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Baltic Newsletter

Law and Taxes in Estonia, Latvia and Lithuania

Issue: February 2018

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Dear Readers,

Notwithstanding global turbulence, 2017 brought, as expected, mainly positive news for the Eurozone's economy. In 2017, it recorded its strongest annual growth since the debt crisis, with the Baltic States once again leading the way. This is reason enough for us to provide a legal review of 2017 as well as a look ahead to 2018 in our current "Baltic Newsletter".

To keep competition between the Member States in balance, in October 2017 the European Parliament published guidelines for the sale of agricultural land to foreign buyers – a topic which has been the source of much dispute for many years within the EU. For the Baltic States in particular, the status of such land is essential, as agriculture still plays a major role within their economies. But even beyond agricultural use, these areas have significance: e. g. for the implementation of renewable energy projects.

At the end of 2017, the release of the so-called "Paradise Papers" brought fresh public scrutiny to the area of international tax avoidance activities and the misuse of so-called "tax havens". This has led to a new discussion on the extension of the current rules on international tax reporting and a tightening of the recently introduced country-by-country reporting (CbC reporting).

In addition, this year will see the entry into force of the new General Data Protection Regulation (GDPR). This landmark legislation aims to give citizens and residents more control over their personal data, and by standardising existing legislation within the EU, facilitate international business activities.

These topics and more will be discussed in this issue. I hope you will find it valuable reading,

Tobias Kohler
Partner, Head of Office Lithuania

> Targeting: Fight against tax avoidance – How "Paradise Papers" reignite the discussion about tightening Country-by-Country Reporting rules

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In brief:

- Multinational enterprise groups (MNE Groups) are currently regulated by transfer pricing reporting. In 2017 new reporting for such MNE Groups was introduced, called country-by-country (CbC) reporting.
- These regulations may differ in different countries.
- The current "Paradise Papers" scandal may result in the closer inspection of the reporting of respective transactions. Moreover, new, stricter regulations regarding international fiscal activity may arise in the future.

The huge leak of more than 13 million records of tax avoidance cases obtained by German newspaper "Süddeutsche Zeitung" has rocked the international business community. These cases show how individuals and corporations have, by using offshore accounts or engaging in creative bookkeeping, exploited loopholes to legally avoid taxes. This precedent has been dubbed the "Paradise Papers". It reveals the financial activity of well-known public figures as well as huge multinational enterprises. This massive glut of tax avoidance cases raises deep concern about the current tax regulation of international transfers and boosts public pressure on the tax authorities to more closely inspect financial activity related to so-called tax havens.

Current legal situation

Multinational enterprise groups (MNE Groups) are currently regulated by transfer pricing reporting. In 2017 new reporting for such MNE Groups was introduced, called Country-by-Country (CbC) reporting. According to the regulations of CbC, groups which are considered to be MNE must provide tax authorities with an annual report, including an MNE Group's fiscal information (revenue, profit, tangible assets etc.), divided by the country of business operation. This type of reporting includes a great deal of sensitive data, which is why some companies are hesitant to prepare it.

Although CbC should be under the responsibility of the Holding company of the group, each subsidiary of the company must prepare their part of the reporting also. In addition to this, in cases where the Holding company is established in a state which does not require CbC reporting, the subsidiary located in a country which requires CbC reporting, becomes the responsible party. Therefore, every subsidiary of an MNE should be aware of CbC requirements and regulations.

CbC Reporting in Estonia, Latvia and Lithuania

It is important to note that these regulations may differ in different countries. The regulation for transfer pricing, including CbC reporting differs between the three Baltic States. In the table below you may find a comparative analysis of the regulations of CbC reporting in Estonia, Latvia and Lithuania.

	Estonia	Latvia	Lithuania
MNE Group turnover threshold for obligation for CbC reporting	750 million euros	750 million euros	750 million euros
Signatory to CbC Multilateral Competent Authority Agreement[1]	Signed by Estonia	Signed by Latvia	Signed by Lithuania

[1]The CbC MCAA is an agreement which provides that Country-by-Country reports filed with the tax authority of a signatory will be automatically exchanged with the tax authorities of all other signatories.

	Estonia	Latvia	Lithuania
Notification obligation concerning CbC Report	**Informing of the reporting entity:** Obligatory **Information needed:** name of the reporting entity, country of residence **Deadline for providing information:** Notification obligation must be performed within 6 months from the end of the financial year that is the reporting year for the group.	**Informing of the reporting entity:** Obligatory **Information needed:** name of the reporting entity, country of residence **Deadline for providing information:** Information concerning the first reporting year (which began on 1 January 2016) was due before 31 August 2017. For subsequent years the notification should be made by the last day of the reporting fiscal year of the MNE group.	**Informing of the reporting entity:** Obligatory **Information needed:** name of the reporting entity, address and the place of residence **Deadline for providing information:** until the end of the current fiscal year of the MNE Group.
Submission obligation concerning CbC Report	CbC report is due within 12 months from the last day of the taxpayer's financial year.	CbC report is due within 12 months from the last day of the taxpayer's financial year.	CbC report is generally due within 12 months from the last day of the taxpayer's financial year. **Exception:** The first CbC report (for 2016) must be submitted no later than the end of the first quarter of 2018.
Sanctions	Failure to comply with the obligations of the information provider (reporting entity) and information source provided (non-reporting entity) is punishable by a fine of **up to 3,200 euros**.	Monetary penalties **up to 700 euros** can be triggered when a Latvian entity fails to report the required information within the time stipulated or fails to report the information in a complete and accurate manner.	If the MNE Group fails to provide STI with the aforementioned reports, a proper warning or fine **up to 600 euros** will be applied. It must be noted that the fine does not exempt the party from their duty to provide the aforementioned reports.

