

## Legal News

The most important legal changes in the Czech Republic and Slovakia and brief overview about buying real estate in Portugal

**September 2021**



Dear Readers,

I trust that you are enjoying the beautiful Indian summer and that if you have school-age children they are excited to be back in the classroom and doing their schoolwork.

Nevertheless, with the beginning of September we once again find ourselves watching with trepidation the rise in Covid-19 infections, the number of hospitalisations and, of course, the development of that magical R number. These statistics do not give much reason for optimism, and in combination with the upcoming elections and the government's reluctance to spoil the "open" summer mood for voters, I feel a certain sense of *déjà vu*.

My fears are also fuelled by confusion about the restrictive measures in force. This stems not only from their vast number, constant changes and complexity (even for a lawyer), but above all from the surprising and obviously persistent inability of our ministries to prepare measures that would withstand subsequent judicial review.

But I also have some good news about the anti-coronavirus measures, especially for employers. Fortunately, even in the case of mask and respirator mandates, a rational interpretation has prevailed, which allows employers to adopt their own rules, whether stricter or more relaxed, given their specific conditions and risk assessment in their workplaces.

In line with the same principle and following a proper risk assessment, employers can now, for example, reintroduce regular testing of their employees as a preventive health and safety measure, or take other appropriate measures without having to wait for government action. In conclusion, let me as always wish you fortitude and good health and, of course, the belief that we will overcome this difficult situation.

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**Radek Matouš**  
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**The European Commission has issued new model standard contractual clauses ("SCCs") for the transfer of personal data outside the EU/EEA that must be applied from 27 September 2021.**

#### What exactly are SCCs and why is it important?

The transfer of personal data to countries outside the EU (or the EEA) is only possible to countries which the EU has recognised by special decision as providing an adequate level of protection. Recently this has happened in relation to transfers to Great Britain or Japan, for example.

Transfer to other countries outside the EU is in principle only possible if appropriate guarantees for the protection of personal data by the data exporter and importer are established. And it is the SCC that is the basic and by far the most widespread tool in practice for creating such appropriate guarantees under the GDPR.

SCCs are a model binding text of a contract between an EU data exporter (controller or, more recently, a personal data processor and a data recipient from a third country (controller or processor)), the text of which is issued by the European Commission.

#### What has changed?

In June 2021, the European Commission issued new SCCs to replace the original SCCs (last updated in 2010), both in light of the new GDPR requirements and, in particular, in response to European court decisions on the transfer of personal data to the US (phasing out the Safe Harbour transfer mechanism and, subsequently, the Privacy Shield).

A fundamental conceptual change is the extension of the scope of new SCCs based on a modular approach. The new SCCs regulate four different clause modules in one set, which, in addition to the standard relations between the data exporter and importer (controller – controller and controller – processor), now also completely modify the processor – processor and processor – controller relations. The exporter and importer of the data must choose the appropriate module according to their relationship, select the relevant provisions, and fill in and conclude the clauses and their annexes.

In addition, the new SCCs introduce more detailed and some entirely new obligations for exporters and importers, and significantly strengthen the rights of data subjects related to transfers and their enforcement, allow access to other parties, or adjust more detailed security or control obligations.

#### What do you have to do and when?

All controllers and processors must immediately verify whether and, if so, on what legal basis, they transmit or share personal data (e.g. on their employees, customers or visitors to their websites) outside the EU.

**If they use the original SCC for such transfers, they must take the following steps as data exporters:**

- The old original version of the SCC can be used only until 27 September 2021. From 27 September 2021, only new SCCs may be used for newly concluded relationships connected with the transfer of data outside the EU
- By 27 December 2021 at the latest you must replace the original concluded old SCC and conclude a new SCC with the data importers

## What are the possible penalties?

If you do not start using the new SCCs or replace the original SCCs by the above deadlines at the latest, further transmission based on them will be illegal. In such a case, you will not only face high fines from the relevant supervisory authorities (including foreign ones), but you will also be directly liable for damage or other harm (caused by the importer) to the natural persons directly affected.

[Radek Matouš](#) | Principal Associate | Prague

### When is a property owner liable for damage? The case of a woman injured in a shopping mall



#### Anyone who's been in business for any amount of time has heard from their lawyer about the duty of prevention – the duty to prevent harm.

The basic duty of prevention applies to all and means that everyone is obliged to act in such a way that there is no unjustified damage to the liberty, life, health or property of another. Simply put, there is an obligation not to cause harm by **active action**. Violation of this obligation leads to the injured party's claim for damages against the wrongdoer.

