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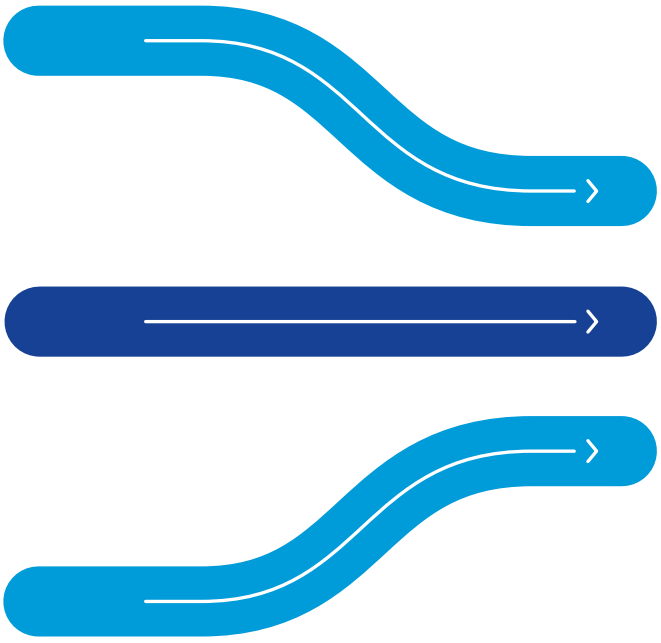
Central- and Eastern Europe



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New EU Restructuring Directive adopted: what changes are expected?

New EU Restructuring Directive which enters into force on 16 July 2019 aims to further increase the efficiency of restructuring procedures

On 6 June 2019 the Council of the European Union (EU) adopted new Directive 2019/1023 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132. Officially the new Directive's legislative procedure was completed on 26 June 2019 following publication in the EU Official Journal.

The new Directive, inter alia, aims to establish common principles for preventive restructuring mechanisms in each EU Member State. The new Directive sets minimum standards which Member States are required to implement by transposing the new Directive into national insolvency laws.

In the context of the new Directive, it is also important to mention that the Lithuanian Parliament has adopted and the President has signed the Law on Insolvency of Legal Entities, due to come into force next year. This law consolidates corporate restructuring and bankruptcy procedures, aims to increase the efficiency of insolvency proceedings and to enable viable businesses to continue operating. Note that this legislation includes several restructuring mechanisms that meet the requirements of the new Directive and which give priority to restructuring viable companies rather than liquidating them.

The new Directive enters into force on 16 July 2019 and its essential provisions must be implemented by Member States no later than 17 July 2021. However, in justified cases, Member States may ask the European Commission to extend the implementation period for an extra year.

Although the new Directive aims to harmonize the different regulation of restructuring procedures throughout the EU, a high degree of flexibility is allowed to Member States to transpose the new Directive into national law. This means that forum shopping will not be completely prevented in the future.

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Moreover, each Member State will inevitably interpret and transpose the new Directive in a slightly different way. Nevertheless, the Commission's efforts to establish common EU principles for preventive restructuring mechanisms should be seen as a useful starting point for creating a viable business rescue culture in Europe. The purpose of this culture is to enable debtors to restructure effectively at an early stage in order to avoid insolvency and to increase the ability of creditors to satisfy their claims.

Source:
https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L1023&from=EN

Continuing Latvian saga of the fight against money laundering

The Latvian government introduces further measures in its fight against money laundering by amending several acts

The new government's so-called "general overhaul" has led to further substantial and institutional changes in Latvian legislation.

In order to comply with recommendations by Moneyval, the permanent monitoring body of the Council of Europe competent in the field of combating money laundering, the Latvian parliament has adopted a number of changes to various laws. The amendments also aim at transposing the EU's 5th Anti-Money Laundering Directive earlier than legally required – in order to demonstrate Latvia's determination to enforce its fight against Money Laundering.

