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THE RIGHT FOCUS

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TABLE OF CONTENTS

AN OVERVIEW OF 2022 TECH REGULATIONS

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Before embarking on any New Year's resolutions, it is worth starting with a moment of reflection on the year gone by. In the EU, 2022 brought a number of new regulations in the new technology market, so let's take a closer look at them.

The following is our selection of the most important developments and legislative initiatives to emerge in 2022, which will significantly influence further international and national IP/IT regulations.

DORA – digital operational resilience for financial entities

The specific geopolitical situation has brought the concept of cyber security to prominence in 2022. On 27 December, the Digital Operational Resilience Regulation (DORA) was published in the Official Journal of the European Union, setting up a harmonised regulatory framework to strengthen the ICT security of financial entities.

Its objective is to achieve a high common level of digital operational resilience across all EU Member States, aiming to prevent and mitigate cyber threats and ensure that businesses can withstand, respond and recover from all types of ICT-related disruptions and threats. DORA will enter into force on 16 January 2023 and will apply from 17 January 2025.

The European supervisory authorities have been tasked with developing technical standards applicable to all financial entities covered by DORA.

PThe entities subject to DORA are encouraged to start preparing for its application by identifying any gaps in their governance and ICT processes. They should also consider which of their service providers may be considered critical and review their testing and recovery protocols against the standards set out in the new Regulation.

We discuss the main DORA provisions here >> and here >>

NIS II – cyber security for network and information systems

Second, a new Network and Information Security Directive (NIS II), which will enter into force on 16 January 2023, was also published in the Official Journal of the European Union on 27 December 2022. The adoption of NIS II not only broadened the scope of the NIS Directive, but also enabled the harmonisation of cyber security requirements and the implementation of cyber measures across Member States.

To achieve this, it sets out minimum rules for a regulatory framework and establishes mechanisms for cooperation between the relevant authorities in each Member State. NIS II is to be transposed into national law by 17 October 2024, with EU Member States required to apply its provisions from 18 October 2024.

DSA / DMA – digital services and markets in the EU

Third, Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services, i.e. the Digital Services Act (DSA), and Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector, i.e. the Digital Markets Act (DMA), entered into force in 2022. They both constitute a comprehensive regulatory framework for digital services, including social media and online platforms operating in the European Union.

The aim of the DMA is to ensure that the digital sector is fair with equitable access to digital services for all users. The DMA will apply to undertakings that are considered to be gatekeepers, defined in the Regulation as entities having a significant impact on the internal market; providing a core platform service which serves as an important access point for business users to reach end-users; or having an entrenched and durable position in their operations or expected to foreseeably enjoy such a position in the near future.

In contrast, the main objective of the DSA is to combat illegal services, content or goods on the Internet, in particular laying down the obligations of service providers operating as online intermediaries, e.g. Internet access providers, domain registrars or web hosting providers.

Most of the DSA provisions will come into force on 17 February 2024, with online platform operators other than micro- or small enterprises being required to publish information on the number of active users as early as 2023. Most of the DMA provisions will take effect on 2 May 2023.

For more information on the DSA, click here >>

MiCA – a response to the cryptoasset market crisis?

We should also not forget the regulations concerning cryptocurrencies. The year 2022 was a hard year for the cryptocurrency market as a progressive decline in the value of coins, the problems of FTX and the collapse of trust, are all raising questions about the future of crypto. The declaration of bankruptcy by FTX, the third largest cryptocurrency exchange, caused an earthquake in the industry. The primary lesson to be learned from recent events is that there is a need for greater financial transparency for cryptocurrency service providers.

The answer to this need is market regulation, and here, the Markets in Crypto Assets (MiCA) regulation could provide some answers to these problems. MiCA is part of the European Union's larger digital finance package. Its objectives include:

- Creating a single legal framework for the cryptocurrency market in the EU
- Introducing uniform rules for crypto service providers (including exchange operators) and crypto issuers,
- Ensuring market stability and protecting investors from risk.