But then there are cases when the damage occurs not because someone did something, but on the contrary because someone did *not* do something. For these cases, the law states under what conditions the person who "did nothing" or "did too little" is still liable to the injured party for the damage. These are mainly situations where the person (and it can also be a company) has created a dangerous situation or has control over it and subsequently did not intervene to avert the damage or prevent its occurrence. In each specific case, however, it is necessary to assess whether the action against imminent damage is required by the circumstances of the case or the so-called habits of private life.

In a case currently being considered by the Supreme Court of the Czech Republic, a woman was injured in a shopping mall when she failed to notice a damaged area on the floor that was covered by a slightly raised plastic board attached with warning (but apparently trampled over) black and yellow adhesive tape. The injured woman sued the operator of the shopping mall for compensation for lost earnings, costs related to treatment, satisfaction for non-pecuniary damage, and compensation for pain and impaired social position. (That's plenty, isn't it?)

#### The court reached the following conclusions:

**First – general conclusion:** If the injured party suffers damage in the building, the owner is responsible for it if it did not act in such a way to prevent the unjustified damage occurring during the administration of the building. The owner is liable for damage even if it itself created or even tolerated a dangerous situation in the building without taking sufficient measures to avert the imminent damage. In such measures, the owner must consider the nature of the space in which the obstacle is located and the purpose for which the space (here the corridor) serves. Likewise, whether the measures taken by the owner to prevent injury would be sufficient will have to be examined in each instance on a case-by-case basis, taking into account the nature of the case, private life, local circumstances and the specific circumstances of the injury.

**Second – specific conclusion:** According to the Supreme Court, it is to be expected that the operator of a shopping mall will mark an easily overlooked unevenness on an otherwise smooth floor clearly enough to be noticed by passing customers who cannot be expected to focus on the floor. In short, even the operator in such a case must assume that customers will look at shop windows rather than underfoot. Therefore, if the owner did not mark the unevenness of the floor in a sufficiently clear manner,

and the measures taken were therefore insufficient to avert the imminent damage, the owner is liable for the damage.

For owners this case shows that preventive measures are necessary but are only an effective tool to exclude liability for damage if they are adequate for the specific situation.

The rest of us may come away with a little more understanding and sympathy for the "caution wet floor" signs that sometimes act as "obstacles" for us to navigate around.

**Dominika Veselá | Partner | Prague**

## **In brief**

The Ministry of Labour and Social Affairs has set up the Information Pension Application (IDA), which provides clear and comprehensible information on the registered number of years of pension insurance, retirement age and the estimated amount of old-age pension. The application is available on the website of the Czech Social Security Administration.

**Peter Perniš**

Senior Associate  
Prague

According to a recent judgment of the Constitutional Court (II.ÚS 671/21), it is the duty of each court to inform the sender of the submission of the result of the verification of the validity of the recognised electronic signature. Failure to do so by the court violates the submitter's right to judicial protection. If you are sending a submission using an electronic signature, please read the court notice properly to see if your submission has been deemed (in)valid.

