

# PETERKA & PARTNERS

The CEE Law Firm

CEE Newsletter, July 2013



Countries covered

Czech Republic | Slovakia | Poland | Hungary | Romania | Bulgaria | Serbia | Belarus | Ukraine | Russia |

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### **Amendment to the Labour Code**

The Parliament of the Czech Republic passed an amendment to the Labour Code which regulates the rules for repeated fixed-term employment and rest between shifts. Under the amendment creating employment will be more flexible which may be useful mainly for employers who employ seasonal workers. The amendment will take effect on 1 August 2013.

#### 1. Fixed-term employment

Under the current Labour Code the term of fixed-term employment between the same parties may not exceed three years. The first fixed-term employment may be renewed only twice, always for a maximum of three years ("3x3 rule"). Any former fixed-term employment between the same parties is disregarded three years after the termination of it.

Under the amendment this rule is modified as follows. If the employer has serious operating reasons or the nature of the job is specific so that it may not be fairly requested that the employer offer the employee indefinite term employment, the restriction mentioned above will not apply. Consequently, it means the so-called chaining of fixed-term employment, or the possibility to repeatedly make a fixed-term employment agreement more than three times consecutively. But the condition that a procedure of the employer other than the procedure stipulated by the Code is adequate to the grounds must be fulfilled.

#### 2. Continuous rest between shifts

The amendment also regulates the length of continuous rest between shifts. Under the amendment the employer is obliged to schedule working hours so that the employee has the continuous rest of a minimum of 11 hours between the end of a shift and the beginning of the following shift. Minor employees must have the minimum rest of 12 hours in 24 consecutive hours.

### **Adoption of the new Personal Data Protection Act**

On 1 July 2013, the new Personal Data Protection Act took effect. The Act's aim is to set out a transparent regulation of the rights and obligations of personal data processors and to strengthen the independent standing of the Slovak Office for Personal Data Protection when exercising its supervisory powers. Among other changes the Act defines the relation between a personal data operator and a mediator and extends a mediator's obligations. In general, the Act imposes stricter formal requirements on actions envisaged by the Act.

The requirements for cross-border transfers of personal data are simplified and changed fundamentally. Cross-border transfers of personal data into a third country which does not guarantee a reasonable level of personal data protection are possible without the Office's consent, if (except for other exemptions) the operator accepts adequate guarantees in the form of standard contractual clauses approved by the European Commission, binding in-house rules, or if the transfer is done by an operator or mediator with their registered seat or the permanent residence in the United States, which has acceded to safe harbor principles.

Finally, the Act introduces changes regarding the obligation to empower a commissioner to inspect compliance with personal data protection duties.

### **Changes in Limited Liability Companies**

The requirement to create share capital will be abolished (the minimum share capital will be 1zloty). However, an LLC will have to create supplementary capital and will be obliged to retain at least 10 percent of its profit until accumulated capital reaches 5 percent of the company's total liabilities (at the end of the year), but no less than 50,000 zlotys.

Dividends will only be paid to shareholders after the management board confirms that the payments will not result in a loss of financial liquidity in the next year. Each quarter the management board will have to assess the risk of a significant loss to the company and the maintenance of solvency.

### **Anti-Crisis Act**

Under measures in the anti-crisis act employers will be able to introduce arrangements with staff or trade unions on temporary stoppages or temporary reductions in working hours during a crisis. Consequential reductions in pay will be supplemented by the Employees' Guaranteed Benefits Fund. This financial support will be available for companies which show a decrease in turnover. Decreases in sales of goods and services will have to be at least 15 percent over 6 months during the 12 months preceding the filing of an application for support.

An employer which benefits from this support will not be able to dismiss employees during receipt of funds and for three months afterwards.

### **Amendment to the Construction Act**

Simplification and shortening the construction process are the main aims of amendments to the Construction Act. Formalities regarding building designs will be simplified. It will not be necessary to attach a declaration on provisions of energy, water, and so on. A declaration from the road administration on the possibility of connecting the land which will be invested in with the roads will not also be necessary (except of domestic and regional roads).

### **New Criminal Code takes effect**

As announced in last year's edition of PETERKA & PARTNERS' CEE newsletter, Hungary has a new Criminal Code. The new legislation was passed by the Hungarian Parliament in June 2012, but its effect was postponed to 1 July 2013.

As a reminder, the new code brings new fundamental principles, simplification and modernisation to criminal law as required by the development of the criminal law, including the nature of crimes. The former criminal code had been effective for over 30 years (since 1978).

