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Central European Law: 2003 Legislative Year-in-Review

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I. Bulgaria

A. AMENDMENT AND SUPPLEMENT

1. *The Constitution of the Republic of Bulgaria*

In September 2003, important amendments to the Constitution were adopted, introducing a number of changes to the judicial system in Bulgaria. The amendments replaced the existing absolute immunity of judges, prosecutors, and investigators with a functional one (i.e., exemption from legal liability for actions taken in the context of their duties as magistrates). Furthermore, the amendments accorded permanent status (immovability) to the magistrates after five years in office, instead of three years, subject to fulfilling a number of criteria.

2. *The Law on Commerce*

The 2003 amendments to the Law on Commerce have provided for substantial changes to the corporate governance of commercial companies, the legal procedures governing transformation and insolvency of commercial entities. The newly introduced amendments

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are in line with the efforts of the Bulgarian legislature to harmonize Bulgarian corporate law with its European counterpart. The purpose of the amendments is to implement the provisions of some European Union (EU) Directives, including the Third Council Directive and the Sixth Council Directive.

B. NEW LEGISLATION

1. *Law on Telecommunication*

Effective October 7, 2003, the new Law on Telecommunications aims at alignment with the *acquis communautaire*. It reflects the international trends for liberalization of the telecommunication market and establishment of fair competition. As such, it regulates the powers of the regulatory authorities, the licensing of telecommunication operators, the obligations to be placed on operators with significant market influence, and the provision of universal telecommunication service.

2. *Law on Energy*

The new Law on Energy took effect on December 9, 2003. It is entirely in agreement with the common rules of the internal market of electricity, thermal energy, and natural gas defined by the EU Directives. The law envisages a transition from the "single buyer" model to the "access of a third party to the network" model.

3. *Law on Limiting the Administrative Regulation and Administrative Control of Economic Activity*

Adopted in June 2003, the new Law on Limiting the Administrative Regulation and Administrative Control of Economic Activity seeks to increase transparency and efficiency in administrative decision-making. It regulates the general legal framework for obtaining different licenses and permits, and introduces the principle of positive administrative silence in certain cases.

II. Croatia

A. AMENDMENTS

1. *Labor Act*

After several years of negotiations between the government and the labor unions, the Croatian Parliament passed amendments to the Labor Act that represent a substantial reduction in labor rights, both in terms of shorter notice periods and lower redundancy payments. Under the amendments, gross income is defined as base salary. The most dramatic amendments to the Labor Act are considered to be the provisions regulating discrimination, harassment, and sexual harassment. The amendments have shifted the responsibility of proving the above-mentioned offenses from the employee to the employer, who now has the responsibility of proving that such offenses did not occur. Furthermore, it is important to point out the establishment of a temporary employment agency. Although such agencies had not previously been mentioned in the act, the subject now occupies an entire chapter in the amendments.

2. *The Civil Procedure Act*

The past implementation of the Civil Procedure Act has shown that: (1) proceedings last too long; (2) courts are backlogged by a large number of civil cases; (3) the quality of

delivered decisions is often poor, which is confirmed by the large number of abolished decisions of the lower courts; (4) parties often misuse their procedural rights in the course of proceedings; (5) certain procedural solutions are too formal; and (6) the institution of side judges in civil procedure has not proven its purpose.

The amendments to the Civil Procedure Act have radically reformed the act for the first time since its adoption in 1991. The procedure before the first instance and the higher instance courts has been reorganized, the system of the legal remedies has been modified, conditions for the strengthening of the procedural discipline have been established, and general functioning and speed have been improved.

The proposed Act on Amendments to the Civil Procedure Act is intended to make the civil procedure more simple and effective, as well as to increase the general level of legal protection.

3. *The Croatian Companies Act*

Recent amendments to the Croatian Companies Act entered into force in July 2003, and shall be applied as of January 1, 2004. The amendments included the following changes: (1) an increase of the minimum amount of share capital in joint-stock company from 30,000 German deutschemarks (DEM) to 200,000 Croatian kunas (HRK), and addition of the requirement that share capital be expressed in Croatian kunas; (2) a decrease of the minimum value of stocks in joint-stock company from 100 HRK to 10 HRK; (3) a decrease of the minimum contribution in limited liability company from 200 DEM to 200 HRK; and (4) provisions regulating split-up and spin-off of joint stock and limited liability companies.