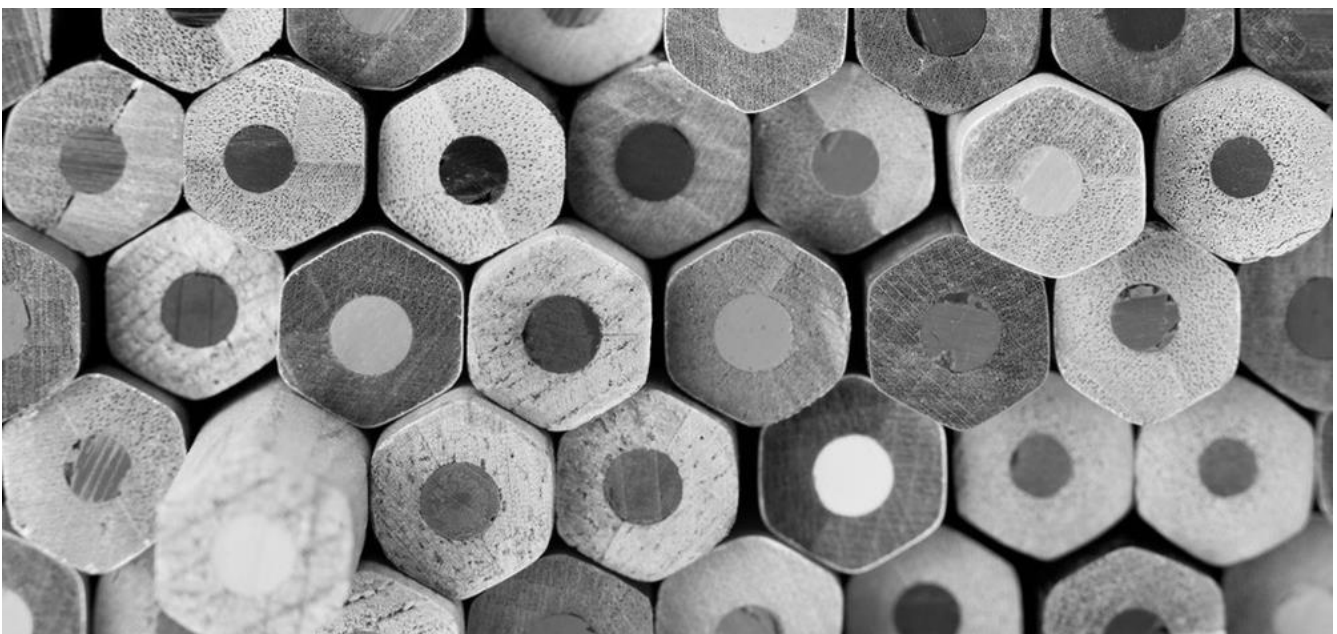
**Michal Růžička**

Senior Associate  
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The Constitutional Court emphasised that if a contract is declared invalid for a conflict with good morals, the costs of the proceedings on the suspension of execution should be awarded to the person who did not cause this invalidity. If the court decides not to award these costs, it must give reasons for its decision.

**Lukáš Šikel**

Associate  
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## Slovakia

### In brief

On 29 July 2021, the Ministry of Labour, Social Affairs and Family of the Slovak Republic initiated an inter-ministerial comment procedure on the draft of another amendment to the Labour Code, while this amendment is "enforced" by the transposition of two European directives. The final wording will not be available until the autumn, but the changes will primarily concern the provision of information to employees, transparency, and the resolution of some practical application problems.

#### Adam Oleš

Associate  
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Pursuant to the new decree of the Public Health Office, economic operators can choose whether to be open only to fully vaccinated persons, VTR (vaccinated, tested, recovered) or the so-called base, i.e. all customers without distinction. The selected mode can alternate, the minimum duration is not specified. However, the choice must be visibly marked.

#### Soňa Petrovičová

Senior Associate  
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From 3 July 2021 it is forbidden to place disposable plastic products, e.g. cutlery, plates, cups and food boxes, on the Slovak market. There is also an obligation to uniformly label the packaging of certain disposable products such as hygiene items, cups and tobacco products throughout the EU.

#### Annamária Tóthová

Partner  
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The amendment to the Labour Code aims to eliminate inequalities in the taxation of various meal voucher programmes as well as to simplify the administration of employers. Among other things, the amendment will allow employers to provide meal vouchers and a financial contribution, similarly to wages, additionally, but no later than the last day of the following calendar month.

#### Paulína Šlauková

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## Portugal

### Buying Real Estate in Portugal - Brief overview



In Portugal, real estate ownership right comprises the full and exclusive rights to use, enjoy, transfer, and encumber immovable assets with no limitation in time. Another type of rights *in rem* such as surface right (corresponding to the common law "leasehold") is also admissible. Real estate can be acquired directly ("asset deal") or indirectly ("share deal") through a corporate vehicle.

The negotiation procedure is initiated by a *letter of intent* or a *non-binding offer* from the buyer to the seller, after which the parties agree on the next steps of the transaction such as the performance conditions of the due diligence. Typically, after the binding offer is accepted, the parties execute a promissory sale and purchase agreement, which sets forth the main commercial terms of the transaction and may include representation and warranties, as well as certain precedent conditions to be met before completion, such as the notification to public entities holding pre-emptive rights over the property or completion of building works. In residential properties, the seller often requests a reservation deposit from the buyer (usually €10.000) to grant an exclusivity period provided based on the reservation agreement that usually includes certain clauses of the transaction. Often the buyer's lawyer carries out due diligence to the legal status of the property and comments on the draft promissory agreement provided by the seller. The buyer may also commission a technical survey (which may include an environmental assessment) of the property. With the execution of the promissory agreement, the parties commit to complete the transaction on a fixed date or after certain conditions are met. The buyer typically makes an initial deposit corresponding to 10 to 20% of the purchase price upon execution of the promissory agreement. Additional deposits of the price may be agreed upon by the parties before the deed takes place.

A provisional register of the purchase may be requested at the Land Registry Office to guarantee that final acquisition becomes effective as of the date the provisional registry was filed, based on the seller's consent or in specific provisions of the promissory agreement for such purpose. The transaction is executed by public deed or private authenticated document and requires certain mandatory documents, such as the Land Registry certificate or use permit of the property. Acquisition of real estate assets is subject to Municipal Property Transfer Tax and Stamp Duty which are levied over the acquisition price or the property's tax value (whichever is higher) and must be paid by the buyer before the transfer deed is executed. Other transaction costs such as notary and registry fees are also borne by the buyer. Transfer of ownership must be registered at the Land Registry Office to be effective against third parties.

### Eversheds Sutherland FCB in Portugal

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