Among the changes brought by the code are a special chapter devoted to crimes against intellectual property rights, changes to sexual offences, crimes against children, consumer offences, public order offences and offences committed by people in public life.

### **Agreements between Hungary and Belarus**

With the main goal of supporting development of business relations several treaties have been signed between Hungary and Belarus. Among other things the agreements are concerned with launching direct flights to ensure connection between Belarus, Hungary and Serbia, and starting Hungarian language courses at Minsk University. Investment protection has also been discussed, with the aim of concluding an agreement soon.

### **Support for Hungarian domestic farmers**

From May 2014 domestic farmers will be protected against foreign investments in Hungarian land. A new land act will tighten the rules for acquiring Hungarian land to restrict the purchase of farmland with speculative intentions. The Hungarian government's aim is to support family farms and smaller or middle-sized farmers, and to increase competitiveness in agricultural business.

### **Amendment to Act 220/2008 on the Promotion of Renewable Energy Projects**

On 29 June 2013, as published in the Official Gazette, the government issued Government Emergency Ordinance No. 79/2013, which took effect upon publication. The only amendment brought by the Government Emergency Ordinance to existing legislation refers to solar projects. The Government Emergency Ordinance states that the Romanian E-RES promotion system will not apply to “energy produced by solar projects located on land that, at 31 December 2013, is in the agricultural circuit (in Romanian, *teren in circuitul agricol*).“

Consequently, the deadline for removing land necessary for solar projects from the agricultural circuit has been extended from 1 July 2013 to 31 December 2013.

### **New Government Emergency Ordinance regarding Judicial and Stamp Taxes**

Government Emergency Ordinance no. 80/2013 regarding judicial and stamp taxes has been adopted. Under this enactment, certain taxes have been increased up to 4.5 times, while taxes for pecuniary claims remain unchanged.

### **Amendment to Public Procurement Legislation**

Amendments to public procurement legislation have been adopted under Act 193/2013, approving Government Emergency Ordinance no. 77/2012, which amends and completes Government Emergency Ordinance no. 34/2006, on public procurement.

Among other amendments to public procurement procedure is the raising of the minimum threshold for the direct awarding of the public procurement contracts to €30,000.

### **Amendments to the Energy Act**

The Bulgarian Parliament has recently amended the provisions of the Energy Act concerning the pricing model in the section dealing with the distribution of expenses between all parties, namely consumers, producers, end suppliers and the public supplier (the National Electricity Company).

One of the most important changes concerns the abolishment of the green supplement, until now paid by consumers and traders exporting electricity as part of the transfer fee. This is considered an export promotion measure. As far as the costs for green energy are concerned those will be compensated by a new method developed by State Energy and Water Regulation Commission.

Further, the new law states that electricity purchased by producers using renewable energy sources will be sold by end-suppliers to the public supplier at the same prices for which they were purchased from the producers. In this way the legislator intends to cut off the existing supplements paid within the price for transferring electricity.

### **Amendments to the Service Activities Act**

Parliament is adopting amendments to the Service Activities Act to clarify and supplement existing national legislation on the free provision of services in Bulgaria. This would lead to full coherence with EU law by implementing the provisions of Directive 2006/123/EO.

These amendments concern the functions of the Unified Contacting Unit, which coordinates all electronic administrative services offered nationwide. The principles of non-discrimination, necessity and proportionality are proclaimed and implemented.

The amendments will enhance the transnational rendering of services with regard to one of the major freedoms proclaimed by the Treaties, the free movement of goods and services within the EU.

**New Accounting Act**

The Serbian Parliament adopted on July 16th 2013 a new comprehensive accounting act, aimed at improve the Serbian rules and practices on corporate financial reporting and making accounting more transparent. Among others, the new act further aligns Serbian accounting rules with EU rules, introducing in Serbian accounting and financial reporting rules for instance the concept of “micro-entities” and introducing the principle of collective responsibility for financial reporting by management bodies and the legal entity acting as the supervising body in companies. In addition, the new accounting act further liberalizes accountancy services as it avoided imposing the obligation for accountants to obtain special training and license. Furthermore, the new accounting act foresees a mechanism by which the Serbian Central Bank will have direct access to all financial reports and data registered in the Companies Registers Agency; specific procedures have still to be implemented.

**New Act on the Protection of Topography of Semiconductors**

The Serbian Parliament adopted a new act significantly improving the legal framework in the protection of intellectual and industrial property rights in the field of semiconductors, aligning Serbian legislation progressively with the EU regulations in the field.

