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SCWP SCHINDHELM

EDITORIAL

Dear Reader,

Welcome to the 17th edition of our international newsletter, which we have created together with the partner law firms of the Schindhelm Alliance. In this edition, we have also prepared a variety of current topics for you.

We hope you will find it an interesting read and look forward to your comments and suggestions for the next edition.

Your SCWP Schindhelm Team

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I. CONTROVERSIAL GLOBAL CHALLENGES IN ENVIRONMENTAL PROTECTION

The flood of single-use plastic must be stopped. Recently, therefore, the EU directive "on the reduction of the impact of certain plastic products on the environment" entered into force. As a result, the use of plastics as consumer packaging and goods will change massively in the future. Manufacturers and dealers will clearly be held accountable for the sustainable use of plastics. – What is new?

II. BAN ON MARKETING

The marketing ban on certain single-use plastic articles and goods made of oxo-degradable plastic has already been much discussed. These include plastic plates, plastic cutlery, balloons, plastic drinking straws and cotton swabs with plastic components. However, certain foamed takeaway packaging will also be withdrawn from the market as of July 2021. Manufacturers must look for alternatives made of bamboo, paper or wood.

III. HIGHER PRODUCT REQUIREMENTS

The product design of single-use plastic products must be modified in such a way that closures cannot escape into the environment individually. As of July 2024, closures and lids must be firmly attached to the container, and PET beverage bottles must contain a so-called "recyclable content" of 25% as of 2025.

IV. LABELLING OBLIGATION

Balloons, cigarette filters, wet wipes, plastic cups and other articles must be labelled to inform the consumer of appropriate disposal options and of the negative effects of careless discarding.

V. OBLIGATION TO BEAR COSTS

In the future, manufacturers are to contribute to the costs of collection, recycling and sensitisation measures.

VI. CONCLUSION

Manufacturers of plastic consumer packaging are primarily affected by the new requirements of the EU directive.

The entire trade sector will also not escape scot-free. It will be a particular challenge for this sector to remove articles that are no longer marketable in the short term. The logistical effort involved alone makes people sit up and take notice and requires timely precautions.

The Directive requires Member States to introduce appropriate and dissuasive penalties for breaches of the new obligations. These will most likely be fines. The most effective sanctions, however, will certainly be warnings and injunctions from competitors and consumer protectors, who detect banned goods after the respective deadlines.

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EUROPE: LIABILITY OF THE OPERATOR OF A WEBSITE FOR THE FACEBOOK "LIKE BUTTON"

I. BACKGROUND

The European Court of Justice (ECJ) recently ruled on the long-discussed question of whether and how website operators can integrate the Facebook Like button (so-called "social plug-in") in accordance with data protection requirements.

Th ECJ's investigation results from a legal dispute between the Consumer Association of North Rhine-Westphalia and a subsidiary of Peek & Cloppenburg KG.

The retail chain had included the Like button on its website. This resulted in the personal data of the visitor being transferred to Facebook when the website was accessed. The data transfer took place regardless of whether the visitor was aware of it, the Like button was clicked or the visitor was a Facebook member at all.

Facebook, on the other hand, was able to track the visitor's behaviour and create profiles through data transfer. This allows internet content to be displayed to visitors that is specifically tailored to their interests.

The consumer association filed a complaint against this. According to the association, the user's consent is required for the data transfer to Facebook; in addition, the user must be sufficiently informed about the data transfer. Otherwise the data transfer is unlawful.

II. DECISION OF THE ECJ

If the website operator includes the Like button on its website, it is responsible for the collection and transmission of the visitor's data to Facebook. In the future, the website operator must expressly inform the visitor about the data transfer. This does, of course, not apply to the data processing by Facebook itself.

The ECJ left unanswered whether the visitor's consent is required for the data transfer or whether (still) a weighing of interests is sufficient. This will now be decided by Düsseldorf Higher Regional Court. In any case, it is clear that the processing of visitors' personal data requires concrete justification.

III. EFFECTS IN PRACTICE

One can assume that the decision for similar plug-ins (from Google to Twitter) will have a corresponding role model effect.

As responsible officers, website operators with social plug-ins must expressly give notification in the future that personal data will be collected and transmitted to the provider of the social plug-in.

It is still unclear whether consent is required for the processing of the data when integrating a social plug-in or whether a weighing of interests is sufficient. What is certain, however, is that the need to grant consent leads to new pop-up windows on the websites.

