

Legal News

December 2018

Central- and Eastern Europe

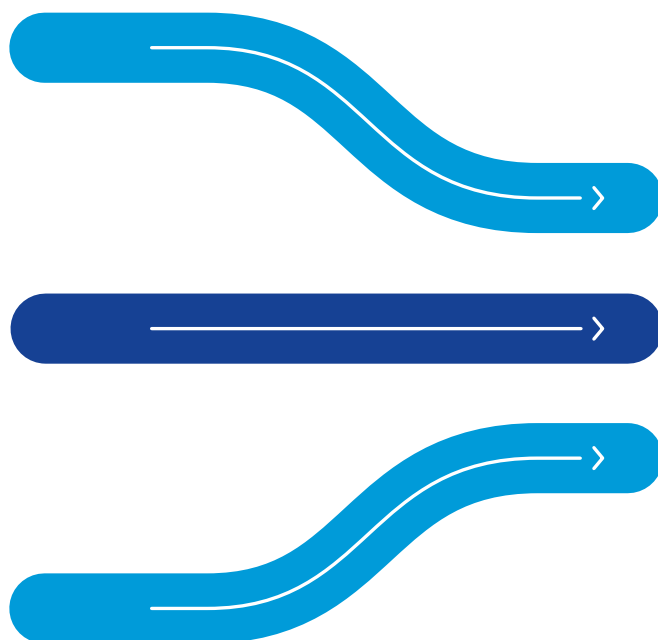


Table of contents

Hungary	EU makes Christmas shopping easier	2	Czech Republic	Financial statements or your life... A few observations on the amended Public Registers Act	9
Belarus	Competition rules changed in Belarus	4	Germany	Forfeiture clauses ineffective if minimum wage claims not excluded	11
Estonia	Essential change concerning tax debts in Estonia	6	Slovakia	New rules for information from the slovak land register	12
Poland	Revolution in leases of residential real estate	7			
Lithuania	Lithuania to introduce official virtual registered seat	8			

EU makes Christmas shopping easier

[Restricting cross-border e-commerce is banned](#)

From 3 December 2018, the new Geo-blocking Regulation bans geo-blocking – territorial restrictions on cross-border e-commerce that have occurred in certain areas.

Online traders operating in the European Union will not be allowed to discriminate between customers in their own Member State and customers in any other Member State.

The Geo-blocking Regulation enables access by everyone in the European Union to electronically supplied services such as data warehousing, cloud and hotel accommodation or even car rentals under the same conditions and prices. Additionally, even selling tickets at different discounts or higher prices to customers in other Member States will be banned. Foreign webpages cannot apply additional costs just because the customer is Hungarian or only has a credit card issued in Hungary. From December, EU citizens can shop freely at any web shop in the European Union, even if they do not ship to the shopper's country of residence. For example if furniture is cheaper in an Italian web shop, a shopper in another Member State can buy the same furniture under the same conditions as apply to Italian customers. Although the Italian web shop need not deliver the item to the shopper's home state, the shop must ensure that the shopper can pick up the item in Italy or in any other country that the web shop ships to; alternatively, the shopper can arrange and pay for shipping to their home state. Also, traders will not be allowed to apply different payment conditions or different credit card requirements against customers in other Member States. Foreign websites will not be allowed to block or limit customer access based on their IP address or redirect them without prior consent to another website, even if it is set up especially for foreign customers.

The ban does not apply to copyright-protected content, such as e-books and music streaming services. Also excluded are financial, healthcare and social services. In 2020 evaluation of the Regulation is expected to lead to extending the geo-blocking ban to other services.

The Hungarian legislator and the traders affected still have plenty to do by December, especially as the controlling authority ensuring compliance with the Regula-



YOUR CONTACT IN
OUR OFFICE

dr. Zsófia Sallai
ügyvédjelölt
Junior Associate

T +36 1 41 33 400
zsofia.sallai@bnt.eu

bnt ügyvédi iroda
Stefánia út 101-103
H - 1143 Budapest

tion has not yet been appointed in Hungary and sanctions have not yet been set.

