CHSHCEE Newsletter

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CHSHCEE | Austria

Cartel and Competition Law Amendment Act 2017

The long-awaited Cartel and Competition Law Amendment Act 2017 ("**Amendment Act**") was published in the Federal Law Gazette on 24 April 2017. Most of the new provisions are applicable from 1 May 2017.

The Amendment Act introduces numerous changes, especially relating to the enforcement of actions for damages for infringements of competition law ("**Private Enforcement**") based on the EU Directive on Antitrust Damages Actions (Directive 2014/104/EU), but it also introduces a whole host of innovations in other areas as well. A number of the key changes are summarised below:

Easier access to evidence

On the basis of the EU Directive on Antitrust Damages Actions, the Austrian legislator has introduced the possibility for civil courts to order the disclosure of evidence and/or impose sanctions for any failure to disclose evidence. This provision may prove to be of considerable significance in future, especially when quantifying the amount of damages to which the injured party may be entitled. A disclosure order requires precise justification, both setting out the facts and evidence in the possession of the person subject to the order and adequately supporting the plausibility of the action for damages. It is, strictly speaking, even possible to request the disclosure of evidence in files held by courts or public authorities. However, this does not apply to leniency applications or settlement submissions as the attractiveness of leniency programmes and settlement decisions should not be jeopardised by disclosure requirements that are too extensive in scope.

Time-barring of claims for damages for competition violations

In future, claims for damages for competition violations will become time-barred after five instead of three years (with an absolute limitation period of ten years). Aggrieved parties will thus have more time to assert any claims they may have against the undertakings participating in the cartel.

New transaction threshold for merger control

From 1 November 2017, an additional threshold will apply under Austrian merger control law. This additional threshold is linked not only to the turnover of the undertakings involved, but also to the transaction value. Specifically, concentrations meeting the following thresholds must in future be notified to the Austrian Federal Competition Authority (*Bundeswettbewerbsbehörde*): (i) a combined worldwide turnover of more than EUR 300 million, (ii) a combined turnover in Austria of more than EUR 15 million, (iii) the value of the consideration exceeds EUR 200 million, and (iv) the target company has significant business operations in Austria. This additional threshold is already relevant now for transactions which might close at or after 1 November 2017. In terms of the exact meaning and interpretation of these conditions (including the condition "significant business operations in Austria") a cautious approach is recommended until further guidance has been provided by the Federal Competition Authority.

Other innovations

- Easier access for the Federal Competition Authority to electronic data (including access to external servers) during dawn raids, by making it possible to impose penalty payments.
- Interruption of the period of limitation for antitrust infringements as a consequence of the disclosure of any action taken by the Federal Competition Authority to investigate or prosecute an infringement vis-à-vis at least one member of a cartel.
- The Federal Competition Authority may establish an internet-based whistleblowing system allowing individuals to report any possible infringements whilst maintaining their anonymity.

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CHSHCEE | Belarus

Simplifying the Procedure for Setting Up a Company in Belarus

Belarus is currently attempting to simplify all legal procedures related to doing business in the country. In particular, the amendments to Decree No. 1 of the President of the Republic of Belarus "On State Registration and Liquidation (Termination of Activity) of Undertakings" (the "**Amendments**") were introduced on 28 February 2017 by Decree No. 2 of the President of the Republic of Belarus. They will come into force on 3 September 2017. The Amendments will somewhat simplify the procedures for setting up a company and regarding its liquidation.

More certainty regarding the risk of invalidating a company registration

At present, the registration of a company may be deemed void if the relevant application documents contain any false information. Irrespective of whether or not such false information was submitted intentionally, the authorities may petition the competent court for invalidation of the company registration. This may be done at any time after registration of a company since the law does not provide for any limitation period. The invalidation of a company registration may result in confiscation of the company's revenue for the entire period of the company's activity. Thus, the current regulation for a company registration involves significant risks for a company and its shareholders.

The Amendments are aimed at mitigating these risks for unintentional offenders. In particular, from 3 September 2017 a court hearing a case on the invalidation of a company registration will take into consideration:

- whether or not the false information was submitted intentionally;

- whether submission of the false information has resulted in any damage to public or private interests;
- other circumstances.