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EUROPE: IMPLEMENTATION OF THE EU TRADE SECRETS DIRECTIVE

I. BACKGROUND

The new "Law on Trade Secrets" now implements the so-called "EU Trade Secrets Directive". This adopts the European legal requirements for the protection of confidential know-how and secret business information.

Even in the past, authorised signatories, commercial agents, trade assistants, commercial agents and trade brokers had to treat not only so-called "trade secrets" but also the reputation of their clients as confidential. Recently, these persons have even been subject to special liability.

Moreover, the new legal provisions contain limitation periods and important procedural provisions for the protection of trade secrets in court proceedings.

II. SUBJECT MATTER AND IMPORTANT REGULATIONS

Infringing products may be goods or services. Goods and services infringe the law if their design, features, functions or manufacturing processes are based, to a considerable extent, on unlawfully acquired, used or disclosed trade secrets.

If a trade secret is infringed, its owner can file a court action. This right shall expire five years after the date of the infringement. However, the defendant and any third party may claim damages if the action was unfounded or fraudulent. This entails a certain risk for the plaintiff. The deadline for the opponent to assert damages is one year.

III. PARTICULARITIES IN COURT PROCEEDINGS

The parties, any other person who can prove a legitimate interest and witnesses in the proceedings may request the court to designate as confidential certain information submitted in the proceedings.

In justified cases, the court may restrict access to documents or to court proceedings.

In addition, documentation can be prepared that does not display any trade secrets.

However, these restrictions do not apply to the parties to the court proceedings or to their lawyers. Participants in court proceedings (parties, lawyers, witnesses, experts, court officials, etc.) are obliged - with a few exceptions - to keep the secret they become aware of during the court proceedings even after the proceedings have ended.

If measures prescribed in a ruling are not complied with, fines of 500.00 lev per week will be imposed. However, such fines are capped at the value of the damages claimed or awarded.

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CHINA: EFFECTS OF THE "SOCIAL CREDIT SYSTEM" ON FOREIGN COMPANIES

I. FUNCTION AND PURPOSE

The Chinese "Social Credit System" (SCS) is an autonomous credit rating system based on "Big Data" with the purpose of regulating economy and society. It is to be introduced nationwide by the end of 2020 as a centralised control instrument.

Not only individuals but also domestic and foreign companies will be affected by this system. The declared aim of the SCS is to persuade all market participants to behave in accordance with the law and regulations through self-regulation.

For this end, data of companies is recorded in a central database, the "National Credit Information Sharing Platform". The data processing is carried out with the help of artificial intelligence; based on various ratings, an "overall score" is determined for the company, which is then publicly available as a "confidence index". The better the rating, the easier it is for a company to capitalise on the positive rating. On the other hand, companies with a poor rating face negative consequences, such as poor credit conditions, difficult access to the market, denial of public aid, exclusion from participation in public tenders and blacklisting.

II. IMPORTANT ASPECTS

The SCS affects almost all areas of the company, such as taxes, customs, finance, social security, occupational health and safety, environmental protection, product safety, data protection and intellectual property. Some of these are already subject to independent official ratings. In future, the ratings of the individual divisions will be combined and subjected to an overall assessment. This results in the "overall score" of the company.

By the end of 2020, all relevant data from up to 30 corporate divisions will be collected centrally. They form the basis for assessing whether a company complies with the law or regulations. Companies with sales branches or subsidiaries in China must ensure that the branches and/or subsidiaries do not achieve a bad rating in order not to lose out themselves.

Regional headquarters as well as companies with an extensive sales network in China are thus faced with the enormous challenge of implementing effective controlling instruments in order to avoid the risk of a bad "score".

III. PREPARATION IS EVERYTHING

The SCS is a complex and challenging system. Every company should therefore carry out a compliance analysis promptly in order to identify various risk areas. The most important thing here is to know your own company, its internal processes and business structure. Internal processes must be adapted to the legal framework and continuously monitored.

At first glance, the Chinese market could become more difficult for foreign companies. However, it is to be expected that the successful implementation of the SCS will lead to significantly more transparency. This could reduce transaction costs, e.g. because a comprehensive due diligence of the contractual partner in the context of initiating business is not necessary.

