

IT AND TELECOM SORAINEN LEGAL UPDATE

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SORAINEN

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Dear Readers,

This Update is the first time our Minsk office, opened in March 2008, is presenting news from specialist Tatsiana Klimovich.

News in Europe relates to the European Commission's proposal to amend E-Privacy Directive 2002/58/EC by introducing mandatory notification of subscribers where security breaches result in users' personal data being lost or compromised.

News from Estonia on a new Gambling Act to keep up with the changed gambling environment, while the Data Protection Inspectorate continues its practise of issuing guidelines and materials to help interested parties in finding their way through the complex jungle of Estonian data protection requirements.

From Latvia, news of amendments to the Electronic Communications Law, providing substantial changes concerning definitions: "recognizable terminal equipment" and "access to data flow"; and substantial amendments to the Administrative Offences Code, imposing more serious sanctions regarding certain administrative offences.

Finally, news from Lithuania on the ECJ ruling that Lithuania has failed to fulfill its obligations under Article 26(3) of Directive 2002/22/EC on universal services and users' rights relating to electronic communications networks and services. Good news, though, that the National Communication Regulator launched a website at www.cert.lt where Internet users can report Internet incidents to the CERT-LT website.

Yours sincerely,
Renata Berzanskiene
Head of Sorainen Information Technology Legal Team

EU NEWS

DATA PROTECTION

Commission proposes mandatory notification of subscribers in cases of data security breaches by telecom operators

The European Commission has proposed amendments to the E-Privacy Directive 2002/58/EC. The proposed amendments would introduce mandatory notification of subscribers where security breaches result in users' personal data being lost or compromised. The theft of personal data from millions of subscribers of a leading German mobile operator, reported in May, demonstrates the importance of informing subscribers in such cases.

If a breach of security leads to accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to personal data transmitted, stored or otherwise processed in connection with supply of publicly available communications services in the Community, the service provider must promptly notify the subscriber concerned and the national regulatory authority. Notification to the subscriber must at least describe the nature of the breach and recommend measures to mitigate possible negative effects.

Notification to the national regulatory authority must also describe the consequences of the breach and measures taken by the provider to address it.

The proposed amendments set standards for technical implementation measures regarding notifications. In general, notification of a breach of security needs only to be made to the national regulatory authority, and to consumers only in cases where an imminent and direct danger exists for consumer rights and interests. Users who experience less serious breaches of security would have to be informed annually.

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ESTONIA

New Gambling Act adopted

On 21 October 2008, the Estonian Parliament adopted a new Gambling Act in order to keep up with the changed situation in the gambling sector

EU News

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and to make use of novel possibilities to supervise gambling organisers. Lawmakers hope that the new legislation will improve the quality of gambling services through imposing stricter requirements on organisers and more efficient supervision. A separate Gambling Tax Act is also undergoing review.

The new Gambling Act encompasses types of gambling that are currently insufficiently regulated or not regulated at all. Most importantly, the new Act thoroughly regulates remote gambling. This is defined as a type of gambling where the result of the game is determined by using an electronic device and the players can participate in the game by means of electronic communication devices (such as the Internet, digital-TV; mobile phones, public broadcasting). The legislation aims to provide an attractive and trustworthy business environment for organising remote gambling over the Internet from Estonia. The upside is that foreign remote (online) gambling operators are enabled to legalise their activities in Estonia and avoid banning of access to their services by internet service providers and restrictions on transferring funds to locally unlicensed remote gambling operators. The downside is that remote gambling operators interested in acquiring a local license must have their server physically located in Estonia. This and many other additional restrictions put in question the attractiveness of Estonia – which is basically a small market – for global online gambling operators. However, at least another interesting option has finally arrived.

Entry into force of the new Gambling Act is split into stages. While most provisions will enter into force on 1 January 2009, organisers of remote gambling have time to study the impact of the new legal regime until 1 January 2010. Finally, provisions regulating electronic accounting and supervision of gambling systems will enter into force on 1 January 2011.

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DATA PROTECTION

Estonian Data Protection Inspectorate (DPI) issues several guidelines

The DPI continues its practice of issuing guidelines and materials to help interested parties in finding their way through the complex jungle of Estonian data protection requirements:

- Guideline on “Registering sensitive personal data processing for security firms” (2 June 2008).
- Self-help questionnaire on “Data protection and data security” (2 September 2008).

Guidelines and self-help questionnaire are not legally binding documents but are advisory. However, we strongly recommend complying with them while planning related activities.

These and many other guidelines are available for downloading on the web-page of the Estonian

Data Protection Agency (<http://www.dp.gov.ee/>), but unfortunately only one is available in English.