4. *Bankruptcy Act*

The amendments to the Bankruptcy Act substantially altered the structure and jurisdiction of public bodies in bankruptcy proceedings. The most important alteration is the abolition of the bankruptcy council, which previously consisted of a bankruptcy judge and two other judges from the authorized Commercial Court. The abolition means that all claims are transferred to the bankruptcy judge, which introduces the principle of the single-judge panel. The amendments further enable lawyers to be registered in the Register of trustees in bankruptcy without the requirement of a special certificate, provided that the lawyers have previously concluded a contract with a financial expert. Furthermore, creditors are given a greater prerogative by the amendments, which provide that creditors with 50 percent or more of the recognized claims are entitled to the appointment of a trustee in bankruptcy by their own choice provided that his appointment complies with the provisions of the Bankruptcy Act.

B. NEW LEGISLATION

1. *Consumers Protection Act*

Pursuant to obligations arising under the EU Stability and Accession Agreement, Croatia adopted EU guidelines regarding the protection of consumers. The guidelines have been incorporated into the new Consumers Protection Act, which came into force on September 8, 2003. Before the act was passed, relevant subject matter was regulated by several separate acts (i.e., Trade Act, Standardization Act, etc.), none of which offered integral protection or included provisions on the formation of a state body that would exercise supervision. The new act has integrated in a more detailed manner regulations regarding consumer protection in areas such as buying products and consumer services. The act also regulates

the procedure for implementing a national program of consumer protection, and for establishing authorized bodies obliged to protect consumers' interests. Lastly, the act provides that a consumer domiciled in Croatia may not be denied protection under the act by the designation of foreign governing law over any contract entered into by such consumer.

2. *Foreign Exchange Act*

The Croatian foreign exchange system has been partially liberalized by the new Foreign Exchange Act (FEA), which basically follows the relevant EU Directives. FEA introduces new investment possibilities for both natural persons and legal entities, and enables direct investments abroad. Moreover, trading with foreign securities is now allowed in domestic capital markets, although several limitations related to foreign short-term securities are provided for under a special implementing decision of the Croatian National Bank (CNB). Further limitations were imposed on non-resident investors by another implementing decision of the CNB related to the acquisition and further disposition of Croatian securities and shares in Croatian investment funds (i.e., non-residents are not allowed to sell, pledge, or otherwise transfer the acquired securities to a resident for a period of one year following the day of acquisition). However, those limitations do not apply to certain categories of non-residents, including residents of countries having bilateral agreements with Croatia regarding investment protection in accordance with provisions of a respective agreement. In certain cases—for example, real property purchase, or acquisition of securities and shares—the CNB has also unexpectedly precluded the possibility of direct foreign exchange payments between residents and non-residents.

III. Czech Republic

A. THE VALUE ADDED TAX ACT

The main purpose of this amendment is to harmonize Czech VAT legislation with EC law, mainly its procedure of tax reimbursement. Part of this change is the reduction of the turnover limit relevant for registration of a person as a VAT payer. The amendment also raises certain services (i.e., telecommunications services, tax and legal consultancy, audit services) from the 5 percent bracket to the 22 percent bracket.

B. THE EXCISE DUTIES ACT

The Excise Duties Act is a completely new act, and replaces the old Excise Duties Act No. 587/1992 Collection of Laws. Although the previous act was almost completely harmonized with EC legislation, some areas remained incomplete. The new act mainly changes the administrative procedures of assessing and collecting excise duties, and in some cases increases the tax rates in order to reach the EC rates. This act is the last step toward full harmonization of Czech excise duties with the EC legislation. It introduces the new concept of tax warehouses, which are meant to ensure tax supervision of movement of tax-free goods, and also introduces the regime of conditional exemption from taxes. Although the new act generally took effect on January 1, 2004, some of its provisions have become effective upon the entry of the Czech Republic to the EU, and some will not take effect until January 1, 2005.

C. REGULATION OF ADVERTISEMENT

The main purpose of the amendment to the Regulation of Advertisement is to restrict the regulation of advertising of tobacco products. Advertising tobacco products is generally

prohibited. One exception to this rule allows advertising in specialized tobacco products shops, including tobacco product departments in stores where a wide assortment of goods and services is offered. Sponsoring, the main objective of which is promotion of tobacco products, is also prohibited.

