

An overview of important legislative news

May 2024

Czech Republic

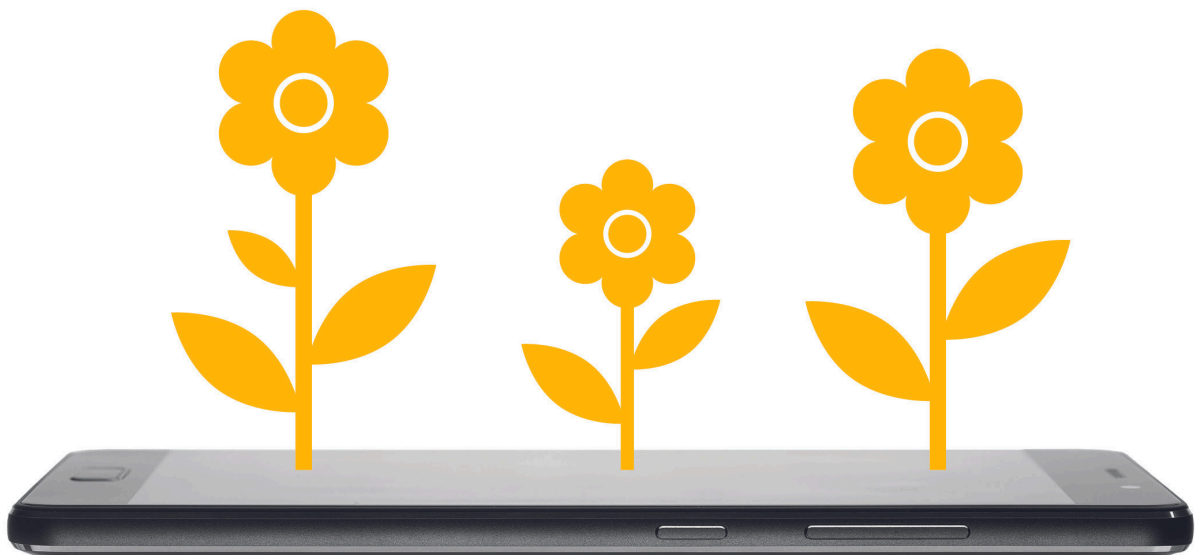
- Selected aspects of the planned amendment to the Rules of Administrative Procedure
- Changes to agency employment in 2024
- Legal news in brief

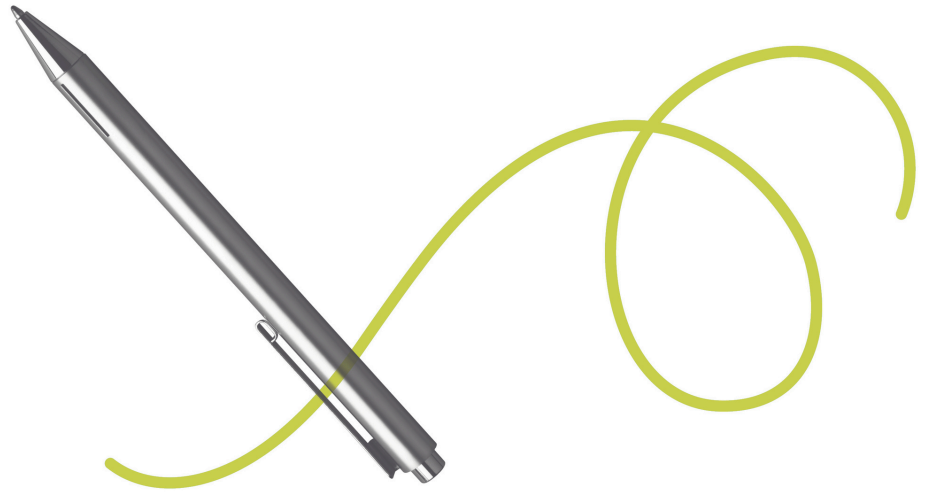
Slovak Republic

- Construction legislation from 1 April 2024
- Legal news in brief

European Union

- According to the CJEU, the choice of a foreign court is also possible for domestic cases
- Data under control
- Legal news in brief