As of 29 June 2019 the personal scope of the freshly renamed Law on the Prevention of Money Laundering and Terrorism and Proliferation Financing has been considerably widened. The law now also applies to insolvency practitioners, outsourced accountants, sworn auditors, commercial firms of sworn auditors and tax advisors, as well as any other person who undertakes to assist on tax matters. Moreover, persons engaged in the circulation of art and antiques will also be subject to legal obligations.

Not only has the personal scope been expanded – the time frame of measures by the competent authorities: during insolvency or liquidation proceedings the law must from now on be obeyed, too.

Relevant changes have also been made to the Law on International and National Sanctions, in force from 4 July 2019. The idea is to be compliant with international sanctions more quickly. In this regard, the changes e.g. provide for the application of financial and civil sanctions imposed by the United Nations without undue delay. This means that Latvia need not wait for the EU to transpose UN sanctions to EU sanctions.

Finally, changes to the law on the national "watchdog" in financial matters, the Financial and Capital Market Commission, involve a smaller board. The number of

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board members is reduced from 5 to 3 and the head of the board will have to pass an open competition. Additionally, the new board will be elected by the parliament. The idea behind this measure is to increase the accountability of the board's actions.

Source:
Amendments to the Law on the Prevention of Money Laundering and Terrorism Financing, the Law on the Financial and Capital Market Commission and to the Law on International Sanctions and National Sanctions of the Republic of Latvia

The German car toll violates European law

The ECJ has ruled that the planned car toll in Germany discriminates against foreign drivers and violates EU law.

On 18 June 2019, the European Court of Justice (ECJ) ruled that the planned passenger car toll in Germany violated EU law in response to a complaint by Germany's EU neighbours Austria and the Netherlands. In the opinion of the European Court of Justice, the toll is discriminatory because it in fact only burdens the owners and drivers of vehicles registered in other EU states. The toll also violates the principles of the free movement of goods and services in the EU internal market.

The reason for the infringements is that the user charge for German residents should be offset by a lower vehicle tax. Austria has therefore accused Germany of discriminating against other nationals and requested infringement proceedings in October 2017. Since December 2018, the complaint has been negotiated before the ECJ. However, the ruling ultimately came as a surprise: At the beginning of 2019, a leading expert at the ECJ still considered the German car toll to be legal. Advocate General Nils Wahl therefore recommended that the judges in Luxembourg reject Austria's action against the plans of the Federal Government. In his view, Austria's reasoning was based on a fundamental misunderstanding of the term "discrimination". However, the judges did not follow this view.

The failed car toll has already cost the federal government around 54 million EUR. Other costs, such as potential claims for damages by the toll operators Kapsch and the ticket seller CTS Eventim or the already planned toll revenues, have not yet been taken into account.

Source:
ECJ: C-591/17
German and European Press

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Digital pioneer Estonia introduces e-invoices only

From July 2019 only digital invoices can be sent to the Estonian public sector.

As of July 1st 2019, government accounts in Estonia will be fully converted to so-called e invoices. This means that, from this date, invoices can only be sent to the public sector via a digitally formalized invoice and that paper invoices or invoices in simple pdf format (as usual so far) will no longer be accepted.

All service providers who wish to send invoices to public institutions after the 1st of July 2019 are affected; these are the state and all state authorities, all local and municipal authorities, other legal persons governed by public law and any foundation or non-profit association under the direct or indirect control of these bodies.

An e invoice is a digital invoice that moves in a standardized form between different information systems - for example, from business software to government software. The main purpose of an e invoice is that sending and receiving an invoice does not have to be handled separately - information systems enable this on their own. Invoices no longer have to be entered manually in different systems. This in turn excludes possible processing errors.

How do I send Estonian e invoices?

- make an agreement with a company that offers e invoicing services (e.g. Omniva, Tieto Estonia, Telema, Fitek, Envoice);
- make sure that your accounting software is able to create and send e invoices (most programs are already fully customized);
- if the accounting software is unable to do so, you should develop the appropriate feature or switch to more modern software;
- if you only need to send small quantities of e-invoices, the e invoice can be sent to the buyer free of charge via the government-generated e invoice information system https://www.rik.ee/et/e-arveldaja. The software is located in the Company Portal of the E Business Registry and can be used by companies as well as accountants, financial managers and other authorized company representatives. All companies and organizations involved in electronic invoicing can send e invoices to the public sector free of charge, in unlimited quantities and for an indefinite period of time.

