the Republic of Serbia.

New economic decrees supporting small and medium-sized enterprises (SMEs)

The Government of Serbia has adopted six new economic decrees aimed at supporting small and medium-sized enterprises (SMEs).

Among the key measures introduced are:

- The Development Opportunity Program for the processing industry in 2024, which will be implemented in partnership with the Development Agency of Serbia (RAS) and a banking institution. This program will provide RSD 600 million (around EUR 5,100,000) in non-refundable funds to boost the sector.
- The Program for Encouraging the Development of Processing Capacities in hunting, fishing, and the production of wine, beer, and strong alcoholic beverages in 2024. This initiative, in collaboration with the Development Fund, marks the first of its kind and allocates RSD 160 million (around EUR 1,300,000) in non-refundable support.
- For the Development of Traditional and Artistic Crafts and Domestic Handicrafts, RSD 10 million (around EUR 85,000) will be made available in grants, while RSD 100 million (around EUR 850,000) will be allocated for the Program to Encourage Women's Entrepreneurship and Single Mothers in 2024.
- Another RSD 100 million has been set aside for the Program to Support Entrepreneurship through Financial Assistance for Startups in 2024.
- For the first time, the Program to Strengthen Employer Capacities Involved in Dual Education will offer RSD 50 million (around EUR 425,000) in non-refundable funds to support businesses participating in dual education.
- Finally, the Program for Supporting the Development of Women's Entrepreneurship in Rural Areas will receive RSD 30 million (around EUR 255,000) in 2024.

These initiatives are a part of the government's ongoing efforts to stimulate economic growth and provide targeted support to various industries, as announced by the Serbian Government.

Serbia and EU sign strategic partnership on raw materials and electric vehicles

The European Union and Serbia have taken a significant step toward deepening their cooperation in the green economy by signing a Memorandum of Understanding (MoU) that establishes a strategic partnership focused on sustainable raw materials, battery value chains, and electric vehicles. The agreement represents a crucial move for Serbia's alignment with the EU Green Deal and its continued integration into the European single market.

Key objectives of this partnership:

The MoU aims to boost local industries and create high-quality jobs in Serbia along the electric vehicle (EV) value chain. It prioritizes collaboration in areas such as:

- Developing sustainable value chains for batteries and electric vehicles.
- Promoting research and innovation in sustainable extraction, processing, and recycling of raw materials.
- Ensuring the application of high environmental, social, and governance (ESG) standards throughout the value chains.
- Mobilizing financial instruments to support green investment projects, especially through Invest EU and the Western Balkans Investment Framework.
- Developing skills for high-quality jobs in the battery and raw materials sectors, involving Serbian organizations in initiatives such as the European Battery Alliance.

This initiative represents an essential block in advancing Serbia's integration into the EU's green economy and supporting its broader ambitions for economic and environmental alignment with Europe.

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MONTENEGRO

LEGAL NEWS

OVERVIEW OF RECENT LEGAL AMENDMENTS, NEW LAWS AND REGULATIONS

New UBO regulations

The Montenegrin Ministry of Internal Affairs has recently implemented a new UBO Rulebook that came into effect on 27 July 2024. The UBO Rulebook is a regulation aimed at increasing transparency in corporate ownership by requiring companies to identify and disclose their Ultimate Beneficial Owners (UBOs). This rule is part of Montenegro's enhanced measures to strengthen the fight against money laundering and ensure transparency in corporate ownership.

Registration and compliance requirements

Legal entities, particularly those established before the enactment of the new Anti-Money Laundering (AML) law on 20 December 2023, are required to update their UBO information in the national UBO Registry. Submissions must be completed online, accompanied by a qualified e-signature from a Montenegrin-based authorized representative, attorney, or employee. If ownership chains involve other legal entities, companies must provide both an ownership structure diagram and registry extracts for every entity in the chain.

Automated supervision mechanism

To ensure adherence to these regulations, an automated system has been set up, designed to monitor compliance continuously. One of its key functions is to automatically flag companies that fail to update their UBO information by the 31 March deadline each year.

Penalties for non-compliance

Entities that do not meet the requirements face significant penalties. Legal entities can be fined up to EUR 20,000, while authorized representatives risk individual fines of up to EUR 2,000 for failing to ensure compliance.