MiCA will create a harmonised European cryptocurrency market ensuring legal certainty across the EU through clear asset classification and transparent guidelines for service providers and issuers. If the regulations are widely accepted, more institutional investors and more assets may be expected to enter the market, which could help its further development.

In addition to this, due to the scale of the European single market, MiCA could follow in the footsteps of the Data Protection Regulation (GDPR) and also contribute to the formation of similar regulations in other parts of the world. The European Parliament is expected to vote on the draft in February this year and MiCA is likely to enter into force in Q3 2024.

Read more about MICA here >>

Artificial Intelligence – a strategic area of interest for the European Union

Legislative excitement is also unabated in the field of AI, with the expected entry into force of the most important piece of AI legislation – the AI Act, a Regulation of the European Parliament and of the Council establishing harmonised rules on artificial intelligence.

The aim of this regulation is to develop safe, reliable and ethical artificial intelligence processes in the European Union.

The AI Act will divide AI systems by risk categories. The Act specifies which AI applications will be considered unacceptable and has created a category of high-risk AI systems, the operators of which will be subject to a number of obligations.

The year 2022 brought further amendments, bringing us closer to the final wording of the document. At the beginning of December, the Council adopted a common position on the act, and the next step will be for the Parliament to also adopt a common position. The exact date when the AI Act will come into effect is not yet known, but estimates place it around early 2024.

AI is central to the EU's strategy for creating a digital single market, so in parallel to work on the AI Act, other aspects of AI are also under discussion. In September 2022, the European Commission adopted two proposals leading to the regulation of AI liability.

One concerns the modernisation of existing rules on the strict liability of manufacturers for defective products, whereas the other proposes a new, separate directive on AI liability. The Commission's proposals now need to be adopted by the European Parliament and the Council.

Read more about the new draft AI liability regulations here >>

This concludes our regulatory review and we look ahead to 2023. If the acts described in this article apply to your company, you will need to bring your operating model in compliance with the new obligations.

Even if the effective dates of the acts are still unknown or appear remote, it is worth analysing how the regulations may affect your business and what changes you may have to make in your operation.

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THE CASE OF HERMÈS TRADEMARK INFRINGEMENT IN THE METAVERSE IS GAINING MOMENTUM

TOMASZ SZAMBELAN

We previously wrote about the dispute over trademark infringement in the Metaverse concerning the luxury brand Hermès, and the brand's owner taking legal action against artist Mason Rothschild, the creator of "MetaBirkin" non-fungible tokens (NFTs). Hermès alleges that the NFT version of their famous Birkin handbags violates the rights of the Hermès design house

How it happened: the anatomy of the conflict over NFTs

The year end is a good time for summaries, so let's take a further look at the status of the Hermès brand case, how the litigation pending before the U.S. District Court for the Southern District of New York emerged, and examine recent decisions taken in this case to see what conclusions can be drawn for future brands entering the Metaverse.

January

Hermès files a trademark infringement lawsuit against NFT creator Mason Rothschild, claiming that his digital version of the famous Birkin handbags violates the rights of the Hermès fashion house.
In their complaint, Hermès claims that "MetaBirkins" infringe upon their famous "Birkin" trademark and are likely to cause confusion among consumers, who may believe that Rothschild's artistic creations were authorised, sponsored or approved by Hermès.

February

Rothschild disagrees with Hermès' claims, considering that the NFTs are merely an artistic modification of the famous Hermès fashion house handbag, and in his view do not mislead the public as to the origin of the goods bearing the disputed mark.

May

The Court denies Rothschild's motion to dismiss the claim and confirms that an NFT can violate trademark rights. The Court argues that an NFT is simply a code pointing to where a digital image is located and authenticating the image, so using an NFT to authenticate an image and enable its subsequent resale and transfer does not make the image a commodity without legal protection.