In any case, online traders engaged in cross-border e-commerce should reconcile the operation of their web shops as soon as possible with the new Regulation applicable in every Member State.

Source: Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC

Competition rules changed in Belarus

The new Antitrust Law amends the rules on economic concentration and provides new tools for protection from unfair competition

Rules on economic concentration

The new antitrust law doubles the financial thresholds applicable for obtaining consent from the competition authority required for acquisition of stock (shares) in statutory funds of commercial legal entities. From now on, consent is required if the book value of the company's assets exceeds 200 000 basic values (approx. 2 033 000 EUR) or if the company's total revenue (without VAT) exceeds 400 000 basic values (approx. 4 067 000 EUR) as of the end of the previous financial year.

At the same time, the new law extends the list of actions which are considered to be an economic concentration and require consent from the competition authority, provided that at least one of the above financial criteria is met. In particular, consent is necessary for concluding partnership agreements between competitors for acquiring ownership/use/possession of core assets or intangibles (if their value exceeds 20% of the book value of the company's assets) as well as for establishing holdings, associations and unions.

Unfair competition

The new law specifies the actions which fall under the notion of unfair competition. Unfair competition includes incorrect comparison with a competitor, copying or imitating corporate identity, illegal use, disclosure of information constituting commercial, official and other secrets protected by law, introducing goods on the market in violation of IP rights, and other actions.

The amendments are expected to allow market participants to protect their rights more effectively and to contribute to establishing uniform regulatory practice.

Preventive control

The new law also establishes the possibility of applying preventive measures by competition authorities. For instance, the competition authority is now entitled to send warnings about the inadmissibility of actions that may lead to a violation of competition laws in the future.



YOUR CONTACT IN
OUR OFFICE

Oksana Belova, LL.M
Senior Associate

T +375 17 203 94 55
oksana.belova@bnt.eu

bnt legal and tax
Revolutsionnaya str. 9A-40
BY - 220030 Minsk

Furthermore, the new rules enable the competition authority to issue notifications before establishing the facts of antitrust violation. Fulfilment of all conditions in the notification will terminate the proceedings on antitrust violation and thus exclude liability of the market participant.

Source: National legal internet portal of the Republic of Belarus (NLIP)
02.02.2018, 2/2536

Essential change concerning tax debts in Estonia

Tax debts can now expire according to Estonian supreme court

The Estonian Supreme Court ruled on 10 October 2018: tax debts expire after five years, the same way as other debts. More precisely: the expiration ends with handing over the claim to the bailiff and starts again on 1st of January of the following year. If the debt has not been settled within 5 years after that date, it has expired.

Until now, the state's tax claims were essentially timeless - if the tax authorities had handed them over to the bailiff, they did not expire. Even the debtor's death did not stop claims, so that the obligation passed to the debtor's successors. At the same time, other claims, e.g. alimony and claims arising from health damage, are treated differently in that they expire after a certain period.

The Supreme Court acknowledged that there is no reason to treat tax debtors differently. In accordance with the principle of legal certainty, the state must ensure that legal stability in all legal relations arises after a reasonable period of time.

The decision is expected to make the state's efforts to recover tax debts more effective. According to the Estonian Taxpayers' Association the decision does not motivate anyone to avoid taxes.

The Supreme Court's decision retroactively concerns all valid tax claims handed over to the bailiff before 1 January 2013. According to the Estonian Tax Board there are altogether ca. 2,500 such claims, of which 10% are against businesses. The claims amount altogether to 9.5 million euros, the recovery of which is considered to be unlikely.

Source:

Supreme Court ruling of 10.10.2018

Estonian Tax and Customs Board



YOUR CONTACT IN
OUR OFFICE

Anneli Piirat
Office Manager

T +372 667 6240
anneli.piiirat@bnt.eu

bnt attorneys Advokaadibüroo OÜ
Tatari 6
EE - 10116 Tallinn

Revolution in leases of residential real estate

Work is in progress in the Polish parliament on the law on companies investing in property leasing (i.e. the Polish equivalent of REIT).

