

## Legal news

An overview of important legislative changes  
in the Czech Republic and Slovakia

**March 2023**

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## Czech Republic

### The development of energy price caps for large enterprises

Although negotiations regarding the method of capping electricity and gas prices are still ongoing, both at the national level and in the EU, the Government of the Czech Republic has already issued the expected amendment specifying the capping of energy prices for large enterprises.

According to the current EU Temporary Framework, large enterprises are limited in terms of the amount of support they can receive within the European Economic Area. This threshold is not limited in time, it will be applied to all support issued by individual Member States in connection with the Russian aggression in Ukraine. However, the established mechanism for calculating the threshold runs into problematic verification of approved support to large enterprises by individual states. In principle, the aforementioned amendment pre-empts the likely future adjustment of the EU Temporary Framework and introduces national thresholds that will only be applied to businesses within the Czech Republic.

The lowest threshold was set by the government at EUR 2 million. However, in the case of high eligible energy supply costs, it can be several times higher.

Large enterprises are now obliged to report the amount of property benefit (i.e. the amount of support exceeding the relevant thresholds) to the Ministry of Industry and Trade every quarter.

Exceeding this threshold during the quarter is not a violation, but the company will be obliged to transfer the excess property benefit back to the state budget.

**David Němeček** | Associate



## Consumer law amendment

In January 2023, there was a significant amendment to consumer law, which on the one hand expanded the rights of consumers, and on the other hand introduced a number of new obligations for retailers.

The most discussed change is the information obligation of the seller regarding the discounts provided. If the seller states that they are providing a discount on the goods, they must also inform the consumer of the lowest price at which they sold the product in the 30 days prior to the discount. The measure is intended to prevent consumers from being deceptively tempted by fictitious discounts.

Another important change concerns liability for defects. By law, the entrepreneur is only liable for defects in the goods that already existed when the consumer took over the goods and that become apparent within two years. At the same time, it is presumed that if the defect becomes apparent in the first year, it already existed at the time of takeover (this period was six months before the amendment). During this time, it is up to the seller to prove, if necessary, that the item was without defects upon being taken over.

The list of unfair business practices has been expanded (among other things, it is a new unfair practice if the seller puts dual-quality goods on the market in several EU Member States, unless this is justified by objective facts) and the provision of other options to defend against unfair practices (withdraw from the contract within 90 days or request a discount on the price of the goods). The amendment also modifies the rules for publishing consumer reviews and expands the seller's information obligations when concluding contracts over the phone or electronically.

The amendment does not introduce a comprehensive change in consumer law, but rather a series of partial changes. Businesses should review more closely whether they fulfil all the new obligations and whether there is no need to modify the sales process, business conditions or perhaps the complaints procedure.

**Ondřej Beneš** | Counsel



## Legislative changes in the field of renewable energy sources

On 24 January 2023, a new law called LEX OZE I. (Act No. 19/2023 Coll.) entered into force. The goal of this law is to remove obstacles and speed up the construction of renewable energy sources ("RES").

LEX OZE I. introduces an amendment to the Energy Act, according to which power plants producing electricity from renewable sources with a total output of more than 1 MW are established and operated in the public interest. In practice, this will mean that the relevant authorities will have to take this public interest into account during the permitting process, and the mere existence of another public interest (in the construction of wind and solar power plants, for example, the interest in nature and landscape protection) does not mean that this other public interest will automatically prevail.

Another important change is the possibility to operate RES with an output of up to 50 kW without a licence from the Energy Regulatory Office.

The construction of RES will also be facilitated by the change in the Building Act, according to which these facilities are now considered public technical infrastructure. This change has a major impact on spatial planning, as it allows these facilities to be built even in undeveloped territory, if it is in accordance with its character, unless the spatial plan expressly excludes it. The obligation to have a zoning decision and building permit for the construction of small renewable energy plants with an output of up to 50 kW will also no longer apply, if these plants are in accordance with the spatial planning documentation. For most of these buildings, as well as for the construction modifications necessary for their installation, there will be no need to notify the building authority as long as the buildings do not interfere with the supporting structures of the building and do not change the way it is used. The exception is mainly buildings in specially protected areas, heritage reserves and heritage zones, for which the obligation to notify will remain.

**Vít Inquort** | Junior Associate



# In brief

## **Inadmissible agreement on unpaid leave**

The Supreme Court ruled that if an employer is unable to assign work to an employee due to an obstacle on its side (e.g. restrictions during a pandemic), it must proceed according to the Labour Code and pay wage compensation. It is not permissible to conclude an agreement on unpaid leave instead.

