

Legal News

The most important legal changes in the Czech Republic and Slovakia

11 December 2020



A most unusual year

Advent has begun. A time when we are rushing towards the end of the year and the beginning of the new year is already in sight. A time for contemplation and for taking stock of the past year. A time to think about our expectations for the coming year. Advent 2020.

This year was different. It exceeded our wildest expectations. It brought many worries and uncertainties, but also much that is wonderful. In the spring, people were able to unite and generously and selflessly help complete strangers. We were able to innovate. Companies succeeded in introducing teleworking practically overnight, a project that would otherwise have taken years with uncertain prospects. Employee health has become a real priority for companies.

The end of the year again brings changes in virtually all areas of law. For better, for worse, and sometimes we just don't know yet, as in the case of the tax package. Next year, we will eagerly look forward to the deployment of Covid vaccines, while monitoring with trepidation the impact that the end of the support programmes will have on weakened companies. But there is no doubt that next year will be a search for a "new normal".

So let's hope 2021 will be a different year, a better year!



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New holiday rules from 1 January 2021

CZ

With the end of the year approaching, all employers are awaiting the transition to the new holiday legislation introduced by last June's amendment to the Labour Code. It is therefore high time to complete the training of new accountants, ensure software updates or adjust payslips.

From 1 January 2021, it will be necessary to record the holiday entitlement and its use in hours, not in working days (shifts) as was the case so far. The employee's entitlement to holiday will be newly based on the fixed weekly working hours worked (or agreed shorter working hours) in a calendar year, from which the length of holiday in hours will also be derived.

The holiday entitlement for a calendar year will therefore represent a total of 200 hours for an employee with five weeks of leave and 40 hours of weekly working time. If the employee does not work the entire calendar year, they will be entitled to a proportional part of the holiday leave for the calendar year after working for at least four weeks, for each full week of work performed in the amount of 1/52 of the total holiday entitlement. In this context, the current holiday leave for calendar days worked is completely abolished as redundant.

Conceptually, the way obstacles at work are regarded is changing, as there will no longer be a reduction in holiday leave depending on their length. Depending on their type, obstacles will be included for holiday purposes as work performance, either in full or up to 20 times the weekly working time when performing at least 12 weeks of work.

Other important changes are also taking place as regards transfer of holiday leave, rounding or reduction of holiday in case of unexcused absence.

The use of transferred leave, to which an entitlement arises until 31 December 2020, will continue to be governed by current rules. Therefore, if you want to avoid the hassle of keeping two sets of records (or a problematic transfer to hours), we recommend that you consider using the remaining holiday by the end of the year.

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Residence and work of UK citizens in the Slovak Republic after 1 January 2021

SK

The transitional period, which guaranteed UK citizens and their family members freedom of movement within the European Union, will end on 31 December 2020. From 1 January 2021, UK citizens and their family members ("UK citizens") will be considered third-country nationals. It follows that if they want to stay in the territory of the Slovak Republic other than as tourists (work, business), they will have to apply for a residence permit and a work permit.

An exception is if UK citizens are legally resident in the territory of the Slovak Republic before the end of the transitional period. The precondition for the application of this exception is registration.

By 30 June 2021, all UK citizens living in the Slovak Republic before 31 December 2020 must register with the Foreign Police. If UK citizens are already registered, they must exchange their EU residence documents for residence documents (as third-country nationals), which will be in accordance with the exit agreement.



Their residence status will be automatically updated in the Slovak system on 1 January 2021. All UK citizens are required to apply for a new residence permit (as third-country nationals) in accordance with the exit agreement by 30 June 2021 at the latest. The current residence document of an EU citizen expires on 30 June 2021. After that date, it will be possible to apply for a new residence document, but a fine of EUR 1,600 will be imposed.

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Residence and work of UK citizens in the Czech Republic after 1 January 2021

CZ

The transitional period during which UK citizens and their family members ("UK citizens") retained the right to move freely within the European Union will end on 31 December 2020. From 1 January 2021, UK citizens will be considered third-country nationals. It follows that if they want to stay in the Czech Republic other than as tourists (work, business), they will have to apply for a residence permit and work permit.

An exception applies to UK citizens who were legally resident in the Czech Republic before the end of the transitional period. The precondition for the application of this exception is proof of the right to stay in the Czech Republic before 31 December 2020.

For this reason, the Ministry of the Interior strongly encourages UK citizens residing in the Czech Republic without a temporary or permanent residence permit (in the case of foreigners staying in the country for more than five years) to apply for these permits before 31 December 2020. Applying for a temporary residence or permanent residence permit should be possible even after 1 January 2021, but it will be necessary to prove the legitimacy of the previous residence in the Czech Republic.

Within one year from the start of the issuance of biometric cards (to be specified during 2021), all UK citizens and holders of a temporary or permanent residence permit will be obliged to exchange their existing cards for new ones.