D. FOREIGNERS' STAY AND RESIDENCE IN THE CZECH REPUBLIC

This act reflects the process of harmonization of Czech legislation with that of the EC, including providing a legal framework for subsequent implementation of Schengen regime at Czech borders. The amendment introduces procedures for, among others, the extension of short-term visas, a new regime of temporary residence, and notification duties of foreigners. If a foreigner plans to stay for more than one year in the Czech Republic, instead of obtaining a visa, he or she will be able to obtain a residence permit through a simplified procedure.

IV. Estonia

A. CIVIL LAW REFORMS

For the purpose of continuing both the harmonization of Estonian law with EC law in anticipation of the upcoming European Union accession, and the unification of principles of the commercial and property law subsequent to the civil law reform of 2002, several legal acts entered into force substantially changing the foundations of Estonian civil law. Such principal legal acts were the new General Principles of the Civil Code Act, the Law of Obligations Act, and the Private International Law Act. In 2003, the General Principles of the Civil Code Act, the Law of Obligations Act, and the Law of Property Act were amended in order to address certain issues that had come to light in the course of implementing the acts.

B. BANKRUPTCY ACT

Another significant development affecting Estonian commercial law was the adoption of the new Bankruptcy Act. Among other changes, the act: (1) introduced a specific bankruptcy procedure applicable to the bankruptcy of natural persons; (2) improved the position of claims secured with a pledge; (3) excluded tax and employment related claims from the preferred claims; and (4) introduced stricter oversight over the bankruptcy trustees.

C. ENERGY LAW

Substantial developments took place in the field of energy law. The following legal acts entered into force: the Electricity Market Act; the Natural Gas Act; the Liquid Fuel Act; and the District Heating Act. Prior to the adoption of these acts, all principal subject matters of Estonian energy law were regulated solely by the Energy Act. With the adoption of the new legislation, more detailed regulations were established for each particular type of fuel and energy source. One of the most noteworthy developments was the introduction of regulation under the Electricity Market Act, which is targeted toward the liberalization of the Estonian electricity market.

D. CONSULTANCY SERVICES LEGISLATION

The Act on Prevention of Money Laundering was significantly amended, directly affecting consultancy services. The amendments established measures to prevent financing of terrorism, and provided enforcement powers to authorities, i.e., such as the right to suspend the transaction and to seize assets. The notification and identification obligations established within the act were also extended to auditors, notaries, attorneys, and other persons providing consultancy services in connection with transactions listed in the act (i.e., transfer of real estate and of shares, foundation of legal entities, and management of funds of a client). The act was also renamed to the Act on Prevention of Money Laundering and of Terrorism.

E. PUBLIC INTERNATIONAL LAW

In the area of international law, the International Sanctions Act and the Act on International Military Co-operation were either adopted or entered into force in 2003. Among others, the Estonian Parliament ratified the Convention for the Pacific Settlement of International Disputes, the Convention for the Unification of Certain Rules for International Carriage by Air, the Patent Law Treaty, the Convention on Limitation of Liability for Maritime Claims, and Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Concerning the Abolition of the Death Penalty in All Circumstances.

V. Hungary

A. CAPITAL MARKETS

The amendments to Act CXX of 2001 on Capital Markets have brought the act fully in line with EU legislation. For example, through the inclusion of rules dealing with capital markets supervision on a consolidated basis and special provisions pertaining to managers of so-called European investment funds (i.e., investment funds established in Hungary and regulated in accordance with the relevant European legislation), the investment certificates of such funds can be freely traded in the EU following accession.

B. CREDIT AND FINANCIAL INSTITUTIONS

The amendments to Act CXII of 1996 on Credit Institutions and Financial Enterprises, which entered into force on May 1, 2004, set forth, the licensing procedure for financial institutions, rules relating to deposit insurance, and rules governing the relationships and cooperation between the Hungarian Financial Institutions Supervisory Authority, relevant EU authorities, and the banking authorities of other EU-member states. The most important modifications, however, relate to cross-border activities and the establishment of branch offices of Hungarian banks in EU-member states.

C. TELECOMMUNICATIONS

Act C of 2003 on Electronic Telecommunications relates to all electronic telecommunication activities, as well as to every activity producing radio frequency signals carried out in or aimed at Hungary. The act, which is in conformity with the relevant EU legislation,

liberalizes electronic telecommunication services, preserving those telecommunication services reserved for universal telecommunication service providers. The act establishes the National Telecommunication Authority as the new telecommunication authority.

