



GIESE & PARTNER

CZECH REPUBLIC & SLOVAKIA

# Newsletter



## General Interest

### Miloš Zeman's Final Game

by Marie Zámečnicková

With the election of the new president of the Czech Republic, the era of the current president, Miloš Zeman, will soon come to an end. The new president, Mr. Petr Pavel, will take office after taking the oath of office on March 9, 2023. Until then, Mr. Zeman will remain in office and it is expected that he will not leave in silence.

In the past few months, he has already granted some very controversial pardons to friends, colleagues and former state officials without properly justifying these decisions and without consulting the Ministry of Justice, which is the usual procedure. These steps were also highly questionable because Mr. Zeman explicitly promised at the beginning of his first term ten years ago that he would not abuse this power and would only grant pardons in very exceptional cases for serious health or humanitarian reasons, which was not the case here at all. Given that the granting of pardons is an exclusive constitutional power of the president, there is no way to challenge his decisions.

Another important constitutional power of the president is the appointment of Justices of the Constitutional Court, which requires the consent of the Senate, the upper chamber of the Czech Parliament. Once the Justices are

appointed, the president appoints the chairperson and vice-chairperson from among them, and this is the exclusive power of the president, which does not require the consent of any other authority. The current chairman of the Constitutional Court is Pavel Rychetský, who will retire in August this year. Therefore, the new chairperson should be appointed by the new president sometime during the summer. However, President Zeman came up with the idea of appointing the

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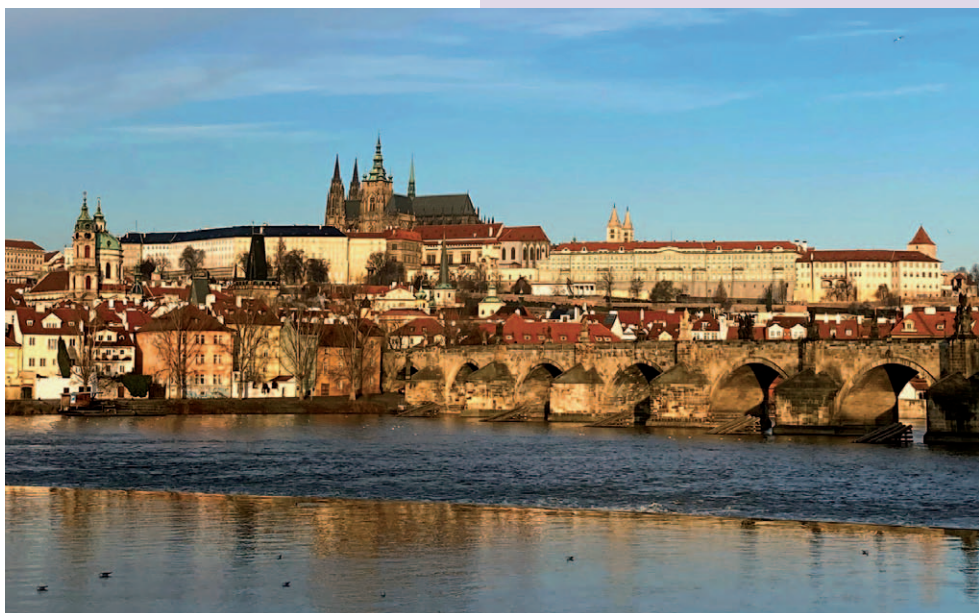
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new chairperson of the Constitutional Court before his term ends, basically six months in advance. He argues that there is no such provision in the Constitution or any other law that would forbid him to do so, and that the Constitution says that all citizens may do what is not prohibited by law. This is indeed one of the key provisions of the Constitution. However, this is a pure misinterpretation of the Constitution because this provision affects individuals and other non-state entities. On the other hand, the president, in exercising his powers, is a state authority bound by the other key constitutional principle that state authorities are to serve all citizens and may be invoked only in cases, within the limits, and in the manner provided by law.