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GERMANY: BAN ON FACEBOOK FAN PAGE PERMITTED

I. THE STARTING POINT

The courts have been dealing with the dispute between the Wirtschaftsakademie Schleswig-Holstein (Business Academy Schleswig-Holstein) and the Unabhängiger Landeszentrum für Datenschutz (ULD [Independent National Centre for Data Protection]) for more than eight years now. Originally, the ULD had prohibited the Academy from continuing the "fan page" presence it maintained on Facebook. On the one hand, the lack of information on data processing and the rights of data subjects and, on the other, the ineffectiveness of objections by users were criticised. The Business Academy initially successfully defended itself against this before the Higher Administrative Court (OVG). In June 2018, the European Court of Justice ruled that the operator of a Facebook fan page was jointly responsible for the data processing operations carried out there, following a submission by the Federal Administrative Court (Bundesverwaltungsgericht - BVerwG). After all, it is the operator who makes data processing by Facebook possible in the first place by means of the fan page it maintains.

II. THE DECISION OF THE BVerwG

The German Federal Administrative Court thereupon recently reversed the appeal decision. The ULD was not obliged to take action against any of Facebook's subsidiaries because this would have entailed considerable actual and legal uncertainty due to the lack of willingness to cooperate. If the data processing operations on the Academy's fan page were to be classified as unlawful, the order to deactivate them was, in the view of the BVerwG, also a proportionate means. The Business Academy would not have any other options for the creation of data protection-compliant conditions.

However, the proceedings have not yet been completed. The Federal Administrative Court referred the matter back to the Higher Administrative Court of Schleswig-Holstein in order to clarify the question of the illegality of data processing. In this respect, it will be interesting to see whether it will be possible to reveal the data processing procedures conducted by Facebook in more detail.

III. CONSEQUENCES IN PRACTICE

Almost every company has not only a homepage, but also a Facebook page. However, a legally safe operation of a Facebook fan page is hardly possible from a data protection point of view and according to current knowledge - the data processing of Facebook is too opaque.

In addition, the principles established by this ruling - as well as the pioneering ruling of the European Court of Justice on joint liability - also apply in principle to other social media companies.

If the operators of a Facebook fan page do not want to take any risks, the only option is to deactivate the social media page. If this is not desired from an entrepreneurial point of view and the associated risk is accepted, at least as much information as possible about the data processing processes should be provided. A separate privacy policy should be implemented on each page.

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ITALY: THE NEW LAW ON CORPORATE CRISES AS A "WORK IN PROGRESS"

I. THE REFORM

A new law on company crises has significantly changed the rules applicable to limited liability companies in this respect Among other things, the liability of the company's management was tightened.

II. INTERNAL SUPERVISORY BODY

The prerequisites for the mandatory appointment of an internal supervisory body have also been adapted. Accordingly, such a supervisory body is now required whenever, in two consecutive financial years, the assets or turnover exceed four million euros or an average of 20 employees are employed. These thresholds were initially drastically lowered in the course of the reform, but then raised again, partly due to being fiercely criticised. "Early adopters", i.e. companies that have already implemented a supervisory body can initiate a dismissal by a court of this body, although this is no longer necessary due to current values.

Furthermore, the tasks of the supervisory body were expanded: After the supervisory body reports "justified signs" of a company crisis, the management must make a report addressed at this body within 30 days. The report must refer to proposed solutions and measures already taken to eliminate the crisis. If the management does not become active or becomes insufficiently active, the supervisory body must report the crisis to the state "crisis resolution body" This sets in motion negotiations between the company and its creditors.

III. CRISIS INDICATORS

A draft of the leading indicators has been available since September. The most important indicator is the "debt service coverage ratio" (DSCR), i.e. the ratio between the amount of the company's liabilities and the budget at their disposal over an observation period of six months. Default in agreed payment terms shall also be taken into account.

Where the DSCR cannot be determined, five other indicators shall be used in an overall assessment: The portability of financial charges, the valuation of the cash flow and the amount of liabilities for social benefits and taxes.

IV. EVALUATION OF THE REFORM

The new Crisis Code is expected to lead to noticeable changes in corporate management. In the future, the company's internal organisational and financial structure will require ongoing examination for appropriateness. The fact that there is still no consolidated practice makes the matter just as challenging as ongoing legislative changes.

