

## Legal News

Overview of important legislative changes in the Czech Republic, Slovakia and the correct qualification **of the employment contract under Austrian law**

**May 2021**



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### Old habits die hard

A proverb provides moral instruction, a warning or a rebuke. And with the relaxation of the anti-epidemic measures, one in particular occurred to me: "Old habits die hard." I compare the habits of our pre-pandemic lives with those we have been forced to accept for health reasons over the past 13 months. It is already clear that we probably won't change some of these new habits. But a habit that I intensely feel the lack of (and I believe many of my colleagues would agree), is regular face-to-face meetings with our clients. You build professional trust through a job well done, but personal trust takes much longer. Meetings with our clients are a great tool for gaining it.

I look forward to restoring the traditions that unite us and our clients and, conversely, to preserving the habits that the pandemic has introduced. For example, greater consideration for the health of others, an increase in the number of kilometres cycled or run... or internet for every family.

I hope that in the coming months we will all be talking about the post-pandemic time.



**Jan Roub**  
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## Slovakia

### Mandatory extension of support for producers of electricity from renewable sources



**On 15 April 2021, the Government of the Slovak Republic approved a draft amendment to Act No. 309/2009 Coll., on the Promotion of Renewable Energy Sources, which introduces a mandatory extension of support for electricity from existing renewable energy sources. The amendment is currently in parliament and is scheduled to take effect on 1 August 2021.**

The plan is to extend the support by a surcharge for producers of electricity from hydro and solar energy, biomass, biogas, landfill gas or gas from wastewater treatment plants by five years, while the Regulatory Office for Network Industries (the "RONI") will reduce the producer's price of electricity (feed in tariff). In addition to the surcharge, the support will also be proportionally extended in the form of the purchase of electricity at the price of the purchased electricity and by assuming responsibility for the deviation, but only until 31 December 2033 at the latest.

Producers of electricity from the above-mentioned sources will be obliged to apply to the RONI by 31 August for a reduction in the price of electricity, if the average amount of its surcharge for the previous calendar year reached at least EUR 150/MWh and the total amount of the surcharge was at least EUR 75,000.

When reducing the price of electricity, the RONI shall consider several factors, such as the cost of necessary repairs to extend the operation of the facility or the requirement to maintain the economic viability of the facility. The RONI will publish the precise tool for calculating the reduction in the price of electricity on its website [www.urso.gov.sk](http://www.urso.gov.sk).

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## Czech Republic

### New Act on the Registration of Beneficial Owners



**A completely new Act on the Registration of Beneficial Owners will enter into force on 1 June 2021. The changes that the law will introduce are important for many legal entities and trust funds, which are already obliged to register their beneficial owners. The law introduces a system of direct sanctions, which can be considerable: for example, a fine of up to CZK 500,000, the inability to vote at the general meeting or a ban on the payment of profits.**

There are several changes compared to the current law, including the definition of the beneficial owner itself, which will be each natural person who is the **final beneficiary** or a **person with final influence**. While the position of the final beneficiary is based on the possibility to obtain property benefit (e.g. profit), the person with final influence has the possibility to exercise a decisive influence.

It is therefore a broader concept than the current definition in the AML Act, which may in some cases result in the obligation to register other persons in the Register of Beneficial Owners.

**Companies that have registered members of the statutory body** as so-called substitute beneficial owners should also take note. The law now requires the registration of other persons in such cases, and in some cases top managers of the parent company will be required to register. The scope of collected data will also be broadened and, finally, **the Register of Beneficial Owners will become public to the specified extent.**

Last but not least, the obligation to determine and register the beneficial owners under the new law may also affect participants in public contracts who, as a result of the absence of registration, will not be able to conclude a relevant contract with the contracting authority to perform the public contract and will be excluded from the tender.

It is in the interest of each registrant to check the record of the beneficial owner and to adjust it if necessary. Those who have duly registered their beneficial owner within the deadlines under the current law have time until 1 December 2021. Everyone else must comply with the new law by 1 June 2021.