As can be seen from the table above, the turnover threshold for CbC reporting is the same in all the Baltic States. Also, all of the Baltic States have signed CbC Multilateral Competent Authority Agreement (CbC MCAA). This means that the exchange of data provided to the local tax authorities is automatic between the Baltic States and the other signatories. At the time of writing, 65 jurisdictions have signed the CbC multilateral competent authority agreement, which sets out the conditions and operational aspects for the exchange of CbC Reports on mutual administrative assistance in tax matters. In addition, CbC Reports are to be be exchanged automatically between EU Member States under EU Directive 2016/881/EU.

Notification obligation concerning CbC Report is obligatory in all three Baltic States. This part of reporting is obligatory even in such cases where a Holding company prepares CbC reporting. Every subsidiary has a duty to report to the local tax authorities about the party of the MNE Group that is responsible for CbC reporting:

- In Estonia the due date is within six months from the end of the financial year that is the reporting year of the group.
- Latvia has the same deadline; however, the notification of the first reporting period was due by 31 August 2017.
- In Lithuania this information has to be provided to the tax authorities by the end of the current fiscal year of the MNE Group.

Proceeding in Estonia

In Estonia, the reporting entity as a rule is the group's parent company. If the parent company does not fulfil its obligation then the other reporting entity that is a tax resident of Estonia is obligated to communicate all information required for the performance of the reporting obligation or submit a country-by country report. This is also the case when there has been a failure to obtain all the information required to perform the reporting obligation.

The CbC report includes aggregate information on MNE groups relating to the amount of revenue, profit or loss before income tax, income tax paid and income tax accrued, stated share capital, accumulated earnings, number of employees and tangible assets other than cash or cash equivalents with regard to each such state and jurisdiction in which the MNE group operates. It also includes information that enables the identification of the members of the MNE group, including information concerning the state or jurisdiction of tax residency of the member of the group, or under the legislation of which it is formed if it is different from the jurisdiction of tax residency, and information on the main business activities of the members of the group (specified in Estonian Tax Information Exchange Act).

A reporting entity that is a tax resident of Estonia has to collect the information and submit the CbC report to the tax authority by 31 December of the calendar year following the financial year that is the reporting year.

In cases where the group has more than one member that complies with the definition of the reporting entity, the group has to notify the tax authority of the appointment of one member of the group to submit the county-by-country report on behalf of the group. Such member of the group must be ensured access to all the information within the group that is required for submission of the country-by-country report. Each member of the group that is a tax resident of Estonia must notify the tax authority whether it is a reporting entity or not, and about which of the members of the group is a reporting entity.

Proceeding in Latvia

The regulations on the order of CbC report preparation and submission stipulate that the CbC report must be prepared by a Latvian company within a 12 month period after the end of a fiscal year if the company is a parent company of an MNE Group. It should be noted that only a few Latvian companies are parent companies of such MNE Groups, the turnover of which exceeds 750 million euros.

A Latvian company which is a member of an MNE Group must prepare and submit a CbC report to the Latvian tax administration in the following cases:

- The parent company of an MNE Group does not have a duty to submit the CbC report in its country of tax residence.
- There is no agreement on exchange of CbC reports concluded between the Republic of Latvia and the country where the parent company is a tax resident.
- The country of tax residence of the parent company and the Republic of Latvia has concluded an agreement which foresees a duty to exchange with CbC reports; however, the Republic of Latvian cannot obtain this information.

The CbC report must contain detailed information about each member of the MNE Group, such as: information concerning revenues from related and unrelated parties, information concerning the profit or loss of the company, paid income tax, accumulated income tax, share capital, accumulated income, number of employees. The CbC report must contain information about the type of commercial activity for each member of the MNE Group, as well as other information.

The CbC report must be provided to the tax administration within 12 months from the last day of the fiscal year.

If there are several members in an MNE Group which can prepare the CbC report, the MNE Group can define which company of the group is liable for preparing and providing the CbC report to the tax administration. Latvian tax payers which are members of MNE Groups must inform the Latvian tax administration of companies that are liable to submit CbC reports.
There is a special template of the report available in the Electronical Declaration System of the Latvian tax administration. The CbC report can also be imported in the Electronical Declaration System via the xml file format.

Proceeding in Lithuania

A Lithuanian parent company of an MNE group is obliged to submit a CbC report to the Tax Inspectorate. In certain cases, the parent company of an MNE group can pass the obligation to submit a CbC report to another company of an MNE group (surrogate parent company). CbC reporting rules are also relevant for permanent establishments of MNE group entities. Information related to permanent establishment should be attributed to the country in which permanent establishment is constituted.

All CbC reports submitted to the tax authorities should include country-specific information regarding the financial and other operational results of an MNE group companies. Information shall be divided into two separate tables:

- The first table should include revenues, taxes paid and an overview of other financial indicators of the MNE group segregated by country.
- The second table should show the list of all companies of the MNE group and indicate the main business activities of different companies of the MNE group in different countries.