October

Hermès files a motion for summary judgment, asking for the application of the similarity analysis test (Gruner test), which it believes is appropriate. The Court rules that the Rogers test will be employed, as it balances freedom of speech against trademark rights and, in the Court's view, is applicable to the analysis of trademark infringement involving the NFTs in question.

Brand protection in the Metaverse

The case has not yet been resolved, but one can already see some very interesting implications for further NFT- and Metaverse-related litigations, which will certainly also take place in Europe.

Indeed, the fact that more such cases will follow was demonstrated by the recently discussed litigation initiated by the Juventus football club. The U.S. Court's confirmation that the use of an NFT to authenticate an image and allow for its subsequent resale and transfer, does not make the image a commodity without legal protection, is also significant in this context.

This only confirms our earlier observations on how important it is to adequately secure the rights of any business seeking a presence in the Metaverse. Indeed, we have to assume that the number of disputes will only increase, pro-rata with the number of users of this new platform.

Now we know with certainty that any failure to properly update trademark applications and adjust the list of goods and services for operation in the Metaverse may seriously limit or prevent effective trademark protection.

CHANGES TO COMMERCIAL COMPANIES LAW
AT THE TURN OF THE YEAR

In 2022, the Commercial Companies Code has undergone significant changes, including the introduction of the so-called holding law laying down the principles of operation of groups of companies, which we wrote about in the 'Controversial Amendment to the CCC' article. Further changes to the Code are expected at the turn of 2022, the most important of which are discussed below.

RAFAŁ RAPALA

DOMINIK KARKOSZKA

ADAM CZARNOTA

Digital tools and processes in corporate law

The amendment, being an implementation of Directive (EU) 2019/1151 of the European Parliament and of the Council of 20 June 2019 amending Directive (EU) 2017/1132 as regards the use of digital tools and processes in company law, entered into force on 15 December 2022.

The lawmakers have introduced a regulation enabling limited liability companies in the process of formation to:

- Settle payments for shares via an online transaction, and
- Provide proof of such transaction to a payment account maintained by a bank providing its services in an EU/EEA state.

In practice, this provision will enable such a company to open an account into which payment for the share capital can be made.

It is worth noting that such manner of payment will not be obligatory in every case, including due to the need to respect the consensual will of shareholders as regards a different manner of making contributions to the share capital.

According to the explanatory memorandum to the draft, such provisions are also intended to counteract situations where financial institutions required limited liability companies in the process of formation, wishing to open a bank account, to provide proof of their entry in the register. Such practices hindered the process of company formation.

A broader implementation of Directive 2019/1151 was not necessary, as Polish law already provides for online formation and registration of companies, and to a greater extent than required by the aforementioned directive.

The Commercial Companies Code has provided for the incorporation of limited liability companies online, via the S24 system since 2012. Since 2015, it has also been possible to establish general and limited partnerships in this way.

Cross-border conversions, mergers and divisions of companies

On 8 August 2022, a bill was published to implement Directive (EU) 2019/2121 of the European Parliament and of the Council of 27 November 2019 amending Directive (EU) 2017/1132 as regards cross-border transformations, mergers and divisions.

The changes, expected to enter into force on 31 January 2023, will include:

- introducing simplified mergers and a new type of division – "division by separation", modelled on the solutions previously available in cross-border procedures,
- granting full merger and division capacity to limited join-stock partnerships, and
- simplifying company reorganisation procedures.

The regulations of the bill are further intended to contribute to the exchange of information on disqualifications of directors between the registers of EU (EEA) Member States in order to enhance the security of trading within the single market.

The exchange of information will concern relevant data collected in the National Criminal Register (Krajowy Rejestr Karny), the Register of Insolvent Debtors (rejestr dłużników niewypłacalnych), the National Debtors Register (Krajowy Rejestr Zadłużonych) and a list provided by the Financial Supervision Authority (Komisja Nadzoru Finansowego).

