

newsletter

MONTHLY LEGAL UPDATE | HUNGARY

APRIL 2015

IN THIS ISSUE:

EU law EU law infringement procedures against Hungary	p. 1
Medical / Pharma law Structural changes in the Hungarian healthcare system	p. 2
Civil procedure law A new speedy procedure for privacy right infringements	p. 2
Employment law Termination of employment by e-mail?	p. 2
EU law / Consumer law Product Liability is applicable for recalled products	p. 3

EU LAW

EU law infringement procedures against Hungary

The 2012/27/EU Directive on energy efficiency establishes a set of binding measures to help the EU reach its 20% energy efficiency target by 2020. Under the directive, all EU countries are required to use energy more efficiently at all stages of the energy chain, from production through to final consumption.

Hungary has not taken any significant steps toward implementing the Directive. The European Commission has therefore initiated an infringement procedure with the Court of Justice of the European Union (the "CJEU").

In its claim, the European Commission requests the imposition of a daily fine of up to HUF 4.6 million (approx. EUR 15,444), which is common for infringement procedures initiated for non-implementation of a Directive. However, this amount will only be due if the CJEU decides in favour of the European Commission and if, at the same time, Hungary fails to implement the Energy Efficiency Directive.

In another infringement procedure, the European Commission requested that Hungary and three other EU Member States submit their observations on their laws regulating the acquisition of agricultural land for foreigners.

It is the view of the European Commission that the laws of the four countries involved may restrict two fundamental freedoms of the EU: the freedom of establishment and the free movement of capital. The European Commission indicated that such restrictions must be justified and comply with the principles of non-discrimination and proportionality.

The European Commission added that certain rules of the laws concerned, such as a requirement to reside in the country in question, may also lead to the discriminatory treatment of investors from other Member States.

MEDICAL / PHARMA LAW

Structural changes in the Hungarian healthcare system

As of 1 March 2015, significant structural changes entered into force impacting the operation of healthcare authorities in Hungary.

Most importantly, a new authority has been set up, the National Institute of Pharmacy and Nutrition (OGYÉI), which shall be responsible for licensing and supervising activities related to pharmaceutical products. In addition, as the legal successor of the National Institute for Food and Nutrition Science (OÉTI), it will also have certain tasks and responsibilities, as defined by law, related to food and cosmetic products.

The other newly established authority is the Healthcare Registration and Training Center (ENKK), which is responsible for the training and the registration of healthcare professionals. The ENKK will also be responsible for the authorisation and supervision of medical devices and the clinical trials conducted in relation to such products. Lastly, first instance decisions rendered by the OGYÉI can be appealed before the ENKK.

The Organisational Development in Healthcare and Medicines (GYEMSZI) has become the National Healthcare Supply Center (ÁEEK), which focuses on the management of ownership rights relative to state-owned healthcare institutions.

It is expected that the new structure shall enhance the more effective operation of the healthcare authorities. Additionally, Csilla Pozsgay, the head of OGYÉI, reported to the press that OGYÉI would like to obtain supervisory powers as regards food supplements, which may in turn result in further minor changes to the current system.

CIVIL PROCEDURE LAW

A new speedy procedure for privacy right infringements

To enhance the enforcement of privacy rights related to photographs and recorded voice as laid down in the new Civil Code, a new chapter of procedural rules has been introduced into the Civil Procedure Act.

As of 2 April 2015, shortened deadlines will apply to such privacy rights proceedings.

Individuals whose personality rights have been violated by having photographs or recordings taken or used without their consent may request the breaching party to provide remedies without the involvement of the court.

If the breaching party fails to satisfy the required remedies off-court, the injured party may initiate a proceeding against the perpetrator within 15 days. The injured party may demand that the breaching party stop the infringement or make appropriate restitution (e.g. appropriate public apologies at its own expense). The perpetrator may be asked to destroy the photographs or recordings. However, compensation cannot be claimed in this speedy procedure.

EMPLOYMENT LAW

Termination of employment by email?

Act 1 of 2012 on the Labour Code (the "Labour Code") has introduced the possibility of submitting declarations, including termination notices to another party, in the form of electronic documents. However, neither the courts nor the legal literature have come to a common understanding as to the conditions required for such e-declarations.

The first two conditions are clear. Firstly, one must be able to retrieve the information contained in the electronic document at a later date, with the assurance that the information is identical, i.e. the email should remain at all times in the same form and with the same content. Secondly, the time at which the declaration was made must be clearly discernible.

The third condition, which raises some questions, is that the sender of the email must be identifiable. It may be argued that a simple email does not necessarily prove the sender's identity. The safest method would therefore be to include an electronic signature, although this is not explicitly required by the Labour Code. Electronic signatures are regulated by law and require prior registration with a company providing the necessary services. For all intents and purposes, the sender's name and contact details indicated at the end of the email do not qualify as an electronic signature.

Another issue is the delivery of the email to the employee. According to the Labour Code, the electronic document is deemed to be delivered to the addressee when it becomes available to that person, i.e. it becomes possible for him or her to read the email.

However, is this the moment the email reaches the email account, or when the addressee opens his or her account and sees the relevant email? Both interpretations are possible and no clear answer has yet been provided.

Considering the above uncertainties, and until they have been clarified either by the legislator or the courts, a personal or postal delivery still remain safest methods to give an employee or employer their termination notice.

EU LAW / CONSUMER LAW

Product Liability is applicable for recalled products (joined cases C-503/13 and C-504/13)

This case brought to light some interesting issues as to whether damages are payable under the special product liability regime introduced by an EU Directive in the event of product recall, i.e. when a specific product has not (yet) proven to be defective (but the batch of products to which it belongs shows that a particular defect is likely to appear) nor has it yet caused damage due to this defect (but certain damage has been sustained as a result of this product's recall). This case regarded a specific class of products, namely medicinal devices that have been fitted inside the human body and whose recall involves a surgical procedure.

The Court of Justice of the European Union ruled that where it is found that a product has a potential defect, all products belonging to the same batch or forming part of the same production series may be classified as defective, without there being any need to show that the product in question is indeed defective.

As observed by the Advocate General, the concept must be given a broad interpretation, with "compensation for damages" involving everything that must be done to remove harmful consequences and to restore the level of safety that a person is entitled to expect.

CONTACTS

FRANÇOIS D'ORNANO
ornano@gide.com

ÁKOS KOVÁCH
kovach@gide.com

FRANCK AUDRAN
audran@gide.com

You can also find this legal update on our website in the News & Insights section: gide.com

This newsletter is a free, periodical electronic publication edited by the law firm Gide Loyrette Nouel (the "Law Firm"), and published for Gide's clients and business associates. The newsletter is strictly limited to personal use by its addressees and is intended to provide non-exhaustive, general legal information. The newsletter is not intended to be and should not be construed as providing legal advice. The addressee is solely liable for any use of the information contained herein and the Law Firm shall not be held responsible for any damages, direct, indirect or otherwise, arising from the use of the information by the addressee. In accordance with the French Data Protection Act, you may request access to, rectification of, or deletion of your personal data processed by our Communications department (privacy@gide.com).