

Legal News

The most important legal changes in the Czech Republic and Slovakia

18 February 2021



Perspective

Now as I write this editorial, it seems that the pre-spring third wave of Covid-19 has emboldened our members of parliament to end the state of emergency. If, as they say, it is darkest before the dawn, then this probably applies to this situation.

Last year was very unusual for us, as it was for everyone else, but certainly not dark. Thanks to the dedication of my colleagues in Prague and Bratislava, our office achieved its best results so far. We welcomed 14 new colleagues, started working for more than 200 new clients, established 960 new client projects in our system, and more. But it's not just about the numbers. More than in previous "normal" years, we have come to understand that working with you, our clients, is truly a partnership that is about help, support, and mutual enrichment.

The Covid era has shed better light on personal and business relations. It became clearer who could lend a helping hand, who could be trusted. I believe that as a team we passed this test. At the same time, we are all looking for a "new normal" that will bring new things and move us forward. Regardless of the fate of the state of emergency, we probably have a few difficult weeks and months ahead of us, but then it will be clearer and better. In other words: Everything will be OK in the end. If it's not OK, it's not yet the end.



Stanislav Dvořák
Managing Partner | Prague

Eversheds Sutherland

Pobřežní 394/12
Prague 8, 186 00
Czech Republic
paha@eversheds-sutherland.cz
www.eversheds-sutherland.cz

Eversheds Sutherland

Hodžovo námestie 1/A
Bratislava, 811 06
Slovakia
bratislava@eversheds-sutherland.sk
www.eversheds-sutherland.sk



If you have customers, suppliers or owners in the UK, you have certainly watched with trepidation how the negotiations on the terms of further cooperation between the EU and the UK will turn out after the end of the Brexit transition period on 31 December 2020.

Indeed, at the eleventh hour, the EU and the UK managed to resolve the last contentious issues, and on 24 December 2021, an agreement on trade and cooperation was concluded. In addition to zero tariffs, quotas on goods, the end of free movement, and fishing rules, the agreement also addresses the protection of personal data.

In particular, the EU and the UK have agreed on another special transitional period (the so-called bridge), during which the UK will remain subject to the General Data Protection Regulation (GDPR) for the transfer of personal data from the EEA (i.e. the EU plus Iceland, Norway and Liechtenstein). The transitional period was set at four months and can be extended by another two months, i.e. until 30 June 2021 at the most. During this period, personal data can continue to be transferred to the UK as before without restriction.

If the EU does not adopt a decision as regards the UK on an adequate level of personal data protection during this transitional period, the UK will find itself in a so-called third-country regime. Then personal data can only be transferred if additional guarantees under Article 46 of the GDPR are met (particularly standard contractual clauses or binding corporate rules, or when using one of the exceptions under Article 49 of the GDPR).

It can be assumed that a decision on the appropriate level of protection will be issued by the end of the transitional period. However, should such a decision not be adopted by the end of April 2021, we encourage all controllers and processors transferring personal data to the UK to adopt appropriate safeguards. This will mostly consist in the conclusion of standard contractual clauses.

Controllers and processors sending data to the UK are also required to update the records and information about processing kept for data subjects in order to supplement the information on the transfer of personal data to the UK.

If, on the other hand, you receive personal data from the UK, then nothing has changed for you due to Brexit and you do not need to take any further measures or steps.

Note that the transitional period does not apply to the so-called single point of contact mechanism, which cannot be applied to the UK from 1 January 2021.

Controllers and processors established in the UK who process personal data of EU individuals in connection with offering goods or services to these persons or monitoring their behaviour, are now obliged to appoint a representative established in the EU under Article 27 of the GDPR.





At the end of 2020, there were several changes in the field of justice in Slovakia. One of the most important is the creation of the Supreme Administrative Court of the Slovak Republic, which so far has not existed in Slovakia. Along with the Supreme Court of the Slovak Republic, it will represent the highest judicial body in matters of administrative justice. Its headquarters will be in Bratislava.

From 1 August 2021, the Supreme Administrative Court will decide not only in matters of reviewing the legality of decisions of administrative bodies, but also in matters of dissolving political parties, the legality of regional elections, or disciplinary prosecution of judges or prosecutors.

One of the aims of the reform is to strengthen citizens' confidence in the judiciary as such, which is currently shaken. Another is the possibility of dismissing judges who are unable to prove their property relations. A judge can also be dismissed if it is proven that they have contacts with persons from organised crime.

At the same time, a reform of the judicial map is being prepared, i.e. a reorganisation of the number and structure of the courts. There will be a major reduction in the number of district courts from the current 54 to 30. There will also be a change in the level of courts of appeal, which newly should be only three instead of the current eight. Within the cities of Košice and Bratislava, the existing district courts should be merged into one municipal court. Eight district courts of the Commercial Register will be replaced by one court based in Žilina. Proceedings in all dissolved courts will automatically continue in the successor courts from 1 July 2022.