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THE ESG REPORTING DIRECTIVE HAS COME INTO FORCE

WOJCIECH WROCHNA

On 5 January 2023, the long-awaited EU CSRD came into force, expanding reporting obligations on the impact which companies have on people and the environment

European Green Deal

On 16 December 2022, after more than one and a half years of public consultation and inter-institutional arrangements, the text of the Corporate Sustainability Reporting Directive (CSRD) was published in the Official Journal of the European Union.

The regulations introduced therein will replace a number of existing solutions relating to non-financial reporting contained, inter alia, in the Non-Financial Reporting Directive (NFRD). The CSRD is part of an action plan under the European Green Deal.

Who is affected by the new ESG Directive?

The new ESG reporting obligations will be imposed in the first instance on the largest entities already required to file non-financial reports under the NFRD and the Accounting Act implementing it.

Reporting obligations will subsequently extend to all other large undertakings (including parent companies of large groups) that meet at least two of the following conditions:

- More than 250 employees
- EUR 40 million in turnover, or
- EUR 20 million in total assets.

Lastly, small and medium-sized listed companies will be added to the list of entities required to submit ESG reports.

Obligations will also cover certain non-EU (third-country) undertakings with:

- A turnover of over EUR 150 million in the EU, and
- An EU branch.

Corporate Sustainability Reporting Directive – what else is going to change?

One of the most significant changes is the introduction of a uniform ESG reporting standard, both from the perspective of reporting entities and beneficiaries, i.e. investors and consumers.

Until now, under the NFRD, the choice of the reporting standard was left to reporting entities, which meant that it was often not possible to compare information provided by different entities.

The omission of certain data and the lack of market confidence in such data meant that the existing reports were of poor quality.

This is set to change under the CSRD.

By 30 June 2023, the European Commission is to present delegated acts to the directive, under which uniform European Sustainability Reporting Standards (ESRS) will be introduced, already having been drafted and presented last November by the European Financial Reporting Advisory Group (EFRAG) Sustainability Reporting Board.

Reporting will have to be made in a uniform digital format.

New ESG reporting obligations – yes, but not straight away

Although the CSRD entered into force on 5 January 2023, this does not mean that obliged entities will immediately need to start complying with the obligations contained therein this year.

The legislation provides relatively ample time to prepare for the changes, as the first group of obliged entities will only have to file their first CSRD-compliant sustainability reports in 2024 (followed by large undertakings in 2025 and listed SMEs in 2026). However, this does not mean that ESG issues can be completely disregarded until then.

It should be borne in mind that, in order to correctly comply with reporting obligations, additional (perhaps currently uncollected) business information will need to be collected and adequately analysed.

Moreover, some of the required information will relate not only to the reporting entity itself, but to its group entities and value chain.

Adding to this the fact that the reports will be available to business partners, customers and investors, it is worthwhile starting gathering data as early as possible and taking appropriate steps to demonstrate a real concern for employees, communities and the environment within your business.

CIVIL PROCEDURE REFORM TO SERVE GOVERNMENT AUTHORITIES

MATEUSZ OSTROWSKI

BARTŁOMIEJ GALOS

The government is creating space for state authorities to evade accountability and is tightening enforcement procedures against independent media publishers.

On 27 September 2022, the Council of Ministers referred a draft amendment to the Code of Civil Procedure and certain other acts to the Sejm, and the Minister of Justice was appointed to present the government's position during parliamentary work.

The explanatory memorandum to the bill states that the amendment is aimed at simplifying existing procedures, which, according to the proponent, is expected to reduce the burden on courts and the length of proceedings. The amendments also aim to make it easier for parties and attorneys to contact the court, to facilitate consumers' assertion of their rights in court and to fill gaps in existing law.

During our review of the amendment, we came across a regulation that may certainly represent a breakthrough in the assertion of rights by creditors in favour of whom publication of a statement has been validly ordered pursuant to Article 24 of the Civil Code. However, one has to wonder whether, considering the existing strict enforcement regime against publishers, this is either another attempt to exert influence on the independent media, or the use of coercive measures by the state to top up the budget with publishers' money.

