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First prohibited employers' agreement case is now pending

At the end of June, the Office for the Protection of Competition initiated first administrative proceedings to address a potential breach of the Competition Protection Act in connection with a prohibited agreement between employers.

Pavel Koukal
Rödl & Partner Prague

Last year we informed you about the publication of a new policy brief by the Czech Office for the Protection of Competition titled "Competition Aspects of the Labour Market." In October 2023, the Office opened investigation on first two cases of prohibited agreements on the labour market. The Office ultimately closed the cases without initiating formal proceedings, and without imposing a fine on the parties involved for their violation of fair competition rules.

The prohibited agreements covered by the new policy are infrequent in normal business usage, and generally fall within the category of wage-fixing, where employers agree on harmonizing wages or benefits offered to their employees, and within the category of non-poaching, where employers agree to apply and enforce strict non-compete provisions in a coordinated manner that prevent their employees from switching from one employer to another.

The Office started to focus on this type of prohibited agreements in reflection of a trend adopted by many competition authorities elsewhere. In particular, the Office began to pay more attention to agreements that incorporate mutual commitment not to hire employees of the other employer (non-poaching clause), which are perceived by the Office as provisions on a division of markets or sources of supply pursuant to Section 3(2) of the Competition Protection Act.

At the end of June, the Office took a major step in enforcing its new policy, when it initiated first administrative proceedings in a case involving a potential prohibited agreement between employers. In the agreement, employers incorporated a clause that prohibited them from recruiting and hiring each others' employees.

According to the Office, this is the first administrative proceedings on a non-poaching clause adopted with the purpose of breaching or potentially resulting in a breach of fair competition rules. The infringement is punishable by a fine of up to 10 million CZK or up to 10% of the parties' net turnover for the prior accounting period.

Given the extensive sanctions available to the Office, it is highly advisable to mitigate the new competition compliance risk by enacting prudent business policies on the part all business companies and their officers and managers that will prevent any conduct that could be construed as a prohibited agreement on the labour market.

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→ Taxes

Tax benefits for victims of natural disasters

The Czech Republic has just been hit by floods. Victims are now primarily concerned with repairing the damage. They do not have time to look into possible tax relief measures. We have therefore summarised the tax measures available to them.

Martina Šotníková, Daniel Ďuriš
Rödl & Partner Prague

Paying taxes

Taxpayers who need to pay their tax and do not have the funds at their disposal now may:

- Ask the tax administrator to defer payment of the tax or to pay the tax in instalments. The request can be made retroactively. Interest will be charged on arrears during the period of delay.
- In case of income tax advances, taxpayers may apply for a re-assessment of the advance or even ask the tax authorities to cancel the advances altogether. To this end, the taxpayer must submit evidence of the expected reduction in the tax base.
- Taxpayers in arrears may apply for a waiver of late payment interest.
- Taxpayers who fell prey to the natural disaster are exempt from admin fees related to tax proceedings.

Filing a tax return

Most taxpayers have already filed their income tax return for the year 2023. But for some taxpayers, the fiscal year does not coincide with the calendar year, which means that they may be now in a position where they are required to file their return. Taxpayers affected by the recent floods may apply for an extension of the time limit for filing the return.

Deadline extension is not possible in case of VAT returns. The only option is to apply for a deferral of the tax payment or for a waiver of interest or penalties for the late submission of the return or control report. Given the scale of the disaster, the Ministry of Finance is expected to grant a collective waiver to the entities affected.

Donations for victims

Donations for victims of natural disasters are to be tax deductible in the amount of up to 30% of the reported tax base (the approval of the 30% limit is currently pending).

For victims, such donations are treated as non-taxable income.

This applies to donations granted to both corporations and individuals or employees harmed by the natural disaster.

Real estate tax

Lands, buildings, and units affected by the disaster may be exempt from real estate tax by the relevant towns and cities for the period of up to 5 years. The affected municipalities are expected to adopt the exemption effective from the tax year 2025 and beyond.

We will gladly assist you in any of the matters mentioned above.

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→ ESG Insights

ESRS E2 – Pollution

ESRS E2 is a European Union sustainability reporting standard that zeroes in on pollution issues. It spells out what undertakings need to disclose regarding their significant impacts on pollution, related risks, policies, goals, and measures they've taken to prevent and mitigate these impacts.

Ladislav Čížek
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Like its counterparts, ESRS E2 has a structured format, which includes the following sections:

- Objective
- Interaction with other ESRS's
- Disclosure Requirements
- Governance
- Strategy
- Impact, Risk and Opportunity Management
- Metrics and Targets
- Appendix A: Application requirements

Introduction

Pollution is a major environmental challenge facing modern society. The ESRS E2 standard tackles a wide array of pollution forms, breaking them down into four main areas: air, water, soil, and substances of (very high) concern. An expanded classification can be found in Appendix A of the general ESRS 1 standard, which lists the following subtopics for ESRS E2:

- Air pollution
- Water pollution
- Soil pollution
- Pollution of living organisms and food resources
- Substances of concern
- Substances of very high concern
- Microplastics

So, what does this mean for undertakings? When conducting a materiality assessment (see our previous articles), they need to pay special attention to these areas. If a particular area is deemed material,¹ the company must include it in their sustainability report, following the corresponding disclosure requirements under the ESRS E2 standard. Naturally, the assessment must take into account the entire value chain.²

Just as with climate change, assessing double materiality is key when it comes to pollution. Undertakings must determine whether their activities are causing significant pollution or if they're exposed to risks associated with it.