**Ondřej Šudoma | Senior Associate | Prague**



## In brief

<b>SK</b>	<b>New termination reason for employees</b> An amendment to the Slovak Labour Code has introduced a new reason for termination. This may be applied, provided an employee has reached the age of 65 and at the same time is old enough to be entitled to a retirement pension. If both conditions are met, the employer may terminate the employee. The amendment is effective from 1 January 2022.	<b><u>Helga Vernarcová</u></b> Senior Associate Bratislava
<b>SK</b>	<b>Waiver of interest on arrears and penalties as regards taxes</b> The government decided in its regulation that the payment of interest on arrears for unpaid tax due in 2020 and the imposition of a sanction for failure to file a tax return within the specified period, i.e. from 12 March 2020 to 31 December 2020, shall be waived.	<b><u>Soňa Petrovičová</u></b> Senior Associate Bratislava
<b>CZ</b>	<b>Failure to pay court fee due to hospitalisation</b> Constitutional Court: If the court fee is not paid together with the motion to initiate proceedings, the court will call upon the petitioner to pay the fee within 15 days. If the fee is not paid even then, the court will suspend the proceedings regardless of the reason (even in the case of hospitalisation).	<b><u>Lukáš Šikel</u></b> Associate Prague
<b>CZ</b>	<b>Return of citizens to the Czech Republic with a positive test for Covid-19</b> Citizens of the Czech Republic and EU citizens with permanent or temporary residence in the Czech Republic can enter the Czech Republic even with a positive Covid-19 test. After entering the Czech Republic, they must inform the regional hygiene station and undergo the test. They must also remain in isolation for three days after the symptoms of the disease have subsided, but for at least 14 days after the first positive Covid-19 test.	<b><u>Peter Perniš</u></b> Senior Associate Prague
<b>CZ</b>	<b>Restrictions on the shares transferability by registration in the Commercial Register</b> The restriction on the transferability of registered shares is effective only on the day of registration in the Commercial Register, even if it is already regulated by the articles of association. Until the transferability restriction is registered in the Commercial Register, the shares are transferable without limitation and the transfer of such shares is effective, even if the buyer was aware of the transferability restriction enshrined in the articles of association.	<b><u>Dominika Veselá</u></b> Partner Prague

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## Employment contracts under Austrian law

**Employment contract, contract for work and services, free service contract in Austrian labour law - distinction and legal consequences of incorrect contract classification**



**The essential characteristic of a "genuine" employment contract is the personal dependence of the employee on the employer. Indicative for the genuine employment contract is the obligation of the employee to submit to the personal and factual instructions of the employer. What is owed is the provision of the work performance, not a specific result. In the case of a genuine employment contract, the employee is subject to the full scope of labour laws, collective agreements and the social insurance provisions of the General Social Insurance Act (ASVG).**

If a **contract for work and services** exists, on the other hand, the production of a specific result is owed and not mere effort. The contractor acts independently and must guarantee that the work has been properly completed. Social security contributions and taxes are paid by the contractor.

The **free service contract** offers the possibility to individually arrange the course of work. In general, there are no rigid working hours or instructions from the employer. Therefore, only those provisions of labour law are applicable, which do not assume the personal dependency relationship of the freelancer. Nevertheless, the social security contributions of the freelancer must be paid by the employer.

The factual type of contract is determined by the actual form of the employment relationship, the name of the contract is irrelevant. The nationality of the wage earner is also not significant and thus also affects Czech citizens working in Austria.

If a staff member is incorrectly assigned, for example, this may result in (up to 5 years retroactive) additional payments of social security contributions, default interests or non-wage costs. Due to the Social Insurance Assignment Act (SV-ZG), which has been in force since 01.07.2017, it is possible to request a review of the social insurance assignment and thus achieve legal certainty.

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