



Commercial Law Digest

Guide to commercial law developments
across Central and Eastern Europe





Welcome to the 2nd edition of our Commercial Newsletter, where we bring you key legal and regulatory updates from across Europe:

1. **Austria:** On 23 November 2023, the Austrian Supreme Court ruled that the Consumer Protection Act applies to data protection clauses if they are considered contractual provisions. On 2 May 2024, the Austrian Ministry of Justice published a revised draft to implement Directive (EU) 2020/1828 on representative actions.

Corporate sustainability: The Corporate Sustainability Reporting Directive (CSRD), effective as of 5 January 2023, must be transposed into national law by 6 July 2024. The Austrian Ministry of Justice has discussed a comprehensive draft for its implementation, proposing significant changes to the commercial code and company law.



2. **Bulgaria:** On 18 May 2024, changes were introduced to Bulgarian gambling regulation. Furthermore, a draft law amending the Consumer Protection Act is in the making.
3. **Slovenia:** The Slovenian advertising tribunal issued its first ruling on the use of artificial intelligence in advertising on 4 April 2024, in a case against an insurance company.
4. **Ukraine:** The new law on customs control and economic competition, effective as of 16 May 2024, includes exemptions of military transactions from merger control. Ukraine also launched its State Register of Sanctions on 1 February 2024.

Stay informed with our in-depth coverage of these important developments and more in this edition.



What to expect

Country spotlights:

Explore the nuances of commercial law in different EU and non-EU countries through our informative country spotlights, offering practical insights for your cross-border operations. Unpack complex legal jargon with our in-depth analyses, providing you with a clear understanding of how regulatory changes impact your business.

Expert commentary:

Benefit from our legal experts' comments as they share their perspectives on emerging trends, potential challenges, risks and opportunities within the commercial law landscape.

Risk assessment:

Take advantage of the benefits of assessing the impact of regulatory changes and prepare your business for compliance. Our professional advice, based on decades of experience, will help you along the way.

Your Guide to commercial legal intelligence

Consider this digest your guide to legal intelligence, helping you navigate the intricacies of commercial law effortlessly. As your dedicated legal companion, we are committed to keeping you well-informed, empowered, and prepared for the legal challenges that lie ahead.



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Austria



Development and date

On November 23, 2023, the Austrian Supreme Court ruled that the provisions of the Austrian Consumer Protection Act apply to data protection clauses if they are considered contractual provisions.



Description of development

In a recent decision, the Austrian Supreme Court held that data protection clauses must comply with the strict review of clauses under the Austrian Consumer Protection Act (KSchG). This decision arose from an action brought by the Association for Consumer Information (VKI) against an insurer's privacy policy. When applying for insurance, customers had to confirm that they had read the privacy policy. According to the Supreme Court, the mere acknowledgement of the notice may imply consent to its contents and qualify a data protection notice as a contract, and the court concluded that if such clauses are to be considered contractual provisions with legal consequences, they must comply with the strict transparency standards pursuant to Section 6(3) of the KSchG.



Impact and risk

The fact that acknowledgment can imply consent poses a significant challenge for companies, as the GDPR requires them to prove that they have fulfilled their duty to inform and obtain acknowledgment. If this acknowledgment makes the privacy policy part of the general terms and conditions and subject to consumer protection law, the privacy policy must also meet the strict consumer transparency standards of the Supreme Court. This requirement complicates the task of drafting legally correct, clear, understandable, and transparent privacy policies, increases the risk of legal challenges, and requires careful balancing of these elements.



Next steps and future actions

This decision is further evidence of a trend in jurisprudence towards stricter privacy policies. It remains to be seen whether this trend will continue. Meeting the required standard in practice seems almost impossible, requiring vigilant compliance efforts and potentially ongoing regulatory adjustments to meet evolving legal expectations.

Austria



Development and date

On 2 May 2024, the Austrian Federal Ministry of Justice published a revised draft of the Directive Implementing the Directive on Representative Actions (VRUN) to implement Directive (EU) 2020/1828 (Class Action Directive).



Description of development

The draft Directive proposes that "Qualified Entities" may bring actions for injunctive relief and damages. It introduces a separate Qualified Entities Act (QEG), which distinguishes between the recognition of a qualified entity for cross-border representative actions and the recognition of a qualified entity for domestic representative actions. For cross-border representative actions, any legal entity incorporated under Austrian law must be recognized by the Federal Cartel Prosecutor if it meets certain requirements, including public activity for the protection of consumer interests for at least 12 months prior to the application, non-profit status, solvency, independence from corporate influence and transparency of information provided to the public.