Moreover, the Amendments clearly envisage that the authorities may not request a company registration be invalidated upon expiry of a 3-year limitation period.

Audit of a company undergoing liquidation

Currently, a company undergoing liquidation may not be excluded from the trade register before tax authorities, customs authorities, social security authorities and the Republican Unitary Insurance Enterprise "Belgosstrach" inspect the company and issue a positive opinion on the absence of debts owed to the state. This may take up to six months.

After the Amendments come into force, a company will be able to engage an auditor or an audit firm. The positive audit report with respect to the company could be used instead of the above-mentioned opinions of the state authorities and will be sufficient for completion of the company liquidation and its exclusion from the trade register. This will significantly shorten the duration of a liquidation procedure.

Opening a bank account

Currently, a representative (i.e. director) of a newly established company is required to apply to a bank in person after state registration and must submit relevant documents in order to open a bank account.

From 3 September 2017, all documents required for opening a bank account may be handed over to a bank by the registration authority upon a company's request. Nevertheless, the company's representative (i.e. director) will still be obliged to visit a bank for the purpose of verifying his/her signature on payment documents and to sign a contract with the bank to open an account.

Summary

The Amendments will improve company registration and liquidation procedures. The risks related to invalidation of a company registration will decrease and the liquidation procedure will become more flexible. For these reasons the Amendments are welcomed by the business community.

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CHSHCEE | Bulgaria

Amendments to Accountancy Act

According to recent amendments of the Accountancy Act, the Registry Agency is required to provide the National Revenue Agency by 31 July of each year with a list of all companies which have not submitted their annual financial statements to the Commercial Registry by the due date (30 June). The new provision is related to the increased sanctions in force from 2016, according to which a fine between 0.1 and 0.5 percent of the net sales revenues for the relevant accounting period is imposed on companies which fail to submit their financial statements by the statutory deadline.

Amendments to the Labour Code

- New provisions regulate the posting of workers in the framework of the provision of services, thus transposing into Bulgarian law Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and Directive 2014/67/EU on the enforcement of Directive 96/71/EC.
- An amendment to Article 128b provides that a part of the labour records of the employees can be created and kept in the form of electronic files. The government is expected to provide further details on this option by adopting a regulation.

Amendments to the Consumer Protection Act

According to amendments to the Consumer Protection Act, published in January 2017, disputes which involve consumers (i.e. individuals not engaged in business or

professional activities) can no longer be resolved by arbitration courts, with the exception of procedures for alternative dispute resolution for consumers under Directive 2013/11/EU. In this regard, arbitration clauses in contracts with consumers are considered null and void unless they refer to the abovementioned alternative dispute resolution procedures.

Amendments to the Civil Procedure Code

Amendments to the Civil Procedure Code, published in February 2017, introduce new provisions on establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters, in line with Regulation (EU) No 655/2014. The new provisions define which Bulgarian courts are competent to issue preservation orders. It is also provided that European Account Preservation Orders will be enforced in Bulgaria by the respective enforcement officers, who are also entitled to receive and serve orders under the Regulation.

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CHSHCEE | Czech Republic

Obligation to charge customers for plastic bags from 1 January 2018

A new amendment to Act No. 477/2001 Coll., Packaging Act, relating to waste management and mainly impacting retail businesses, is going through the legislative process. This amendment will transpose into Czech law a new directive of the European Parliament, aiming at reducing the consumption of lightweight plastic carrier bags.

The necessity to implement the directive

At the European and national level, plastic shopping bags are perceived as a high risk to the environment, which is why their use is regulated by several directives. As a consequence, it is necessary to amend the Packaging Act so as to transpose Directive (EU) 2015/720 into national law. The Directive requires Member States to adopt corresponding legal and administrative regulations which ensure compliance with this Directive by 27 November 2016. Since the process of implementing the Directive into Czech law by the Czech Parliament has already been delayed, it is reasonable to expect the corresponding legal regulations to be enacted in the near future.

European minimum

As mentioned above, it is essential to implement the Directive into Czech law to reduce the consumption of plastic shopping bags. To achieve these aims, the Directive introduces a new obligation on all businesses to start selling lightweight plastic carrier bags for a price that is at least equal to the cost of production. This obligation applies to all lightweight plastic bags within a range from 15 to 20 microns, meaning mainly those bags already provided by retailers for a charge.

