CHSHCEE Newsletter

Keep up to date with the latest legal developments in Austria, Belarus, Bulgaria, the Czech Republic, Hungary, Romania and the Slovak Republic with our CEE newsletter.

Austria

Vienna's legislator takes the fight to Airbnb

Mark Krenn describes how the planned amendment of the Viennese building code will impact on online platforms as short-time lets will be subject to even greater restrictions. **>> Read full article**

Belarus

Upgrade of Merger Control Regulation

Sergei Makarchuk explains a number of changes to the newly introduced Antimonopoly Law that will provide more legal certainty for M&A transactions. **>> Read full article**

Bulgaria

Draft amendments to the Personal Data Protection Act

Boyko Gerginov outlines certain important rules proposed by a draft for amending the Bulgarian Personal Data Protection Act. **>> Read full article**

Czech Republic

New register of beneficial owners of legal entities in the Czech Republic

Hana Maláčová highlights basic points of a new register of beneficial owners of legal entities and trust funds that aims to make the ownership structures of companies more transparent in the Czech Republic. **>> Read full article**

Hungary

Electronic Public Procurement Practices

Eszter Á. Kontor discusses comprehensive changes to all aspects of public procurement practices. **>> Read full article**

Romania

EU Directive on Antitrust Damages Actions

Mirela Nathanzon discusses a Government Emergency Ordinance regarding claims for damages in case of infringements of competition law. **>> Read full article**

Slovak Republic

Prevention of Legalization of Proceeds of Criminal Activity and Terrorist Financing

Jozef Bannert summarizes the main aims of the amendment and highlights the significant changes. **>> Read full article**

CHSHCEE Newsletter issue 4/2017

CHSHCEE Austria

Vienna's Legislator takes the fight to Airbnb

Recent surveys have shown that about 15,000 apartments in Austria are currently being offered as short-term lets on online platforms such as "Airbnb", which is undoubtedly the most prominent such platform. Of these 15,000 apartments, approximately 7,700 are in Vienna. Such high figures for the capital are attributable not only to its attractiveness, but also to the legal framework, which differs from federal state to federal state, each of which places different limitations on short-term lets.

The benefits of online rental platforms are obvious as they offer well located and spacious apartments in Vienna often at just a fraction of the price of conventional accommodation. On the other hand, short-term lets are often far more lucrative for lessors as they generate higher rental income than apartments let for a longer fixed period.

As the majority of short-term rental apartments are located in Vienna, the planned amendment of the Viennese building code – which becomes effective at the end of 2018 – will have an impact on online platforms as short-time lets will be subject to even greater restrictions.

At present, most apartments are located in an area dedicated for residential use in the Viennese zoning plan. The planned amendment aims to clarify that the short-term commercial letting of an apartment does not usually take place in a residential area. The consequence of this clarification is that the letting of apartments on a commercial basis in residential areas is prohibited under the new rules. This *de facto* means Airbnb lessors will be restricted to letting out apartments on a non-commercial basis. Nevertheless, all non-commercial Airbnb lessors, i.e. those letting out only one apartment, will not be affected by this amendment and can continue to let out an apartment on a short-term basis.

By contrast, the legislation currently in force in Vienna stipulates that although the short-term letting of apartments located in residential areas is permissible as a general rule. there are however two main restrictions, both of which will continue to apply after the planned amendment of the Viennese building code takes effect. First of all, short-term letting is limited to what is considered a normal level. This means that the lessor cannot provide ancillary services typically provided in relation to accommodation, such as cleaning or catering, as this activity would fall within the scope of

commercial renting and an official trade licence would be required. Secondly, letting an apartment on a commercial basis can be prohibited under the terms of the condominium ownership agreement. This restriction can be lifted with the unanimous consent of all owners.

For more information

Mag. Mark Krenn
Partner in Austria
Head of CHSH CEE Real Estate Practice
mark.krenn@chsh.com
Tel: +43 1 514 35 591

CHSHCEE Belarus

Revision of Merger Control Regulation

Introduction

The restated version of the Law of the Republic of Belarus No. 94-Z dated 12 December 2013 "On Countering Monopolistic Activities and the Promotion of Competition" (the "**Antimonopoly Law**") was adopted on 8 January 2018 and will enter into force on 3 August 2018. The Antimonopoly Law will introduce a number of changes. In our view, the most interesting relate to merger control.