**Ondřej Beneš** | Counsel

## **New methodological instruction of the GFD**

The General Financial Directorate has issued a new methodological instruction No. GFŘ-D-59, regarding the practical application of the Income Tax Act, e.g. on the exemption of income from the sale of immovable property and related changes to terms or specification of conditions for applying the lump sum meal allowance.

**Jiří Brabec** | Associate

## **Right to appointment of a legal representative extended**

The Constitutional Court repealed part of the Advocacy Act regarding the appointment of a legal representative for those without the means to pay for one. The Czech Bar Association should newly appoint a legal representative even for those who can afford one but cannot find anyone willing to take on their case. The enforceability of the decision has been postponed until 31 December 2023.

**Barbora Bugová** | Associate

## **Bill to regulate the cannabis market**

A bill is being prepared to regulate the cannabis market, which should enable self-cultivation and the establishment of cannabis clubs. The law should further establish a model of licensed manufacturers, distributors and dealers. The bill is expected to be submitted by the end of March 2023.

**Barbora Bugová** | Associate

## **Agreement on set-off before commencement of insolvency proceedings (NS 29 ICdo 127/2020)**

An agreement by which the debtor and the creditor set off their mutual claims against the debtor's assets before the commencement of insolvency proceedings is not in itself a legal action without adequate compensation and, as a rule, it will not even be an ineffective legal action within the meaning of the Insolvency Act.

**Tomáš Jelínek** | Senior Associate

## **Exclusion of internet sales of goods as sales under the Sales Period Act (7 As 229/2020)**

In the case of goods purchased in an online store, their mere issue (or payment) in the establishment cannot be regarded as a retail sale within the meaning of the Retail Sales Period Act, as the decisive phase of the sale (conclusion of the contract) did not take place in the establishment but on the website.

**Petra Konečná** | Counsel

## Another summer of grace

The government of the Czech Republic is preparing another so-called summer of grace from 1 July to 30 November 2023. It will be possible to apply for remission of accessories (penalties, interest, fines) of tax and social security payments, if the outstanding payment is paid, and for remission of minor arrears.

**Šárka Kuchařová** | Associate

## Increase in point value for work accidents

With effect from 1 January 2023, the government decided on a fundamental increase in the value of a point within the point evaluation of compensation for pain and social impairment in the event of work accidents or occupational diseases. Newly, the value of the point is variable and determined as 1% of the average wage in the national economy determined for the first to third quarter of the calendar year of the previous year. For 2023, this means an increase in the point value from CZK 250 to CZK 393.06.

**Radek Matouš** | Partner

## The new decision-making practice on the moderation of contractual penalties

The Supreme Court deviated from the previous decision-making practice on the moderation of contractual penalties within the meaning of Section 2051 of the Civil Code. Newly, the unreasonableness of the contractual penalty agreement is not examined, but the unreasonableness of a specific right to a contractual penalty. To determine whether a claim is unreasonable, it is necessary to examine how and under what circumstances the breach of the contractual obligation establishing the right to the contractual penalty occurred and to what extent it affected the creditor's interests protected by the penalty. The procedure for moderating the penalty is therefore such that the court first determines what function the contractual penalty was meant to fulfil. It then deals with specific circumstances at the time the contractual penalty was negotiated and at the time the contractual obligation was breached. If it finds that the penalty is inadequate given the circumstances examined, it can reduce it to a reasonable amount.

**Marek Poloni** | Associate

## Discount on social security for employers

From 1 February 2023, employers can apply a 5% discount on social security premiums for certain groups of employees (e.g. people over 55 years of age, people caring for a child under 10 years of age, students, people with health disabilities or people under 21 years of age). The condition of the discount is, among other things, a work or service relationship with a shorter working time of 8 to 30 hours per week (for persons under the age of 21 years of age, it can even be applied for any working time) and timely application of the discount. The discount can also be applied only if the employee's income does not exceed 1.5 times the average salary (currently CZK 60,486). Some other restrictions also apply.

**Ondřej Šudoma** | Associate

### **Adequate minimum wage in individual EU countries**

A new EU directive has been issued that sets out procedures to ensure an adequate level of minimum wages in individual EU states and to support collective bargaining on wage setting. The directive should be incorporated into Czech law by 15 November 2024.