An apology in the Court and Commercial Gazette (MSiG) at the debtor's expense

The newly proposed regulations include an amendment to the enforcement procedure, introducing an obligatory method of satisfying a creditor to whose benefit an apology has been validly ordered, which may be interesting for practitioners handling cases of infringement of personal interests.

The novelty lies in the fact that the apology is to be published, at the debtor's expense, in the Court and Commercial Gazette (Monitor Sądowy i Gospodarczy, MSiG), with the wording corresponding to that specified in the judgment, with the aim of concluding the enforcement proceedings.

We believe that the said new procedure is likely to be triggered automatically. Once the deadline set for the debtor has expired, the court will, ex officio, impose a fine on the debtor and order the publication in the MSiG, at the debtor's expense, of an announcement corresponding to the required statement, in the form of either an apology or a rectification, with the wording as established in the relevant final and non-appealable judgment.

In addition to concluding enforcement proceedings, the intention of the bill is also to allow the statement to be reproduced in the mass media, with reference to an official publication such as the MSiG – the national official journal.

Reasons for the amendment

It is worth noting that the amendment to the Code was proposed 16 years after the Supreme Court, in its resolution of 28 June 2006, III CZP 23/06, reversed the line of jurisprudence, suggesting that the publication of a statement may be a replaceable act – given that it is published not for the creditor's moral satisfaction but in order to reach the widest possible audience.

This concept has not taken hold, as it is inevitable that the creditor, according to the mirror principle (i.e. publishing statements in the same place where the infringement of personal interests occurred), will be most interested in having an apology published in the same place, as only in this way can the statement actually reach the same group of recipients as the original source of the infringement.

In view of the above, we assume that, over 16 years, people dealing with personal interests cases have managed to learn how to break the debtor's resistance by causing the debtor to make an appropriate statement and how to effectively defend the debtor against defectively formulated motions to initiate enforcement proceedings or erroneous court orders.

From a practical point of view, there is no major problem, but for some reason the above-mentioned resolution of the Supreme Court and Professor K. Knoppek's Glossa were revisited to introduce into Polish civil procedural law a measure analogous to that existing in criminal law, i.e. making a sentence public (Article 39(8) of the Criminal Code).

Such an amendment is puzzling, to say the least, as the measure of making a sentence public has been successfully employed in judicial practice for years without unnecessary interference from the legislator.

What are the major concerns of practitioners?

Will this allow for more effective enforcement? Yes, enforcement proceedings can definitely be sped up, but this brings additional concerns about the concept of justice and fair play.

First, is the speed of enforcement proceedings correlated with the waiting time for acceptance of or refusal to accept cassation appeals for examination where the execution of a second instance court judgment was not suspended, and when enforcement ends successfully for the creditor and an apology is published in the MSiG, and the Supreme Court decides in favour of the debtor on the cassation appeal?

Contrary to appearances, the above assumption is of colossal practical importance in the case of lawsuits bearing the hallmarks of SLAPP (Strategic Lawsuit Against Public Participation). There is an assumption that, under the notion of speed of enforcement proceedings, a muzzle is imposed on the independent media. Such "conveniences" being introduced without giving them any consideration create the risk of the state media and the MSiG becoming a well-functioning propaganda machine for the dissemination of fake news.

This is also important when it comes to filed lawsuits and, in fact, formulated claims for multi-page apologies with non-standard parameters and duration, the voluntary publication of which will result in the creditor's rights being exceeded.

Second, who will pay for all of this?

The answer seems fairly obvious: the publishers will pay.

Under the Civil Court Costs Act, the State Treasury is not obliged to pay court fees, which potentially seems logical, as it does in terms of entities applying the exemption from paying the fees. But there is more: the compulsory publication of an apology or a rectification at the debtor's expense in the MSiG (which, let us recall, is the national official gazette).