The key amendments

Merger notification thresholds

First, merger notification thresholds will apply not only to the target company as before but also to the acquirer. The acquirer is understood to mean the specific company and not a group of companies as in some other jurisdictions.

Second, merger notification thresholds will double. The approval of the antimonopoly authority will be required if:

(i) the book value of the target's and/or acquirer's assets exceeds 200,000 basic units (ca. EUR 2,000,000), and/or

(ii) the target's and/or acquirer's annual turnover exceeds 400,000 basic values (ca. EUR 4,000,000).

Third, in addition to share deals, asset deals will also be subject to merger control. The acquisition of 20% or more of the assets of a Belarusian company will trigger the merger notification requirement if any of the abovementioned thresholds are exceeded. Under the previous Antimonopoly Law, asset deals did not fall within the scope of the antimonopoly regulation and were sometimes used to avoid triggering the merger notification requirement.

Thus, on the one hand, the merger notification thresholds will increase (although they will still be very low compared to those in force in other countries).

On the other hand, every medium-sized EU or US company would easily exceed the abovementioned thresholds. As a result, most acquisitions of Belarusian companies by Western buyers will trigger the merger notification requirement. At the same time, to circumvent the Antimonopoly Law a buyer could make use of an "empty-shell" SPV to acquire a Belarusian company and avoid the notification requirement provided, however, that the target company itself does not exceed the abovementioned thresholds.

Intragroup transactions

Upon its entry into force, the Antimonopoly Law will expand the scope

of intragroup deals, which are not subject to approval by the antimonopoly authority. Thus, obtaining approval for a deal will not be required if:

(i) the seller holds more than 50% of the shares in the buyer or vice versa; or

(ii) the seller and the buyer have common shareholders that hold 50% or more of the shares in each of them.

In spite of the fact that approval is not required for intragroup deals, such deals must nevertheless be reported to the antimonopoly authority *post factum* within one month of closing of the respective deal.

Limitation period

The Antimonopoly Law will introduce a 3-year limitation period with respect to breaches. Thus, a breach of the Antimonopoly Law identified after the 3-year period has expired commencing from the time the breach was committed will not result in any legal consequences for the lawbreaker.

Summary

The restated version of the Antimonopoly Law will become more comprehensive and will be a better-structured legal act which remedies a number of omissions in its previous version. The key amendments have been designed to promote competition and improve the business environment. In addition to this, there is no doubt that the new version of the Antimonopoly Law will provide more legal certainty for parties to an M&A transaction.

For more information

Sergei Makarchuk, LL.M.
Managing Partner in Belarus
sergei.makarchuk@chsh.com
Tel: +375 17 2663417

CHSHCEE Bulgaria

Draft amendments to the Personal Data Protection Act

The Bulgarian Commission for Personal Data Protection has announced a draft (**Draft**) for amending the Bulgarian Personal Data Protection Act. The purpose of the Draft is to make Bulgarian data protection law compliant with the rules of the General Data Protection Regulation (**GDPR**), and where applicable, to provide further details on or derogations from the GDPR provisions.

Below we outline certain important rules proposed by the Draft.

Data Protection Officers

In addition to the three cases under Article 37 GDPR requiring the appointment of a data protection officer (DPO), data controllers and processors will be obliged to appoint a DPO if the controller (processor) processes the personal data of more than 10,000 data subjects.

Additional obligations for employers

The Draft imposes several specific new obligations on employers:

- employers will not have the right to make copies of employees' IDs (personal ID card, driving license, etc.) unless this is explicitly provided by law.
- employers will be required to adopt rules on (i) the use of internal systems for breach reporting, (ii) restrictions on using company resources, and (iii) access control systems.
- employers must determine a storage period in relation to the retention of data collected during the staff recruitment process. Such storage period may not be more than three years.

Child's consent in relation to information society services

In relation to the offer of information society services directly to a child, the processing of a child's personal data is lawful under the GDPR where the child is at least 16 years old. Member States are allowed to set a lower age provided it is not below 13 years. In this regard, the age proposed in the Draft is 14 years.