The introduction of early warning systems also entails the risk of incorrect "sick reports". By means of a "self-fulfilling prophecy", healthy companies could themselves only enter the actual crisis by triggering the crisis (elimination) mechanisms. This may be the case, for example, when business relations with creditors or financing banks deteriorate as a result of the crisis instruments.

Therefore, the reform's true impact remains to be seen: Will there be a change in corporate culture or will there be an increase in corporate crises?

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AUSTRIA: ON THE TERMINATION OF THE LEASE DUE TO CONSIDERABLY DETRIMENTAL USE

I. LEGAL BASIS

According to Sec. 1118 ABGB (Austrian Civil Code), the lessor can terminate a lease unilaterally prematurely if the lessee makes a "considerably detrimental use" of the leased object. For the scope of application of the MRG (Austrian Tenancy Law), Sec. 30 para. 2 clause 1 provides a nearly identical regulation.

The scope and content of these legal provisions is a constant source of discussion.

II. STRUCTURAL CHANGES BY LESSEE

The mere performance of structural alterations by the lessee without the consent of the lessor does not in itself justify a good cause for the termination of the lease.

The Austrian Supreme Court has recently ruled that an autonomous conversion alone does not entitle the lessor to an immediate termination of the contract if the essential structure of the leased object is not significantly damaged. This applies even if the intentions or specifications of the lessor are disregarded.

Rather, the termination of a contract would require a violation of important economic or other interests of the lessor or conduct that would make the continuation of the contract unreasonable.

Such a violation must be explained by the lessor. This is not the case with mere conversion work, even if this is carried out autonomously.

Properly implemented measures to improve or modernise the object of the leased object do not, in principle, constitute an infringement that justifies termination. This would not be the case, for example, even if the building authorities had to be consulted before implementing the measure or if the consent of the lessor had been required.

Essential interests of the lessor are affected if there is a substantial damage to the essential structure of the house. This is not the case, for example, with the installation of a suspended plaster ceiling or with drill holes for spotlights.

III. CONCLUSION

If a lessor wishes to prevent lessees from carrying out installation or conversion work without its consent, the lessor must prove why its essential interests are impaired by the respective measure.

Improvements to the leased objects or modernisations usually do not constitute an infringement that justifies termination.

Therefore, it will sometimes not be sufficient to make the execution of conversion work in lease agreements dependent on the mere consent of the lessor. Rather, concrete facts or measures should be cited which entitle the lessor to terminate the lease.

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AUSTRIA: EVEN MORE TRANSPARENCY FOR TRANSPARENT COMPANIES

I. THE STARTING POINT

State and corporate compliance obligations to combat money laundering and terrorist financing remain an utmost priority for EU member states. Companies ("legal entities") have therefore been obliged to disclose their "beneficial owners", among other things, for quite some time. In Austria, a separate database - the "Beneficial Owners Register" - was set up for this purpose. The beneficial owner is the person who is the legal owner of a company or who (otherwise) exercises control over it.

II. EVEN MORE TRANSPARENCY

In course of the implementation of the 5th EU Money Laundering Directive, further tightening measures have now been adopted. These will come into force in stages, starting in January 2020. The aim is to establish the register as a central platform for the identification and verification of "beneficial owners".

III. INSPECTION FOR ANYONE

Some innovations bring about a real paradigm shift: Previously, only a limited number of obligated persons were permitted to inspect the register, in addition to the authorities, under certain conditions. In the future, anyone will be able to inspect the register. A special interest is no longer a prerequisite. Such a public extract contains essential data on the company concerned and its beneficial owners. Trust structures shall be disclosed; they may be kept secret only exceptionally and under very limited conditions.

IV. ANNUAL REVIEW

Legal entities shall, at least once a year, obtain adequate, accurate and up-to-date information about their beneficial owners and their economic interests. In addition, it must be checked whether the beneficial owners reported to the register are still up to date. Within four weeks of the due date of the annual review, observed changes shall be reported or the reported data confirmed.

V. COMPLIANCE PACKAGE

The "Compliance Package" is also new. This (voluntary) instrument creates the possibility to upload into the register all information, data and documents necessary for the identification of the beneficial owner. However, certain information must mandatorily be disclosed, e.g. an organisation chart or evidence of relevant trusteeships. Articles of association or partnership agreements must also be registered if they result in differing voting rights or control relationships. All in all, the requirements for a CP are quite strict. In exceptional cases, documents may be replaced by substantiating notes. The management of the legal entity shall confirm that the CP is complete. – Purpose: With a CP, the time required to provide substantiating information on demand can be reduced. In any case, a legal entity is obliged to do so.