The Directive permits member states to apply an exception for very lightweight plastic carrier bags with a thickness of under 15 microns, so-called microtene bags, which are mainly used for fruit and vegetables. The reason for this exception is that the microtone bags are often used as primary packing and thus unlike other carrier bags they have an important hygienic role that also helps to prevent food waste. Another exception applies to carrier bags with a thickness of over 50 microns for which, according to the Directive, no charge need be made.

The Czech way

The amendment to the Packaging Act introduces an obligation that is more restrictive than that demanded by European directives. It prohibits businesses from providing customers with free plastic shopping bags except for very lightweight plastic carrier bags (microtene bags). This means this prohibition applies to all plastic bags with a thickness of over 15 microns. The justification for this is that there is the risk that taking the approach suggested in the Directive would, with two possible exceptions, give rise to an increase in the consumption of bags with a thickness of over 50 microns, which may also

be considered as having negative impacts on the environment. In compliance with the Directive, the Czech amendment is implementing only the exception for very lightweight plastic carrier bags with a thickness of less than 15 microns (microtone bags).

On the basis of the amendment that has been enacted, businesses are required from 1 January 2018 to charge customers for plastic carrier bags (except for microtene bags) if these are provided to customers at the point of sale. The fact that plastic carrier bags are not provided free of charge should be apparent from the tax document related to the purchased goods (e.g. as a separate item on the receipt). The minimum price of a plastic carrier bag has to be equal to its production costs, while the maximum price is not regulated by the amendment. Primary impacts are expected mainly in connection with retail businesses which usually offer plastic bags to their customers for free.

If a retailer is providing plastic bags at the point of sell free of charge, it may be committing an administrative offence subject to a fine of up to CZK 500,000.

The bill has passed the third reading in the Chamber of Deputies and is now being considered by the Senate.

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CHSHCEE | Hungary

Companies will have new obligations and face heavy fines from May 2018

The new European data protection regulation, generally known as GDPR, was officially published in May 2016 and will become directly enforceable in Member States from May

2018. Until then, data controlling and data processing in Hungary is governed by the data protection directive (Directive 95/46/EC) and the Privacy Act that transposes its regulations into Hungarian law. The obligations of data controllers and data processors will be greatly expanded when the GDPR takes effect, and when these obligations are not fulfilled, violators will face **hefty fines of up to EUR 20 million or 4% of their worldwide annual turnover.** Only one year remains in which to prepare for the new rules, which is quite a lot less than it might appear, considering that it will take more than just drafting a few legal documents: data controllers and processors will have to rethink their processes from the ground up in some cases.

Business leaders and decision-makers will have to be aware that they will have to adapt their organisations to the new environment, and data controllers will have to revise their data controlling practices and will have to be able to demonstrate that they have done so with documentary evidence. Some of the new features introduced by the GDPR that will require action from data controllers are as follows:

- **Right to be forgotten**. Data subjects can request the erasure of their data if they believe that accessibility to the data is harmful to them and there is no public interest that would counterbalance their private interest. It might be advisable for data controllers to introduce a procedure for such erasures because they can expect to receive such requests in great numbers. (The right to be forgotten implicitly exists under the Directive, but once it will be expressly stated in the applicable regulations, it is reasonable to assume that such requests will multiply.)
- Data controllers will have to ensure that data subjects have the right to **data portability**, which means that they can receive their own data in a commonly used and machine-readable format, and can request that the data controller transmit the data to another data controller.
- The data subjects' right to access data will also change: with certain exceptions, **data requests** will be free of charge. (On the other hand, a data controller will be allowed to reject a data subject's request if it does not meet the applicable requirements.) If a data controller believes that it is likely to receive a large amount of data requests, it should give consideration to introducing an online platform that allows data subjects to access the relevant data directly in order to minimise administrative burdens.
- Data controllers will be required to document any **personal data breach** (e.g. a hacking attack) and report it to the competent authority, which in Hungary is the National Authority for Data Protection and Freedom of Information, within 72 hours.