Unsolicited personal data

One of the new proposed provisions aims to address situations where a data controller has received personal data from an individual which the controller did not request (e.g. in an online contact form, the user attaches documents containing personal data which is

irrelevant to the user's particular inquiry). In such cases, unless there are legal grounds to retain the data, the controller/processor is required to return the data immediately or erase the data within one month.

Minimum amount of sanctions

Other proposed rules are broadly criticized, namely the provisions laying down minimum penalties (BGN 5,000 or 10,000 depending on the violation). Such minimum penalties are not provided under the GDPR and may prove inappropriate for small and medium enterprises which lack the technical, human and financial resources required to adequately implement the new data protection requirements.

For more information

Boyko Guerginov
Managing Partner in Bulgaria
boyko.gerginov@chsh.com
Tel: +359 2 401 09 99

CHSHCEE Czech Republic

New register of beneficial owners of legal entities in the Czech Republic

On 1 January 2018, a new register of the beneficial owners of legal entities and trust funds came into effect in the Czech Republic. It is another step toward tightening up the legislation aimed at preventing money laundering and combating the financing of terrorism. It aims to make the ownership structures of companies active in the Czech Republic more transparent.

Who is the beneficial owner?

The definition of a beneficial owner is incorporated in Act No. 253/2008 Coll., on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing ("**AML Act**"). Under the AML Act, a beneficial owner is defined as *a natural person who factually or legally exercises directly or indirectly a decisive influence in the corporate entity*. The AML Act includes specific criteria to help establish who those persons are, such as *it is every natural person who receives at least 25% of the profits from the legal entity or who holds more than 25% of the voting rights in the company or whose share in the subscribed capital of the company is more than 25%*. If no such persons can be identified on the basis of the definition provided in the AML Act, beneficial owners are deemed to be natural persons who hold senior management positions or other similar positions.

New register of beneficial owners

Most of the legal entities operating in the Czech Republic that are recorded in a public register (such as the commercial register) are required to enter their beneficial owners into the newly created database. This includes, for example, corporations such as limited liability companies, joint stock companies, cooperatives, societies, foundations, and trust funds. Corporations and cooperatives must enter their beneficial owners into this new register by 1 January 2019 at the latest. Other legal entities including trust funds are required to identify and enter their beneficial owners by 1 January 2021 at the latest.

The register contains information on the beneficial owners, such as their names, addresses, nationalities, dates of birth and an explanation why these persons have been identified as beneficial owners. The persons subject to such an obligation must also submit documents proving the aforementioned facts. The information

must be entered into this register, which is maintained by the relevant Czech court, within five working days.

In 2019, entries into this register are exempt from administrative fees. From 2020 onwards, the relevant court will charge a fee of CZK 1,000 (approximately EUR 40). The register is not open to the public. Only public authorities, predominantly bodies such as courts, prosecutors, tax authorities, and contracting authorities which launch public tenders, will have access to it.

Legal entities and trust funds are also required to keep the relevant documents and information regarding the identification of beneficial owners for the whole time that the person remains a beneficial owner and for a period of 10 years after he or she ceases to hold such status.

Conclusion

There are some indirect sanctions for legal entities that do not identify their beneficial owners. For example, companies taking part in public tenders can be excluded from the tender in those cases where they fail to reveal their beneficial owners to the contracting authority. Furthermore, transactions performed by companies which have not identified their beneficial owners and recorded them in this new register can be deemed “suspicious” and subjected to a review by the relevant Czech financial and tax authorities. That is why companies affected by the new rules should comply with this new obligation.

Author

Mgr. Hana Maláčová, Senior Associate

For more information

JUDr. Petr Kališ
Managing Partner in the Czech Republic
petr.kalis@chsh.cz
Tel: +420 221 111 711

CHSHCEE | Hungary

Electronic Public Procurement Practices

A comprehensive modification

After many years of planning, new laws came into force on 1 January 2018 which result in comprehensive changes to all aspects of public procurement practices. A majority of these changes are the last, major steps to introducing electronic public procurement procedures and practices in Hungary. These long-awaited changes are manifold, entered into force gradually – between 1 January 2018 and 15 April 2018 – and result in the introduction of almost fully electronic public procurement practices in Hungary.

Electronic public procurement procedures

Since 15 April 2018 public procurement procedures must be conducted via electronic means. Prior to that date, i.e. from 1 January 2018, contracting authorities/entities had the option of launching procedures electronically or in paper based forms, unless they wished to include an e-auction in their procedures. Procedures involving e-auctions have had to be launched electronically from 1 January 2018.