Despite the fact that the majority of constitutional experts and current Justices of the Constitutional Court, including the chairman Pavel Rychetský, strongly disagree with this idea, arguing that such a step would interfere with the powers

of the future president and thus be in direct contradiction with the Constitution, Mr. Zeman keeps repeating that there is nothing that would prevent him from doing so. He also states that he has expert opinions that sanctify this plan of his, but he has refused to make these opinions public or even to name their authors. It is also not entirely clear what the solution would be if he decided to do so. President-elect Pavel says he would appeal to the Supreme Administrative Court to review the appointment. However, constitutional law experts argue that this is not possible and that the Supreme Administrative Court has no power of review in this context. The only option would be to simply ignore the appointment and appoint a new chairperson of the Constitutional Court when the time comes. In any case, the “pre-appointment” would cause considerable chaos and uncertainty and could endanger the stability and credibility of the Constitutional Court as such. And

as we know from other Central European countries, attempts to paralyze the Constitutional Courts are always extremely dangerous and should not even be conceivable in a functioning democratic state based on the rule of law.

**Latest update:** According to the president-elect Pavel and the prime minister Fiala who both met with president Zeman, he should have promised them that he would not appoint the chairmen of the Constitutional Court anymore although he claimed that he was still convinced that he could have done it without breaking the Constitution.

For additional  
information contact  
Marie Zámečnicková at:  
zamecnikova@giese.cz

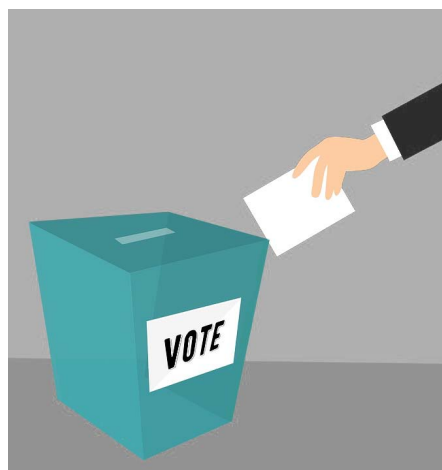


## New Czech President Assures Firm Western Ties

by Radek Werich

The recent presidential elections confirmed that a large part of Czech society strongly supports democratic values and the Czech Republic's firm anchorage among Western nations.

This is illustrated by the overwhelming victory of Mr Petr Pavel, a retired army



general, over the populist oligarch Mr. Andrej Babiš.

Mr. Pavel won with the support of more than 58 percent of the electorate, while Mr. Babiš fared badly, winning less than 42 percent of the vote despite his massive and openly unscrupulous campaign. Voter turnout was just over 70 percent, a record high for a presidential election. Mr. Pavel, who ran as an independent, is a former chairman of NATO's Military Committee, the alliance's top military body, and was widely praised for his tenure. He previously served as the Czech chief of staff. Mr. Pavel was also awarded France's highest military honour for his personal command of a rescue operation of besieged French troops during the civil war in Yugoslavia in the 1990s.

Mr. Pavel did particularly well in large cities and among liberal voters who appreciated his campaign, which focused on democratic values such as honesty,

truth and fairness. His calm demeanour and military background also helped him in many rural areas.

Mr. Pavel has repeatedly made it clear that the Czech Republic is a staunch NATO and EU ally, which he sees as a fundamental part of the Czech Republic's international orientation. He has been a strong supporter of Ukraine against Russian aggression and has taken a realistic view of threats from China. Unlike the outgoing president, Miloš Zeman, who was notorious for his support of China and Russia (at least before the Russian invasion of Ukraine in 2022), Pavel is widely expected to continue the legacy of the first Czech president, the internationally renowned Václav Havel.

For additional  
information contact  
Radek Werich at:  
werich@giese.cz



## Czech Legal News

### The Button Amendment

by Jan Valíček

E-shops are facing new rules for consumer protection based on the European legislation generally known as the "Button Amendment". Rather revolutionary changes from the consumers' as well as e-shop providers' point of view relate to:

- Discounts;
- Purchase buttons;
- Online marketplaces;
- Customers' review;
- Manuals.

**Discounts** shall be more transparent as regards their presentation. The well-known practice of price setting, where the seller first raised the purchase price and then announced a significant discount from this higher price as part of a Black Friday sale etc., are over. Sellers now have to provide information on the lowest purchase price within the last 30 days.

**Purchase buttons** as we know them shall be adjusted. Newly, it has to expressly state and indicate to the customer that the click means confirmation of the order and commitment to pay the purchase price. Otherwise, the order is invalid.