The specialisation of judges is expected, which will be addressed only with selected issues and the creation of separate administrative courts. The court map has not yet been definitively approved and should be implemented within the next year. More information on the planned changes can be found on the website of the Ministry of Justice of the Slovak Republic <http://web.ac-mssr.sk/sudna-mapa-otazky-a-odpovede/>.

Ján Macej | Senior Associate | Bratislava



Until now, the courts required proof of a specific order or contract which the business lost through an incorrect official procedure, etc. If the lost profit were assessed only based on lost orders, then ad absurdum in the case of a closed restaurant, for example, the lost profit would have to be denied, because the injured business could hardly prove who might otherwise have come to the restaurant on a particular day and "what they would spend there". But the concept of business activities is broader. It also includes activities such as customer procurement, purchase of materials, administration, etc.

From the ruling of the Constitutional Court (I.ÚS 922/18), which deals with a relatively small amount of lost profit, it can be concluded that it is not just a matter of proving a specific failed contract.

Especially for small businesses, it is necessary to consider the nature of the business and to approach each one individually. The business should acquaint the court as much as possible with the operation of the business and provide various documents

for the calculation of lost profits. In this case, it was also suggested to take the tax return into consideration. [I.ÚS 922/18 #1](#)

[Hana Mikulková](#) | Senior Associate | Prague



New Act on the Registration of Beneficial Owners

CZ

A new Act on the Registration of Beneficial Owners (the "Act") will enter into force on 1 June 2021. The Act, which transposes the V. AML Directive, clarifies and expands the definition of beneficial owner and newly introduces sanctions and public access to certain registered data.

As for the definition of the beneficial owner of a business corporation, the law now regards this person as:

- Final recipient – this is a person who can directly or indirectly obtain more than 25% of the total property benefit generated in the activity or liquidation of a legal entity. It also means a person who directly or indirectly has the right to a share in the profit, other equity or liquidation balance of a business corporation greater than 25%; or
- Person with final influence – this means any natural person who is a controlling person pursuant to Sections 74 and 75 of the Business Corporations Act. In general, a person with final influence can be identified as a person whose direct/indirect share significantly exceeds that of others, especially if it is greater than 25%.

If the beneficial owner cannot be determined in this way, the persons in the top management of the business corporation and the parent company exercising a decisive influence in the business corporation are regarded as the beneficial owner, i.e. any natural person who usually provides business management and at the same time is:

- A member of the statutory body;
- A person in a similar position; or
- Directly subordinate to the statutory body of a legal entity.

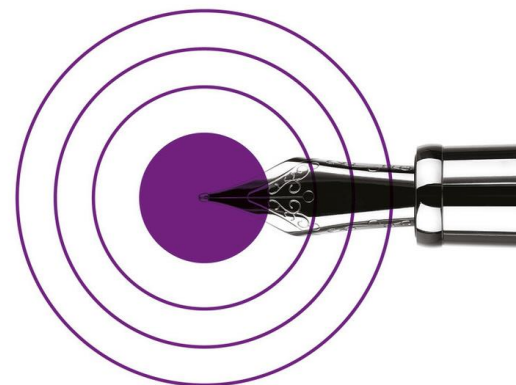
Another novelty is public access to information from the register. New data will be available such as the name, month and year of birth of the beneficial owner, as well as their actual status and the date from which the person has been the beneficial owner.

Penalties for failure to register a beneficial owner:

- The business corporation cannot pay out a share in its profits; and
- Loss of right to vote at the general meeting.

The Act also stipulates penalties of up to CZK 500,000 for:

- Failure to register a person who is obliged to be registered; and
- Failure by the beneficial owner to provide cooperation to the registering person in connection with their registration in the register.



[Jakub Verlík](#) | Senior Associate | Prague



The new act reflects both the decision-making practice of the Antimonopoly Office (AMO) and the need to transpose the ECN+ Directive, i.e. Directive (EU) 2019/1 of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market.