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FRANCE

LEGAL NEWS

OVERVIEW OF RECENT LEGAL AMENDMENTS, NEW LAWS AND REGULATIONS

Entry into force of the new directive CS3D (Corporate Sustainability Due Diligence Directive)

The Corporate Sustainability Due Diligence Directive (CS3D) was adopted by the European Parliament and the European Council on 24 May 2024. Published in the Official Journal of the European Union on 5 July 2024, Member States will be required to transpose the directive into their national legislation within two years.

Inspired by the 2017 French Duty of Vigilance Law, this directive extends its scope and clarifies the measures that must be implemented. It aims to compel companies to adopt sustainable and responsible practices throughout their entire value chain by imposing various due diligence obligations.

A notable point is that the directive provides a clear definition of the "chain of activities", a precision that French law does not offer. As such, it extends beyond the scope of French law by covering not only the upstream business partners (as French law does) but also the downstream business partners, who are not addressed by French legislation.

Scope of application

Unlike the French Law, which only applies to companies based in France or having their headquarters in France, the CS3D has a more precise and broader scope, encompassing both companies established in the European Union (EU) and those based outside the EU.

According to Article 2 of the CS3D, the criteria for European companies are as follows:

- Companies and parent companies established under the laws of an EU Member State that employ an average of **more than 1,000 employees** and have a **worldwide net turnover exceeding EUR 450 million.**
- Companies entering into franchise agreements operating within the EU, with a **worldwide net turnover exceeding EUR 450 million**.
- Companies that have entered into franchise or licensing agreements in the EU, where the worldwide turnover generated from these agreements exceeds **EUR 80 million**, provided that **the associated royalties amount to at least EUR 22.5 million**.

Additionally, the directive also applies to non-EU companies as well as their parent companies and franchises based outside the EU, provided that they meet the same turnover thresholds in the EU as mentioned previously.

It is worth noting that when the 'ultimate parent company' is limited to holding shares in its operational subsidiaries and does not participate in management, operational, or financial decisions, it is not required to comply with the obligations of the directive. In this case, it is the subsidiary established in the EU that will need to fulfill these obligations.

Due diligence obligations

In general, the obligations set out in the directive are comparable to those of the French Duty of Vigilance, with a few additional requirements, notably the obligation to consult stakeholders on a regular basis.

In this regard, the directive imposes the following obligations on companies subject to it:

- Following consultation with stakeholders, companies are required to implement an **internal due diligence policy**. This should include: **(a)** a description of the company's approach to due diligence; **(b)** a code of conduct outlining the rules and principles to be followed throughout the company and its subsidiaries, as well as by the company's direct or indirect business partners; and **(c)** a description of the procedures in place to implement due diligence (Article 7).
- Companies must identify their activities, those of their subsidiaries, and those of their business partners, in order to **identity potential risks** from these activities (Article 8). Once identified, **risks must be prioritized** by the company according to their severity and probability (Article 9).
- Implement appropriate measures to **prevent potential negative impacts** (Article 10.2) and **to address actual negative impacts** (Article 11).
- Take appropriate measures to **remedy actual negative impacts** (Article 12).
- Engage in **constructive dialogue with stakeholders**, including through consultations and information exchanges (Article 13).
- Implement **a complaints procedure** for any individual adversely affected by a negative impact and establish **a notification procedure** (Article 14).

Supervising authority

Article 24 requires that each Member State must designate one or more supervisory authorities responsible for monitoring compliance with the obligations set out by the directive and for sanctioning any breaches.

Penalties

While French law only provides for civil liability for companies in cases of failure to meet their due diligence obligations, the directive allows Member States to apply their own civil liability regimes while also imposing financial penalties enforced by the designated supervisory authority.

These penalties must be calculated based on the company's worldwide net turnover. The maximum amount of the penalties may not exceed **5% of the worldwide net turnover** achieved by the company during the financial year preceding the imposition of the penalty (Article 27).

Any decision by the regulatory authority concerning a breach of the directive must be made public and remain accessible for at least five years ('name and shame'). In comparison, this sanction also exists under French law, but its application is left to the discretion of the judge.

