EVERSHEDS SUTHERLAND

Legal News

The most important legal changes in the Czech Republic and Slovakia

14 September 2020

Season restart

After a frenzied spring in which we battled alongside clients with an exceptional number of unprecedented situations caused by the coronavirus crisis, the summer seemed almost peaceful.

Rather than signs of an economy in decline, it seems there was a general fatigue and expectations of more turbulence ahead. Nevertheless, I would like to believe that summer was not just the calm before the storm and that a productive and successful period full of interesting projects awaits us.

At the end of July, EU leaders agreed on the parameters of an economic recovery fund (sometimes referred to as the Marshall Plan 2.0), which is set to provide grants totalling EUR 390bln and soft loans totalling EUR 360bln as of 1 January 2021. It's no secret that some EU Member States would like to use these funds to attract manufacturing back to Europe. There is a talk of the reindustrialisation of Europe.

This will give rise to new challenges, but certainly also to new opportunities.

Efforts to maintain a workforce whose shortage has only worsened due to the departure of foreign workers will remain at the forefront. In this context, the decision of the Czech Supreme Court concerning regional differences in salary is sure to be of interest. You can read more about it in the contribution by our Prague attorney Kateřina Demová.

A smaller practical impact, albeit no less interesting, will be the long-term reflections on the need to reform the competition law rules under which contemplated concentrations with competitors and significant undertakings are notified and assessed.

You can read more about the news in this area in the article by Bratislava attorney Soňa Petrovičová.

Surprising – especially for notaries – may be the decision of the Czech Supreme Court that a notarial deed containing the consent of the tenant to direct enforceability by eviction is not a sufficient enforcement title.

Coronavirus may still be here with us, but business must and will go on. A busy restart of the season awaits us, and we wish you a successful entry into this new stage.

Michal Hrabovský

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Ground-breaking court decision on differential regional remuneration of employees

CZ

A court decision made waves this year when the Supreme Court ruled against the common practice of employers operating in several regions paying their employees different wages depending on where the work is performed.

According to the decision, employers cannot justify paying higher wages to employees in Prague compared to employees working in the same position in other regions only because living costs in Prague are significantly higher. By doing so, the employer is guilty of unequal treatment in the area of remuneration.

The decision may therefore have a major negative impact on the current practice of paying employees who work in Prague and other larger cities more than employees in other localities, while employees can claim a wage adjustment up to three years back. The risk of fines from the Labour Inspectorate is not negligible either.

However, it cannot be inferred from the Supreme Court's decision that employers with nationwide operations should adjust wages across regions. Differences in the remuneration of employees working at the same position in Prague or other major cities and in other regions are still defensible if they are justified by differences in the work performed (for example, in different customer portfolios or requirements for language skills). It is also possible to reduce risks by making specific adjustments to the remuneration structure.

Kateřina Demová | Senior Associate | Prague

Biometric templates also belong to special categories of personal data

CZ

The Office for Personal Data Protection (the "Office") as part of its inspection activities (inspection report file no. UOOU-02993/19-22 dated 17 March 2020) came to the conclusion that biometric data, which in accordance with Art. 4 (14) of Regulation (EU) 216/679 ("GDPR") means *"personal data resulting from a specific technical processing relating to the physical, physiological or behavioural characteristics of a natural person which allow or confirm a unique identification of that natural person, such as a facial images or dactyloscopic data"*, is not only the fingerprint itself, but also the fingerprint template algorithmically expressed by the so-called HASH code.

From the point of view of the GDPR, the use of systems working with templates, i.e. not directly with biometric data, must be subject to the processing of special categories of personal data, which require a stricter system of protection.

As a part of the above-mentioned inspection proceedings, the Office examined, among other things, whether it has a legitimate legal title to process the data in question.

The audited company used attendance terminals at the entrance doors to the offices, which enable to monitor the arrival and departure of individual employees based on fingerprint recognition technology. The attendance terminals stored data on employees, including first name, surname, employee number, date and time of arrival and departure of individual persons at the workplace

and a record of the number of fingerprints and the fingerprints of the employee converted into numerical form, i.e. a HASH code.