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POLAND: ELECTRICITY PRICE SUBSIDIES FOR COMPANIES

I. BACKGROUND

In 2018, the prices for CO2 emission certificates increased sharply. A direct effect of this was the rapid increase in electricity prices. Despite promises to the contrary, the government did not prevent this price increase. However, compensatory measures have been proposed for 2019. For some companies, these interventions are to apply beyond that date, but up to a maximum of 2028.

II. MICRO AND SMALL ENTERPRISES

In the case of micro and small enterprises (MSE) whose electricity costs rose after 30 June 2018 following the conclusion of new or amendments to existing electricity supply contracts, energy supply companies (ESCs) had to reinstate more affordable electricity prices (i.e. those of 30 June 2018) by 13 September 2019.

The prices should be frozen retroactively from 1 January 2019 to 30 June 2019 or 31 December 2019. This depends on whether the respective micro or small enterprise had submitted the legally prescribed self-declaration of MSE status to the ESC in good time.

If the ESC has not yet carried out a settlement with the respective micro or small enterprise or has not even attempted to do so (e.g. by sending a draft addendum), it is advisable to check whether the enterprise has perhaps been wrongly overlooked.

III. MEDIUM-SIZED AND LARGE ENTERPRISES

In the first half of 2019, medium-sized and large enterprises (MLE) made use of the frozen electricity prices under the same conditions as MSEs, but without having to submit a status declaration to the ESC. If the settlement has not yet taken place, it must be checked whether there is perhaps a mistake on the part of the ESC.

In order to be eligible for support in the second half of 2019, MLEs must apply for so-called de minimis aid to offset increased electricity costs. Although the deadline for applications only expires on 30 June 2020, the first applications can already be submitted after the end of the third quarter of 2019.

IV. ENERGY-INTENSIVE SECTORS OR SUBSECTORS

A separate support programme has been set up for sectors with high energy consumption. Electricity-intensive companies (including producers of aluminium, steel, paper, chemical fibres and many other industrial sectors) can therefore receive compensation of the national electricity price annually, but no later than 2028. Eligible companies will be compensated for their electricity costs if they submit the complex aid application for the relevant accounting year by 31 March of the following year.

The compensation for the year 2019 coincides with other support measures for this period. Aid under the conditions applicable to MLEs is in principle not available to energy-intensive companies for the second half of 2019. However, they can benefit from the frozen electricity prices like other companies. If they have not waived this right by mid-September 2019, they can only apply for compensation for the 2020 settlement year by 31 March 2021.

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POLAND: NEW VAT OBLIGATIONS FOR FOREIGN COMPANIES

I. AMENDMENT OF THE POLISH VAT ACT

Entrepreneurs who do business in Poland and are registered there for VAT purposes will face new obligations as of November 2019.

II. BANK ACCOUNT IN POLAND

All companies registered in Poland as VAT payers must submit their bank accounts for inclusion in the list of taxpayers. It is important that they have an earmarked special account for VAT payments, which has been verified using the so-called "STIR system". „STIR" is a state supervisory system based on algorithms and operated by the Polish "Settlement Chamber".

If it is not possible to audit foreign banks via the STIR system, foreign entrepreneurs registered in Poland for VAT purposes are required to open such a special account in Poland. It is noteworthy that the Polish tax authorities are to reimburse the costs of maintaining the account.

Larger amounts may only be transferred to bank accounts indicated in the list of taxable persons. Otherwise, the business partner will not be allowed to set off business expenditures. In the most extreme case, the business partner may even be held jointly and severally liable by the VAT payer for irregularities in the VAT statement. These sanctions shall take effect at the beginning of 2020.

III. SPLIT PAYMENT

The previously applicable reverse charge procedure for domestic transactions will be replaced by the split payment procedure.

The new rules require certain (new) information to be included in the invoice. In addition, incoming invoices must be allocated appropriately. In certain cases, transfers may only be made using a Polish VAT special account. Any irregularities in this regard will be sanctioned in the future.

