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Up-to-date news around business law in Central- and Eastern Europe

Enforcement of CLP

CEE: Only a few months remain until 1 December 2010 when EC Regulation on Classification, Labelling and Packaging of Substances and Mixtures (CLP) will start to gradually replace the Dangerous Substances Directive (DSD). With phased implementation over an eight year period, the new regulatory framework concerns any entity involved in the supply chain of chemicals.

On 28 January 2010, bnt in cooperation with Hammarström Puhakka Partners (Helsinki) and Riga Graduate School of Law organized a seminar on the CLP and REACH (Regulation on Registration, Evaluation, Authorisation and Restriction of Chemicals). Topics discussed included practical aspects of CLP and REACH implementation in EU, referring to actual examples of changes to safety data sheets, labelling, and packaging.

Although the CLP entered into force on 20 January 2009, several of its provisions will become applicable later. The next significant deadline is 3 January 2011 when manufacturers and importers must notify classification and labelling of substances to the European Chemicals Agency (ECHA), unless substances are already notified under REACH. The ECHA expects about 20 million CLP notifications.

Currently, classification and labelling of substances and mixtures in the EU is governed by two directives – the DSD mentioned above and the Dangerous Preparations Directive (DPD). Where classification, labelling, and packaging under the CLP must be applied in parallel with the DSD or DPD, national law rules are maintained, assuming transposition of DSD and DPD provisions.

A concern relates to classification and labelling notifications to the ECHA of imported substances not covered by REACH (due to a tonnage threshold). The CLP, unlike REACH, does not foresee the status of the "only representative", a non-EU manufacturer's EU representative in charge of registration of imported substances under REACH, thus releasing other importers of the same substance from duties related to registration, evaluation, and possible authorisation.

In contrast, the CLP does not provide the "only representative" tool. Each importer is itself responsible for classification, labelling, and notification of substances to the ECHA. Only post-factum agreement of notifiers and registrants is provided within the CLP – if a notification results in different entries on the ECHA's classification and labelling inventory for the same substance, notifiers and registrants must make every effort to come to an agreed entry to be included in the inventory, and notifiers must inform the ECHA accordingly.

News at a glance

Soon full scale free movement for EU construction companies in Germany?

Germany: ECJ finds German restrictions on free provision of services in regard to contractual workers unlawful

By judgment of 21 January 2010 the Court of Justice of the European Union (ECJ) decided that the German regulation according to which only German construction companies are allowed to be contract partners of Polish construction companies in the context of a works contract is contrary to EU law.
Germany concluded a bilateral agreement with Poland that allows the posting of Polish workers to Germany for performing works contracts. Because Germany maintains restrictions on free provision of services and of free movement of workers from new EU Member States until May 2011, this agreement is an important exception to these restrictions. Similar agreements also exist with other new EU countries. The ECJ has now decided that German administrative practices under which exceptions may only be used by German companies are contrary to EU law. Therefore, Germany will have to change its administrative practices.
The judgment postulates extensive equal treatment of German and foreign companies. In our opinion it will therefore also have an impact on the accounting of quotas for employment of contract workers from CEE. However, full implementation of the judgment will still need several months.

Source: (ECJ judgment in case C-546/07)

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Prohibition of Contract Performance

Czech Republic: A new Institution in the Public Procurement Act

An important amendment to the Public Procurement Act came into force on 1 January 2010. In particular, this implements a host of changes in Czech law aimed at: increased transparency in procurement of public contracts, and increased protection against unlawful conduct on the part of the contract awarding authority. Among these, ‚prohibition of performance under the contract' appears to be one of the most important and most promising new concepts. In situations where the contract awarding authority acted unlawfully (by violating specific provisions of the Public Procurement Act) but where the most favourable bid has already been selected and the contract has already been made with the respective bidder, the contract awarding authority could previously be sanctioned only in the form of a fine imposed by the Antitrust Office – not to mention that the amount of the fine is and was regularly incommensurate compared to the consequences of the contract awarding authority's unlawful conduct.
The newly introduced institution allows the Antitrust Office to forbid a delinquent contract awarding authority from performing under a contract that has already been made. In effect, prohibition of performance under the contract means that the contract is treated as ineffective; the contract awarding authority is thus forced e.g. to initiate a new tender procedure.
Unfortunately, the weight of this tool has been somewhat compromised by the fact that prohibition of performance can only be imposed at the request of a bidder, and only in cases enumerated in the Public Procurement Act.
That being said, practice will have the last word: only time will tell whether this new concept will live up to expectations.