The CbC report is generally due within 12 months from the last day of the taxpayer's financial year. There is an exception for the first CbC report for the financial year starting 1 January 2016. The first CbC report must be submitted no later than the 31 March 2018.

Group entities resident in Lithuania must provide notification to the tax authority by the end of the reporting fiscal year as to which entity is the ultimate parent, surrogate parent, or otherwise required to submit a CbC report. Otherwise, notification must be provided on the identity and residence of the CbC reporting entity (ultimate or surrogate parent).

CbC reports are to be filed electronically through the systems provided by the Lithuanian tax administrator. In cases where a parent company has no obligation to provide the report – the Lithuanian company must do it. Furthermore, a company may ask the tax authority to allow it to provide only a simple report (if it is not able to obtain all the information required). The CbC report filing can be conducted in parts: The CbC report will be considered as having been completely filed when the taxpayer submits the last part of the CbC report.

Violations may trigger sanctions

Sanctions for not meeting the obligations related to CbC reporting differ across all three countries:

- In Estonia the fine is relatively higher than in the other two countries. An entity which does not comply with the requirements for CbC reporting may be punishable by a fine of up to 3,200 euros.
- In Latvia this fine goes up to 700 euros.
- In Lithuania the entity may face a fine up to 600 euros.

Conclusion

As can be seen from the multiple regulations and rules concerning CbC reporting, the preparation of such reporting is a difficult and time consuming task. Complicating matters more is the fact that the regulations differ throughout the countries which apply CbC reporting. As this is a relatively new legislation and local jurisdictions have little experience of dealing with it as yet, receiving assistance from the relevant tax authorities can be quite troublesome. It is therefore advisable for companies to seek out expert advice so that they have the correct measures in place to perform their Cbc reporting.

Furthermore, the concern raised regarding the current tax regulation of international transactions may result in the closer inspection of the reporting of these transactions. Moreover, new, stricter regulations regarding international fiscal activity may arise in the future.

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> Focus: Acquisition of agricultural land: EU Commission issues guidelines for Member States

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In brief:

- EU Member States have the right to restrict the sales of agricultural land to preserve agricultural communities and promote sustainable agriculture.
- In 2015, the Commission launched infringement procedures against Member States that discriminate against investors from other EU countries and create disproportionate restrictions on cross-border investment, e.g. Lithuania.
- In the Communication of 12 October 2017, the Commission provides indications to Member States on the measures permissible for the restriction of the sale of agricultural land based on case law of the Court of Justice of the European Union.

Background

Agricultural land is a scarce and special asset which merits special protection. Consequently, some Member States impose restrictions on its purchase. At the same time, foreign investment is an important source of capital, technology and knowledge. It can boost agricultural productivity and improve access to finance for local businesses. EU rules on the free movement of capital are essential to ensure this cross-border investment.

In May 2016 the European Commission requested that Bulgaria, Hungary, Latvia, Lithuania and Slovakia comply with EU rules on the sale of agricultural land. Certain provisions of these Member States' laws which restrict EU individuals and companies from buying agricultural land were considered discriminatory or overly restrictive. These laws were introduced following the expiry of transitional derogations from the freedom of purchasing agricultural land which some Member States were granted when they joined the EU.

The European Parliament conducted in-depth research on the challenges EU Member States face in their agricultural land markets. These concerns are connected in particular to the increased concentration of land or excessive price speculation with land.

Estonia – national laws in line with EU requirements

Estonia complies with EU requirements.

A citizen of Estonia or another country which is a contracting party to the European Economic Area (EEA) or a member state of the Organisation for Economic Cooperation and Development (OECD), which are both referred to as a Contracting State, has the right to acquire an immovable which contains agricultural or forest land without restrictions.

A legal person whose seat is in a Contracting State has the right to acquire immovable property which contains less than ten hectares of agricultural land, forest land or agricultural and forest land in total without restrictions.

If the land plot contains ten hectares or more of agricultural or forest land, a legal person must prove that it has been engaged in the production of agricultural products, except fishery products and cotton, for the three years that immediately preceded the year the transaction for the acquisition of the immovable property is made.

Furthermore, a legal person of a Contracting State has the right to acquire an immovable property which contains less than ten hectares of agricultural land and less than ten hectares of forest land, but ten hectares or more of agricultural and forest land in total, if the legal person has been engaged in the production of agricultural products or forest management for the three years that immediately preceded the year the transaction for the acquisition of the immovable property is made.

Latvia – a new law raises concerns

European Commission institutions have expressed "concerns" about the recent restrictions put in place which requires that foreigners from other Members States who buy agricultural land in Latvia, have knowledge of the state language. In May 2016 the European Commission informed Latvia of its concerns. It was noted in the opinion of the Commission that a new law must be adopted in accordance with European Union regulation. Additionally, any new regulation must be written in such a manner that it avoids any violation of European Union regulation. The placing of language requirements as a condition for the buying agricultural land are recognized of being discriminatory in nature, as local farmers are placed in more beneficial situation than nationals of other EU countries.