Moreover, in accordance with Article 29, the company may be required to fully compensate for any damage caused to a natural or legal person in the event of a breach, whether intentional or resulting from negligence, of the directive's obligations.

Progressive implementation

Article 37 states that Member States must adopt and publish the necessary laws to comply with the directive by 26 July 2026.

The provisions will be implemented progressively according to the following schedule:

- From July 26, 2027, large companies with **more than 5,000 employees** and a **worldwide turnover exceeding EUR 1.5 billion** will be required to comply with the directive's requirements.
- From July 26, 2028, companies with **more than 3,000 employees** and a **worldwide turnover exceeding EUR 900 million** will also be required to comply.
- From July 26, 2029, all other companies falling within the scope of the directive will be subject to its provisions.

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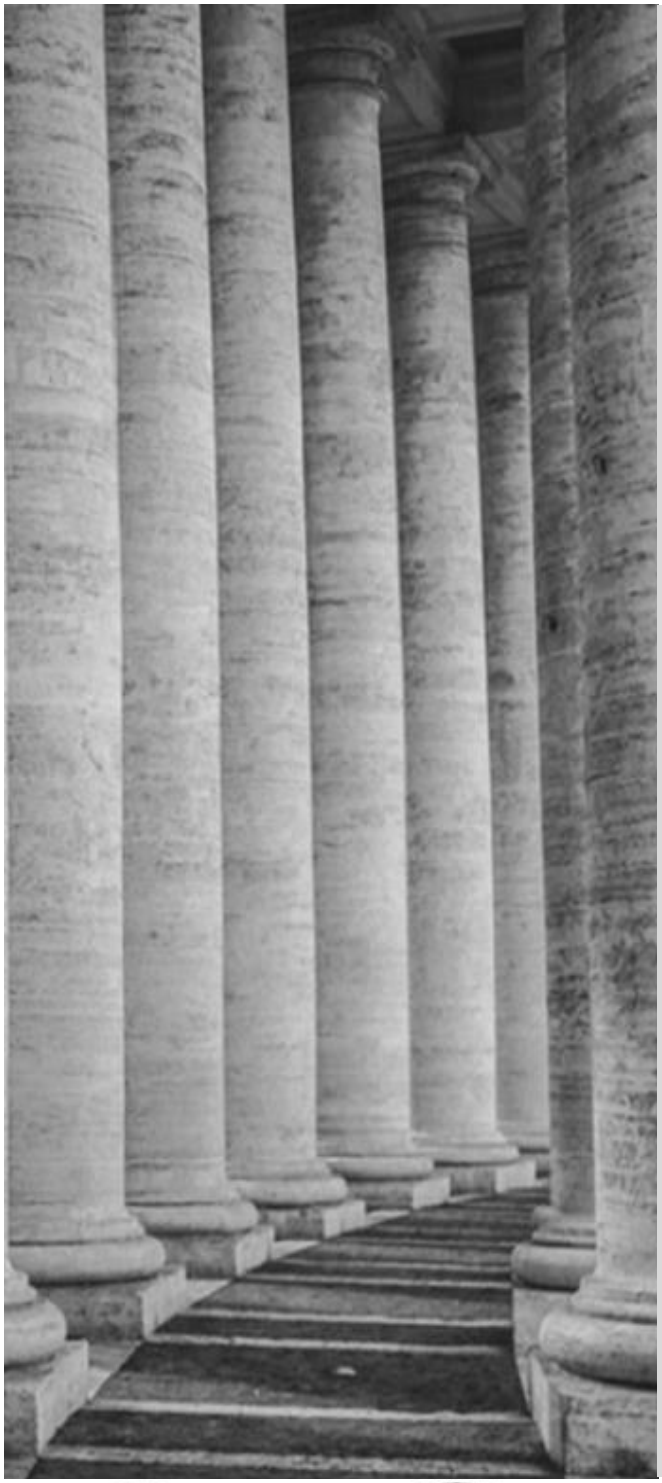

About D'ORNANO PARTNERS

D'ORNANO PARTNERS is an international law firm specializing in mergers and acquisitions, real estate transactions and foreign investment law in Central and Eastern Europe and South-East Europe.

Well-established in these regions and in 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:

- **Mergers & Acquisitions**
- **Corporate law**
- **Real Estate**
- **Competition & Regulatory**
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