Source: (Act No. 137/2006 of the Collection of Statutes)

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First e-court in Poland

Poland: Poland joins countries where court disputes may be settled via Internet

On 1 January 2010 an amending act to the Polish Civil Proceedings Code came into force introducing a new institution called "Electronic Claim Proceedings". Under this procedure the claimant files all pleadings (including the statement of claim) with the court via Internet, and receives all letters from the court electronically. However, the procedure only applies to defendants to the extent that they file a pleading in the same proceedings.
For filing pleadings, the party must first establish a user account in the data transmission system of the e-court. All pleadings must be signed by using an electronic signature.
At present the only e-court in Poland is the District Court in Lublin (16th Civil Department) which is competent for the entire country regardless of the value of the subject matter of the dispute.

By taking into consideration the exceptions under the Polish Civil Procedure Code, Electronic Claim Proceedings will apply if the claimant so wishes but is not compulsory, i.e. the claimant is fully competent to decide whether to file a statement of claim via Internet (Electronic Claim Proceedings) or in the traditional way with the competent court under the general rules.

Source: (Dz.U. of 17.02.2009, No. 26, item 156 as amended)

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Amendments to Belarusian Tax Law

Belarus: Special part of Belarusian Tax Law in force from 1 January 2010

This part of the Belarusian Tax Law provides consistent imposition of nationwide and local taxes as well as other duties and fees. At the same time, some 100 previously effective legal acts in the tax field were repealed. Several taxes and fees were deregulated, including, e.g.: contribution to the Fund for agricultural producers (was 1% of profits gained by production, trade, treatment, or supply of services; tax on purchasing means of transportation was 3% of the purchase price and was paid by entities or the sole traders); local withholding tax (5%) and specific duties on renewal of urban public transportation. The special part of the Belarusian Tax Law also concretizes the term "permanent establishment" which facilitates the basis for assessing business activities of foreign investors in the country. Belarusian permanent establishments of a foreign entity have to be registered with the Belarusian tax authorities. Changes have also occurred in the fiscal rate, so that as of 1 January 2010 dividends to natural and legal persons will attract capital gains tax at 12% - previously 24% for legal persons and 15% for natural persons. The VAT rate was increased from 18% to 20%. Changes also affect regulations on the tax assessment and accounting period for VAT. Previously a calendar month applied to the tax assessment and accounting period for VAT, but from now on the accounting period matches the calendar year.

Source: (NRPA 2003, Nr. 4, 2/920; 2010, Nr.4, 2/1623)

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Farmland purchase by EU companies

Latvia: Companies owned by EU citizens can buy farmland and forests in Latvia

On 13 January 2010 the Latvian Supreme court ruled in a case on restrictions for foreigners buying farmland in Latvia. Generally, Latvian legislation does not allow foreigners to buy farmland and forests in Latvia. EU citizens can buy farmland only if they are farmers and have been residents of Latvia for at least three years. Companies incorporated in Latvia but owned by foreigners can buy farmland only if such entitlement is stipulated in an investment protection agreement between Latvia and the respective country. In the relevant court case, Irish citizens owned a company incorporated in Latvia and no investment protection agreement was in place between Latvia and Ireland. The claimant relied on free movement of capital within the European Union and on non-discrimination against EU citizens. The court agreed with these arguments and referred to Latvia's Act of Accession to the European Union. Under the act, Latvia reserved restrictions on purchase of farmland and forests by EU citizens until 1 May 2011. But the Supreme Court pointed out that all restrictions have to be interpreted narrowly. The restriction concerns "nationals of Member States and companies formed under the laws of another Member State and being neither established nor registered nor having a local branch or agency in Latvia". Therefore a company formed in Latvia but owned by a EU citizen is not bound by the restriction, so that it can buy Latvian farmland and forest on the same conditions as Latvian citizens and companies owned by them.