Despite the concerns voiced by the European Commission, the Parliament amended the law "On Land Privatisation in Rural Areas" on 18 May 2017 (took effect on 1 July 2017) to facilitate purchase of agricultural land by local farmers and to introduce the following material changes:

Under the new law, foreign buyers of agricultural land in Latvia will be required to display a high level of knowledge of the Latvian language and, if requested by the local government, will have to be able to present their plans for a land plot they have acquired in Latvia.

The Law introduced a requirement that in order to acquire agricultural land a sole shareholder of a legal entity or

shareholders who together represent more than half of a legal entity's share capital with voting rights and all persons who are authorised to represent the legal entity must satisfy two criteria. They must obtain:

- an EU citizen's registration certificate in Latvia if they are citizens of other EU Member States, the European Economic Area or the Swiss Confederation;
- a document certifying their knowledge of the state language (Latvian) at a minimum B2 level.

To achieve Level B2 (Vantage or upper intermediate), a person must clearly demonstrate that they can understand the main ideas of a complex text on both concrete and abstract topics, including technical discussions in their field of specialization. Moreover, they must be able to interact with a degree of fluency and spontaneity that makes regular interaction with native speakers quite possible without strain for either party. They must also be able to produce clear, detailed texts on a wide range of subjects and explain a viewpoint on a topical issue giving the advantages and disadvantages of various options.

The same requirements apply to individuals who intend to acquire agricultural land.

A new restriction on land acquisition has been also imposed on related parties: they can acquire a maximum of 4,000 hectares of land.

The new law also deals with other matters, such as the registration of land plots with the Land Register that have not already been registered. From 1 January 2018, a land purchase deed concluded before 31 October 2014 and not registered in the Land Register by 30 June 2017 or with the municipal commission by 31 December 2017 can be registered at the Land Register only after consent has been obtained from the municipal commission for purchase of agricultural land.

Furthermore, from 1 January 2018, municipal agricultural land without buildings can be transferred for lease with redemption rights for a term of up to 12 years with an annual land rent at the rate of 4.5 of the land's cadastral value.

Lithuania – a law amendment is still pending

In light of the EU Commission's infringement procedure against Lithuania, in January 2017 the government approved in principle a proposal to lift the requirements for agricultural land buyers to qualify as farmers or have farming experience.

The draft amendments to the Law on Acquisition of Agricultural Land are yet to be approved by the Lithuanian Parliament.

The Commission opened the infringement procedure against Lithuania in March 2015, saying that its law regulating the acquisition of agricultural land violated EU law. The EU's executive body asked the country to amend legislation that was passed in May 2014 to tighten the rules for the sale of land to foreigners.

Natural persons or legal persons have rights to acquire agricultural land in Lithuania. A natural person must have professional skills and competence: they need to have been engaged in agricultural business activities within Lithuania for a minimum of 3 years during the last 10 years before buying agricultural land in Lithuania, and such persons must also declare their crops. This natural person must register their agricultural activity or have an agricultural education diploma. This requirement does not apply to young farmers under the age of 40 who have obtained permission to buy agricultural land in Lithuania from the National Land Service under the Ministry of Agriculture of the Republic of Lithuania.

These requirements are also applicable to buyers of legal entities which hold more than 10 hectares of agricultural land and for buyers when they are to become holders of at least 25% of the shares of a legal entity which holds more than 10 hectares of agricultural land. **This restriction is anticipated in the current law and also the current amendment project (which may still be changed by Lithuanian Parliament), meaning the acquisition of agricultural land through legal entities might still be problematic.**

Legal persons and foreign legal persons must demonstrate that they have been engaged in agricultural business activities within Lithuania for a minimum of 3 years before they may purchase agricultural land in Lithuania. Overall revenue from agriculture of such a foreign company must be satisfied, and more than 50 % of income has to come from agriculture activity. Also, proof of the economic vitality of the venture must be presented to The Ministry of Agriculture of Lithuania, which will then evaluate the company's perspectives.

From the moment the agricultural land is purchased, the foreign legal person must ensure that that land is used for purely agriculture purposes for a minimum of 5 years (unless during this 5 year term, the agricultural land is transferred to third persons). Violation of this 5 year rule can result in the fine of up to 3,000 euros. The minimal approved income level per hectare (set by the Ministry of Agriculture) must be maintained.

Person or related persons can purchase from the State a maximum of 300 hectares of agricultural land in Lithuania. Person or related persons can purchase a maximum of 500 hectares of agricultural land from the State and other persons combined. This limit does not apply if the agricultural land is purchased for cattle breeding in Lithuania, and if purchased agricultural land does not exceed the ratio of one conditional animal per one hectare. Related persons are held spouses, their parents and their underage children. Also legal persons which directly or indirectly control more than 25 % shares of other legal person

(which allow voting in shareholders meeting) are deemed to be a related person.

Key features of the Commission's guidance

The Communication of 12 October 2017 responds to a call in March 2017 by the European Parliament, which asked the Commission to set a clear and comprehensive set of criteria for land market regulations to ensure a level playing field in compliance with EU law. It clarifies that Member State are competent to decide on measures designed to control the sales of agricultural land. As clarified by the Court of Justice of the European Union, some restrictions may be acceptable under certain conditions:

- prior authorisations from national authorities for the acquisition of land
- limits on the size of the land to be acquired
- pre-emption rights allowing certain categories of buyers to purchase agricultural land before it is sold to others. Buyers benefitting from these rights may include tenant farmers, neighbours, co-owners, and the State
- State price intervention

However, EU law does not allow discriminatory restrictions such as general residence requirements as preconditions for the acquisition of land.