A REIT (Real Estate Investment Trust) is generally an entity that invests directly or indirectly in real estate, makes profits on a long-term rental and enjoys special tax status. Each country in which REITs operate establishes its own regulations regarding the legal form of these entities, their rules of operation or applicable tax reliefs. According to the draft law, companies in Poland that invest in leasing real estate (REIT) will be able to become joint-stock companies whose main activity is renting residential real estate in Poland (including renting through subsidiaries). The draft law does not apply to commercial real estate.

The purpose of introducing REIT is to encourage both institutional and private investors to invest in the residential real estate market and increase the attractiveness of doing business there.

As an encouragement, the legislator predicts the following tax benefits:

- exemption for shareholders of PIT and CIT tax from dividend profits and other income from participation in REIT profits,
- introduction of an 8.5% CIT rate on REIT income from renting residential real estate,
- partial exemption from CIT of subsidiaries' income from leasing and sale of residential real estate, i.e. in the part intended for payment of dividends to REIT and only if paid in a timely manner.

Another special feature of REIT is the requirement to annually distribute profit to the shareholders in the amount of at least 90% of the total value of rental income or income from the sale of real estate. As part of securing the proper functioning of these entities, the legislator has provided supervision by the Polish Financial Supervision Authority (Komisja Nadzoru Finansowego).

The entry into force of the Act is scheduled for January 1, 2019.



YOUR CONTACT IN
OUR OFFICE

Katarzyna Harna
Radca prawny
Associate

T +48 22 373 6550
katarzyna.harna@bnt.eu

bnt Neupert Zamorska & Partnerzy sp.j.
ul. Chłodna 51
PL - 00 867 Warsaw

Lithuania to introduce official virtual registered seat

On October 2018 the Government of the Republic of Lithuania approved plans to introduce a virtual registered seat for businesses

The Government of the Republic of Lithuania has approved a plan which should decrease the administrative burden on both newly established and long existing businesses by dropping the requirement to maintain a physical registration address. Instead, companies will be entitled to choose a virtual address. For the purpose of this registration method, a virtual delivery box (similar to e-mail) will have to be opened on the national information system for delivery of electronic messages and electronic documents. This virtual delivery box will be considered as the company's address. For jurisdictional and administrative purposes, companies will have also to declare the municipality which they will be attributed to.

Such novelties, anticipated to become available in practice in 2019, should make company formation and changing premises a smoother and faster process. At the same time, it may perceptibly affect all current "virtual office" services providers, whose entire business model is based on providing a formal physical registration address without creating much additional value for the business.

Source: Decision of the Government of the Republic of Lithuania, 24 October 2018 "On submitting to the Parliament of the Republic of Lithuania a draft amendment to article 2.49 of the Civil code of the Republic of Lithuania". No. 1060.



YOUR CONTACT IN
OUR OFFICE

Dr. Arnas Stonys
Advokatas
Senior Associate

T +370 5 21 21 627
arnas.stonys@bnt.eu

bnt Heemann Klauberg Krauklis APB
Embassy House
Kalinausko 24, 4th floor
LT-03107 Vilnius

Financial statements or your life...

A few observations on the amended Public Registers Act

Current law already allows for the punishment of corporations which fail to properly lodge their financial statements in the roll of deeds at the Commercial Register, but even so, a substantial number of legal entities keep disregarding this duty. A recent proposal for an amendment seeks to change this sorry state of affairs.

Under current law, businesses must file their financial statements (and, where relevant, their annual reports) with the Commercial Register within 12 months from the respective balance date. These documents are then lodged in what is known as the “collection of deeds”. They are publicly accessible so that third parties have the opportunity to familiarize themselves with the economic standing and performance of the given corporation during the period of interest.

Current law also provides that if business corporations fail to observe this filing duty, they may be fined up to CZK 100,000; or up to 3% of their total asset value (under the Accounting Act); or if further requirements set out in the law are fulfilled, they may even be dissolved and liquidated. Considering these fines, dissolving and liquidating corporations which do not even have the assets to cover the costs of liquidation is a costly and inefficient affair, which is why the courts rarely make use of this sanction in practice.