Impact and risk

This draft directive allows Qualified Entities to bring claims for injunctive relief and damages in court, potentially leading to significant changes in the way consumer protection is enforced in Austria. In contrast to the existing legislation, the representative action under this draft covers any unlawful conduct, thus extending the scope beyond the minimum requirements of the Class Action Directive. The new provision on redress actions allows courts to impose obligations on defendants, providing a new avenue for consumer claims. However, the requirement that at least 50 consumers be affected by the same conduct may pose challenges. The exclusive jurisdiction of the Commercial Court of Vienna and the possibility for courts to order the publication of judgments add another layer of legal complexity and potential risk for businesses.



Next steps and future actions

The review period for this draft ended on May 27, 2024, receiving many critical comments as part of the review process. If the draft moves forward, it remains to be seen how many legal entities will apply for recognition as qualified entities. Activist associations focused on privacy and climate issues may be successful in applying for recognition. We can also expect to see an increase in litigation funders and cross-border activities by qualified entities from abroad. The practical use of redress actions and the ability of courts to meet the Directive's objectives of providing an effective and efficient means of protecting consumers' collective interests are still unclear and will be critical areas to monitor.

Austria



Development and date

Directive (EU) 2022/2464 (Corporate Sustainability Reporting Directive – "CSRД") on corporate sustainability reporting entered into force on January 5, 2023 and must be transposed into national law by July 6, 2024. On April 25, 2023, the Austrian Federal Ministry of Justice (BJM) discussed a so-called "civil servant draft" for the implementation of the CSRД, which provides for extensive changes to the Austrian Commercial Code (UGB), company law, banking and stock exchange law, the Austrian Professional Trustees Act 2017 and the Auditor Supervision Act.



Description of development

The CRSD tightens the rules for social and environmental reporting by large companies and listed SMEs, requiring them to include sustainability aspects in their management reports. The BMJ has prepared a draft law (NaBeG) for implementation, and discussions are underway to allow audits by "independent assurance service providers" (IASPs) in addition to traditional auditors. A legal opinion is awaited from the European Commission.



Impact and risk

The Austrian Commercial Code (UGB) categorizes companies on the basis of size thresholds that determine their accounting obligations. The NaBeG could lead to an adjustment of these thresholds, which could benefit many companies, potentially increasing the number of micro-corporations by 10% and reducing the number of the largest companies by 10%, providing significant relief to approximately 9,000 micro-corporations and 250 large companies.



Next steps and future actions

Companies already required to report non-financial information will need to prepare for the 2024 reporting year based on the Directive and existing standards. To ensure compliance, it is advisable to engage a traditional auditor as the legal recognition of IASPs remains uncertain for now. Engaging an IASP may entail risks, so it is prudent for companies to retain traditional auditors at this stage.



Bulgaria



Development and date

Changes in the Bulgarian gambling regulation, 18 May 2024.



Description of development

Under the new legal regime major changes have been introduced with respect to advertisements ban and organizing gambling games. For example, gambling advertisements on TV, websites, and online media have been totally banned, whereas gambling advertisements on billboards are only allowed if located further than 300 metres from educations and community establishments. As for organizing gambling games, the mandatory pain-in capital has increased to BGN 750,000 (50% increase). Further, in case gambling halls are located in areas with less than 10,000 citizens, they would need to close their premises by 18 May 2027.



Impact and risk

The amendments may substantially impact existing advertising contracts, amongst others. Parties involved, including media service providers and gambling game organizers, should assess whether these legislative changes could permit the termination of agreements without penalty, under the grounds of a force majeure event, for the party that is unable to fulfill its obligation



Next steps and future actions

The changes have substantial consequences for the gambling legal regime. Apart from the changes described above, online gambling organizers would need to implement responsible gambling practices, such as limiting players' time spent on gambling, and promoting their health. The deadline for the implementation of such practices is 1 January 2025.

Additionally, brick-and-mortar (*i.e.*, land-based) casinos would need to assess the impact of the changes of their ordinary course of business.

Bulgaria



Development and date

Draft law amending the Consumer Protection Act.



Description of development

The draft law provides for the implementation of Regulation (EU) 2023/988 on general product safety as well as Directive (EU) 2020/1828 on Representative Actions for the Protection of the Collective Interests of Consumers. The draft law covers a pretty wide range of products, such as electronic equipment, cosmetic products, medical devices, tobacco products, and the collective consumer interest



Impact and risk

Under the **new product safety regime**, the following would be applicable, (i) common rules applicable to product safety would need to be established, (ii) comprehensive obligations of online marketplace operators would be established, (iii) the procedure for product recall would be changed, (iv) investigative procedure and penalty mechanism would be introduced. **As for the Directive**, (i) representative claims in telecommunications, insurance, financial services, data protection, etc would be introduced, (ii) the Civil Procedure Code would be amended to reflect representative actions, the Consumer Protection Commission would have the authority to bring representative actions for damages.