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A major amendment to the Business Corporations Act

CZ

On 1 January 2021, the most fundamental amendment to the Business Corporations Act so far will come into force. On the one hand, some provisions will be clarified and what already works in practice will be explicitly inserted into the text. On the other hand, the amendment will introduce some fundamental novelties and will significantly change some well-established institutes of corporate law.

Among the most important changes that need to be prepared in just a few weeks are the new monistic system for joint-stock companies (without a statutory director), a different way of appointing representatives of legal entities that are members of elected corporate bodies (ban on chaining) or stricter responsibilities for statutory bodies.

Members of statutory bodies especially should seek to familiarise themselves with the new rules in good time and put them into practice. After all, stricter responsibilities for them is one of the main pillars of the amendment. A fundamental change in this area is the abolition of the statutory liability of members of statutory bodies for the company's debts, which will be replaced by a stricter obligation to settle the difference between the debts and the company's assets in the event of bankruptcy.

Regulations governing the return of benefits to members of the statutory body which they received from the company in the last two years will also be stricter. The two-year period will no longer be calculated from the legal force of the insolvency decision, but from the moment the insolvency proceedings are opened. The conflict of interest rules will also be extended and the rules on expulsion as a member of the statutory body will be simplified.

The clearly positive changes include, for example, a simplified procedure for the establishment of a limited liability company (s.r.o.) with registered capital of up to CZK 20,000 or the option to decide on the payment of profits until the end of the following accounting period.

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Important information if you transfer personal data outside the EU

SK

The Court of Justice of the EU issued the Schrems II judgment, in which it declared that the Privacy Shield, an instrument for the transfer of personal data to the USA, is invalid. Companies that transfer personal information to the USA based on it must suspend or otherwise secure the transfer.

You think this decision has nothing to do with you? Take a closer look...

The Court of Justice also examined the validity of standard "controller - processor" contractual clauses, i.e. another legal instrument for the security of personal data transfers to third countries, not only to the USA. It declared the clauses valid, but not unconditionally. Whether a specific transfer of personal data can take place should depend on the outcome of the assessment of the legislation in force at the point of import of the data. The Court thus left the responsibility for assessing the legislation and enforcement in a third country to the data exporter.

Recommendations for data transfers outside the EU / EEA

The following recommended steps can be deduced from the Judgment to ensure the lawfulness of the transfer of personal data to a third country:

- if the third country is the USA and the transfer was made under the Privacy Shield, it must be suspended
- if the data are transferred on the basis of the clauses to any third country, it must be verified before the transfer begins that the legislation in the country of the data importer guarantees an adequate level of protection and that the practice of public authorities does not interfere with adequate protection
- take additional measures if necessary (for more on this new issue, see EDPB Recommendation 1/2020)
- if even additional measures do not ensure the adequacy of personal data protection, do not start the transfer or end it
- if the transfer nevertheless takes place, the competent supervisory authority must be notified

In accordance with the principle of responsibility, it is necessary to substantiate all the above steps with the relevant documentation.

Helga Vernarcová | Senior Associate | Bratislava



In brief

CZ	Special conditions of the Antivirus Plus programme: The contribution under the Antivirus Plus scheme cannot be granted to an employer who has received public support of more than EUR 800,000 under the so called Temporary Framework. The contribution under Antivirus Plus is also included in this limit. After reaching the limit, the employer can continue to draw Antivirus A and Antivirus B.	<u>Peter Perniš</u> Senior Associate Prague
CZ	According to the Supreme Court, the loss of a legal reason for using the premises (e.g. a contract) in which the company's registered office is located does not establish the company's obligation to apply for a change of registered office in the Commercial Register. At the same time, however, if the legal reason for using the premises is lost, the company must decide to change its registered office. If this does not happen and the company does not arrange a remedy even within a reasonable period set by the Commercial Court, the court will decide on the dissolution of the company in liquidation.	<u>Hana Treutlerová</u> Associate Prague
CZ	According to a government bill amending the regulation on the minimum wage, the minimum wage should increase to CZK 15,200 per month and CZK 90.50 per hour from 1 January 2021.	<u>Jakub Verlík</u> Senior Associate Prague
SK	The National Council of the Slovak Republic approved an amendment to the VAT Act, the aim of which was mainly the implementation of EU directives. It also abolishes the exemption from VAT of consignments from third countries with a value of up to EUR 22. It should enter into force on 1 January 2021, and in the case of certain provisions relating also to e-commerce on 1 July 2021.	<u>Soňa Petrovičová</u> Senior Associate Bratislava
SK	Publication of data on end users of benefits: As of 1 November 2020, the Statistical Office of the Slovak Republic has made available to the public on its website data on end users of the benefits of businesses and legal entities.	<u>Petra Štrbová Marková</u> Senior Associate Bratislava
CZ	Data on beneficial owners in the Czech Republic are not yet public. The publication of these data is planned within the implementation of the 5 th AML Directive.	<u>Ondřej Šudoma</u> Associate Prague

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