The obligation to use the "split payment procedure" applies to transactions between entrepreneurs ("B2B") taxable in Poland if their gross value per month exceeds PLN 15,000.00 (equivalent to approximately EUR 3,000.00) and if the transactions involve supplies and services listed in an annex to the VAT Act.
Accordingly, the changes relate to the following supplies and services, among others:

- products made of steel, precious metals, non-ferrous metals;
- waste, old metal, secondary materials;
- electronic devices, in particular: processors, smartphones, telephones, tablets, netbooks, laptops, gaming consoles, print cartridges, toner hard drives;
- fuels for combustion engines, fuel oils and lubricating oils;
- emission rights for greenhouse gases;
- construction services;
- sale of car and motorcycle parts.

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ROMANIA: BAN OF BEARER SHARES FROM CORPORATE LAW

I. BACKGROUND

In July 2019, new legal measures were introduced to combat money laundering and terrorist financing. The Romanian Companies Act was also significantly amended as a result of this.

II. BAN ON BEARER SHARES

The core of the reform: In order to prevent money laundering and terrorist financing, bearer shares have been completely abolished. This means that only registered shares can be issued.
This precaution is intended to make the beneficial owners or "true" shareholders transparent.
Consequence: Existing bearer shares must be converted into registered shares. In this context, the holders of such shares are obliged to present them within 18 months at the registered office of the relevant public limited company. In addition, they must register as shareholders in the shareholders' register. The complete identification data of the parties shall be provided. Legal transactions with bearer shares are no longer permitted.

III. SANCTIONS

If shareholders with bearer shares fail to comply with their aforementioned obligation, these shares will be cancelled and the company's share capital reduced accordingly.
Furthermore, in the event that the corresponding conversion does not take place within the 18-month period, the company may be dissolved and deleted from the commercial register.

IV. CONCLUSION

Overall, the ban on bearer shares will lead to greater transparency of the identity of the shareholders of a public limited company.

In Romania, however, there are currently only a few public limited companies with bearer shares. Furthermore, these companies do not have any significant assets. It can therefore be assumed that the amendment will not have a significant impact on the Romanian economy.

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SLOVAKIA: NEW LAW ON WHISTLEBLOWING

"Whistleblower" - people who point out violations of the law - will be protected even more in the future. This is the aim of a new law that came into force a few months ago. The new regulation adds to already existing provisions on the protection of whistleblowers in the employment relationship.

I. NEW AUTHORITY

Previously, either the labour inspectorates (for the protection of whistleblowers) or the Ministry of Justice (for the remuneration of whistleblowers) were responsible.

However, the high expectations regarding the detection and combating of illegal activities have not been fulfilled since 2014. This is apparently due to a lack of confidence in the labour inspectorates.

Therefore, a separate independent central authority has now been established, which is competent for whistleblowing matters. This new authority takes over the previous agendas of the labour inspectorates and the Ministry of Justice, on the one hand, and is entrusted with additional tasks, on the other. These include, for example, the submission of comments, advice on the application of the law on whistleblowers or educational activities.

II. EXPANSION OF THE SCOPE OF PROTECTION, LONGER LEGAL PROTECTION

The new regulation has also introduced an extended definition of whistleblowing. In order to receive legal protection, it is no longer necessary whether the whistleblower has contributed significantly to the discovery of unfair practices. It is sufficient that the whistleblower was convinced of the correctness of his or her criminal complaint.

Furthermore, the duration of legal protection for the whistleblower is extended. Until now, legal protection ended when the criminal or administrative proceedings were terminated. In the future, legal protection will continue to exist three years after the termination of these proceedings.

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SLOVAKIA: IMPORTANT CHANGES IN THE REGISTER OF PUBLIC SECTOR PARTNERS

I. MORE TRANSPARENCY

As of November 2019, new legal regulations will bring even more transparency into the structures of companies that make use of public tenders or state aid.

The definition of a "public sector partner" is new. In the future, however, there will be no registration requirement for so-called "public businesses" and for the financial sector.

New interpretation rules for the determination of the value of a "repeated performance" should help to define the registration obligation more clearly.

II. DETERMINATION OF TOP MANAGEMENT, PENALTIES, NEW DEADLINES

The definition of "top management" is also new. This only refers to the members of the statutory body (i.e. managing directors and board members, but not authorised signatories).

The upper limit of fines for the members of the statutory body - who are also jointly and severally liable - shall be EUR 100,000.

The annual verification of the end user of benefits by 31/12 must, in the future, be submitted to the register by 28/02 of the following year.