Objectives and basic concepts

The aim of the ESRS E2 standard is to lay out disclosure requirements that allow users of sustainability reports to grasp an undertaking's impact on pollution and its efforts to mitigate these effects. It also encompasses financial impacts and risks tied to pollution, as well as the measures undertakings are taking to tackle them.

Risks and opportunities

Undertakings face both physical risks from environmental pollution and transition risks due to changes in regulatory and policy frameworks. Definitions of both types of risks, along with other terms, can be found in the glossary, which is an integral part of the ESRS standards.

¹ See requirement ESRS 2 IRO-1.

² For more on the value chain issues, refer to our previous articles.

Physical risks might include, for instance, contamination of soil or water resources—situations that can lead to hefty remediation costs, sanctions, or a tarnished reputation. Transition risks stem from the necessity to adapt to new environmental regulations or shifts in societal expectations.

The standard details in its appendix introduction (paragraphs AR1 – AR9) that when assessing the materiality of environmental subtopics, undertakings can consider four phases, known as the LEAP approach

- Locate = Locate where, within the undertaking's operations and value chain, its activities interface with nature;
- Evaluate = Evaluate the dependencies and impacts related to pollution.;
- Assess = Assess significant risks and opportunities;
- Prepare = Prepare and communicate the results.

This step-by-step approach is echoed in other environmental standards as well.

Interaction with the ESRS's

While ESRS E2 doesn't explicitly detail **emission factors** as defined in standards like ESRS E1³, they still play a pivotal role in ESRS E2.

Similar to how ESRS E1 mandates calculating and reporting greenhouse gas emissions, ESRS E2 calls for the calculation and reporting of environmental burdens linked to emissions of hazardous substances. Emission factors for various types of pollution are crucial for determining the total amount of pollution an undertaking causes.

Undertakings must use these factors when calculating the impacts of their activities on the environment and when assessing their responsibility for the pollution they cause. They should follow Regulation (EC) No 166/2006 of the European Parliament and of the Council known as the European Pollutant Release and Transfer Register (E-PRTR Regulation).

Disclosure requirements

- **E2-1 – Policies related to pollution:** Undertakings must disclose their goals and policies for reducing pollution and how they aim to minimize the negative impacts of their activities on the environment.
- **E2-2 – Actions and resources related to pollution:** Undertakings need to detail the actions they've taken regarding pollution and the resources allocated

located for their implementation. This might include plans to address pollution, technological innovations, or investments in cleaner production processes.

- **E2-3 – Targets related to pollution:** Targets can relate to the undertaking itself or aim for a specific indicator within the value chain.

These targets must be set using scientifically recognized methodologies that enable measurement of pollution. Undertakings can't just make up their own methods for measuring pollution. A prime example is the Science-Based Targets Initiative for Nature (SBTN). It's clear that seasoned experts in this field are indispensable.

- **E2-4 – Pollution of air, water, and soil:** this requirement involves disclosing the amounts of pollutants that an undertaking releases into various environmental compartments. Undertakings must provide detailed information on:

- Air emissions (e.g., nitrogen oxides (NO_x), sulphur dioxide (SO₂), dust particles)
- Water emissions (e.g., chemicals, heavy metals, nitrogen, and phosphorus)
- Soil emissions (e.g., pesticides, heavy metals, industrial chemicals)

To gather relevant information, undertakings must proceed in the following order:

1. Direct measurement of emissions, wastewater, or other pollution using recognized continuous monitoring systems (e.g., automated measuring systems);
2. Regular measurements;
3. Calculations based on site-specific data;
4. Calculations using published emission factors;
5. Estimation (only as the last resort).

- **E2-5 – Substances of concern and substances of very high concern:** This requirement focuses on disclosing information about substances considered hazardous and having significant negative impacts on human health or the environment. Substances of Concern are chemical substances that may pose risks to human health or the environment. Identified and regulated by the European Chemicals Agency (ECHA), these substances might be carcinogenic, mutagenic, toxic to reproduction, bioaccumulative, or have other hazardous properties.

Substances of very high concern are a specific category

³ ESRS E1 deals with greenhouse gas emissions and emission factors for converting these emissions to their CO₂ equivalent.

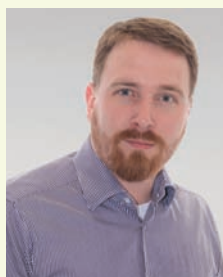
category of substances with severe and often irreversible effects on human health and the environment. If a substance is designated as SVHC, it's listed among substances subject to special authorization.

– **E2-6 – Financial effects of pollution:** Undertakings must disclose the financial consequences they face due to pollution. This includes costs for remediation, fines, legal expenses associated with regulatory violations, and investments in technologies to reduce pollution.

The topic of pollution, as covered by ESRS E2, is vast and includes various forms of emissions and environmental risks. The disclosure requirements span from reporting emissions of pollutants to detailing financial impacts and prevention strategies. For undertakings operating in high-risk sectors,

it's imperative to ensure transparent and accurate reporting of their pollution-related activities. This calls for not only precise measurement but also the implementation of preventive measures and innovative technologies.

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