D. POSTAL SERVICES

Related to Act C of 2003 on Electronic Telecommunication, Act CI of 2003 on Postal Services was also enacted. In conformity with the relevant EU legislation, the act liberalizes all postal services except for those specified as “reserved services,” which shall continue to be performed by the Hungarian Post Office.

E. PATENTS

The Hungarian Parliament amended Act XXXIII of 1995 on the Patent Protection of Inventions to incorporate rules relating to European patent protection and the Geneva Convention. In addition, the legislature has also modified the deadlines specified in the Hungarian Patent Office procedural rules, both as the receiving office and as the designated office under the Patent Cooperation Treaty. The patentability of biotechnological inventions shall also be regulated in conformity with the applicable EU law.

F. CORPORATE

Act XLIX of 2003 contains the regulation relating to the European Economic Interest Grouping, and amends Act CXLIV of 1997 on Business Associations and Act CXLV of 1997 on the Register of Companies, Public Company Information and Court Registration Proceedings. With respect to business associations, the act sets forth several important amendments, including changes relating to the establishment of companies limited by shares (*Rt.*), the increasing or decreasing of share capital, and the rules for acquiring the company’s own shares.

On October 20, 2003, the Hungarian Parliament amended Act CXLV of 1997 on the Register of Companies, Public Company Information and Court Registration Proceedings, modifying the rules relating to, among others, the registration procedure of limited liability companies (*Kft.*) and companies limited by shares. The legislature also modified the procedure for registering corporate amendments by electronic means, as well as the disclosure of corporate documents of limited liability companies and companies limited by shares by electronic means.

G. TAXATION

Act XCI of 2003 amends the rules relating to personal income tax, corporate tax, dividend tax, and certain regulations on local taxes and stamp duties. The act also amends the rules relating to social security contributions, private pension, and health care funds.

VI. Latvia

A. SECURITIES

The Law on the Market of Financial Instruments entered into force on January 1, 2004, fully replacing the Law on Securities, and introducing the requirements of the EU Direc-

tives. The law regulates: (1) the public trading of financial instruments; (2) the operation and supervision of the regulated market; (3) the procedure under which suppliers of investment services registered in both the EU and the European Economic Zone will render services in Latvia; (4) the cooperation of the Latvian supervisory authorities with the authorities of the EU-member states; and (5) other matters.

B. COMMERCIAL

The amendments made to the Law on Entrepreneurial Activity on April 16, 2003, supplement the routine liquidation procedure of companies with a simplified liquidation procedure, providing five new cases when the Register of Enterprises can exclude the company. These amendments apply only to those companies that do not re-register with the Commercial Register before January 1, 2005, when the Law on Entrepreneurial Activity will lose effect and will be replaced with the Commercial Law.

C. TAXATION

The amendments to the Law on Value Added Tax, adopted on December 18, 2003, state that as of May 1, 2004, a new reduced value added tax (VAT) rate of 5 percent shall be applied to certain supplies of goods and services specified by law. The new VAT rate will also be applied to the supplies of pharmaceuticals and medicinal products, which were previously exempted from VAT. The reduced VAT rate of 9 percent was effective through April 30, 2004.

D. COMPETITION

On the basis of delegation of the Competition Law, the Cabinet of Ministers issued three governmental regulations: (1) the Regulation regarding the procedure for adoption of the decisions of the Competition Council; (2) the Regulation regarding the procedure for calculation of fines in relation to prohibited agreements specified by law and abuse of the dominant position; and (3) the Regulation regarding the procedure under which the Competition Council in specific cases authorizes prohibited agreements described by the Competition Law.

E. MISCELLANEOUS

The Goods and Services Lottery Law entered into force on January 1, 2004, and regulates the manner in which goods and services lotteries are organized, the receipt of permits for such lotteries, and the manner of control over these lotteries. Until now, these areas have lacked the relevant normative regulation. The law also introduces a new state fee of 25 percent of the lottery prize fund, which the business must pay before the lottery permit can be issued. The state fee must be paid, and a lottery permit must be received, in all lotteries whose prize fund exceeds 500 Latvian lats.

VII. Romania

A. NEW CONSTITUTION

The New Constitution harmonizes Romanian constitutional law principles with those of the EU on a number of fronts. Among others, it grants foreigners the right to own land in

Romania on the basis of reciprocity—consistent with either EU accession requirements or with international treaties to which Romania is a party.