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SPAIN: CORRECTIONS TO THE SHARE CAPITAL OF A LIMITED LIABILITY COMPANY

I. NEW DECISION OF THE DGRN

In June 2019, the General Directorate of Registries and Notaries' Offices ("DGRN") confirmed the decision of a commercial register refusing to register a shareholders resolution. This resolution had provided for the cancellation and invalidation of a capital increase carried out shortly before and already entered in the commercial register.

II. FACTS

The shareholders' meeting of a limited liability company had unanimously decided to cancel and suspend a capital increase that had previously been duly carried out and entered in the commercial register by offsetting receivables. The shareholders justified this by stating that the capital increase would damage the minority shareholders because their share in the share capital would be diluted by the capital increase.

The commercial register refused to register this resolution. It stressed that the shareholders' meeting could not change a capital increase already entered in the commercial register without a corresponding shareholders' resolution to reduce the capital being passed. The company could not adjust the capital decrease without complying with the statutory provisions on capital reduction (e.g. the shareholders' right of objection).

The company appealed against this decision. In addition to the minority protection, it claimed that these were doubtful receivables, the collection of which was uncertain.

III. CONFIRMATION OF DECISION BY THE DGRN

The DGRN rejected the objection.
In its explanatory memorandum, the DGRN essentially referred to earlier decisions. Accordingly, it has already been clarified that all changes in capital (whether increases or reductions) can only have an effect vis-à-vis third parties if a corresponding shareholder resolution has been passed. Besides that, such a resolution would have to provide for a capital increase or reduction in compliance with the statutory requirements. Finally, the resolution must be duly entered in the commercial register.

A mere resolution to cancel and repeal the last registered capital increase was therefore not sufficient to correct the share capital. Nor is it a question of the reasons on which such a resolution is based.

IV. CONCLUSION

The decision deals with a hot topic. For reasons of creditor protection, the decision appears in any case justifiable. For third parties concluding contracts with a company, the amount of the company's share capital is an important factor. Business partners must be able to rely on the fact that the capital can only be modified if the legal requirements for the capital increase or reduction have been fully complied with.

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THE CZECH REPUBLIC: AMENDMENT OF THE INVESTMENT INCENTIVES ACT

I. THE STARTING POINT

The current unemployment rate in the Czech Republic is 2.7%. This corresponds to the lowest value in the EU. In view of this, the Czech government is seeking to focus the system of investment incentives on promoting projects with higher added value, in addition to combating unemployment. The "Investment Incentives Act" has therefore been substantially amended.

The aims of the amendment are, in particular, to
(i) promote investment in projects with higher added value,
(ii) increase support for economically problematic regions,
(iii) improve the availability of incentives for small and medium-sized enterprises, and
(iv) improve the flexibility of the system for investment incentives.

A new government decree defines concrete parameters for the provision of incentives for investment projects. This can be easily changed by the government. What is also new is that the government must approve individual investment incentive plans.

II. PROJECTS WITH HIGHER VALUE ADDED VALUE

Eligible projects with higher added value are projects implemented in the following sectors:

(i) manufacturing industry,
(ii) technological centres (research, development and innovation) and
(iii) centres for strategic services (e.g. software development).

In certain cases, it is assumed that 80% of the employees in the investment project will receive a gross wage at least equal to the average wage in the region. It may also be necessary to include certain project shares of employees with a university degree (10%) and/or of employees in the field of research and development (2%). The purchase of machines can also be prescribed. However, the need to create new jobs has been eliminated.

III. INCREASED SUPPORT FOR ECONOMICALLY PROBLEMATIC REGIONS

If the unemployment rate in a region exceeds 7.5% and at the same time reaches 125% of the average unemployment rate, this region automatically receives increased support.

IV. IMPROVEMENT OF THE AVAILABILITY OF INCENTIVES FOR SMALL AND MEDIUM-SIZED COMPANIES

The amendment also regulates the reduction of minimum investments and the requirements for new jobs in beneficiaries of small and medium-sized enterprises.

V. CONCLUSION

The system will become more flexible. Critics of the amendments stress, however, that the government has great influence on the distribution of incentives. In addition, applicants must expect a longer procedure. The preparation becomes more complicated, the waiting times for a decision become longer.