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LATVIA

INFORMATION SOCIETY SERVICES

Amendments to electronic communications law

Amendments to the Electronic Communications Law adopted on 3 July 2008 became effective on 29 July 2008. The amendments provide substantial changes concerning definitions: “recognizable terminal equipment” and “access to data flow”.

“Recognizable terminal equipment” in the context of the Law is terminal equipment to which a manufacturer assigns an identifier for recognition in the electronic communications network. And “access to data flow” is defined as the numeral subscribers service provided by one electronic communications merchant to another electronic communications merchant in order to offer the end-user broadband access to the internet.

The amendments also cover the following issues with regard to electronic communications services: determination of the market, maintenance of effective competition, and requirements for identification of information concerning business secrets.

New Article 33 (3) states that if the general authorization regulations are violated the Regulator – the Public Utilities Commission - may terminate for up to five years the activities of an electronic communications merchant in the field of electronic communications services or in provision of an electronic communications network.

When an electronic communications merchant provides information to the Regulator, it must indicate information considered to be a business secret and explain legal grounds for it.

The new regulation in Article 46 (6) forbids changing data that identify terminal equipment in the electronic communications network or obtaining, saving, or distributing such data without acceptance by or on behalf of the manufacturer of terminal equipment. This restriction also applies to software or equipment provided for altering such data.

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Draft regulation for registration of electronic communications merchant

The regulator (Public Utilities Commission) on the basis of recent amendments to the electronic communications law has prepared a new draft regulation “for registration of an electronic communications merchant”. Under the draft regulation, an electronic communications merchant may provide an electronic communications network and electronic communications services after sending

to the regulator a merchant’s registration notice (of which a template is attached as annex 1).

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DATA PROTECTION LAW

Amendments to the Administrative Offences Code

Substantial amendments to the Administrative Offences Code, adopted on 24 July 2008, became effective on 7 August 2008, imposing more serious sanctions regarding certain administrative offences (for example, against violating the Personal Data Protection Law).

The Code imposes administrative liability for unlawfully processing an individual’s personal data. The amendments increase sanctions for failure to provide necessary information to the data subject, for operating an unregistered personal data processing system and also for failure to submit information to undertake the necessary accreditation by the Inspectorate.

Under the Code, a legal person unlawfully processing personal data is liable to a warning or a fine of between LVL 100 and LVL 1,000.

Failing to provide necessary information to a data subject incurs a penalty up to LVL 250, if information was obtained from a data subject or if the offence was committed while obtaining or revealing information to a third person for the first time, and the information was not obtained from the data subject.

A similar fine may be imposed if a person liable has failed to register a personal data processing system or necessary changes in the system, or to submit information to the Inspectorate, or to undertake necessary accreditation.

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LITHUANIA

TELECOMS

The Communications Regulatory Authority of Lithuania decides to lower mobile termination rates

The Communications Regulatory Authority (CRA) decision to lower mobile termination rates by 20% has outraged Lithuanian mobile telecommunications service providers. The CRA concluded in its decision that telecommunications service providers are applying too high mobile termination rates and therefore disadvantaging end service receivers. The telecommunication service providers pay mobile termination rates to each other, i.e. when a customer makes a call from one network to another, a mobile termination rate is paid to the operator through whom the call is received.

It was warned that prices for telephone calls may increase as a result of the CRA proposal because the majority of income that service providers receive stems from termination rates. At present, the mobile termination rate in Lithuania is LTL 0,36 per minute during peak hours and LTL 0,18 per minute for non-peak hours. It was argued that lowering mobile termination rates would hinder a new operator from entering the Lithuanian telecommunications market.

After analysing the market, the CRA came to the conclusion that all operators must implement certain obligations, i.e. to ensure transparency when announcing conditions, to implement wholesale service price control. For example, if a customer pays LTL 0,07 per minute and its operator pays LTL 0,36 termination rate per minute, the balance is considered to be unfair. Therefore, it is necessary to consider harmonisation of mobile termination rates. The CRA argues that if, after the decision to lower mobile termination rates, fees for mobile telephone calls increase, this would be regarded as cross-subsidization, which is considered to be anticompetitive behaviour.

The CRA's decision has passed the public consultation procedure and is expected to come into effect as from 1 January 2009.

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The European Court of Justice (ECJ) declares Lithuania in breach of the Universal Service Directive

In its judgment of 11 September 2008 in Case C-274/07 *Commission of the European Communities v Lithuania*, the ECJ ruled that Lithuania had failed to fulfill its obligations under Article 26(3) of Directive 2002/22/EC on universal services and users' rights relating to electronic communications networks and services. The issue in question was incorrect application of Article 26(3) of the Universal Service Directive under which Member States are to ensure that undertakings which operate public telephone networks make caller location information available to authorities handling emergencies, to the extent technically feasible, for all calls to the single European emergency call number 112.