The audited company used this personal data for the purpose of recording working hours in the attendance system.

The Office summarised that legal title for the processing of personal data stored in the attendance terminal, including first name, surname, employee number, date and time of arrival and departure of individual persons to the workplace, is given according to Art. 6 (1) (c) of the GDPR, where the processing is lawful because it is necessary for compliance with a legal obligation applicable to the controller. In the case at hand, it was the employer's obligation to keep records of working hours pursuant to Act No. 262/2006 Coll., Labour Code.

As for the remaining biometric data that the audited company processed, these can be processed only on the basis of the legal title according to Art. 9 (2) (a) of the GDPR, i.e. explicit consent to the processing of special categories of personal data.

Even though the audited personal data controller obtained the explicit consent of its employees to process biometric data, we believe that such data should be processed only in exceptional cases where there is no simpler solution for the purpose. In the given case, which involved the access of a total of eight employees to the office, we believe that there is a simpler solution, such as a chip card, etc. The GDPR is based on the principle of minimising the scope of processed personal data and minimising interference with data subjects' rights, which in our opinion was not the case here. In addition, given the superior–subordinate relationship of the personal data controller (employer) and the employee, doubt may be cast on the validity of the consent, so we recommend always carefully considering the implementation of such a system and only going forward if there is no other suitable solution.

Petra Kratochvílová | Senior Associate | Prague

Will the competition authority obtain the right to request notification of all your acquisitions? SK CZ

For some time now, European competition authorities have been openly pointing out that current competition law tools, both at the European Union and Member State level, are no longer sufficiently adapted to the present economic situation and are no longer able to respond appropriately. The European Commission is preparing new tools to respond to competition issues not yet addressed by competition standards. As a part of the "Single Market – new complementary tool to strengthen competition enforcement", the European Commission launched a public consultation on 3 June 2020.

Current competition law, both that of the European Union and of individual Member States, is based on the enforcement of Article 101 (cartes) and Article 102 (abuse of dominant position) of the Treaty on the Functioning of the European Union. To prevent entities with a dominant position from being created in the first place, some contemplated mergers are already subject to a notification obligation towards

competition authorities. However, there is an increasing criticism that, especially in digital markets, according to the current notification criteria (especially according to the turnover of the acquired undertaking) it is not possible to cover cases leading to the creation or strengthening of a dominant position of the buyer. An often-cited example is the acquisition of Instagram, which has become the most popular social network among young people in just a few years. In professional practice, therefore, the adoption of further optimisation measures is being discussed, which would make it possible to pre-adjust the competitive conditions on the markets, thus preventing markets from becoming markets with one entity holding a monopoly position or to markets with other competition problems.

While the European Commission has just launched a public consultation on the initiative, some Member States, which in the past have pointed out that competition law is not adapted to the changing economic climate, are beginning to take action in response to the digital age. In France, for example, an amendment to the law has emerged according to which the French competition authority would have the right to draw up a list of so-called structuring companies, with companies on this list being required to notify any concentration with a potential negative impact on the French market, whether or not the regular notification criteria are met. In practice, these would be mainly internet giants, but the criteria for designating a company as structuring are quite general, and include, for example, the existence of a dominant position, the benefits of network effects, access to the unique information needed to enter the market, the number of unique users, etc.