Disproportionate restrictions on cross-border investment are also unlawful. Based on case law, it is in particular disproportionate to:

- impose self-farming obligations
- prohibit companies from buying land
- require qualifications in farming as pre-conditions for buying land
- require general place of residence

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> Update: EU's General Data Protection Regulation enters into force – What companies need to do now

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In brief:

- On 25 May 2018, EU's General Data Protection Regulation (referred to as the "Regulation" or "GDPR") enters into force and restates the handling of personal data.
- For the Baltic States in particular, the regulation means a substantial tightening of data protection law.
- Legal entities that collect personal data are strongly encouraged to review their data collection processing policies and related documentation, so as to ensure their Company's compliance with the Regulation.
- Failure to comply with the requirements of the Regulation may lead to draconian sanctions.

Significant changes regarding data protection regulation

In the wake of increasing risks (e. g. cyber-attacks, data leakages etc.), the issue of data privacy has become more

important than ever before. Thus, Regulation has been adopted and will come into force on 25 May 2018. The Regulation will bring in significant changes in the field of data privacy and will have a direct effect on the Member States from May 2018. Therefore, businesses will need to audit their compliance of their data privacy policy and adjust it in accordance with the Regulation.

The regulation aims to introduce the so-called "right to be forgotten" and the "right to data portability". It will also apply to companies based outside the European Union but with offers addressed to EU citizens.

Objectives and innovations of the GDPR

As stated in recital 11 of the GDPR, the main purpose of the regulation is to strengthen and harmonize data protection within the EU. In particular, its goals include the following:

- Strengthening and clarifying the rights of data subjects
- The tightening of conditions for those who process and decide on personal data
- Harmonisation of Member States' powers/sanctions in monitoring and ensuring compliance with personal data protection legislation

Until now, the legal data protection framework within the EU has been governed by directives only. These have no direct effect, but are implemented by the EU Member States in their national laws. Conversely, the GDPR is a regulation which is directly applicable across all EU member states. Only insofar as it is expressly provided by GDPR, different national rules are possible. Although there is a specific duty of interpretation by the national legislator, it is crucial that despite everything, there is no national interpretation, but rather an EU interpretation.

As a result, established concepts of data protection law can be given a new meaning and interpretation in the individual states. This means that previous handling, processes and documents should be reviewed.

There are changes in the following areas:

- Comprehensive information rights of the data subject
- Information and rights of objection
- Right to correction, deletion and restriction of data
- Right to transfer the data to other service providers
- Right to be forgotten
- Clear and understandable language for privacy policy
- Determination of the minimum age to 16 years for the provision of effective consent for the processing of personal data, including proof requirements
- Documentation obligations with regard to the remedial measures used to reduce the risk associated with the processing of personal data
- New terms; new definitions, new interpretation of old concepts
- Tougher sanctions

Severe sanctions' catalogue

While violations of such rules have already been severely penalized in many EU member states, the authorities in the Baltic States have so far been more lenient and sanctions have been comparatively low. This will change significantly with the implementation of the GDPR. Depending on the seriousness of the infringement, this provides for some drastic penalties:

Art. 83 para. 4 GDPR	Art. 83 para. 5 GDPR	Art. 83 para. 6 GDPR
Up to EUR 10 million or up to 2% of worldwide revenue in the previous year	Up to EUR 20 million or up to 4% of worldwide revenue in the previous year	Up to EUR 20 million or up to 4% of worldwide revenue in the previous year
Which ever is higher!		
Violations of regulations regarding - Protective measures (technical and organizational measures) - Order processing (also against processor) - List of processing activities - Privacy impact assessment - Appointment of a data protection officer	Violations of regulations regarding - Principles (Art. 5 GDPR) - Lawfulness - Consent - Rights of data subjects - Transfers of personal data to a third country - Cooperation with the supervisory authority	Violations of orders of the supervisory authority

There is now a heightened risk of the increased incidence of violations, and the resulting level of penalties could prove an especially burdensome risk for companies. In addition, civil claims can be asserted by data subjects. Companies that come into contact with personal data or do not know exactly whether they store, process or trans-

fer personal data should therefore review their situation before the GDPR enters into force to ensure their business is compliant with the new rules.

What are the main requirements introduced by the Regulation?

The Regulation introduces a number of requirements that must be met, the essentials of which are outlined below.

Material and territorial scope

The new Regulation has expanded the scope of the applicability of data protection. Thus, even in cases where data processing takes place outside of the EU, the Regulation might still be applicable if, for example, a company has its sales office in the EU (i.e. conducting marketing activities in EU Member state) and is, thus, inextricably linked to the EU.

Furthermore, the Regulation will also apply to non-EU companies that collect data on EU data subjects. The following requirements must be met by the company resident outside EU for this legislation to apply:

- the company offers goods or services to EU data subjects
- the company is monitoring the behaviour of data subjects

Please note that tracking individuals online to create profiles and assess behavioural patterns with the aim of improving the effectiveness of services is considered monitoring.

Actions to be taken:

- Review the Company's activities in order to assess the applicability of the GDPR to your business.