Concerns as regards incorrect application of Article 26(3) of the Universal Service Directive by Lithuania arose from the fact that when emergency calls to the single European emergency number 112 come from a mobile telephone, caller location information is not provided to the emergency services.

The Commission argued that Lithuania's failure to transmit information on the location of calls from public mobile telephone networks arose not from the technical characteristics of those networks, which would prevent transmission of that information, but from lack of the investment required in order to acquire or adapt the equipment so as to allow transmission. The Court upheld the Commission's view in declaring that by not ensuring in practice that authorities handling emergencies are given caller location information for all callers to number

112 when public telephone networks are used, Lithuania has failed to fulfil its obligations under Article 26(3) of the Universal Services Directive.

The ECJ ordered Lithuania to pay the costs.

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INFORMATION SOCIETY SERVICES

Lithuania launches web site for registration and investigation of Internet incidents

The National Communication Regulator has launched a website at www.cert.lt as a reaction to the recent cyber assault by pro-Russian hackers on about 300 Lithuanian websites, including those of public institutions such as the national Tax Inspection and Securities and Exchange Commission. Now, Internet users can report to CERT-LT, through its website, on Internet incidents such as unwanted spam, unlawful content, unauthorised access, disclosure of personal data and software viruses.

CERT-LT is the Lithuanian national Computer Emergency Response Team whose task is to promote security in the information society by preventing, observing, and solving information security incidents and disseminating information on threats to information security.

The CERT-LT mission is to provide capability to deal with network and information security incidents in Lithuanian public electronic networks and prevent these from occurring. CERT-LT monitors the networks of telecommunication operators and Internet service providers in Lithuania. CERT-LT receives notifications from telecommunication operators concerning network and information security incidents and threats. End users should contact their service providers in the first instance. If operators cannot solve their problems, users can report to CERT-LT.

The main duties of CERT-LT are to:

- register and investigate network and information security incidents in Lithuanian public electronic networks,
- coordinate actions of Internet service providers, telecommunication network operators and CERT groups in Lithuania when responding to network and information security incidents,
- investigate vulnerabilities of networks and information systems and prevent network and information security incidents,
- disseminate information to telecommunication network operators and users about threats to network and information security
- promote establishment of new CERTs; monitor the state of network and information security in public electronic networks.

During the third quarter of 2008, CERT registered 40% more Internet incidents than during the same

time last year. The most common Internet incident is unwanted spam.

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Lithuania takes leading position in Europe by public accessibility of Internet access spots

This year the Ministry of Home Affairs is completing the last stage of establishing public Internet access spots in rural areas. 400 new Internet access spots were set up, while 83 Internet access spots set up in 2002 were modernised by July 2008.

According to the Minister of Home Affairs, Mr. R. Ciupaila, this project - started by business organizations in 2002 - has grown into the densest network of Internet access spots for rural areas in Europe. Currently, over 800 public Internet access spots are operating across Lithuanian rural areas and towns. The network ensures particularly efficient Internet accessibility compared to other European countries.

On the basis of the Development of Public Internet Access Network project, funded by EU structural funds, the network is being further widened to reach the most remote rural places. New spots are being established in areas that previously did not have Internet access due to lack of commercial initiatives or technical obstacles. Free Internet access should be provided in public libraries, community buildings, schools, municipalities, and post offices. An Internet access spot usually provides several modern computer desks that can be used free of charge by any person and that are operated by appointed administrators.

The main objective of the project is to decrease the social exclusion of rural areas and small towns in Lithuania.

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BELARUS

INFORMATION SOCIETY SERVICES

Agreement signed on cooperation with Latvian IT Association "Latvian IT Cluster"

On 16 October 2008 at a Belarusian-Latvian Forum in Minsk, representatives of the Administration of the High Technologies Park met with the chair of the Latvian IT Association "Latvian IT Cluster" and other representatives of IT companies from Latvia. Negotiations resulted in signing of an Agreement on cooperation between the HTP and the Latvian IT Cluster.

- **Additional information:**
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NEWS IN SORAINEN

■ Recent deals

Acquisition finance of EUR 170 million to leading energy and telecom company

Sorainen acted as local counsel for AAC Capital Nebo Sub-LP in obtaining finance for its acquisition of Empower Oy, a major service provider in the energy, telecom, and industrial sector in Finland and the Baltic States. The finance package consisted of EUR 110 million Senior finance, EUR 15 million Mezzanine finance, and EUR 45 million Shareholder finance. The case was handled by partner Reimo Hammerberg and senior associates Rudolfs Engelis and Agne Jonaityte.

Advice to global IT leader

Tallinn office advised the world's largest IT company, in several assignments from simple framework agreements to advising on complex developments. One of the highlights in 2008 has been contracting and sub-contracting advice on purchasing and tailoring a software solution for a self-service portal of one of the leading banks in the Baltics. Advice was provided by senior associates Carry Plaks and Kaupo Lepasepp with appraisals from the client.