Source: (Senate Civil Department of Supreme Court of Republic of Latvia, decision of 13 January 2010 Nr.SKC-410)

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Amendments to Lithuanian Law on Companies

Lithuania: Lithuanian Law on Companies introduces a requirement to form lists of shareholders of private and public limited liability companies, and other amendments

On 15 December 2009 the Lithuanian Parliament adopted amendments to Lithuanian Company Law.
The amendments impose a new duty on the head of a private limited liability company. All newly established private limited liability companies (UAB) must form lists of shareholders, while existing private limited liability companies (UAB) must also form lists of shareholders and file them with the register of legal persons no later than 1 October 2010.
The amendments also regulate in more detail the right of the head of a company to resign from office. From now on the head of the company may personally file resignation documents with the register of legal persons if this duty is not performed by the body that elected him.
The amendments also set shortened periods related to transfer of shares of a private limited liability company (UAB). Other amendments relate to the possibility in certain cases not to convene a constitutive meeting of a UAB, and expansion of the list of sources where public announcements by the company may be published. Some of these amendments will apply as of 1 March 2010; the others will come into force only as of 1 October 2010.

Source: (Nr. XI-564, VZ, 2009-12-28, Nr. 154-6945)

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Unique antitrust instruments in Hungary

Hungary: Whistle-blower award and presumption of quantum of antitrust damages

With the purpose of securing more effective disclosure of price-fixing and market-sharing cartels, a new antitrust law instrument will be in force from 1 April 2010. The whistle-blower award may be presented to someone who provides vital written evidence to the Competition Authority regarding an antitrust law infringement leading to the Competition Authority imposing liability on the company involved. An informant may be awarded 1% of the fine imposed, capped at 50 million HUF (185 000 EUR). This new legal instrument has no precedent in Hungary, while elsewhere it is only applied in England, Pakistan, and South Korea.
Quantifying and enforcing damages arising out of antitrust infringements is a major challenge in modern antitrust law. In particular, both professionals and the European Commission are currently concerned with obtaining evidence in these cases. As of 2009, Hungarian legislation provides an easy avenue for proving quantum of antitrust damages. If an infringement is demonstrably price fixing, injured parties bringing claims against infringers can rely on a legal presumption, namely that the infringement caused a price increase of 10%. The presumption is rebuttable, that is, the mark-up applies unless the contrary is proven.

Source: (Act LVII of 1996 on the Prohibition of Unfair Trading Practices and Unfair Competition, Section 79/A. and 88/C.; Oxera (December 2009): Quantifying antitrust damages, Towards non-binding guidance for courts)

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Tax changes in Estonia 2010

Estonia: Several tax related changes in place in Estonia as of 1 January 2010

On 26 November 2009 the Riigikogu (Parliament) approved Amendments to the Income Tax Act. The income tax rate of 21 % did not change (either for individuals or for legal entities) as was planned previously. Under the changes, study loan interest, trade union subscriptions and membership fees and gifts by donation to political parties may not be deducted from an individual`s income for 2010.
On 11 November 2009, the Riigikogu (Parliament) adopted Amendments to the Value Added Tax (VAT) Act. These entered into force in January 2010. The amendment was approved to adopt changes to VAT directive 2006/112/EC by directives 2008/8/EC, 2008/9/EC and 2008/117/EC into Estonian VAT legislation. Under the amendments, services supplied between persons engaged in business will in general be taxed in the country where the service recipient is established, although some exceptions will still apply. Companies must now submit a report to the tax authorities not only of intra-community supply of goods but also of intra-community services. This enables tax authorities more effectively to control proper payment of VAT. The refund procedure for VAT paid in another Member State is also simplified; for example, refunds can be applied for through the Estonian Tax and Customs Board electronic service desk.
Further, under Land Tax Act changes two deadlines are now set for paying land tax – 31 March and 1 October. By 31 March, at least half of the annual tax amount (but not less than EEK 1,000 [one thousand]) must be settled. Land tax must be paid by the owner, superficiary, or usufructuary of an immovable as of 1 January 2010 according to the land register.

Source: (RTI 2009, 54, 362; RTI 2009, 56, 376; RTI 2009, 65, 441)

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Facilitation of business activities in Ukraine

Ukraine: Changes to certain laws for facilitation of business activities in Ukraine

On 30 December 2009 the new Law on Amendments to Certain Laws of Ukraine to Ease Conditions for Business Activities in Ukraine came into effect. The new Law sets more favourable conditions for business activities in Ukraine.
Under the new law the share capital of a limited liability company was decreased from 100 statutory salary amounts to UAH 869,00.
In addition, licenses required for certain types of business activity will be issued for an unlimited period. At the same time the license term may be limited by the Cabinet of Ministers of Ukraine but may not be less than five years.
Further amendments touch upon the approval system in the field of business activities. The new Law introduces the principle of silent consent. Under this principle, a company or an entrepreneur can start business activity without obtaining a permit if an application for a permit was filed with the appropriate authority but neither a positive nor a negative decision is made. In addition, the law defines the period for processing permit applications. This is now ten days unless otherwise prescribed.
The new law also declares a moratorium on inspections of small companies until 1 January 2011 with the exception of:
inspections of small companies whose business activities pose a high risk;
ordinary and unscheduled inspections by tax authorities;
ordinary and unscheduled inspections of small companies whose business activities pose a high and medium risk by the pension fund;
unscheduled inspections by the consumer protection committee upon consumer complaints.