**Online marketplaces** also encounter new obligations that shall bring higher protection and comfort for the customers. The providers now have to inform about the main parameters for ranking of the offers to avoid hidden influence of paid advertising. Further, providers have to make clear whether the seller is a private person or an entrepreneur. This enables buyers to properly exercise their rights, which are much stronger in case of a commercial seller.

Very popular **customers' reviews** also undergo changes regarding transparency and reliability. E-shop providers shall ensure that the customers' reviews published on the e-shop actually come from customers who have really purchased the respective

product or service. Fake, paid or otherwise false reviews shall be eliminated. The providers may not delete negative reviews.

Product **manuals** remain part of the supply to the customer. However, it is newly possible to omit the paper form. Manuals must be provided on a permanent data carrier as CD-ROM, flash disc or via email. The customer shall be entitled to ask for the paper version of the manual, but only in limited and reasonable cases. Be aware that a manual accessible as download from a web page is not sufficient.

The above mentioned is only a part of a huge package of new regulations. Others include, for example, changes to the business terms and conditions, complaints procedure or time limits for the delivery of goods.

For additional  
information contact  
Jan Valíček at:  
valicek@giese.cz



a sufficient service life that can reasonably be expected is also now considered a defect. Some lawyers believe that the seller will continue to be legally liable for defects within two years, regardless of whether they existed at the time of receipt. However, the case-law of the courts will be decisive for the interpretation of these provisions.

The amendment abolishes the statutory guarantee of quality and leaves it only on a voluntary basis. This does not, however, mean that consumers' rights are restricted to the statutory liability for defects. With a quality guarantee, the seller guarantees that the item will retain certain characteristics for a specific period of time. It may be granted by the seller for any period of time and may relate to defects determined by the seller himself. A voluntary guarantee may lead to a refund of the purchase price, replacement of the item, repair or other service.

So what does all that mean for the consumer? In the first year it will be presumed that the goods were already defective when they were received, unless the seller proves otherwise. In the second year the buyer will have to prove that the goods were defective. In addition to that, the seller will continue to be able to offer customers a guarantee, the parameters of which he can freely determine. As some legal conclusions are still diverging on the exact interpretation of the amendment, only time will tell what these new rules will fully manifest themselves in practice.

### Attention, Shoppers!

by Lenka Charvátová

A long-awaited new legal regulation on complaints brings major changes.

The consumer can still claim for defects within 24 months. However, the consumer will now have 12 months during which the defect will be presumed to have existed at the time of receipt. This means that the seller has to prove that the goods were free from defects at the time of delivery. After that period, the burden of proof will shift to the consumer. In many cases that will mean that the consumer has to prove in a complicated way, by means of an expert opinion, that the item was already defective at the time of receipt.

The fact that the goods do not have

For additional  
information contact  
Lenka Charvátová at:  
charvatova@giese.cz





# Top Employment Law News in 2023

by Dagmar Junková

The biggest expected change in labor law in 2023 is the forthcoming major amendment of the Labor Code. Additionally, there are changes to the implementation of medical examinations and changes to minimum and guaranteed salary.

## THE LABOR CODE AMENDMENT

The new regulation was originally intended to come into force in the first quarter of 2023, but the proposal has yet to be submitted to the Chamber of Deputies. We are currently unable to say when the changes will be effective, but we are monitoring the legislative process and will of course keep you informed of developments.

The changes are expected to affect especially the following three areas:

- ▶ regulation of home working - the most discussed issue is the employer's obligation to cover the employee's home **working costs**, proposed at a rate of CZK 2.80 per hour of work,
- ▶ agreements on work outside the employment relationship, i.e. agreement to perform work (DPP) or an agreement on work activity (DPČ) - a major change is that employees will newly be **entitled to holidays** (under certain conditions),
- ▶ delivery in employment law - it should newly be possible to deliver termination documents and some other specific documents **electronically**.