**New Act on Export and Import of Dual-use Goods**

The Serbian Parliament also adopted new regulations on the surveillance and control on export and import of dual-use goods, thus harmonizing Serbian regulations in the field with EU regulations and providing a new platform for combating illegal trade in goods having both civilian and military purposes.

**Extension of the Guarantee Term under Construction Contracts**

Decision of the Council of Ministers No 623 of 12 July 2013 extends the guarantee term for premises accepted for operation and construction services provided. The guarantee term is extended to eight years from five. The term does not apply to engineering, technical and other equipment for which the guarantee term is established by technical standards legislation; maintenance, repair and installation services and start-up works are also excluded from the new extended guarantee terms. The contractor’s liability for delayed repairs is increased from 1 percent to 2 percent for each day of delay. The Decision takes effect on 17 October 2013 and applies to agreements concluded after this date.

**Amendments to Payment Terms for the Heads of Commercial Organisations**

Decision of the Council of Ministers No 597 of 8 July 2013 imposes new payment terms for the heads of commercial organisations, regardless of ownership structure. The difference between a CEO’s salary and the average salary in the company cannot exceed eight times. Companies in which the state holds more than 50 percent should adjust the rate with the public authority. The rate for non-state companies should be defined in accordance with the rules established by the Ministry of Labour and Social Affairs. The Decision takes effect on 1 September 2013.

**Establishment of a Commission to Settle Public Procurement Disputes**

Decision of the Ministry of Trade No 12 of 26 June 2013 approves an Instruction on the administration of complaints filed regarding public procurement. The Ministry of Trade has set up a specialised commission to settle disputes in this area. Appeals against the commission’s decisions can be brought at court.

### Renewable Resources

The Cabinet of Ministers of Ukraine has adopted an Order on a plan of measures to implement EU Directive 2001/77/EC, on the implementation of the internal market of electricity produced from renewable energy sources, and on a plan of measures to implement EU Directive 2003/30/EC, on the implementation of the use of biofuels or other fuels from renewable sources of energy for transport, No. 429-p dated 19 June 2013. The Order provides instructions to develop necessary legislation and to develop national targets for the next ten years in the area of renewable energy sources.

### Bank Accounts

Changes to the Instruction on opening, using and closing bank accounts in national and foreign currency adopted by Resolution of the National Bank of Ukraine No.212 dated 6 June 2013. The Resolution amends the list of documents required for opening, using and closing accounts depending on a company's corporate form; adopts new forms of banking cards for confirmation of signatures of managers; and states that a responsible bank is obliged to send a notice to the tax authorities on the opening or closing of an account by domestic companies and foreign investors which are part of an agreement on the division of products.

### Maximum Limit for Payments in Cash

Changes to the maximum limit for payments in cash adopted by Resolution of the National Bank of Ukraine No. 210 dated 6 June 2013. The Resolution establishes the following maximum sums for cash payments:

- Business to business - no more than 10 000 Hryvnias (approximately €900) per day;
- Business to consumer for the goods (works, services) - no more than 150 000 Hryvnias (approximately €14000) per day;
- Between individuals under notarised purchase agreements – no more than 150 000 Hryvnias (approximately €14000) per day.

### Website Owner's Liability

In a ruling of 9 July 2013 (No. 18-П) the Constitutional Court held that the owner of a website is obliged to delete all information which has been declared by the court as false and discrediting any person, even if the information was published on the website by a third party.

### Information on Insolvency will be more accessible

Federal Act of 2 July 2013 No. 189-ФЗ obliges insolvency trustees to publish the following information on insolvent companies: amount of assets and their balance value, amount of claims of all creditors and their settlement, claims submitted to have the insolvent company's transactions declared null and void, and the amount of expenses during insolvency. This information will be published on a special website with free and unlimited access.

### Compulsory Pre-trial Settlement of Tax Disputes

Federal Act of 2 July 2013 No. 153-ФЗ has amended the procedure for appealing against decisions of tax authorities. Acts and decisions of tax authorities are subject to a compulsory pre-trial settlement and only if the tax authorities refuse to revoke these acts or decisions may a company or individual dispute them in court. The law enters force on 1 January 2014.

### Third stage of Amendments to the Civil Code

Federal Act of 2 July 2013 No. 142-ФЗ introduced a third stage of amendments to the Civil Code within the framework of civil law reform. Amendments have been made to provisions on the objects of civil rights, especially indivisible property, requirements to documentary and non-documentary shares, and protection of reputation, dignity and an individual's private life. The law enters force on 1 October 2013.

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