Electronic public procurement means that electronic communication methods are used from the very start of the procedure up until the time at which the contract is concluded. The conclusion of a contract remains paper based and preliminary actions for the preparation of a procedure also remain outside of the scope of electronic processes. Unless there are technical errors or interruptions in the system, the only major part of the procedure that remains non-electronic are the actual negotiations in negotiated procedures.

This also means that what has already been electronic remains unchanged: all tender notices are published and available on the internet, including large value contracts, exceeding the Community public procurement threshold, which are published on the 'Tender Electronic Daily' or 'TED' and procedures below the Community public procurement threshold, which are published on the public procurement website maintained by the Public Procurement Authority.

What is new is the electronic communication between the bidders and the contracting authority/entity during a public procurement procedure, which will be internet-based and conducted on a common platform easily accessible from a laptop anywhere in the world: https://ekr.gov.hu. Access to the full content of this public procurement website, and access to the complete public

procurement documentation of a public procurement procedure in progress, is subject to prior registration on this public procurement website. To obtain more information than the content of the published tender notice and/or to get involved in a public procurement procedure already launched, a private individual and his/her company must first register at https://ekr.gov.hu/portal/kezdolap. To register, at least one private individual must have internet access and a working (active) mobile phone number, otherwise the website is accessible free of charge, without any limitations or licensing, authorisations etc.

Electronic public procurement databases

The public procurement website https://ekr.gov.hu will also serve as a repository of various public procurement databases, and as a publication site for part of the data uploaded. With the exception of the annual statistical summary, all documents and data defined in Art 43 (1) of Act CXLIII of 2015 (the 'PP Act'), as well as the data of contracting authorities/entities, will have to be stored on this site. Further, documents of procedures not advertised publicly will have to be uploaded to this site. Finally, the contracting authority/entity will have to collect and store the documentation of each specific public procurement procedure on this site. This obligation on the contracting authority/entity will cover documents issued to the tenderers, as well as the internal preparatory or decision making documents.

Since the introduction of the PP Act, contracts and the due performance of the contracts concluded as a result of successful public procurement procedures have gained more and more attention. The introduction of the various electronic means includes the introduction of a new, publicly available and searchable contract register database, the 'CORE'. The database will cover the uploaded contracts (including in-house agreements and certain contracts concluded without public procurements) and data on the performance of these contracts. Contracting authorities/entities will have to enter the main registration platform of the Public Procurement Authority (the KBEJ) to upload data and documents at http://kba.kozbeszerzes.hu/ekt/. The public may search the database at http://kereso.core.kt.hu.

Electronic procedures of the Authority

Another area of public procurement practices are the various regulatory, administrative and review procedures undertaken by the Public Procurement Authority, including for example self-clearance from exclusion criteria, request of opinion, applications of qualified suppliers, etc. Communication with the Authority in these procedures has also

had to be in electronic form since 1 January 2018 in compliance with Act CCXXII of 2015. The electronic forms to be used in these procedures are available as part of the general ÁNYK framework software. Nevertheless, the Authority collected all the specific forms used in its procedures and provides some useful guidance on their use on its own website: http://www.kozbeszerzes.hu/e-ugyintezes/

Electronic procedures of the Tribunal

The final major area of public procurement practices where electronic practices are introduced are the legal review procedures of the Public Procurement Tribunal. This change is in conjunction with the electronic communications introduced at the Hungarian judiciary from 1 January 2018. It should be noted that irrespective of the date of the start of the public procurement procedure in question, and irrespective of the type (paper based or electronic) of the public procurement procedure in question, it has only been possible to initiate a legal review at the Tribunal via electronic means since 1 January 2018. The electronic forms which may be used by the legal representatives of the parties in the legal review procedures are available as part of the general ÁNYK framework software. Similarly to the Authority, the Tribunal collected all the specific forms used in its procedures and it provides some useful guidance on their use on its own website: http://www.kozbeszerzes.hu/cikkek/donto bizottsag-kozlemenyei

Author

Dr. Eszter Á. Kontor, Senior associate

For more information

Dr. Orsolya Hajós
Partner in Hungary
orsolya.hajos@chsh.hu
Tel: +36 1 457 8040

CHSHCEE Romania

EU Directive on Antitrust Damages Actions

Romania transposed the EU Directive on Antitrust Damages Actions[1] into national law by introducing Government Emergency Ordinance No. 39 dated 31 May 2017 (the "**Law**") regarding claims for damages in the case of the infringement of the provisions of competition law and by amending the Romanian Competition Act.