Source: (Law on Amendments to Certain Laws of Ukraine to Ease Conditions for Business Activities in Ukraine No. 1759-VI, 30.12.2009 No. 244)

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Important changes in Labour and Health care law

Slovakia: Changes coming into effect in first Quarter 2010 to ensure that terms of part-time and temporary employment conform with European law

An amendment to the Labour Code, in force as of 1 March 2010, deals with treatment of part-time employees in the same way as full-time employees, mainly regarding protection against dismissal. Additionally, the maximum length of a temporary employment contract will decrease from three years to two years. Temporary employment can be extended or repeated up to twice within the two-year-period without stating a reason, instead of once as hitherto.
A statutory order fixes the amount of the minimum wage for 2010 at EUR 307.70 monthly and at EUR 1.768 for every hour worked. This means an increase of 4.1% in the minimum wage in comparison to 2009.
Finally, an important change in the field of insurance companies is in force. At the beginning of the year the total number of major insurance companies reduced from five to three. The state health insurance companies Spoločná zdravotná poisťovňa, a.s. and Všeobecná zdravotná poisťovňa, a.s. merged, while Všeobecná zdravotná poisťovňa, a.s. appears as assignee. Additionally, the cartel authority approved a merger of two large private insurance companies, DÔVERA zdravotná poisťovňa, a.s. and APOLLO zdravotná poisťovňa, a.s. As of 1 January 2010 these appear together under the name DÔVERA zdravotná poisťovňa, a.s.

Source: (Collection of laws No. 574/2009, No. 533/2009 and No. 441/2009; Decision of the Antimonopoly Office of the Slovak Republic Nr. 2009/ZK/3/1/059)

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News from the bnt-offices

bnt Riga in new premises

From 1 April the office is located in the same building as the Riga Graduate School of Law in the historic art nouveau district of Riga. “The growth of our office necessitated these larger premises, though the proximity of the law school will certainly provide additional inspiration to our work” explains managing partner Arturs Krauklis.

Budapest Office expansion with real estate and litigation specialist

Dr. Gyula Horváth (35) recently joined the Dispute Resolution Team of the Budapest Office. Dr. Horváth started his career with a well-respected local law firm specializing in the field of real estate law and litigation. Besides many publications concerning real estate and business law issues, he co-authored the Big Handbook on Real Estate Law (2010) and is visiting lecturer at several universities in Budapest. Says Dr Horváth about his move to BNT: “For years I have worked with the BNT Budapest team both as an opponent and in cooperation. I was impressed by their vocation and the diversified international atmosphere wherever BNT is acting. I hope that with BNT I can put my previous experience to good use.”

bnt Attorneys organize international conference on EU Insolvency Regulation

bnt Attorneys and the Lithuanian German Lawyers’ Association are hosting a conference on “The Baltic States and the EU Insolvency Regulation” on 20/21 May 2010 in Vilnius/Lithuania with speakers from Lithuania, Latvia, Estonia, Germany, the United Kingdom, and other countries. Presentations and panel discussions will address topics such as forum shopping, recognition of foreign insolvency proceedings and liquidators, CoCo guidelines, coordination of concurrent proceedings, insolvencies against natural persons, recent developments in local jurisdiction, as well as latest trends. The event is supported by INSOL Europe, Riga Graduate School of Law, Vilnius University Law Faculty, the Latvian Insolvency Agency, and GÖRG Rechtsanwälte.

Information and registration: info.lt@bnt.eu

bnt lectures on waste management and conversion in Poland

At a conference on “Thermic Conversion of Communal Waste” on 24-25 February 2010 in Sosnowiec, bnt Warsaw partner Małgorzata Zamorska and associate Joanna Krawczyk gave presentations on the public law framework for investments with environmental relevance, as well as on the influence of the new European Waste Directive on Polish legislation. The establishment of waste combustors is a “burning issue” in Poland not only because EU directives set deadlines for establishment of such investments (by 2013) but also due to significant EU financial help for co-financing waste combustor utilities.

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