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New rules for replica ID cards

Entry into force of new law on public documents raises concern among companies processing personal data.

The Act on Public Documents, which comes into force on 12 July 2019, introduces comprehensive regulation with regard to the principles of functioning of the public document security system.

The new act defines a public document as a document which serves to identify persons, objects or confirms the legal status or rights of persons using the document, protected against forgery and produced according to a model specified by law or the graphic design and form of which have been approved by an entity performing public tasks, and which is consistent with the requirements for the specimen document specified by law.

In connection with the entry into force of the new regulations, the introduction of criminalizing the trade in so-called replicas of public documents has raised the most concern. Producing, circulating and storing these will be banned and criminally sanctioned by up to 2 years' imprisonment. Many entrepreneurs are concerned that the definition of replicas includes, for example, photocopies of identity cards or passports, which are very often created in the course of everyday business activity.

According to the new act, a replica of a public document is a reproduction or a copy of between 75% and 120% of the original size, with authenticity features of a public document or a specimen thereof, except for photocopies or prints of a public computer document made for official, business or professional purposes specified under separate regulations, or for the use of the person for whom the public document was issued.

The data covered by these replicas and the replicas themselves are often needed for the record purposes of employees, contractors, debtors or subcontractors. Their further processing is, according to some commentators, questionable, but the wide exclusion of copies made for official and other purposes or for the use of the persons concerned cannot be disregarded.

Practice and case law will need to clarify the permitted use of replicas of public

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documents. As it seems, though, express consent of the interested party to the indication of (preferably official) purposes might serve as sufficient basis for preparation and use of replicas within the limits of the law and without penalty.

At the same time, it depends on the effectiveness of the new provisions whether such curiosities as "collectors' ID cards" will disappear from the market. They have commonly been used to commit crimes, including bank fraud.

Source:
Act on Public Documents of 22.11.2019 (J.L. 2019, item 53)

Decriminalization of acts in the economic sphere in Belarus

Amendments to the Criminal Code mitigating and excluding criminal liability in the economic sphere are in force in Belarus since 19 July 2019

Decriminalization of economic crimes

Criminal liability is excluded for violating the procedure for opening accounts outside Belarus, fictitious entrepreneurship, antitrust violation, violating rules on transactions with precious metals and stones in the absence of significant damage, as well as for disclosure of specific information on securities in the absence of particularly large amounts of damage. At the same time, administrative liability for such acts may be applied.

Reducing applicability of confiscation

The possibility to impose punishment in the form of "common" confiscation of a convicted person's property is abolished. At the same time, forfeiture, meaning expropriation of crime-related property may be imposed (for example, property obtained by criminal means, instruments and instrumentalities of crime). Forfeiture can be applied both when a person is found guilty of a crime and when relieved from criminal liability.

From now on, most articles of the Criminal Code set a fine instead of confiscation. The amount of the fine depends on the size of the basic value and the nature and level of public danger of the crime committed.

Mitigation of punishment for economic crimes

Imposing punishment in the form of imprisonment for misdemeanours and minor offences for those who commit an economic crime for the first time is now prohibited. Punishment in the form of imprisonment for these categories of crimes may be imposed only for smuggling, illegal export (in the broad sense) and legalization of funds obtained by criminal means (money laundering).

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Increase in threshold of significant and particularly large amounts of damage

The sums that meet the criteria of significant and particularly large amounts of damage are increased. A significant amount of damage will be set at 1 000 basic values (approx. 11 000 EUR) (today - 250 basic values (approx. 2 800 EUR)), while a particularly large amount of damage – 2 000 basic values (approx. 22 200 EUR) (today – 1 000 basic values).

These changes are expected to improve the condition of convicted persons due to application of lesser punishments to them.