Successful client representation in international IT case

Tallinn office advised the world's leading provider of multiple Internet platforms for global commerce, payments, and communications in proceedings originating from a patent infringement lawsuit in the United States. Our team of IT specialists and litigators managed to achieve dismissal of a letter of request submitted under the Hague Convention on the taking of evidence abroad in civil or commercial matters (the Hague Convention of 18 March 1970). In addition to litigation expertise, our team used extensive knowledge of VoIP services obtained from previous assignments to protect the confidentiality of source code of the world's leading VoIP software. Advice was provided by senior associate Kaupo Lepasepp, supported by litigation partner Carri Ginter.

Another complex trans-Atlantic data transfer

Sorainen advised in a trans-Atlantic transfer of client databases. Transfer of data to a non EU country required approval of the Estonian Data Protection Inspectorate. This case showed that data transfer assignments in Estonia are currently the most problematic. Here, Sorainen successfully assisted the client thorough administrative complications caused by adoption of the new Data Protection Act in 2008 and lack of experience in public authorities concerning data migration to "non-safe harbour" entities in non-EU countries. Advice was provided at pan-Baltic level.

Acquisition in Lithuanian IT sector

Vilnius office advised UAB Baltnetos komunikacijos, provider of complex IT and data

communication solutions, in its acquisition of UAB Norby Networks from Martinson Trigon Venture Partners. UAB Norby Networks was formed recently on the basis of the internet service, data communication and telephony unit of former UAB MicroLink Lietuva. As a result of the acquisition, UAB Baltnetos komunikacijos became the second largest supplier of internet services to corporate clients in Lithuania. Our team in this project included partner Laimonas Skibarka, senior associate Raminta Karlonaite, and specialist counsel Paulius Koverovas.

■ Employees

Sorainen Tallinn office welcomes a new associate to the Commercial Contracts team

Mihkel Miidla, an associate, has joined our Commercial Contracts Team. He specialises in trade, distribution, and services. Mr Miidla has previously worked as a legal trainee in the Civil Chamber of the Estonian Supreme Court. He holds a Master's degree in Law from Tartu University.

Riga office welcomes an associate to supplement the team dealing with Commercial contracts

Ieva Lacenberg-Rocena, an associate specializing in Litigation, Arbitration, Public procurement and Commercial contracts. Before joining Sorainen, Ms Lacenberg-Rocena worked as acting director of legal department for the Procurement Monitoring Bureau in Latvia. She has graduated from Riga Graduate School of Law (LL.M.).

Vilnius office team: one more specialist working with personal data protection law issues

Since September 1 our office IT practice has been strengthened by the arrival of associate **Erika Budaite**, who mainly specialises in competition law and also works with personal data protection matters. Before joining Sorainen, Erika Budaite practised law with the international business law firm DLA Piper UK LLP in London for two years and has a two-year experience of working with The British Institute of International and Comparative Law (BIICL) in London. Ms Budaite graduated from King's College, University of London (LL.M.) where she studied competition law, and Concordia International University in Estonia, where she obtained her LL.B. in International, EU and Comparative Law.

■ Seminars

Organising IT seminar in Vilnius

Sorainen Vilnius office in cooperation with ICC Lithuania organised an IT law-focused conference on September 25: **What you should**

know when concluding IT contracts: legal comments and practical advice, where certain aspects of IT contracts were discussed. The aim of the conference was to provide businesses with detailed information on the IP rights of software providers, software licensing, specific and main aspects of IT agreements, as well as issues related to personal data protection in the context of IT contracts. Specialist counsel Paulius Koverovas and associate Paulius Galubickas delivered presentations.

■ Other

Sorainen starts blogging

Sorainen offices recently started legal blogging in major business media in the Baltics: on Aripaev, Dienas Bizness, and Verslo Zinios respectively. Lawyers blog on topics relating to corporate matters, including M&A issues. You are welcome to visit our blogs and share your views: www.aripaev.ee (in Estonian), www.db.lv (in Latvian) and www.vz.lt (in Lithuanian).

Sorainen contributes to a substantial overview on electronic evidence published by high profile London law book publisher

Partner Agris Repss from Sorainen Riga office contributed to the book "International Electronic Evidence" published in June 2008 by the British Institute of International and Comparative Law. The book outlines the substantive law of evidence, admissibility, disclosure, and procedural requirements in respect of digital evidence. Our lawyers prepared an insight of these topics in a chapter on Latvia. The book is one of the very few publications providing a comprehensive analysis of the laws of various jurisdictions on admissibility, disclosure, and procedural requirements in respect of digital evidence.