Next steps and future actions

The public consultations are expected to take place until 13 July 2024. Following this, the draft law, or respectively an amended one taking into consideration the public opinion, would be filed with the Parliament for discussion. However, considering the current political turmoil, it is not certain when the draft law will turn into a binding piece of legislation.



Slovenia



Development and date

The Advertising Tribunal of the Slovenian Advertising Chamber ruled for the first time on April 4, 2024 (Decision No. 410) on the use of artificial intelligence in advertising, in a consumer complaint against a videographic advertisement of the insurance company Zavarovalnica Triglav.



Description of development

The complainant argued that the unlabeled AI-generated content caused confusion about the authenticity of individuals featured in the ads, potentially misleading consumers about the appeal and reliability of Zavarovalnica Triglav's insurance services.

Zavarovalnica Triglav confirmed its use of AI, but emphasized that current Slovenian law does not require explicit labeling of AI-generated content.



Impact and risk

The Tribunal ruled that Zavarovalnica Triglav did not breach the Advertising Code, as the ads did not exploit consumer trust or lack of knowledge. However, the case underscored the ethical and legal implications of AI in advertising, emphasizing the potential for misleading representations and the need for consumer transparency.



Next steps and future actions

Acknowledging the importance of regulating AI usage in advertising, the Tribunal will closely monitor developments in this field. The upcoming revision of the Slovenian Advertising Code will include provisions addressing AI-generated content, aiming to enhance ethical standards and consumer protection in the evolving advertising landscape.



Ukraine: Exemption of military transactions from merger control



Development and date

On 16 May 2024, the Law of Ukraine "On Amendments to the Customs Code of Ukraine and other Laws of Ukraine regarding the Peculiarities of Customs Control and Customs Clearance of Certain Categories of Goods" (**Law**) came into force.

Along with amending the Customs Code of Ukraine in relation to customs control and customs clearance of biomethane transported by pipeline, the Law introduced changes to the Law of Ukraine "On Protection of Economic Competition", providing for a merger control exemption for outside of Ukraine transactions on development and implementation of technologies and production of military and dual-use goods.



Description of development

Based on the amendments, companies do not need to obtain prior approval from the Antimonopoly Committee of Ukraine for the military transactions provided that:

- the ultimate recipients and/or purchasers of the technologies/goods are exclusively the Armed Forces of Ukraine, other law enforcement agencies and military bodies;
- the technologies/goods are not developed and implemented/produced on the territory of Ukraine as of the date of concentration or domestic production is insufficient for the state's defense capability, and
- control is acquired by a business entity that carries out economic activities in the markets for the production, sale, or purchase of military products, military services, or the development and implementation of military technologies and dual-use goods.



Impact and risk

The Law is designated to significantly enhance Ukraine's defense capabilities against Russian armed aggression by accelerating and simplifying the execution of crucial transactions. This legislative measure will relieve companies from the burdensome requirement of filing for merger clearance, thereby streamlining the entire process. By removing the procedural obstacles, the Law ensures that defense-related transactions can be completed more swiftly and efficiently, which is vital for bolstering Ukraine's defense mechanisms in the face of ongoing threats.



Next steps and future actions

The exemption will be in effect for the period of martial law plus 90 days after its termination or cancellation and is expected to be lifted afterwards.

Ukraine: Launch of the State Register of Sanctions



Development and date

On 1 February 2024, the National Security and Defense Council of Ukraine launched the State Register of Sanctions on its website (**Register**), following the decree of the President of Ukraine issued on 29 January 2024 (No. 36/2024).



Description of development

The Register provides free public access to up-to-date and reliable information on individuals and legal entities subject to Ukrainian sanctions and is available in Ukrainian and English. The Register includes:

- grounds for imposing, lifting or amending sanctions;
- list of sanctions imposed;
- term of imposition of sanctions and their expiration date;
- details of the relevant decision imposing sanctions;
- state authorities responsible for implementing the decision on imposition of sanctions;
- list of persons subject to sanctions and information for their identification;
- information on the originator of the proposal to impose, lift or amend sanctions for each person subject to sanctions.



Impact and risk

The launch of the State Register of Sanctions will simplify access to critical information by providing a centralized, regularly updated source. As of now, the Register includes details on 28,782 sanctions actions (applications, modifications, cancellations), 10,086 sanctioned individuals, and 7,125 sanctioned legal entities. The transparency ensured by the operation of the Register will streamline administrative processes and enhance public awareness and accountability.

It is also possible to obtain an extract from the Register in electronic form with information about an individual or a legal entity subject to Ukrainian sanctions both in English and Ukrainian.



Next steps and future actions

The data in the Register will be updated regularly, no later than the day following the publication or submission of a sanctions decision to the Secretariat of the National Security and Defense Council of Ukraine. This information will remain publicly accessible unless otherwise stipulated by law.



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