Failure to report a personal data breach may also result in heavy fines. Additionally, the victims of a personal data breach may seek compensation for monetary and other damage or loss.

- Data controllers will be expressly allowed, and some of them required, to appoint a **Data Protection Officer**, who will be responsible for ensuring compliance with the GDPR. A Data Protection Officer will have to be familiar with the internal processes of data controllers and processors, and have in-depth knowledge of data protection matters in general. Hiring and/or training Data Protection Officers will obviously require substantial expenditures, but these costs will still pale in comparison with the potential fines.
- Date controllers will have to carry out a **data protection impact assessment** prior to the processing of personal data if the processing is likely to result in a high risk to the rights and freedoms of natural persons.
- Another important requirement will involve compliance with the principles of what is known as **data protection by design and by default**. These terms mean that data protection considerations must be taken into account as early as the design phase of a data processing system, and that data protection options must be enabled by default during the operation of the system. The application of these principles may also involve the introduction of measures such as the minimisation of the personal data processed, pseudonymisation at the earliest possible stage, and ensuring that data processing is done transparently and in a manner that allows data subjects to monitor the data processing.
- The GDPR specifically defines the category **sensitive data**, which includes biometric data (used in vein scan systems made famous in Hungary as entry control systems at sporting events, or face recognition systems). Whereas the processing of personal data "only" requires the data subject's unambiguous indication of his or her consent, an "explicit consent" standard applies to sensitive data. Therefore, controllers of sensitive data will have to revise their practices for obtaining the consent of data subjects.
- Data controllers are also advised to review their **data protection declarations** and the use of **cookies** tracking user activities on their sites. The information stated in a data protection declaration must be concise and easily understandable, and must be written in a clear and plain language. Simply quoting the language of, or making a reference to, a regulation is expressly considered inadequate. Any website that uses

tracking cookies must inform data subjects of its use of cookies before they are installed. A data subject's consent to the use of cookies must be based on the data subject's free choice and on an informed decision, and it must be specific enough and actively granted. Cookies may not be installed and used on the basis of the "silence implies consent" principle or the user's inactivity. For example, the practice where a checkbox signifying the acceptance of cookies is checked by default is not acceptable; the data subject's required active consent might for example take the form of checking the relevant box.

These are just some of the most important changes, but even this small sample shows that the GDPR will require considerable technical preparations and a comprehensive revision of policies from data controllers and processors before it takes effect in May 2018.

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CHSHCEE | Romania

New Regulation regarding specific taxes for accommodation, restaurants and other related activities

At the end of 2016, a new regulation regarding the specific tax on activities conducted by companies, such as hotels and similar accommodation providers, trailer and camping parks, restaurants, catering services, bars and other food and beverage services was published in the Romanian Official Gazette. This new specific tax was implemented by Law No. 170/2016 regarding taxes on specific activities, which entered into force on 1 January 2017. The new regulation provides a new calculation formula for the specific tax with respect to the above mentioned activities, in comparison with the standard taxes that companies used to pay before the new regulation entered into force. The calculation method for the specific tax is mainly based (i) on the size of the hotel, bar or other property at which the aforementioned services

are provided, and (ii) on the location of such property. The specific tax therefore does not depend on the profit generated by the company in question.

As per the new regulation, the companies subject to the specific tax are those registered according to their articles of incorporation on 31 December 2016. The following activity codes as per the CAEN Code (Romanian Economic Activity Classification) apply to the main or secondary activities:

(a) CAEN Code 5510 – Hotels and other similar accommodation facilities;

(b) CAEN Code 5520 – Accommodation facilities for holidays and short periods;

(c) CAEN Code 5530 – Parks for trailers, camping and camps;

(d) CAEN Code 5590 – Other accommodation services;

(e) CAEN Code 5610 – Restaurants;

(f) CAEN Code 5621 – Event catering;

(g) CAEN Code 5629 – Other restaurant services n.c.a., and

(h) CAEN Code 5630 – Bars and services at events where beverages are served.

Methodological norms have been approved for the application of the new regulation from 14 March 2017. The methodological norms are very useful when applying the method for calculating the specific tax and they provide the implementation methods for the specific tax cases. Furthermore, details regarding the taxation of microenterprises and mixed taxation situations for companies also conducting other activities than the ones subject to the specific tax, are regulated by the methodological norms.