**Barbora Šafaříková** | Senior Associate

### **Notification obligation of the assignor towards the debtor**

Even though Section 1882(1) of the Civil Code does not contain an explicit order for the assignor to notify the assignment of a claim to the debtor, according to the Supreme Court, this obligation follows from the principle of protection of the debtor, whose consent to the assignment is not required (File 20 Cdo 1911/2022).

**Michal Růžička** | Senior Associate





## Slovakia

### Screening of foreign direct investments - new obligations from 1 March 2023

The Slovak Republic was one of the last countries in the region to adopt the Foreign Direct Investment Screening Act, which introduces a comprehensive mechanism for screening foreign investments for the purpose of protecting security and public order based on Regulation (EU) 2019/452.

Foreign investments in which a foreign investor from third countries outside the EU directly or indirectly acquires a target entity or part thereof, exercises effective participation in the target entity or increases it, exercises control in the target entity, or acquires ownership or other rights to substantial assets of the target entity are subject to screening.

So-called critical foreign investments will be subject to mandatory screening. These are investments in the areas of production, research, development or maintenance of military technology or military material, dual-use products, biotechnology, security, periodical publication publishers, etc. In the case of a critical foreign investment, it is necessary to submit a request for screening before it is carried out and screening must not be carried out until the decision on its permission is issued.

In the case of non-critical foreign investments, it is possible to apply for screening voluntarily. The motivation for voluntary requests for screening should be a certain legal certainty, since with specific exceptions re-initiating the procedure for screening an investment with the same parameters in the future by official authority is, in principle, not admissible.

In the case of transactions with an international element from a third country, it will always be necessary to examine in detail whether they may be subject to mandatory screening or consider requesting a voluntary review.

**Petra Marková** | Counsel





# In brief

## Increase in the minimum wage benefit for employees from 1 June 2023

From 1 June 2023, the minimum wage benefit for employees will again be determined as it was before 2020 as follows:

- work on Saturday – 50% of the minimum wage
- work on Sunday – 100% of the minimum wage
- work at night – 40% of the minimum wage

**Filip Kozoň** | Associate

## Increase in meal allowances for business trips from 1 January 2023

From the beginning of 2023, the meal allowance for employee business trips has increased. The amount of the meal allowance depends on the length of the business trip as follows:

- EUR 6.80 for trips lasting 5 to 12 hours;
- EUR 10.10 for trips lasting 12 to 18 hours; and
- EUR 15.30 for trips lasting more than 18 hours.

**Ján Macej** | Senior Associate

## Levy on excess income from the sale of electricity

Producers of electricity from inframarginal sources (RES, nuclear energy, brown coal), or persons connected with them, who supply electricity produced by the producer to the wholesale market, are obliged to file a notification and pay the excess income levy for the first time in the month of February 2023, no later than 25 March 2023. The levy represents 90% of the excess income, while the excess income means the positive difference between the market income and the market income cap.

**Sylvia Berová** | Senior Associate

## The certificate for e-signature on OP chips issued until 20 June 2021 expired on 31 December 2022

The certificate stored on OP chips issued until 20 June 2021 expired on 31 December 2022. In the transitional period until 30 June 2023, it is possible to perform selected actions (authorisation of electronic documents on the Financial Administration portal, customs declarations, etc.) through an alternative - an improved electronic signature.

**Soňa Petrovičová** | Senior Associate



### Information obligation for posting

Posted employees also have the right to predictable and transparent working conditions. The amended Section 54b of the Labour Code defines the scope of the employer's notification obligation, as well as an exception when the posting period does not exceed four consecutive weeks.

**Jana Sapáková** | Counsel

### Energy grants in Slovakia

The Ministry of Economy responded to higher electricity prices, among other things, by compensating businesses in 2022 for energy prices that exceeded the specified price ceilings. However, the compensation conditions were set in such a way that many entities did not receive the subsidy. In practice, businesses in rented premises often found themselves in these situations. The same compensations with the same conditions are also planned for 2023.

**Ján Ščerba** | Associate

### Wage or wage compensation for voluntary activities

The National Council of the Slovak Republic adopted an amendment to the Act on Volunteering, which also changes the provisions of the Labour Code. From 1 March 2023, employers will be able to agree with employees on the payment of wages or wage compensation during work leave provided for the purpose of volunteering.

**Paulína Šlauková** | Associate

### Is excavated soil waste?

In its Porr Bau GmbH decision, the Court of Justice of the EU assessed that excavated soil can be qualified as a by-product subject to specific conditions, which is not covered by the waste regime, or may reach the state of end of waste. Excavated soil used at the place of its origin is also not waste.

**Annamária Tóthová** | Partner



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