## MEDICAL EXAMINATIONS

Medical examinations at work include:

- ▶ **initial examination** - must always be carried out on an employee in an employment relationship according to the current regulations before the employment relationship starts. This is expected to be changed in the near future.,
- ▶ **periodic examination** - the purpose is the early detection of changes in the employee's state of health;

is carried out at specific intervals according to the classification of employees into 4 categories of work (1 - no risk to health to the 4 most risky categories of work); *this examination has been changed and is now carried out on a "voluntary basis" in the case of "less risky walk in" categories one and two.* It is advisable for the employer to describe the respective rules in an internal regulation,

### ▶ extraordinary examination.

## MEDICAL EXAMINATIONS FOR EMPLOYEES WHO DRIVE A CAR

There have also been changes regarding employees who drive a car - from 1 January 2023, driving a car (unless the job title is "driver") is **no longer an occupational hazard**.

However, it still has to be determined whether driving is carried out as a normal part of the work or whether other persons are transported to the place of work. In that case:

If it is a normal part of work or if other persons are transported to the place of work, the employee must undergo a medical examination by the employer's occupational health service provider, i.e. a medical examination by the employee's registered (district) doctor is not sufficient.



## MINIMUM AND GUARANTEED SALARY IN 2023

### Minimum Salary

The minimum monthly salary for 2023 is CZK 17,300 (i.e. approx. EUR 720) and the minimum hourly salary for 2023 is CZK 103.80 (i.e. approx. EUR 4.30) (for agreed working hours of 40 hours per week, i.e. full-time work; if a shorter working time has been agreed, the minimum salary is reduced proportionately).

### Guaranteed Salary

The amount of the guaranteed salary depends on the complexity of the work, the responsibility of the employee for the work performed and the severity of the work. For the purpose of determining the guaranteed salary, eight categories of work are distinguished.

For the highest category, the guaranteed salary for 2023 has also been increased. Since the lowest category of guaranteed salary is equal to the minimum salary, only the lowest and highest categories of work have actually seen an increase in the guaranteed salary. The other minimum guarantee salary levels remain unchanged.

The current level of guaranteed salaries for full-time work are:

Categories of work	Example of profession	Monthly salary in CZK		Hourly salary
		2022	2023	2023
1.	Kitchen assistant, cleaning lady, ...	16,200	17,300	103.80
2.	Digger, chambermaid, ...	17,900	17,900	106.50
3.	Bricklayer, waiter, hairdresser, cashier, ...	19,700	19,700	117.50
4.	Cook specialist, ...	21,800	21,800	129.80
5.	Bus driver, nurse, payroll accountant, ...	24,100	24,100	143.30
6.	Sales Officer, administrator of the IT system, ...	26,600	26,600	158.20
7.	Financial expert, doctor, dentist, marketing expert, ...	29,400	29,400	174.70
8.	Broker on the financial and capital markets, ...	32,400	34,600	207.60

The employer is obliged to provide employees with a supplement to the salary if, after deduction of surcharges, the employee does not reach the appropriate level of guaranteed salary.

#### AMENDMENT OF EXISTING CONTRACTS

If the employee's salary was agreed in

the employment contract in the amount of the minimum or guaranteed salary, we recommend **concluding an amendment** to the employment contract, which will increase the salary accordingly and state the exact amount.

We would also like to draw attention to the fact that the increase in the minimum salary also affects agreements outside

the employment relationship (DPP and DPČ) However, this does not apply to the guaranteed salary.

For additional  
information contact  
Dagmar Junková at:  
junkova@giese.cz



## New Rules on Services for Owners and Tenants of Apartments

by Jana Rechciglová



A big change becomes effective of 1 January 2024: Individual owners or tenants in a block of flats must now receive information about the consumption of heating and hot water that are provided centrally once a month, if the consumption can be determined by remote readings. Recipients will also be able to request data on their heating and hot water consumption for the last 3 years.

In the context of rising energy prices, you may think that the amendment is a response to the energy crisis. This is not the case. In fact, the Czech Republic was obliged to implement a Directive of the European Parliament and of the on energy efficiency by 25 October 2020 at the latest. Given the fact that the law was submitted by the government in

April 2022, it is quite possible that the energy crisis helped the Czech Republic to rectify its commitment to implement the Directive.

However, rejoicing over monthly consumption information is premature for now. Individual flats may not yet be equipped with a system that allows consumption to be read from a distance of 250 metres before 2027. This gives individual owner associations, building owners or housing associations time to acquire such devices. In any case, devices without remote reading function may no longer be installed.