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TURKEY: CHANGES IN SUBSIDY LAW

I. PREVIOUS LEGAL FRAMEWORK

State aid is granted on the basis of various criteria. The region or the economic sector in which the investment is made is decisive, but also the strategic importance of the investment and the level of the investment volume.

Investments in structurally weak regions receive higher subsidies than investments in industrial areas. For the award of grants, a distinction is made between six different regions. General investments (i.e. those which are not of strategic importance, are not carried out in a specific sector and do not exceed a minimum amount) are only supported in industrial areas above an investment level of TL 1,000,000.00. In structurally weak regions, however, an investment volume of TL 500,000.00 is sufficient.

In principle, the following types of state aid are available:

- exemption from VAT.
- exemption from import duties.
- reduction in income or corporate tax.
- reduction of the employer's contribution to social security.
- reduction in wage tax.
- reduction of the employee's contribution to social security.
- aid in the payment of interest and dividends.
- allocation of properties.

The actual aid granted depends on the specific circumstances of the individual case.

In addition, investments relating to a particular project may be subsidised. In order to be recognised as eligible, this project must be innovative, have a high added value and satisfy critical market needs.

It is essential that the level of dependence on supply through imports from abroad is reduced.

II. CHANGES

To date, a particularly high level of support has also been given to investments in certain sectors that increase Turkey's competitiveness, technology, research and development capacity. Such separate subsidies for major investments have recently been abolished by executive order.

In the future, aid for investments linked to a particular project will instead be extended to a specific product range ("list of priority products"). These "project-based subsidies" are granted in particular where the investment concerns the manufacture of high-quality technological products. Products that are essential for the development of certain industries are also considered eligible. These preferred areas include chemical, pharmaceutical and medical value creation, but also computer technology, electronics, optics, electrical equipment, machinery and transportation.

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HUNGARY: THE NEW LEGAL REGULATION OF DRONES

I. UNMANNED AIRCRAFT

Unmanned aircraft is a new component of the global aviation system. A new EU-Regulation on the common rules of civil aviation therefore aims on establishing rules for the use of unmanned aircraft. This Regulation, which entered into force last year, is directly applicable in all Member States. According to the Regulation, unmanned aircraft means any aircraft operating or designed to operate autonomously or to be piloted remotely without a pilot being present on board.

II. WHAT IS THE "PROBLEM" WITH DRONES?

Drones are technically designed for a variety of purposes. Subsequent military, civilian and business purposes have emerged. Only a few years ago, recreational drones became available to the public. An important feature of drones is that they can be equipped with devices which may record personal information. Such type of aviation makes it possible to observe not only persons but also objects and processes, all this even undetected. The "flying eye in the sky" has obvious privacy implications. The EU-Regulation strengthens controls on the use of drones to uphold the right of privacy of individuals.

III. AIMS OF THE NEW EU-REGULATION

In designing the Regulation, the core principles of necessity and proportionality were in focus. It is essential to identify the drone, its operator and the contact information of the operator. The flight path must be defined in advance in real-time by specifying the coordinates and time of flight; furthermore, it must be reconstructable at any time later. Unmanned aircraft uses the very same airspace as usual aircrafts. The Regulation therefore integrates the requirements for unmanned aircraft into the rules of civil aviation. Regulation at EU level was necessary since the manufacture, distribution and the use of drones in many cases extends beyond the borders of the Member States. Local authorities must carry out prior authorisation and risk assessment every time a drone takes off.

IV. HUNGARIAN LEGAL REGULATIONS IN EFFECT

Beyond the Regulation, which has – as mentioned – direct effect in Hungary, a Government Decree from 1998 on the use of the Hungarian airspace also applies to the use of drones. According to the Decree, the operation of an unmanned aircraft is permitted only on a case-by-case basis. The requests for airspace use must be sent to the State Aviation Department of the Hungarian Ministry of Defence. After obtaining an airspace license, any activity must be notified to the Ministry of Innovation and Technology. Sports and private users are relieved from this notification requirement, but are still subject to the airspace use permit.

V. WHAT'S NEXT?

Technology continues to develop unstoppably, so regulations must follow suit. The European Commission will soon publish guidelines and so-called „standard scenarios" for drone operations. It will help drone operators to comply with the adopted rules. The European Commission is developing an institutional, regulatory and architectural framework for drone services, which aim to enable complex drone operations with a high degree of automation. The EU will now have the most advanced rules worldwide. This will pave the way for safe, secure and green drone flights.

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