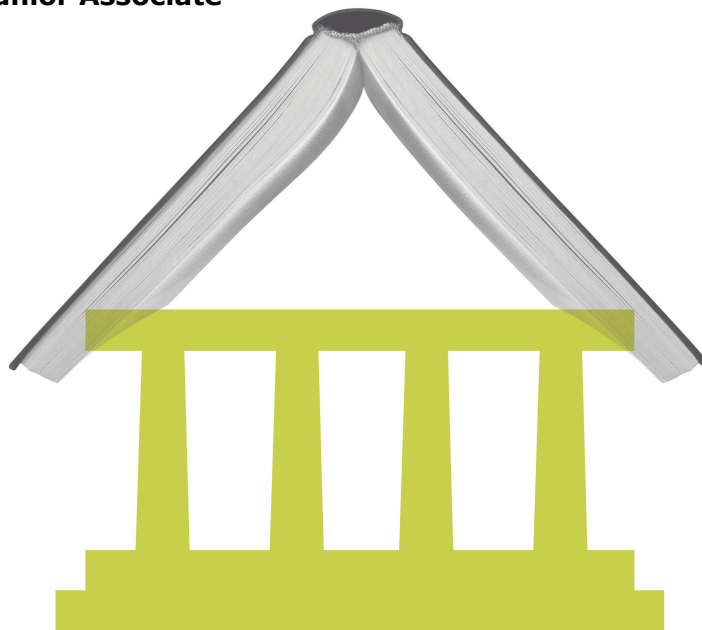
Czech Republic

Selected aspects of the planned amendment to the Rules of Administrative Procedure

CZ: The amendment to the Code of Administrative Justice, slated to take effect on 1 January 2025, will bring many changes. The main ones include the following:

1. Persons for whom a data box is set up without a request will be required to make submissions to the court electronically. In addition, paper and electronic forms of submission will be "equalised". Thus, where a court formerly would not consider a non-supplemented electronic submission at all, the court will now have to first invite the participant to correct the deficiency.
2. The rights of the parties to the proceedings will be strengthened. In particular, the powers of administrative and civil courts deciding according to part five of the Code of Civil Procedure will be better demarcated. Furthermore, the possibility to review estate regulations issued by professional chambers has been added. The range of persons who will be able to propose such a review will also be expanded. The decision-making of the Supreme Administrative Court is strengthened in favour of the appeal, which will speed up proceedings and prevents the game of ping-pong between the Supreme Administrative Court and the regional courts.
3. There are conceptual changes in the cassation appeal procedure. The complainant must now be mandatorily represented already at the stage of drafting the complaint, which is expected to increase the quality of the submission. The possibility of being represented by other persons providing specialised advice (tax advisor, notary, etc.) is also regulated. Unlike legal representation, which must continue to be carried out by a lawyer as a natural person, these other permissible representatives can also be legal entities. However, the new regulation clarifies the requirement that, in such a case, only a natural person who performs this specialised consultancy should act as a legal entity.

Anastasija Levina, Junior Associate



Changes to agency employment in 2024

CZ: In 2024, the conditions for obtaining an employment agency permit will be further tightened. This mainly involves a doubling of the security deposit to CZK 1 million in the case of agencies temporarily assigning their employees to users (existing agencies had to pay the security deposit by the end of March 2024), the tightening of the conditions for proving the responsible representative's professional competence (creditable professional experience of 20 hours per week in the last 10 years is now required) or the condition of being debt free. The employment agency must demonstrate that it has no arrears of taxes or levies to the financial administration, customs administration, social security authorities and health insurance companies at the time of application and every six months after obtaining the permit. There is also a certain enhancement in the protection of temporarily assigned employees, as users can no longer terminate temporary assignment by notifying the agency at any time (if the agreement with the agency allowed it to do so). Now it is also necessary to deliver such unilateral termination to the employee at least 14 days in advance (does not apply to temporary assignments created before the end of 2023). Among other noteworthy changes is the expansion of the content of the annual mandatory reports to also include data on users and the number of temporarily assigned employees, new requirements for marking and identifying the agency's registered office (before submitting an application and throughout the entire period of activity) and, finally, moving the entire agenda related to employment mediation from the Employment Office to the Ministry of Labour and Social Affairs.