Data protection principles

The data protection principles set out in the Regulation have, in essence, remained the same – fairness, lawfulness and transparency and other related principles are applicable to data processing. However, a new so-called *accountability* principle has been introduced. This means that data controllers are now obliged to demonstrate their compliance with data protection principles. It is thus now advisable for businesses to actively demonstrate that they are compliant with data protection principles (e. g. that they adhere to approved codes of conduct, and keep all the records related to decisions regarding data protection etc.), and in this way reduce the potential risks of investigation from data privacy watchdogs.

Actions to be taken:

- Establish or review your Company's policies and draft appropriate documentation in order to assure that the Company complies with data protection principles.

Lawfulness of processing

As prescribed in the Regulation, for data to be lawfully processed, **one of the following requirements has to be met:**

- Unambiguous consent to process personal data must be given
- Processing must be necessary for the performance of a contract with the data subject or taking steps preparatory to such a contract
- Processing must be necessary for compliance with a legal obligation
- Processing must be necessary to protect the vital interests of a data subject or another person where the data subject is incapable of giving consent
- Processing must be necessary for the performance of a task carried out in the public interest or in the exercise of the official authority vested in the controller
- Processing must be necessary for the purposes of legitimate interests

Furthermore, when no consent is given by a data subject or data collection is not prescribed by national or EU law, if personal data on a data subject has been collected for a single purpose, the compatibility of any further processing for other purposes must be considered in light of the following factors:

- The link between the original and proposed new purposes
- The context in which data has been collected (in particular the relationship between data subject and data controller)
- The nature of the data
- The possible consequences of the proposed processing
- The existence of safeguards (including encryption and pseudonymisation).

Actions to be taken:

- Review whether the Company lawfully processes personal data collected.

Consent

It is important to note that even though the consent of the data subject was always one of the central tenets involved in the processing of personal data, the Regulation has placed significantly more emphasis on the concept of "consent". When data controllers collect personal data by obtaining the consent of data subjects, the following must be ensured:

- Consent is active and is not "pre-ticked"
- Consent must be separated from other agreements or declarations presented to data subject, i. e. "bundled" consents are not permissible
- The supply of services cannot be contingent on the consent to process personal data which is not required to provide the services in question
- Data subjects must be clearly informed that data processing about them can be withdrawn at any time, if so requested
- Separate consents must be withdrawn for different processing activities

Actions to be taken:

- Review and, if necessary, amend the Company's documentation (forms), whereby data subjects have to consent for their personal data to be processed.

Special regulation for children consent

The Regulation introduces special requirements for the processing of personal data of children. If the personal data of children is collected for the receipt of information society services and are offered directly to a child under the age of 16, in addition to a child's consent, parental consent must also be obtained.

Otherwise, data controllers must follow national rules regarding the consent to process personal data of children, since this area is left to the legislation of EU Member States.

Actions to be taken:

- Review whether children's personal data may be collected by the Company and draft appropriate forms and documents to this end.

Access of information, rectification and portability

According to the Regulation, data subjects have the right to obtain information and access the data (i.e. receive a copy of such information) that is collected about them, as well as require that such personal date be amended if it appears that it is not accurate.
Moreover, another important requirement introduced by the Regulation is the data portability requirement. Upon the request of a data subject, the data controller is under obligation to provide data to another data controller in a structured and commonly used machine readable form, enabling the transfer of personal data without hindrance.

Actions to be taken:

- Establish and prepare relevant documents, as well as ensure the technical and organizational means that would enable the Company to transfer data safely or provide a copy of such data to a data subject upon request.

Data governance obligations

The Regulation has significantly increased the obligations that must be met by businesses. Companies will now be obliged to have measures in place that would ensure that data protection requirements as per the GDPR are complied with.

One of the new requirements introduced by the Regulation is the obligation for businesses to conduct a data protection impact assessment (the "PIA"). The PIA is a document, by virtue of which, data collectors can analyse, identify and minimise the risks associated with the non-compliance of the Regulation. Data controllers must ensure that a PIA is run before an activity related to a "likely high risk" data processing activity is carried out. High risk data processing is defined as:

- Processing where there is a systematic and extensive evaluation of personal aspects relating to natural persons which is based on automated processing, including profiling, and on which decisions are based that produce legal effects concerning the natural person or similarly significantly affect the natural person.
- Processing on a large scale of sensitive personal data and personal data relating to criminal convictions and offences
- Systematic monitoring of a publicly accessible area on a large scale (e. g. CCTV monitoring)

The PIA has to comply with the minimum requirements set out in the Regulation as to the content of the PIA.

Another requirement of substantial importance introduced by the GDPR is the appointment of a Data Protection Officer (the "DPO"). The DPO will be a responsible appointed person who will monitor a company's compliance with the GDPR. It will be obligatory to appoint a DPO for any organisation the core activities of which require:

- Regular and systematic monitoring of data subjects on a large scale
- Large scale processing of sensitive data or criminal records

The guidance as to what constitutes "core activities", "regular and systematic monitoring" and "large scale" may be found in the EU's Guidance from the Article 29 Working Party, but the main characteristics are as follows:

- Core activities – Core activities are to be understood as activities which are an inextricable part of the controller's or processor's pursuit of its goal. As an example of such activities could be surveillance activities performed by the security company for the safeguard of public space.
- Regular and systematic monitoring – Regular and systematic monitoring is to be understood as, for example, the processing of personal data with respect to profiling, location tracking and similar activities.
- Large scale – Examples could include a bank processing customer data and similar large scale processing.