Source:
National legal Internet portal of the Republic of Belarus (NLIP) 18.01.2019, 2/2609

New approach in employment-law assessment of EU business trips

Will the practice of the member states be unified or further fragmented based on the changed German attitude?

If an employer in a member state sends an employee out to work temporarily in another member state – e.g. for a business trip, for a course, or for on-the-job training at the mother company – this qualifies as posting.

In the course of a posting, the employee stays in the social security system of the sending country. Neither establishment of parallel social insurance nor payment of social insurance contributions is required in the host member state. For proof, a so-called "A1 certificate" is needed. This has to be applied for and issued by the competent institution of the sending country prior to the business trip. The relevant regulation uses the term "whenever possible in advance", leaving the right of interpretation basically to the member states. Not even typical exceptions are listed in the regulation, i.e., covering cases where no application in advance is needed.

For frequently travelling employees as well as urgent, unforeseen business trips the following question arises. Since one of the goals of community law is removal of administrative interstate obstacles, is it reasonable to require the in-advance-application strictly, in each case?

Assessment of the in-advance-application requirement varies greatly across member states. France and Austria represent a strict standpoint, and interpret the term "whenever possible" as "always" supported by the introduction of sanctions (administrative fines) built into their national law.

Recently, however, Germany accepted a different point of view. The federal ministry of labour and social issues (Bundesministerium für Arbeit und Soziales, 'BMAS') examined the question and in their guide published in June 2019 they declared that in case of unforeseen, urgent business trips as well as of business trips no longer than one week, neither the requirement of an in-advance application nor punishment for failing to do so is reasonable. Instead, they found it sufficient to issue and present the document only in case of subsequent necessity (meaning in case of a check by the authority).

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The BMAS guide is not legally binding, while regarding other member states it even has no legal relevance. However, it foreshadows the emergence of two different ways to approach interpretation of the relevant community law, and raises the question of the necessity for clarification at EU level.

Source:
Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I);

Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems;

Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems;

Bundesministerium für Arbeit und Soziales: Handhabung der Bescheinigung A 1 bei kurzfristig anberaumten und kurzzeitigen Tätigkeiten im EU-Ausland, den EWR-Staaten Island, Liechtenstein und Norwegen sowie der Schweiz

Improving worker protection: amending the Posting of Workers Directive

Can protection of workers be reconciled with maintaining freedom to provide services? At first sight, there is no clear answer.

The Posting of Workers Directive (96/71/EC) regulates the extent to which a "core of mandatory provisions" of the host Member State applies to posted workers, irrespective of the law applicable to the employment relationship under the Rome I Regulation. On 9 July 2018, Directive (EU) 2018/957 of the European Parliament and of the Council amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services was published in the Official Journal of the EU. According to Art. 3 of the Directive, it must be implemented into national law by 30 July 2020.

According to the Commission proposal, the official main objective of the reform is "the same pay for the same work in the same place", i.e. applying equal pay conditions within a Member State, irrespective of whether a national or a posted worker is employed. Article 1 of the Directive lays out three objectives: promotion of freedom to provide services; a guarantee of equal conditions of competition; and protection of workers through social convergence.

Posting workers to other countries in the framework of provision of services mainly concerns place-bound activities such as construction work and security services, guarding buildings, personal services such as personal care, and transportation services. In 2016, some 2.3 million workers were posted within the EU. The main country of destination is Germany, while the main country of origin is Poland as well as other Central and Eastern European countries. Since 2010, the number of posted workers has increased many times over.

The main changes concern, in particular, full equal pay for posted workers, the introduction of a maximum duration beyond which all host country legislation applies to a posting, as well as extension of the mandatory application of posting rules in generally binding collective agreements to all sectors of the economy in addition to greater transparency of working and employment conditions.

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The amendment has seen a highly critical response from a large number of Member States. In particular, this is due to the fact that although protection of workers is enhanced, posting becomes less attractive for companies. This raises the likelihood of a decrease in the number of postings. As a result, Poland and Hungary have brought an action for annulment before the European Court of Justice.

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