Energy recipients should also note that if they fail to identify their consumption of heat or hot water, they will be charged with a consumption component equal to three times the average value of the consumption component of the costs per 1 m<sup>2</sup> of chargeable floor area for other service recipients.

Another novelty is the fact that if the recipient does not object to the statement of account within 30 days of the date of delivery, the statement is deemed to be in order and the right to object lapses. It is also newly stipulated that errors in the billing shall not affect the due date of the overpayment and that errors in the billing which do not affect the calculated amount of the underpayment will not affect the due date of the underpayment. These provisions should ensure that the accounts of individual recipients of services are financially settled within a short period of time for owner associations, housing associations and building owners.

For additional  
information contact  
Jana Rechciglová at:  
rechciglova@giese.cz



## Ultimate Beneficial Owners Shrouded in Mystery

by Denisa Molnár

In November 2022 the Court of Justice of the EU adopted a groundbreaking ruling, invalidating a provision of the AML Directive allowing general public to access information on beneficial ownership of companies. The argumentation of the Court was based on the fact that publication of names and other data of beneficial owners interferes with the person's right to respect for private and family life and the right to the protection of personal data, since the information disclosed enables a potentially unlimited number of persons to find out about the material and financial situation of a beneficial owner.

This ruling was enough to trigger significant changes in several national beneficial owner registries (e.g. in Luxembourg, the Netherlands, Belgium, Austria, Ireland, Malta), which were made (completely or partially) unavailable to the public with immediate effect.

The decision sparked a wave of criticism

from anticorruption organizations, as it takes the fight for transparency of company owners, as well as the fight against money laundering in the EU, years back.

As regards the Czech register of ultimate beneficial owners, anybody can still access the entries without limitation. However, the Czech Ministry of Justice as operator of the register is currently analyzing the impacts of the ruling. The following are offered as options for further action: (i) the public access to the register will remain unaffected, (ii) the access will be limited (e.g. by the condition of registration, payment of a fee, proving of legitimate interest), or (iii) the register will be closed for the general public, i.e. access will be allowed merely for (public) institutions obliged to verify beneficial ownership of entities.

Whatever the verdict of domestic authorities, it will anyhow have impact solely on the scope of the disclosed data and the definition of persons, who will have access to the records. The obligation of registration of ultimate beneficial owners as well as sanctions for failure to do so, will remain unaffected.

It remains to be seen, which approach the Czech Ministry of Justice will take. Nevertheless, making the register partially inaccessible could provide an incentive for hesitant beneficial owners to finally register.

For additional  
information contact  
Denisa Molnár at:  
molnar@giese.cz



# Attention, Investors!

## Foreign Investments Screening

by Radek Werich

In Selected foreign investments from non-EU countries are subject to screening and approval by the Czech Ministry of Industry and Trade ("Ministry"). The purpose is to protect the security of the Czech Republic and its internal or public order.

Investment screening is a trend that has emerged in democratic countries over the last 10 years. It is a response to the aggressive economic expansion of some autocratic regimes.

A frequent goal of this economic expansion is to gain access to advanced technologies and critical infrastructure, which can be used diplomatically and economically against the target country of the investment or its allies in the long term. According to the Czech Investment Screening Act ("FIS Act"), a foreign investor is not only an investor, who is not a citizen of the Czech Republic or of another EU Member State, or does not have a registered office in the Czech Republic or in another EU Member State, but also someone who is directly or indirectly controlled by such a person.

Generally, investors from the USA, Great Britain, Asia, Australia or Africa will meet these criteria under the FIS Act.

A prerequisite for the application of FIS Act is the quantitative parameters of the investment, i.e. the effective degree of control. Simply put, this includes:

- ▶ the acquisition of at least 10 % of the voting rights in the target entity of the investment (directly or indirectly),
- ▶ the membership in the body of the target entity,
- ▶ the ability to dispose of ownership rights to the assets with which the target entity carries out its economic activity,
- ▶ other means of control.

In terms of investment categories, these are activities related to military material, operation of critical infrastructure, critical information

infrastructure systems or dual-use goods.

Foreign investments in the above categories can only be made with the prior (conditional) approval of the Ministry.