Please note that despite guidance concerning what constitutes "core activities", "regular and systematic monitoring and "large scale" may be subject to different interpretations, and only through time and practical applicability will these criterions be crystalized sufficiently so that their precise meaning can be assessed.

Actions to be taken:

- Identify, in assessing the company's data processed, whether there is a need to appoint the DPO.
- If such need arises, to appoint the DPO and draft necessary documentation to this end.
- Rödl & Partner can act as the DPO if such need arises.

Personal data breaches and notification

The Regulation introduced new requirements which oblige data processors to notify data controllers about any personal data breaches that have occurred, whereas data controllers are obliged to notify the supervisory authority about such breaches (no later than 72 hours after becoming aware of such a breach). Affected data subjects have to be notified about any personal data breaches as well.

Actions to be taken:

- Prepare documentation related to notification of personal data braches to affected parties and supervisory authority.

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> News in Brief

Estonia

Obligation to maintain and submit data of beneficial owners

On 27 November 2017, new wording of the Money Laundering and Terrorist Financing Prevention Act entered into force in Estonia. The new law transposed the IV Anti-Money Laundering Directive (Directive (EU) 2015/849 of the European Parliament and of the Council on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC).

From 1 September 2018, legal persons registered in Estonia are obligated to gather and retain data on their beneficial owners, including information on their right of ownership or manners of exercising control. The obligation to gather and retain the data of beneficial owners does not apply to apartment associations and building associations registered in Estonia, companies listed on a regulated market, and foundations the purpose of whose economic activities is the keeping or accumulating of the property of the beneficiaries or the circle of beneficiaries specified in the articles of association, and who have no other economic activities.

The data of beneficial owners is to be kept in the Estonian commercial register. The management board of a company and non-profit association must submit the following data on its beneficial owner via the commercial register information system:

1) the person's name, personal identification code and the country of the personal identification code (or if there is no personal identification code, the date and place of birth), and the country of residence;
2) information on the manner of exercising control.

In addition to the data mentioned above, foundations are obligated to submit a list of beneficiaries which contains each beneficiary's name, personal identification code and the country of their personal identification code (or if there is no personal identification code, the date and place of birth), and the country of residence where such persons have been specified in the articles of association of the foundation.

Registered legal persons in private law must submit their data by 1 September 2018. A company, non-profit association or foundation which is being founded must submit the data of the beneficial owner along with the application for registration in the commercial register.

If there are any changes in the submitted data, the company, non-profit association or foundation must submit new data via the commercial register information system no later than within 30 days of learning of the changes in the data. Where the data of the beneficial owner has not changed, the company, non-profit association or foundation will be able to certify the correctness of the data upon submission of the annual report.

The data of the beneficial owners is publicly available and it is made public in the commercial register information system.

Latvia

Obligation to reveal a true beneficiary

On December 1, 2017, amendments to the Law on the Prevention of Money Laundering and Terrorist Financing came into force imposing on each legal person registered in the Enterprise Register of the Republic of Latvia a duty to reveal its true beneficiary.

A true beneficiary of a legal person is an individual who in the form of direct or indirect participation owns more than 25 percent share capital or share capital with the voting rights of a legal person, or who directly or indirectly controls the legal person. The true beneficiary can be an owner of the legal person or an individual who controls the legal person or who benefits from business relations or a casual transaction.

The legal person must disclose and submit information about its true beneficiary to the Enterprise Register of Latvia. This information includes the name and surname of the person, personal identification code, or if there is none – a date of birth, number of an identity document such as a passport, as well as its date of issue, country of issue and issuing authority. Also information about the nationality of the true beneficiary, his or her country of permanent residence and the form in which the control over the legal person is being implemented must be indicated.

Until March 1, 2018, all legal persons that are registered in the registers of the Enterprise Register or whose registration application is submitted after December 1, 2017 will have an obligation to submit an application specifying a true beneficiary. In any case, information about the true beneficiaries of legal persons will have to be indicated when legal persons are registered or when legal persons request to register changes in a management board or shareholders list. If legal persons do not reveal true beneficiaries in registration applications or applications for changes in a management board or shareholders list, the Enterprise register is entitled to refuse to make the requested entries in the relevant registers.

As of April 1, 2018, information about true beneficiaries will be available online to any person upon payment of a service fee.

Amendments to Competition Law

The new Competition Law amendments, which came into force on November 1, 2017, transposes the European Union directive on certain rules which govern actions for damages for infringement of competition law into Latvian law.

Henceforth, consumers, companies and other parties will have the opportunity to claim damages caused by market participants whose activities have been found to be in breach of competition law via a simplified and more effective procedure.

The amendments to Competition law clarify the scope of several definitions included in the law regarding damage claims, as well as simplify the determination of the amount of damages, including the amount of damages claimed from offenders who have cooperated within the framework of the Competition Council's leniency program. The amendments also state that infringements established by a decision of the Competition Council, which has entered into force, or by a court judgment, which has entered into force, do not require to be proven again, thus significantly alleviating the victim of the burden of having to prove the damage caused by an infringement of competition law. Joint responsibility for damage that has been caused jointly is now regulated, as well as the responsibility of small and medium-sized enterprises in Competition Law. In addition, rules governing commencement and suspension of a limitation period have been introduced.