Radek Matouš, Partner



Legal news in brief

Increase of the minimum wage and of the lowest levels of guaranteed wages

CZ: As of 1 January 2024, the minimum wage was increased from CZK 103.80 to CZK 112.50 per hour, or from CZK 17,300 to CZK 18,900 per month. There was also an increase in the guaranteed salary for the 1st to 3rd group of jobs of CZK 1,600 per month and for the 8th group of jobs of CZK 3,200 per month. Other groups of jobs remain unchanged.

Barbora Šafaříková, Senior Associate

Simplifying the employment of foreigners

CZ: Employers employing nationals of third countries (outside the EU) will no longer have to undergo the so-called labour market test. Now an employer who wants to employ such an employee must announce a vacant position to the Employment Office and, after a period of up to 30 days, wait (verify) whether a citizen of the Czech Republic could fill the position in question. From 1 July 2024, the employer will still be required to report the position to the Employment Office, but it will be possible to employ foreigners immediately without the need to wait.

Martina Vodičková, Associate

Duly justified invitation to the general meeting

CZ: The Supreme Court decided that an invitation to the general meeting of a joint-stock company, which by law must contain, among other things, the draft resolution of the general meeting, including its justification, only has to state the basic information for which the adoption of the resolution is proposed, while additional information is to be provided directly at the general meeting.

Barbora Bugová, Associate

Private limited liability companies are not required to distribute all their profits

CZ: The Supreme Court concluded that the jurisprudence establishing the obligation of a joint-stock company to distribute its entire profit to shareholders is not immediately transferable to the circumstances of a private limited liability company. Private limited liability companies are therefore not obliged to distribute their entire profit to its members, even where they do not have an important reason for not distributing the profit in full.

Jan Houlík, Associate

Is a super-office being established in Brno?

CZ: At a time of rising food prices, the government called on the Office for the Protection of Competition to propose new powers. The Office did so in January in the form of a substantive plan, which has now been submitted to the Legislative Council of the Government. The substantive plan includes, among other things, the right to (1) order corrective measures even though there has been no violation (the Office as a regulator instead of market protector?), (2) carry out random dawn raids without any indication of a violation (legalisation of so-called fishing expeditions, which according to existing jurisprudence are an inadmissible invasion of privacy?), (3) obtain location data directly from telecommunications operators, (4) impose sanctions also on members of statutory bodies, employees and other natural persons, (5) assess ex-post also connections that are not subject to notification criteria, (6) reward whistleblowers, and (7) share information with other state authorities.

Michal Hrabovský, Counsel

Conflict of interests of the statutory body in the light of new caselaw

CZ: Where there is a conflict of interests between a member of an elected body and the company, it is sufficient if the member of the elected body informs each shareholder about the content of the contract and all shareholders expressly agree to it or take note of it and waive the right to discuss such a conflict of interest at the general meeting (NS 27 Cdo 1206/2022).

In the event of a conflict of interests, the competent authority can only be informed of a part of the contract, but provided that this authority has enough information based on the submitted part of the contract to consider the possibility of suspending the statutory body or prohibiting it from concluding the contract, and that the unsubmitted part of the contract does not contain so-called unexpected conditions (NS 27 Cdo 2699/2021).

Lola Florianová, Senior Associate



On the limitation of the scope of the statutory pre-emption right under Section 3056 of the Civil Code (CZ)

CZ: The legal right of pre-emption of the owner of the building to the land under it does not arise for the entire land on which the building is located, but only for that part of the land that is necessary for the exercise of the ownership right to the building. The division of the land must not significantly complicate the use or enjoyment of the divided land.