As part of the review process, the Ministry disseminates the information obtained from the foreign investor under the FIS Act to the relevant government institutions (such as various ministries and intelligence services) and other public authorities that are materially affected by the particular investment.

In particular, if at least one of the cooperating state authorities considers the investment under review to constitute a security threat, the Ministry may grant conditional approval, conditional admissibility, prohibition or prohibition of further continuation of the foreign investment. Only if all state authorities involved conclude that the investment under review does not pose a threat, the Ministry shall issue a decision on its approval without any conditions.

The decision of the Ministry may be challenged in court by means of an administrative action.

In case of non-compliance with the law, the foreign investor may be fined up to 1% of the total turnover or up to CZK 50 million if the turnover cannot be ascertained. It is therefore advisable to closely review any proposed transaction in which a non-EU investor intends to acquire assets or shares in a company in the Czech Republic. Investors should be aware that the categories of critical infrastructure, information infrastructure or dual-use goods are broad and may cause regulatory problems, even if the implementation of the transaction appears to be a smooth process at first glance.

For additional  
information contact  
Radek Werich at:  
werich@giese.cz





# You've Got Mail

by Karolína Szturc

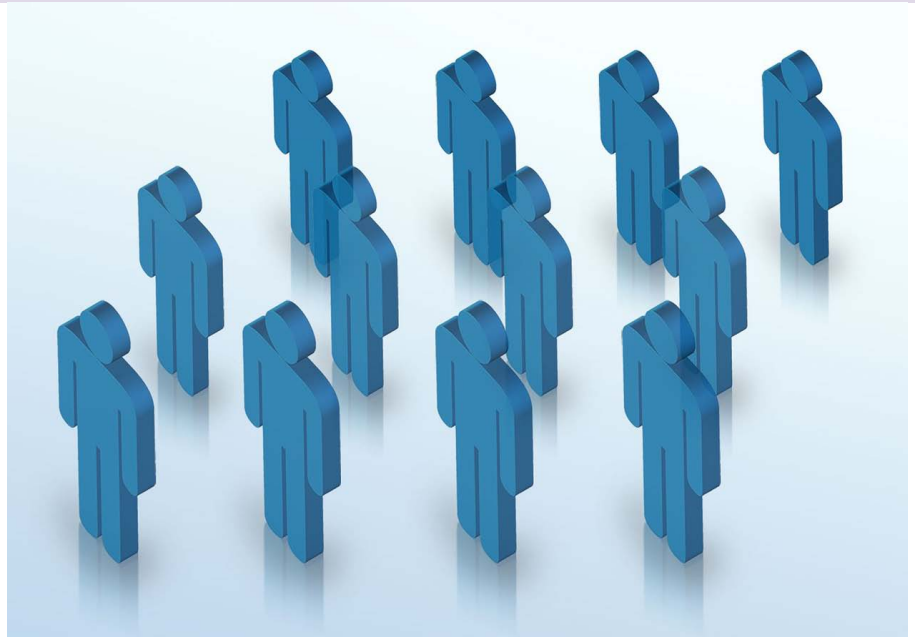
A data box is a secure electronic portal by the Czech state, which is used for electronic communication with public authorities. Recently, the range of mandatory users of data boxes was expanded to more than two million entities.

Data boxes will be newly set up for individual entrepreneurs registered with the Trade Register, foundations, institutes, associations, churches, funds, associations of apartment owners and certain NGOs, even if their business is suspended. As these data boxes are being activated automatically, there is no need for an application. Originally, it was assumed that a data box would be set up for all those who use e-identity, i.e. also non-business natural persons. In the end, however, this proposal was withdrawn. The Ministry of Internal Affairs will try to convince the remaining individuals to set up a data box on a voluntary basis by means of an information campaign.



If you are newly obliged to have a data box, you will receive your login information between January and March this year. The data box will be activated even if you do not take over your access data and never log in. In case you have already set up the data box voluntarily, you can continue using it. However, if you have a data box voluntarily as a private individual, but you should have one as an entrepreneur according to the new rules, you will end up having two data boxes.