Conclusions as to what the proposed amendment to the enforcement provisions may be about are even more obvious. Excessive fines imposed on publishers will constitute alternative sources of income for the State Treasury.

Third, it is difficult to see any analogy between the proposed regulation and the proposed institution of making a sentence public – after all, the announcement to be published in the MSiG will not be a judgment, but in fact, in accordance with the proposed amendment, the content of the statement pasted into the field intended for announcements in the MSiG.

Thus, the publication of an apology in such a form will be strictly limited to a statement, without information on the judgment itself or its content. The publication will simply become a replaceable act. The only difference is that the entity publishing and distributing the MSiG, i.e. the Minister of Justice, will be authorised to place it, instead of the creditor.

Fourth, leaving aside the above doubts, what about the existing judicial practice and the well-established views of legal commentators on the mirror principle? This principle is a compromise developed in case law between infringers and those whose personal interests are infringed. Interfering with the principle with a half-baked amendment may result in damage that cannot be reversed in the future.

Fifth, it is completely incomprehensible to see another fine of up to PLN 15,000 imposed on the debtor, and it is difficult to see any ratio legis in the emergence of another sanction of the same nature.

Pursuant to the current Article 1050 § 3 of the Code of Civil Procedure, the court, at the creditor's request, after ineffective expiry of the time limit set for the debtor to perform an act, will fine the debtor, setting a new time limit to perform the act and warning the same that a more severe fine will be imposed if they fail to comply.

Last but not least, what if a state authority, in particular the Minister of Justice, is obliged to publish an apology or a rectification?

Bearing in mind that the publication of the MSiG is the responsibility of the Minister of Justice, according to Article 2 of the MSiG Publication Act, it is difficult to resist the impression that this creates very significant doubts as to the enforceability of judgments against the above entities.

Indeed, if the Minister of Justice does not consent to the publication of an apology, the enforcement procedure will be exhausted and the judgment will become unenforceable against the state authorities.

NEW YEAR
THE YEAR OF INDEXATION

JACEK KOZIKOWSKI

BARTOSZ BRZYSKI

The construction sector has been one of the industries hardest hit in the last few years.

The downtime and supply constraints associated with the pandemic, followed by similar disruptions brought about by the war in Ukraine, with material price increases that have been building up for years, crowned by rampant inflation have all had a disastrous effect on the sector.

Unsurprisingly, the sector is now facing a number of challenges such as declining profitability and shrinking margins.

Investments planned not so long ago may now be below the break-even point, with the completion of many ongoing projects being called into question. Contractors are therefore starting to seek ways to mitigate the overwhelming risks. One such method is for investors to assume some of the risk in terms of increased project costs, for example by applying contract indexation.

The consideration of whether to use contract indexation and how to do it was one of the hottest topics subject to public debate in 2022, and one which will certainly continue in 2023.

What exactly is indexation?

In simple terms, indexation is a modification of the agreed remuneration to make it as realistic as possible. The purpose of indexation is to bring the current value of the contractual remuneration closer to the level which the parties originally assumed when deciding to cooperate, if this value has changed over time.[1]

In practice, this usually means that the investor agrees to pay a surcharge on the originally agreed remuneration, so that the current contract value reflects the amount agreed with the contractor (months or even years) earlier.

[1] In the context of an insurance contract, cf. Supreme Court Judgment of 5.01.2011, III CSK 125/10.

As such, the contractor will not have to pay extra out of its own pocket, i.e. it will not suffer a loss on the purchase of materials, or will retain at least a minimum margin to protect itself from bankruptcy, etc. In return, the investor enables the project to be completed on the originally planned date.

Project completion – why is indexation needed?

Naturally, at this point, the question arises as to what will the investor actually get out of this? To answer briefly: first and foremost, a finished project.