Dominika Veselá, Partner

Repayment of debt by a third party without the debtor's consent

CZ: A third party can repay the debt to the creditor even without the debtor's consent, unless the debtor expressly agrees with the creditor to prohibit the repayment of the debt by a third party (NS File 28 Cdo 1214/2023).

Petra Konečná, Partner

Planned Register of Representatives

CZ: The Chamber of Deputies passed an act on so-called central records of digital powers of attorney for negotiations with the state administration. It will be a database of granted representative authorisations, in which the authorities will verify the existence and validity of the relevant power of attorney themselves. There will thus be no need to submit a paper power of attorney. Ideally, the system should be operational from July this year.

Ondřej Šudoma, Associate

Dishonest intent in debt relief (trust fund)

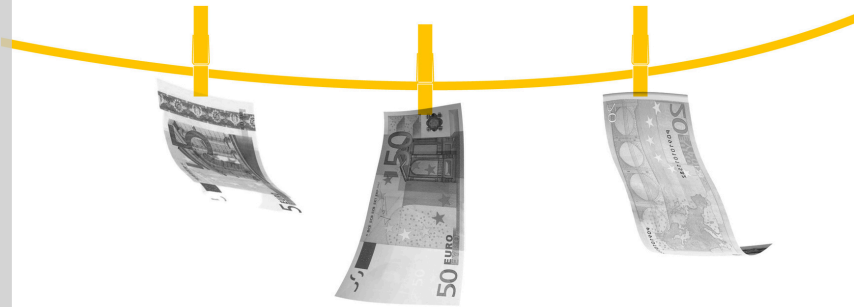
CZ: A debtor who, in a relatively short period of time before filing an insolvency petition in conjunction with a request for debt relief, handled its real estate in such a way that it was not subject to enforcement by the creditor (by putting it in a trust fund), is not acting honestly, and there is reason to "assume" on this basis that the debtor is pursuing a dishonest intention by submitting a debt relief application.

Tomáš Jelínek, Senior Associate

Implementation of the NIS2 Directive

CZ: The Czech Republic is finalising the preparations for the law implementing the new directive on cybersecurity known by the abbreviation NIS2. In February of this year, a draft law on cybersecurity and implementing decrees was submitted to the Legislative Council of the Government of the Czech Republic. The new law will impose obligations on providers of regulated services from sectors that will be listed by name in the annex to the implementing decree for the new law. According to estimates by the National Office for Cyber and Information Security (NÚKIB), the new law will apply to up to 10,000 Czech entities. Providers of regulated services will fall into one of two categories of obligations: essential or important. The regulations introduce new obligations such as self-identification, registration with the NÚKIB, introduction of technical and organisational security measures, mandatory training of management and employees, screening of the supply chain and reporting of cybersecurity incidents. The new law is expected to take effect in the second half of this year.

Jaroslav Tajbr, Partner



News in AML legislation

CZ: On 6 March 2024, the Senate approved yet another amendment to the AML Act. In addition to increasing the upper limits of some fines and expanding the range of obliged persons, it also establishes the possibility for obliged persons not to screen the client if this could frustrate or endanger the investigation of a suspicious transaction (so-called "tipping-off" or warning). In such a case, the obliged person must immediately report the suspicious transaction to the Financial Analytical Office.

Jakub Bystroň, Trainee

Senate approves a bill on non-performing loan market law in early March

CZ: The new law transposes the EU directive and is supposed to strengthen the crisis resistance of the European Banking Union. According to the law, a non-performing loan is a loan, credit or similar financial service (e.g. operational leasing) provided by a bank or other similar credit institution, if (i) the borrower is unlikely to repay its obligations in full or (ii) any of the obligations is more than 90 days past due. Newly, only persons from a legally defined circle and based on the permission of the Czech National Bank will be able to manage the non-performing loans defined above. In addition, the law lays down the rules on how each administrator of non-performing loans must be managed and governed. The market for receivables from non-performing loans and the rules for dealing with debtors will also be regulated.