For additional  
information contact  
Karolína Szturc at:  
szturc@giese.cz



## Slovak Legal News

### Slovak Labour Law News

by Veronika Kvašňovská & Valter Pieger

The Slovak parliament has recently adopted numerous changes to various aspects of the Labour Code and we are glad to introduce you to the most important ones.

A new type of an employment agreement, the **employment agreement for seasonal work** was introduced. This particular type of agreement is defined as a work activity which is dependent on the change of the seasons, reoccurs each year and does not exceed eight months in a calendar year. The agreement concerns workers who are recruited for specific seasonal work in agriculture, tourism, food and forestry sectors. The agreement may be concluded for a maximum of 8 months, within which the employee may work for up to 520 hours. This reduces the employer's burden of wage costs and the difficulty of recruiting employees in these sectors.

A new rule on **transition to a different form of employment** enables the employee with a limited time or part-time employment which exceeds six months, to request an indefinite or full-time employment relationship. The

employer is obliged to respond to such request in writing including the reasons justifying the decision within one month. However, if the employer is a person or if the employer has less than 50 employees, the period for such response is extended to three months.

An **electronization of meal vouchers is widely welcomed**. The employer has to replace paper meal vouchers with electronic "gastro-cards" that the employer tops up with credit intended to pay for employee's meals. The employees shall no longer be bothered by counting the amount of vouchers when paying in restaurants or shops. Instead, the employee can pay for meals or groceries by any amount up to the credit left on the gastro-card. This makes the whole process faster and more convenient. At the same time, the alternative to the paper voucher, a financial contribution for employee's meals sent directly to the employee's bank account is preserved.

**State-supported housing allowance** has been introduced, whereby an employer may optionally provide an employee with an allowance for renting a flat that is state-supported. However,

as to our knowledge, the state-run project is still in its infancy and so far only two developers have decided to pursue this particular type of project. Others are rather reluctant due to lack of incentives and economic benefits.

If you have employees in Slovakia, be aware of the newest Labour Code amendment, effective as of June 2023. The change relates to an increase of **salary benefits for work performed on the weekend and night work**. For work performed on Saturday, the employee is entitled to a wage advantage of at least 50 % of the minimum wage. Moreover, for work performed on Sunday, the employee is entitled to a wage advantage of at least 100 % of the minimum wage. Where the nature of the work or the conditions of the premises require the work to be carried out regularly on the weekend, a lower amount of wage advantage may be agreed, but not less than 45 % of the minimum wage for Saturday and not less than 90 % of the minimum wage for Sunday. As to the night work, which is performed between the hours of 10 pm and 6 am, the employee is entitled to a wage advantage of at least 40 % of the minimum wage, in the case of an employee performing dangerous work it is at least 50 % of the minimum wage. Again, if the night work has to be carried out regularly, a lower amount of wage advantage may be agreed, but not less than 35 % of the minimum wage. This measure is part of a social policy and puts pressure on employers to either close their businesses on weekends, and let the employees spend the weekend at home with their families or to pay them a significantly higher salary.



For additional information contact  
Veronika Kvašňovská at: kvasnovska@giese.sk  
or Valter Pieger at: pieger@giese.sk



## Giese & Partner News

### Junior Lawyer Team

Giese & Partner is pleased to introduce to you a new junior lawyer in our Prague team:

#### MGR. MICHAEL MACK



Michael joined our Prague team as paralegal in 2020 and became junior lawyer after having graduated from the School of Law at Charles University in Prague in January 2023. Michael specializes in corporate law, real estate projects, civil law and international privat law. He speaks Czech, English and German.

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#### Czech Republic

##### Giese & Partner, s.r.o.

Sky Gallery, Bělehradská 132, CZ - 120 00 Praha 2

+420 221 411 511 . office@giese.cz . www.giese.cz

Identification No.: 26156920 VAT No.: CZ26156920

registered with the Commercial Register held by the Municipal Court in Prague, Section C, Insert 212170

#### Slovak Republic

##### Giese & Partner, s.r.o. - organizačná zložka

Lazaretská 8, SK - 811 08 Bratislava

+421 220 510 110 . office@giese.sk . www.giese.sk

Identification No.: 36863238 VAT Identification No.: SK4020249761

registered with the Commercial Register held by the District Court in Bratislava I, Section Po, Insert 1713/B

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