This is about to change, however, thanks to a government-sponsored bill amending the Corporations Act and the Public Registers Act. In line with the government’s proclaimed intention to increase transparency in business, this amendment seeks to prevent corporations which have no economic life of their own and exist merely formally (in the records of the Commercial Register), through stiffer penalties for failure to lodge annual financial statements and reports. In this respect, the register court will let its actions be guided by whether or not the corporation is “responsive”, i.e., whether it can successfully be served notice wherein the court calls upon the company to submit the missing financial statements so that these can be lodged in the collection of deeds (whereas the usual legal fiction of delivery will be excluded).

Corporations which can be successfully served process in this sense are assumed to be economically active and “merely” in default with their duties of disclosure. The amendment bill envisions that such companies are then brought to order by being hit with a fine.



YOUR CONTACT IN
OUR OFFICE

Mgr. Ondřej Tejský
Advokát
Associate

T +420 222 929 301
ondrej.tejsky@bnt.eu

bnt attorneys-at-law s.r.o.
Slovanský dům (building B/C)
Na příkopě 859/22
CZ - 110 00 Prague

Conversely, if the register court summons cannot be served, the dissolution procedure is supposed to be initiated (whereas the commencement of this procedure will be automatically flagged in the Commercial Register entry for the company). Unless the procedure reveals that the company in question has at least enough assets to cover the liquidation costs, the register court will order the company to be dissolved without liquidation. In the opposite case, the corporation will be dissolved and liquidated.

On the whole, the amendment seeks to declutter the Commercial Register by removing those corporations which lead a merely formal existence (and which moreover are easily exploited as a means to commit white-collar crime).

Source:

Accounting Act (Act No. 563/1991 Coll.)

Public Register Act (Act No. 304/2013 Coll.)

Parliamentary press 270/0 – government bill for an amendment to Act No. 90/2012 Coll. and related laws

Forfeiture clauses ineffective if minimum wage claims not excluded

Forfeiture clauses in standard employment contracts are invalid if they do not sufficiently differentiate which claims are covered.

Employment contracts very often contain so-called forfeiture or exclusion clauses. They specify a deadline within which employees must assert their claims against the employer after termination of the employment relationship. If this deadline is missed, claims lapse. However, this only applies if the corresponding agreement is effective.

The Federal Labour Court has now decided that such clauses are invalid as a whole if they do not differentiate sufficiently between which claims are to be covered by them and which are not. In particular, it must be taken into account that § 3 (1) of the Minimum Wage Act prohibits any agreements which fall short of the claim to the minimum wage or which restrict or exclude its assertion. Expiry clauses must therefore explicitly exclude claims to payment of the minimum wage from their own scope of application. Otherwise, the forfeiture clause is invalid in its entirety.

In the specific case, the affected employee could still assert his claims for holiday compensation due to the invalidity of the clause, although he had actually missed the contractually agreed deadline for doing so.

Source: Federal Labour Court, decision of 18.09.2018, Ref. 9 AZR 162/18



YOUR CONTACT IN
OUR OFFICE

Sebastian Harschneck
Rechtsanwalt
Partner

T +49 911 569 610
info.de@bnt.eu

bnt Rechtsanwälte GbR
Leipziger Platz 21
D - 90491 Nuremberg

New rules for information from the slovak land register

Simplification of the due diligence examination in the context of real estate acquisitions

As of October 1, 2018, an amendment to the Cadastre Act (Act No. 162/1995) will amend the rules on inspecting the land register.

The Cadastre (Land Register) in Slovakia is an information system where important data on real estate is kept. Entry in the land register is an indispensable condition for any disposal of real estate (immovable property). In the land register, all legal relationships to real estate (e.g. easements, liens) and all relevant contracts and other documents are entered. The land register is thus also a source of information which is necessary for any purchase, sale or other disposal of the property.

In principle, everyone has the right to inspect the land register both with regard to their own real estate and that of others. However, several exceptions exist to this rule, which was recently amended.