The Law regulates the right of any person who has incurred damage as a result of a competition law infringement caused by an undertaking or an association of undertakings to claim full compensation for the damage suffered before the competent court.

Undertakings which have infringed competition law by acting together are jointly liable for the damage caused by such infringement and the injured party has the right to claim full compensation from any of the undertakings.

Under the Law, the right to claim damages before the court becomes time-barred after five years. The limitation period does not begin to run before the injured party knew or ought to have known of:

- the conduct of the undertaking infringing competition law and the fact that such conduct represents an infringement of competition law;
- the fact that the breach of competition law has caused damage; and
- the identity of the undertaking infringing competition law.

In addition, during the alternative dispute resolution process, the limitation period does not begin to run or, if it has already started, it is suspended.

As regards its application, the Law provides that (i) the substantive provisions do not apply retroactively, whereas (ii) the procedural provisions apply to claims for damages registered as of 26 December 2014.

In this situation, damage claims which fall outside of the scope of application of the Law would need to be considered as per the domestic law governing them.

[1] Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union (Text with EEA relevance)

For more information

Mirela Nathanzon
Partner in Romania
mirela.nathanzon@gp-chsh.ro
Tel: +40 21 311 12 13

CHSHCEE
Slovak Republic

Slovak Act (No. 297/2008 Coll.) on the Prevention of Money Laundering and Terrorist Financing

Main aims of the amendment

The Act (i) transposes Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (IV. AML Directive), (ii) considers the recommendations made by the Moneyval Committee of the Council of Europe from its Fourth Assessment Report on the Implementation of Anti-Money Laundering and Terrorist Financing Measures in the Slovak Republic and Revised recommendation FATF (Financial Action Task Force of the G7) of February 2012, (iii) implements Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds, and (iv) responds to the requirements arising from the current application practice (usually formal clarifications of the obligations that have been previously clarified by its interpretation only).

Significant Changes

Obliged entity pursuant to Act No. 297/2008 Coll. (Section 5)

The amendment excludes from the group of obliged entities insurance companies and financial agents and financial advisers in the non-life insurance sector (according to the explanatory memorandum to the amendment, given the low risk of legalization and terrorist financing in non-life insurance).

The amendment leaves among the obliged entities court bailiff, but unlike in the previous legal regulation, only in the case of an explicit set of activities, e.g. the sale of real estate, movable assets or an enterprise, and the taking of money, deeds and other movable assets into custody in connection with the enforcement proceeding.

According to the former legal regulation, attorneys at law and notaries were obliged entities if they provided legal services to the client which concern exhaustively defined activities (points 1 to 4). The amendment adds new text stating that attorneys at law and notaries are obliged entities if they provide legal services to the client which concern “any financial operation or other action that leads to the movement of funds or directly

causes it" concerning already exhaustively defined activities (points 1 to 4). The previous legal regulation did not apply to any financial operation in which an attorney at law or notary participates.

The amendment decreases the limit (the minimum value of trade) for the inclusion of an entity (legal entity or natural person-entrepreneur) into obliged entities when performing a trade in cash from the original value of at least EUR 15,000 to a new value of at least EUR 10,000.

For more information

JUDr. Jozef Bannert
Senior attorney in Slovakia
ludmila.dohnalova@sp-chsh.sk
Tel: +421 2 2064 8580

Media owner and publisher: **Cerha Hempel Spiegelfeld Hlawati Rechtsanwälte GmbH**, Parkring 2, A-1010 Vienna | Tel: +43 1 514 350 Fax: +43 1 514 35 35 | email: office@chsh.com | Although this newsletter was created with the greatest of care, we nevertheless do not accept any responsibility whatsoever for its content being correct, complete or up to date. | Visit us at www.chsh.com | **CHSH** Austria Belarus Bulgaria Czech Republic Hungary Romania Slovak Republic

CHSH
Cerha Hempel Spiegelfeld Hlawati
Rechtsanwälte GmbH