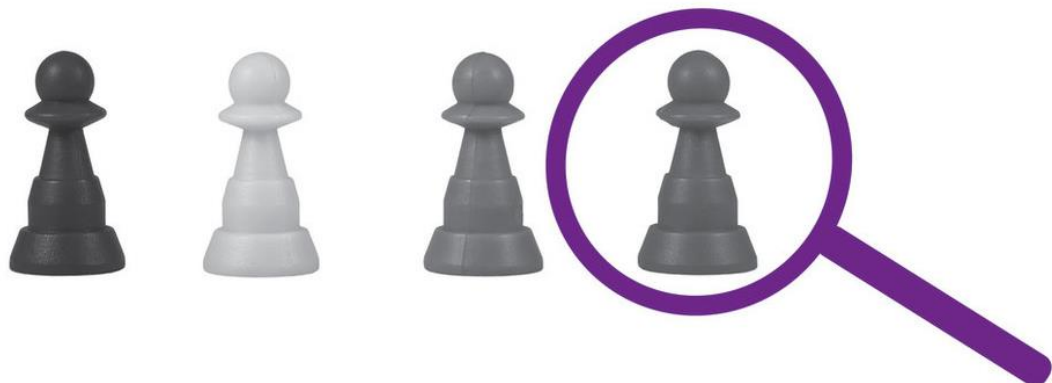
In addition to extending the concept of an undertaking to include all enterprises forming an economic unit (as is common in the EU law), the powers of the AMO have also been extended. The AMO will be able to impose interim measures, both in the area of cartel proceedings and the abuse of a dominant position, as well as in the area of merger control. The AMO will also be able to impose measures necessary to terminate the anti-competitive conduct of the undertaking. The powers of the AMO when it comes to imposing sanctions have also been extended. One of the novelties is the introduction of penalty payments, the purpose of which is to compel the undertaking to fulfil its obligations imposed on it by law or the AMO in a due and timely manner. The joint and several liability of the participants, who are part of a single undertaking, for the payment of the fine is also explicitly introduced. The new law also contains special provisions on international cooperation with the authorities of the Member States, which will enable the AMO, for example, to request a competition authority of another Member State to directly enforce its decision.

The new act introduces several other changes (deletion due to redundancy of one of the notification criteria in the field of concentrations, which was applied in the case of joint ventures, extension of the AMO deadline for a decision on the case, changing the length of the storage period for electronically delivered official messages, or marking confidential information).

There is no doubt that the AMO will use all the rights explicitly granted to it by the new act. Thanks to them, it will be able to effectively restrict businesses in their activities before issuing its decisions, especially if it recognises the existence of a "reasonable presumption", this concept corresponding in substance to the "prima facie" concept according to the case law of the European Commission and the European courts. Similarly, the AMO will be able to more easily ensure the effective enforcement of its decisions abroad. For these reasons, we recommend that planned activities or decisions that could be problematic be assessed even more intensively from the point of view of competition law.

Michal Hrabovský | Head of Competition | Prague, Bratislava

Soňa Petrovičová | Senior Associate | Bratislava



In brief

CZ	From 1 January 2021, employers can provide employees with a meal allowance also in the form of money in addition to meal vouchers or subsidised company meals, with the same tax benefit. This can reduce administration and eliminate the payment of commissions to meal voucher companies.	<u>Ondřej Beneš</u> Senior Associate Prague
CZ	At the proposal of the building manager and with the consent of the majority of owners, the court may order the forced sale of a housing unit owned by a person who fundamentally violates the rights of other owners of units in the building (e.g. by not paying contributions). It is no longer necessary to file an action for performance; a written warning from the building manager is enough, followed by a motion for court to order the sale.	<u>Martina Benešová</u> Associate Prague
CZ	From 1 January 2021, the minimum wage was increased for a 40-hour work week to CZK 15,200 per month or CZK 90.50 per hour. At the same time, the lowest levels of guaranteed wages for individual groups of jobs were also increased.	<u>Jana Hanslíková</u> Senior Associate Prague
CZ	With judgment I. ÚS 760/18, the Constitutional Court annulled the decision of the Supreme Court causing problems in the credit practice of banks that a lien (due to the principle of so-called accessoriness) arises only when a future secured receivable arises. According to the Constitutional Court, even when securing a future receivable, the lien is existing and present ab initio.	<u>Tomáš Jelínek</u> Senior Associate Prague
SK	From 9 December 2020, it is possible to apply for a subsidy for rent even if the right to use the leased property arose later than 1 February 2020, but no later than 1 August 2020. At the same time, the tenant will be obliged to start paying the unpaid part of the rent from 1 April 2021.	<u>Filip Kozoň</u> Associate Bratislava
SK	From 2021, the 15% income tax rate will apply only to legal and natural persons whose income from business and other self-employed activity does not exceed EUR 49,790. For 2020, the income limit was up to EUR 100,000.	<u>Katarína Liebscherová</u> Senior Associate Bratislava

eversheds-sutherland.com

© Eversheds Sutherland 2021. All rights reserved.

Eversheds Sutherland, advokátní kancelář, s.r.o. and **Eversheds Sutherland, advokátska kancelária, s.r.o.**, is part of a global legal practice, operating through various separate and distinct legal entities, under Eversheds Sutherland. For a full description of the structure and a list of offices, please visit www.eversheds-sutherland.com.

This information is for guidance purposes only and should not be regarded as a substitute for taking legal advice. Eversheds Sutherland, advokátní kancelář, s.r.o. and Eversheds Sutherland, advokátska kancelária, s.r.o. can take no responsibility for actions taken based on the information contained in this document.