Anyone can request extracts from the deeds of title, cadastral plans and similar information about their own real estate as well as that of others. This data is also available on the Internet (www.katasterportal.sk, <https://zbgis.skgeodesy.sk>). However, information on the value of real estate, which from 1 October 2018 must also be entered in the land register, and the birth number is only accessible to certain persons (e.g. public prosecutors, courts, etc.).

Access to documents kept in the deed collection of the land register (mostly contracts) is only granted to owners and other specific persons. Access to documents on third-party real estate is still not possible.

A thorough examination of documents on acquisition titles from the past is a necessity for every major transaction. Many authorities have so far refused to deliver to the current owners any documents from the past that were drawn up by their legal predecessors. For example, owners only had access to contracts to which they were a party. They often could not get the contracts of their predecessors, which made investigation impossible. This state of affairs was impractical because it was not possible to carry out a legal analysis (due diligence) of older acquisition titles. The



YOUR CONTACT IN
OUR OFFICE

Mgr. Roman Gašparík,
LL.M.
Advokát
Senior Associate

T +421 2 57 88 00 88
roman.gasparik@bnt.eu

bnt attorneys-at-law, s.r.o.
Cintorínska 7
SK - 811 08 Bratislava

amendment to the law abolished this situation, so that the owner has access to all documents concerning their real estate. In this way, it is possible to obtain an overview of past dispositions of properties, prices, encumbrances, etc.

Our Offices

BELARUS

bnt legal and tax
Revolutsionnaya str. 9A-40
BY-220030 Minsk
Tel.: +375 17 2039455
Fax: +375 17 2039273
info.by@bnt.eu

BULGARIA

bnt Neupert Ivanova & Kolegi adv.dr.
Gladstone 48
BG-1000 Sofia
Tel.: +359 2 980 1117
Fax: +359 2 980 0643
info.bg@bnt.eu

CZECH REPUBLIC

bnt attorneys-at-law s.r.o.
Slovanský dům (building B/C)
Na příkopě 859/22
CZ-110 00 Prague
Tel.: +420 222 929 301
Fax: +420 222 929 309
info.cz@bnt.eu

ESTONIA

bnt attorneys-at-law Advokaadibüroo OÜ
Tatari 6
EE-10116 Tallinn
Tel.: +372 667 62 40
Fax: +372 667 62 41
info.ee@bnt.eu

GERMANY

bnt Rechtsanwälte GbR
Leipziger Platz 21
D-90491 Nuremberg
Tel.: +49 911 569 61 0
Fax: +49 911 569 61 12
info.de@bnt.eu

HUNGARY

bnt ügyvédi iroda
Stefánia út 101-103
H-1143 Budapest
Tel.: +36 1 413 3400
Fax: +36 1 413 3413
info.hu@bnt.eu

LATVIA

bnt Klauberg ZAB
Alberta iela 13
LV-1010 Riga
Tel.: +371 6777 05 04
Fax: +371 6777 05 27
info.lv@bnt.eu

LITHUANIA

bnt Heemann Klauberg Krauklis APB
Embassy House
Kalinausko 24, 4th floor
LT-03107 Vilnius
Tel.: +370 5 212 16 27
Fax: +370 5 212 16 30
info.lt@bnt.eu

POLAND

bnt Neupert Zamorska & Partnerzy sp.j.
ul. Chłodna 51
PL-00 867 Warsaw
Tel.: +48 22 373 65 50w
Fax: +48 22 373 65 55
info.pl@bnt.eu

SLOVAKIA

bnt attorneys-at-law, s.r.o.
Cintorínska 7
SK-811 08 Bratislava
Tel.: +421 2 57 88 00 88
Fax: +421 2 57 88 00 89
info.sk@bnt.eu

BNT NETWORK OF COOPERATIVE LAW OFFICES

Bosnia and Herzegovina, Croatia,
Macedonia, Montenegro, Romania, Russian
Federation, Serbia, Slovenia, Ukraine

further information:
www.bnt.eu