Petr Kučera, Associate

Slovak Republic

Construction legislation from 1 April 2024

SK: The new construction legislation approved in 2022, which aims, among other things, to speed up permitting processes, was to enter into force as a whole on 1 April 2024. This legislation divided the "old" Construction Act into two parts: spatial planning and construction. However, the goal was not achieved.

The newly created Act on Spatial Planning entered into force as planned on 1 April 2024, while at the same time, the provision on spatial planning in the old Construction Act was abolished. This means that the territorial plans of municipalities, or of other territorial units, will already be procured according to the new regulation. Territorial plans, or their modifications and additions, whose procurement was initiated according to the original Construction Act, are an exception. The Act on Spatial Planning also introduces the new institution of the binding opinion of the municipality, which proves within the zoning proceedings the compliance of the proposed building with the binding part of the zoning documentation.

Construction permits, which were supposed to be regulated by the new Construction Act beginning in April, remain valid according to the original Construction Act, with minor modifications. Jurisdiction remains with the municipalities, while the appeal authority is the regional office of the Office for Territorial Planning and Construction (ÚÚPaV).

The new regulation is tentatively expected to take effect on 1 April 2025, but several legislative changes will be necessary by then (e.g. when integrating the proceedings into the building plan proceedings).

The ÚÚPaV launched a new spatial planning portal on its website on 1 April 2024. In the future, the information system will also cover the construction sector. However, due to the postponement of the Construction Act, only the part for spatial planning has now been launched.

Annamária Tóthová, Partner

Legal news in brief



Draft amendment on EIA from the workshop of the Ministry of the Environment of the Slovak Republic

SK: In February 2024, the Ministry of the Environment submitted a proposal to amend Act No. 24/2006, on Environmental Impact Assessment. Even though the declared aim of the legislative regulation was to harmonise the law with the EU legal framework and to make the procedure more efficient, more than 700 comments pointing to the shortcomings of the legal regulation were raised within the comment procedure. One controversial point, for example, is the effort to significantly limit the rights of the affected public in investigative proceedings. The fate of the proposed legislation is thus unclear.

Marek Prítyi, Associate

Extended authorised period for providing energy subsidies for businesses

SK: Slovakia has extended the period for providing energy subsidies for businesses and continues to disburse them according to the same rules as before. The authorised period has been extended until June 2024, and it is currently possible to apply for the payment of energy subsidies individually for the months of January 2023 to January 2024.

Ján Ščerba, Associate



Higher court and administrative fees from 1 April 2024

SK: The basic fee rate for filing a lawsuit (the subject of the proceedings can be valued in money) remains 6%, while the minimum and maximum fees (min. EUR 25 max. EUR 25,000, in business matters max. EUR 50,000) will change. Court fees for other court proceedings and administrative fees are increased, while for electronic filing the rate will be reduced by 50%, but at most by EUR 50.

Simona Makúchová, Senior Associate

Decision of the Supreme Court of the Slovak Republic

SK: A guarantee is created by a unilateral written declaration of the guarantor, but it cannot be imposed on the creditor, and therefore it cannot be denied the opportunity to reject it.

Petra Marková, Counsel

Changes in levies from 1 January 2024

SK: Contributions to voluntary old-age pension savings in the form of the second pillar are reduced from 5.5% to 4%. At the same time, the health insurance rates for employers are increasing from 10% to 11% and for self-employed persons from 14% to 15%.

Martina Ovečková, Associate

Employer's obligation to pay for prescription glasses if employees need them to perform their work

SK: Employers are obliged to provide glasses to employees who use a computer as a significant part of their work, if so determined by an ophthalmologist. The employer can provide prescription glasses directly or reimburse the costs incurred. If the employer reimburses the costs, it is advisable to regulate the method of request and the amount in an internal regulation.