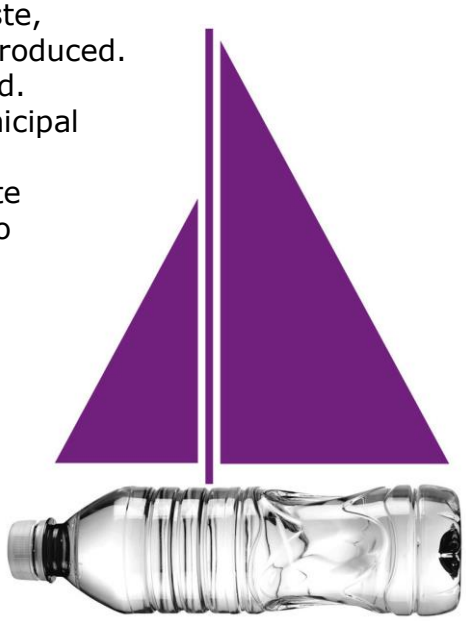
The President of the European Commission has set a goal of adapting competition law to the modern economy. It is therefore possible that European-wide regulation will also move in this direction in the context of the new digital age. And it cannot be ruled out that the new tools will eventually be implemented in other sectors as well.

Michal Hrabovský | Head of Competition | Prague

Soňa Petrovičová | Senior Associate | Bratislava

Amendment to the Waste Act SK

On 1 July 2020, an amendment to the Waste Act came into force, which changes several definitions. For example, the definition of end of waste has changed and the definition of bio-waste has been extended to include bio-waste from offices, wholesalers and cafeterias. Definitions of food waste, non-hazardous waste and of backfilling have also been introduced. Moreover, a definition of material recovery has been added. Another fundamental change is the new definition of "municipal waste" together with a responsibility for municipal waste management. According to the new definition, mixed waste and separately collected waste from other sources will also be considered municipal waste if this waste is similar in nature and composition to the household waste. As a result of the amendment, the ban on waste incineration was also extended.



Bernhard Hager | Managing Partner | Bratislava

In brief

SK	The forthcoming amendment to the Act on the Support of Renewable Energy Sources protects producers of electricity from renewable sources who owe taxes and levies. Now they will no longer risk losing the right to support for electricity generation facilities. Electricity producers will simply not be able to claim support for their plants during the period when they deliberately fail to meet their tax and levy obligations. The aim of the law is probably not only to provide rectification for the future, but also a retroactive recognition of already lapsed claims. The amendment will be discussed by the relevant Slovak National Council committees in September 2020.	**Bernhard Hager** Managing Partner Bratislava
CZ	An amendment to the Business Corporations Act coming into force on 1 January 2021 will tighten the liability of members of statutory bodies if they have contributed to the company's bankruptcy by violating their duties. The insolvency court may newly decide that a member of the statutory body is obliged to provide performance up to the amount of the difference between the sum of debts and the value of the company's assets.	**Tomáš Jelínek** Senior Associate Prague
CZ	According to the Supreme Court (26 Cdo 2085/2019), a notarial deed containing permission with its enforceability cannot be enforced if its subject is the obligation to vacate the real estate.	**Vojtěch Faltus** Principal Associate Prague
CZ	Homophobic statements constitute discrimination in the area of employment and professional life if they are made by a person who has a decisive influence on the employer's recruitment policy or who may be perceived as having such an influence, as the Court of Justice of the European Union ruled on 5 May 2020.	**Petra Konečná** Principal Associate Prague
SK	Parliament has approved several measures aimed at improving the business environment and reducing the administrative burden on businesses. For example, this includes a ban on the Social Insurance Agency requesting duplicates of documents that it already has at its disposal (from 1 January 2021), higher thresholds for the statutory audit of companies, or simplification of the energy audit for large companies that have achieved significant energy savings since the last energy audit or for companies with very low energy consumption.	**Filip Kozoň** Associate Bratislava
SK	From 30 July 2020, new, stricter rules for posting employees are applied. For instance, in the case of a posting lasting more than 12 months (or 18 months), the posted workers will be entirely subject to the law of the country to which they are posted, and not just the "core" labour conditions.	**Katarína Liebscherová** Senior Associate Bratislava
CZ	The government approved the extension of Schemes A and B of the Antivirus programme until 31 October 2020. Their conditions have not changed. On the contrary, Scheme C, consisting in the waiver of social security contributions paid by employers, will end. It may be applied for the last time in respect to August.	**Ondřej Beneš** Senior Associate Prague

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