Many people overlook this aspect, pointing out that since the parties to a construction contract agreed on a flat-rate remuneration, they should expect that, no matter what, the budget of the project should remain unchanged and the contractor should have taken into account all potential financial risks in any offer it makes. However, as the market reality shows, this is not always possible.

A contract's flat-rate remuneration is beneficial for the investor as long as unforeseen cost increases beyond the agreed budget do not start to overwhelm the contractor. If the additional costs go significantly beyond such flat-rate remuneration, the contractor's losses may not be restricted to solely its potential profit, but its entire financial health may be disrupted.

In carrying out their projects, investors must bear in mind that the overriding aim of the investment process is to complete the project and to generate future income from an operating facility (especially in the case of industrial facilities).

In this context, timely project completion is crucial to its successful implementation. Investors are therefore wise to take an individual approach to the indexation of concluded contracts based on the business objectives of the ongoing investment process.

Methods of contract indexation

When it comes to contract indexation, several methods can be distinguished:

Indexation clause in the contract

If certain circumstances occur (price increase or decrease, inflation rate change, etc.), the remuneration indicated in the contract is automatically modified or can be modified at the request of one party.

Annex to the contract

The parties may also agree on concluding an annex to the contract to modify the agreed remuneration.

"Extraordinary change in circumstances" clause or demand for an increase in the flat-rate remuneration

As a last resort, especially in the absence of a consensus, the parties may apply statutory mechanisms allowing the court to change the remuneration amount in the contract, e.g. by virtue of an "extraordinary change in circumstances" clause (Article 3571 of the Civil Code[1]) or by requesting an increase in the flat-rate remuneration (Article 632(2) of the Civil Code).

The choice of the optimum method depends primarily on the specific factual situation and the possibility of reaching an agreement between the parties.

[1] Civil Code Act of 23 April 1964 (uniform text: Journal of Laws 2022, item 1360, as amended).

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CHANGES TO THE LABOUR CODE
WHAT CAN WE EXPECT IN 2023?

MONIKA POLITOWSKA-BAR

ALEKSANDRA ORLIK

2023 will bring major changes to labour law. Among other things, new regulations on remote work and preventive employee sobriety checks are to come into force.

Amendment to the Labour Code and Certain Other Acts

After months of waiting, legislation has been passed, amending the Labour Code with regard to various issues including remote working and preventive sobriety checks. On 13 January 2023, the Sejm rejected the amendments proposed by the Senate in December 2022.

This means that the Labour Code will soon allow employees to work remotely, either wholly or partly, from a location designated by the employee and agreed with the employer.

Employers will be obliged to accommodate remote working requests from employees such as pregnant women or those raising a child up to the age of four.

Employers will also be required to bear the costs of electricity and telecommunications services, as well as other indispensable expenses directly related to remote working.

Occasional remote work of up to 24 days in a given calendar year, will not entail an obligation for employers to reimburse employees for the related expenses.

In another significant change to the Labour Code employers will now be entitled to carry out preventive checks for the use of alcohol or substances having a similar effect to alcohol, provided that they have put in place appropriate internal regulations in this respect.

The bill has now been sent for the President's signature.

Minimum salary

New minimum salary rates apply in 2023. According to the Regulation of the Council of Ministers of 13 September 2022 on the minimum salary for work and the hourly rate:

- the minimum salary for work from 1 January to 30 June 2023 is PLN 3490 gross;
- the minimum salary for work from 1 July to 31 December 2023 is PLN 3600 gross;
- the minimum hourly rate from 1 January to 30 June 2023 is PLN 22.80;
- the minimum hourly rate from 1 July to 31 December 2023 is PLN 23.50.

Automatic re-enrolment in Employee Capital Plans (PPKs) and the duty of information

Under the PPK Act, a new duty of information has been imposed on employers. By the end of February of a given year, employers will be required to inform PPK participants of automatic re-enrolment, which takes place every four years.