Increased minimum salary

Starting from January 1, 2018, minimum monthly salary is increased from 380 euros to 430 euros.

Lower VAT registration threshold

From January 1, 2018 taxpayers will have an obligation to register as VAT payers if the value of their transactions

subject to VAT exceeds a threshold of 40,000 euros during a consequent twelve month period. Until the end of 2017 the registration threshold is 50,000 euros.

Expanded application of the reverse charge mechanism

Starting from January 1, 2018, the reverse charge mechanism of VAT is applicable to the supply of game consoles, household electrical appliances and equipment and metal products.

Application of the reverse charge mechanism to transactions in relation to construction has been expanded. The reverse charge mechanism will need to be applied to the supply of building materials, constructions and the integral parts of buildings, as well as the renting of equipment that is intended for construction works.

The reverse charge mechanism is applied to transactions between registered VAT payers.

Changes in VAT reporting

The threshold for transactions that have to be declared separately in a VAT declaration has been decreased from 1,430 euros to 150 euros. For every transaction that exceeds 150 euros, it will be necessary to indicate every detail of the invoice clearly, providing information about the transaction partner, the type of transaction – supply of goods or services, and the value of transactions.

Lithuania

Lithuanian parliament opened up the country's roads to autonomous driving

On 7 December 2018, the Lithuanian parliament overwhelmingly approved a law which opens up the country's roads to driverless autonomous vehicles. The law will allow self-driving cars to take to the roads without a human driver who is ready to assume control, a requirement put in place in some other European countries, e. g. Germany.

In November 2017, a driverless electric shuttle was the first autonomous vehicle to be tested in Lithuania's capital Vilnius, although there were doubts as to whether the legal framework was sufficient. Lithuania's Minister of Economy Virginijus Sinkevicius announced that the manufacturers of the tested vehicle were interested in continuing cooperation with Lithuania and that talks were already underway with some of the world's largest automotive car manufacturers.

The main goal of the law is to allow such vehicles to be tested in Lithuania.

Changes to the Lithuanian Law on Companies

As of 29 November 2017 new amendments to the Lithuanian Law on Companies came into force which change the rules regarding a shareholders access to a company's confidential information, expanding the functions of the supervisory board of the company and bringing in other changes as listed below:

- From now on a shareholder that holds only 1 share of a company is entitled to gain access to a company's confidential information if such access is prompted by legal acts;
- If a shareholder poses a question to the company related to the General Meeting of Shareholders in advance of the proceedings, the answer to such question shall be represented not only to the shareholder that posed the question (as was the case previously), but to all shareholders;
- The absolute right of shareholders that hold at least 1/2 of the voting rights of a company to receive all of a company's information and documents is now abolished;
- The Supervisory Board of the company in certain instances has to provide an approval to the Board of the Company to take actions (in addition to the approval of shareholders, which was the only approval that the Board would have needed previously);
- The Managing Director of a company now has a duty to provide information to the company's shareholders, the Supervisory Board and the Board on events that have an impact on the company's activities;
- The Supervisory Board now has a new competence – to deliberate on and approve the company's strategy (previously the competence of the Board).

The above amendments are mainly aimed at protecting minority shareholders.

Lithuanian Supreme Administrative Court case on VAT

The Lithuanian Supreme Administrative Court recently adopted a decision whereby it was decided that a company, when issuing an invoice with 0% VAT to another company, is only obliged to check that the buyer has a VAT registration code but is not required to check whether the seller actually has the capacity to conduct its business and pay VAT applicable in its country.

The decision significantly establishes certain standards of supplier behavior when conducting business with foreign legal entities.

> Internal

Latvia

New tax consultant in Office of Rödl & Partner Riga

Before joining Rödl & Partner, Tax consultant Laura Pavāre had seven years' experience of working as tax consultant for a Big 4 company. Her most recent role within her previous company was Assistant Manager, where she mainly specialized in the provision and management of global mobility services, as well as VAT advisory and other taxes.

Laura Pavāre obtained a Master's degree in Business administration at Riga International School of Economics and Business Administration (RISEBA).

Advancing together

„In close collaboration with our clients we develop value-creating ideas that we implement together."

Rödl & Partner

„In connecting and striving for common thinking we regard unity as the clearest form of expression. It is an essential component of our ongoing repertoire."

Castellers de Barcelona

"Each and every person counts" – to the Castellers and to us.

Human towers symbolise in a unique way the Rödl & Partner corporate culture. They personify our philosophy of solidarity, balance, courage and team spirit. They stand for the growth that is based on own resources, the growth which has made Rödl & Partner the company we are today.

„Força, Equilibri, Valor i Seny" (strength, equilibrium, valour and common sense) is the Catalan motto of all Castellers, describing their fundamental values very accurately. It is to our liking and also reflects our mentality. Therefore Rödl & Partner embarked on a collaborative journey with the representatives of this long-standing tradition of human towers – Castellers de Barcelona – in May 2011. The association from Barcelona stands, among many other things, for this intangible cultural heritage."

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