For example, a restaurant located in Zone A in Bucharest, with a surface area of 80 sq m should be subject to an annual specific tax amounting to Lei 19,782 and a three star hotel in the Mamaia sea side resort, with a capacity of 100 guest rooms and suites, open for business 170 days a year, should be subject to an annual specific tax of Lei 7,964, according to the methodological norms.

The new specific tax does not exclude other taxes provided by law if the company in question also derives income from other activities aside from the ones which make it subject to the specific tax. In this case, the company will be subject to a mixed tax which consists of the specific tax and other taxes provided by law.

The new specific tax and its calculation method have both advantages and disadvantages. For example, the owners of small businesses from provincial towns, which do not generate a considerable profit, will be subject to the specific tax, based on the surface area or the location of the property. It cannot be ruled out that the resulting specific tax will exceed the profit generated. On the other hand, the new specific tax appears to be favourable to small sites in the city centre, which may generate a higher profit and be subject to a low specific tax.

Prior to the promulgation procedure, the new regulation was considered inequitable and the president of Romania made use of his right to send the new regulation back to the Parliament for further revision.

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CHSHCEE | Slovak Republic

Recent changes in Sovak legislation

Act No. 2/2017 Coll. – Amendment of Act No. 233/1995 Coll. on bailiffs and enforcement procedure (Enforcement Code)

An amendment to the Slovak Enforcement Code has entered into force which represents a substantial change in enforcement proceedings initiated after 1 April 2017.

The aim of this amendment is to ensure fair and more transparent enforcement proceedings with more balanced relations between courts, bailiffs, creditors and debtors. Since 1 April 2017 there is only one court in the Slovak Republic responsible for handling enforcement proceedings and that is the District Court of Banska Bystrica. Creditors are no longer able to choose bailiffs who will lead the enforcement proceedings. Enforcement

proceedings are distributed equally among bailiffs residing in respective districts. Pursuant to the new rules relating to enforcement procedures, the costs of enforcement proceedings should be predictable for both creditors and debtors. The court may terminate enforcement proceedings against the debtor concerned in the event it is not possible to recover anything from a debtor who is a natural person within five years of the initiation of enforcement proceedings or last recovery within enforcement proceedings and from a debtor who is a legal entity within 2.5 years since the initiation of enforcement proceedings or last recovery within enforcement proceedings.

Act No. 87/2017 Coll. – Amendment of Act No. 160/2015 Coll. Civil Procedure Code
Act No. 88/2017 Coll. – amendment of the Act No. 162/2015 Coll. Administrative Court Procedure Code

Both amendments change and improve the right of every person to be heard before courts in his/her mother language or in a language he or she fully understands.

Act No. 90/2017 Coll. – Amendment of Act No. 79/2015 Coll. Act on Waste

This amendment implements Directive (EU) 2015/720 which orders Member States to achieve a sustained reduction in the consumption of lightweight plastic carrier bags. With effect from 1 January 2018, lightweight plastic carrier bags may not be provided to consumers buying goods free of charge. The Act on Waste does not stipulate the amount of the fee payable for the provision of plastic bags. This obligation does not apply to the provision of very lightweight plastic bags.

Further, the amendment cancelled a provision of the Act on Waste according to which a producer was obliged to keep and retain records on the volume of its production, import, export and re-export, and to report the determined data from the records to the Recycling Fund and the competent state administration authority on a quarterly basis.

Act No. 94/2017 Coll. – Amendment of Act No. 9/2010 Coll. Act on Complaints

The aim of this amendment is to adjust a procedure for handling complaints and to implement a new procedure for handling complaints in relation to digitisation of communication.

Act No. 95/2017 Coll. – Amendment of Act No. 311/2001 Coll. Labour Code

An amendment of the Labour Code caused a significant extension of the ban on the sale of goods to final consumers from 3.5 to 16 bank holidays ("retail days"). Employers are now required to adopt measures in order to modify the organisation of work respectively. Further, employers will not be able to order the employee or to agree with him/her on work which involves the retail days. There are certain minor exceptions to the ban, such as cinemas or retail sales made on retail days by entrepreneurs who are self-employed.

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