Jana Sapáková, Counsel



Slovak government expands the possibilities of granting national visas

SK: As of 6 March 2024, the Government of the Slovak Republic has expanded the range of foreign nationals to whom it is interested in granting a national visa in selected industrial jobs to citizens of India, and in the field of transport to citizens of the Philippines, India, Indonesia and Nepal. The Slovak government has increased the total number of national visas granted in the interest of the Slovak Republic in industry from 2,000 to 10,000, for bus drivers from 200 to 2,000 and for heavy truck drivers from 2,000 to 5,000.

Martina Tymková, Associate

European Union

Data under control

EU: The new European data regulation introduces new rules for the use of information from smart devices.

These rules define rights to access and use data created in the EU across all economic sectors and across smart devices from different manufacturers.

What will the new regulation mean for consumers and businesses?

The possibility of accessing data and using it comes up against various legal or economic restrictions, most importantly data holders' reluctance to share their data with someone else. Consequently, the stronger position of those holding more data in the market is often abused.

In practice, the regulation aims to prevent this with measures that should have the following effect:

- Prices for after-sales services and repairs of smart devices will be lower. For example, if your smartwatch breaks, you can now request that any service outside of the manufacturer gain access to the data.

- There will be new opportunities to use services that rely on access to data. If you have devices from different manufacturers, you can now get advice from one company collecting data from different devices. Until now, each device's data was locked by its manufacturer. The ordinary user will therefore also get a better overview of their data.

- Better access for smaller businesses to data collected by devices.

The goal of the regulation is therefore to remove obstacles to the functioning of the internal data market, to ensure a fair distribution of value from data between individual entities on the market, and to support the so-called secondary data market for their further resale and use.

With exceptions, the data regulation will be effective from September 2025.

Marek Poloni, Associate

According to the CJEU, the choice of a foreign court is also possible for domestic cases

EU: In a recent decision, the CJEU stated that even two domestic entities can choose a foreign court. It involved the case of two companies based in Slovakia that chose the jurisdiction of the Czech courts. It was a standard business relationship governed by Slovak law. There was no other foreign connection, except for the choice of court.

The choice of a foreign court is possible under EU law in certain cases, but there must be some international element (e.g. if one party has its registered office in another country, the place of delivery of the goods is abroad or if foreign law is to be applied). In Slovakia, the choice of a foreign court was therefore not possible in domestic cases where Slovak law was applied. Such an agreement was regarded as circumvention of binding rules on the jurisdiction of courts.

However, the CJEU stated that the choice of a foreign court is also possible in domestic relations.

The international element of the CJEU saw in this that the parties chose the jurisdiction of foreign, i.e. Czech, courts.

Based on the above, the choice of foreign courts is also possible in domestic civil or business relations. The effectiveness of choosing a foreign court is questionable in such cases, since the foreign court will not know domestic law.

Ján Macej, Senior Associate



Legal news in brief

MEPs approved new rules for the operation of artificial intelligence on 13 March 2024

EU: The Artificial Intelligence Act introduces a classification of technologies according to the manner of use and sets different levels of restrictions according to the level of risks involved. The EU is seeking to ban some systems completely (such as social credit assessments, untargeted downloads of facial images from the internet or camera footage to create facial recognition databases). Other tools such as facial recognition algorithms will be heavily regulated.

Michal Růžička, Senior Associate

EU directive on remuneration transparency

EU: Employers will be required to carry out a remuneration analysis to identify and correct unjustified differences in remuneration between men and women. Employers will be obliged to make the analysis available to their employees and the competent authorities.

Štefan Palkovič, Senior Associate

Changes in the management of waste from photovoltaic panels

EU: The Council of the EU has adopted an amendment to the directive on electrical waste, according to which the costs of handling waste from photovoltaic panels placed on the market after 13 August 2012 are borne by the manufacturer of the electrical equipment.

Extended producer liability should apply to products placed on the market after 2018.

Katarína Brath Liebscherová, Senior Associate

Amendments to the EU waste transport regulation

In the future, transport to countries outside the EU should be limited and better controlled, and illegal transport should be fought more effectively. The digitisation of the entire process is considered a step in the right direction.

Bernhard Hager, Managing Partner