B. LABOR CODE

The Labor Code overhauls and modernizes Romanian labor legislation, but its provisions have been extensively criticized for heavily favoring employee rights. New Law 54/2003 on Unions also grants unions the right of consultation where employers' decisions may impact employees' rights and interests.

C. FISCAL CODE

The New Fiscal Code establishes the legal framework for collecting taxes, including calculation and payment methods, and deals systematically with: (1) corporate tax; (2) income tax; (3) tax on micro enterprises' income; (4) tax on income obtained in Romania by non-residents; (5) tax on income obtained by representative offices; (6) VAT; (7) excise taxes; and (8) local taxes. Procedure is governed by the Fiscal Procedure Code.

D. BANKING LAW

Law 485/2003 amending Banking Law 58/1998 harmonizes Romanian banking law with EU law and introduces more stringent banking supervision rules, in line with the recommendations of the Basel Committee (group of ten central bank governors).

E. MISCELLANEOUS

Law 161/2003 enacts certain measures to prevent and sanction corruption, and to ensure transparency in the exercise of public dignity, public office, and in the business environment. It further increases transparency by posting state budgetary creditors on the internet, and amends several existing laws in the economic field, including the Company Law.

VIII. Slovakia

A. TAX LAW REFORM

The most publicized legislative development in Slovakia in 2003 was the reform of the tax laws, although many of the changes did not take effect until January 1, 2004. The reform introduced a flat-rate income tax of 19 percent for individuals and companies. Prior to the reform, individuals could be liable to pay income tax of up to 38 percent, while companies paid 25 percent income tax.

The non-taxable part of an individual's income rose from 38,760 Slovak crowns to 80,832 Slovak crowns. Where there had previously been two different VAT rates, they have now been merged into a single rate of 19 percent for all goods and services subject to VAT. The shortfall resulting from the income tax cut should thus be partially offset by an increase in VAT revenue.

B. LABOR LAW AMENDMENTS

Other important developments during 2003 were the amendments to the Slovak Labour Code. The amendments increased the flexibility of contractual relationships between

employers and employees, including the introduction of more flexibility for employers to arrange working times to suit their operations and needs. The amendments also made it more important for employers to ensure that employees' entitlements are set out either in internal regulations or collective bargaining agreements, and provided for the distribution of power between work councils and trade unions.

C. DELAY IN CHANGES TO REGULATION OF SECURITIES TRADING

In 2001, legislation was passed to create a central depository system for securities trading in Slovakia, replacing the current system operated through the *Stredisko cennych papierov SR, a.s. (SCP)*.

The central depository system was expected to succeed the SCP on June 30, 2003; however, a legislative amendment postponed the date on which the new system would succeed the SCP to sixty days after the first membership to the first licensed central depository was granted. The first central depository license became effective in September 2003, and the first membership to that central depository was granted in January 2004.

D. HARMONIZATION OF TELECOMMUNICATIONS LAW

In 2003, a new law governing telecommunications was passed with the aim of harmonizing Slovak telecommunications law with that of the EU. This act took effect on January 1, 2004. In addition to EU harmonization, the act introduced various obligations of companies whose business includes public electronic communications networks. The act clarified the role and funding arrangements for the Slovak Telecommunications Authority, and covered some issues regarding the protection of personal data and transfer of information.

The act also provided for the simplification of entry requirements and ongoing licensing obligations for companies operating in the Slovak telecommunications market. In addition, it established competition controls, price regulation mechanisms, and conditions for the authorization of the use of electronic communications networks.

E. AMENDMENT TO THE SLOVAK CIVIL PROCEDURE RULES

An amendment to the Slovak Civil Procedure Rules (CPR) became effective on September 1, 2003, and introduced significant and wide-ranging changes aimed at expediting the court process and creating a stronger adversarial culture in civil litigation.

The amendments included increasing the jurisdiction of regional courts in order to free up higher courts for more complex first-instance cases and appeal cases, streamlining the system for issuing preliminary injunctions, and introducing stricter rules on evidence. In addition, there were various administrative amendments, including a revision of the circumstances in which appeals can be made, the imposition of limits on when a judge can be removed from a matter on grounds of partiality, and the introduction of amended rules for obtaining private hearings.