This year marks the first time that 4 years have elapsed since the establishment of the PPK scheme, so by 28 February 2023, employers should carry out information campaigns or otherwise inform employees of re-enrolment. It is important that they can prove compliance with the above duty of information.

Otherwise, they may face negative consequences. PPK participants are free to re-declare to opt out of PPKs on 1 March 2023 at the earliest.

Foreign nationals employment bill

The employment of foreign nationals in Poland is governed by the Act of 20 April 2004 on employment promotion and labour market institutions.

Due to the increased interest of Polish employers in employing foreign nationals, the foreign nationals employment bill has been drafted to regulate this issue in detail.

The main assumption of the bill is the simplification of procedures concerning the employment of foreign nationals and the digitization of proceedings. The bill further provides for the abolition of so-called labour market testing (when applying for a work permit or certain types of residence permits).

The bill includes new criminal regulations providing for a fine of no less than PLN 3000 of at least PLN 500 per person, in the case of employing a foreign national posted to work by an entity other than an employment agency.

Legislative work on the bill is underway.

Whistleblowers protection bill

In December 2022, another version of the whistleblowers protection bill was published on the Government Legislation Centre website. Its purpose is to implement Directive 2019/1937 of the European Parliament and of the Council (EU) of 23 October 2019 on the protection of persons who report breaches of Union law.

The new bill introduces several significant changes compared to the previous version, mainly with regard to external reporting, including the replacement of the Commissioner as the body to which external reporting is to be made. The current bill designates the National Labour Inspectorate to fulfil this role.

A novelty is the possibility of obtaining a whistleblower certificate to be issued by a public authority as confirmation of being subject to protection under the Act.

A more severe penalty, i.e. imprisonment, has also been introduced for obstructing whistleblowing.
The deadline for Poland to implement the Directive was December 2021, but legislative work on the bill is still underway.

Collective labour dispute bill

The collective labour dispute bill is intended to repeal the existing Collective Dispute Resolution Act of 23 May 1991.

The main assumptions of the collective labour dispute bill include:

- a departure from the previous enumerative definition of the subject matter of a collective dispute, with the bill setting out the rules for the (i) initiation, (ii) conduct and (iii) ending of a collective labour dispute;
- introduction of a judicial review of the legality of a strike ballot;
- determination of time limits for conducting a collective dispute – 9 months is proposed with the possibility to extend it for an additional 3 months;
- introduction of preventive mediation aimed at preventing the worsening of a conflict between all engaged parties.

The bill is currently at the consultation stage.

Business travel allowance increase

As of 1 January 2023, the amount of the domestic business travel allowance intended to cover increased food costs will increase from PLN 38 to PLN 45.

The above is governed by the Regulation of the Minister of Family and Social Policy of 25 November 2022 amending the Regulation on business travel allowances due to employees in state or local government budgetary units.

Act on an ICT system for processing certain contracts

The aim of the Act is to simplify procedures related to the conclusion of certain contracts and minimise red tape.

According to the assumptions, micro-entrepreneurs (within the meaning of the Entrepreneurs Law Act), or entities other than micro-entrepreneurs employing no more than 9 persons and natural persons will be able to conclude employment, mandate and service contracts via an ICT system using the following:

- a qualified signature;
- a personal signature, or
- a trusted signature

The ICT system will, among other things, streamline the process of concluding and storing contracts, and will provide access to employee records. It will also facilitate the calculation and payment of social security contributions and taxes.

The Act will enter into force on 23 January 2023.

State of epidemic threat

The Regulation of the Council of Ministers of 16 December 2022 amending the Regulation imposing certain restrictions, orders and prohibitions in connection with the occurrence of the state of epidemic threat has extended the restrictions involving the obligation to wear masks in pharmacies, hospitals and other medical facilities until the end of March 2023.

The state of epidemic threat remains in force – until further notice – during which it is possible to apply the solutions of the Covid Act, e.g. those relating to remote work.

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