



## General Interest

# Czech General Election 2021: Heading West Again

by Radek Werich

The Czech general election in early October and their impacts have brought many moments of surprise. First of all, incumbent Prime Minister Andrej Babiš' ruling party was defeated by two centre-right coalitions of 5 parties. The most extreme populists and the communists have not made it into the Parliament, while liberal parties received a clear majority in the House. Overall, the outcome of the vote is widely considered as a victory for liberal democracy in the Czech Republic.

Second, Czech president Miloš Zeman, 77 years old, fell seriously ill and was taken to an intensive care unit the day after the polls.

Zeman, who is seen as a keen admirer of eastern autocrats by liberal voters, made it clear without any scruples well ahead of the election that he would do whatever it takes to install Andrej Babiš to the office of the PM again. Luckily for the country and its political culture, a swift deterioration of the president's health made this scenario right on the verge of Constitution almost impossible.

Babiš, one of the richest Czech businessmen for almost two decades, who became a Viktor Orban-like politician in recent years, quickly realized

his odds and practically switched sides on the spot. He started open criticism of the closest co-workers of the president who were until recently almost untouchable and misused their positions for shady business. Obviously, Andrej Babiš already kicked-off his presidential campaign and seeks to attract some liberal voters. Having the best intelligence as PM on Zeman's health, he and his advisory team obviously put two and two together and expect that the presidential office will become vacant sooner rather than later.

In the meantime, the Czech Senate (Upper House) made repeated inquiries about Zeman's actual condition as this was kept secret by his cronies. Finally, the hospital issued a statement confirming that the president is unable to exercise his duties due to his ill health. Czech liberal politicians see this as a good opportunity to strip Zeman (at least temporarily) of his presidential powers until he recovers. Actual removal of the president from the office is under the Czech Constitution possible only for a high treason. If the Parliament approves stripping of the powers, Zeman will remain a "sleeping" president, who will still be granted all the benefits; however,

he will have no real authority to interfere in the political process and harm the winning liberal parties. In such case, the new Prime Minister will be appointed by the Speaker of the House who is to be chosen by the winning coalitions by mid-November. Hopefully, with a new liberal government and president Zeman being put on ice, Czechia will re-assure its democratic values and pro-western political and economic orientation.



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# CNB Interest Hike to Combat Strong Inflation

by Radek Werich

In early October, the Czech National Bank (CNB) took an action the market had not seen for more than two decades: the CNB raised its reference rate by 75 basis points taking the two-week repo rate to 1.50 %. The unexpected move was driven by higher-than-expected inflation data. The annual inflation rate based on index of consumer prices reached 4.1 % in August, being the highest since 2008.

Inflation estimates as of the year's end vary between 4.5 and 7 %. However, the real inflation which includes also non-replicable assets such as real estate is well above 10 %.

The main force behind such a high inflation level is largely inflationary pressure from abroad, especially a significant hike in price of commodities and disruption of supply chains. External inflation causes are further fuelled by domestic tendencies such as increased consumer demand following after a harsh period of anti-pandemic measures and an unprecedented

fiscal deficit triggered by the populist government. All these factors have multiplied in the building sector, which has experienced a sudden escalation of overall construction costs, which in turn took the already bloated property prices to all time high.

The CNB also aims on limiting a rapid increase in dwelling prices which have seen an average increase by almost 80 % for the past 5 years.

The CNB board made it clear that the gradual increase of its reference rate will most likely continue and that the market should brace for a rate up to 2.5 % by mid-2022. Some experts suggest that the CNB responded too slowly to the warning indicators and that it should have taken strong action already in the spring. Others indicate that effectively stepping on the inflation brake would mean for the CNB to set its interest rate to more than 3.5 %.

However, this could present a substantial blow to the post-pandemic restart of



economy which is still affected by disruption of supply chains and (perhaps surprisingly) by a lack of workforce in certain economic sectors. In any case, banks have already responded to CNB's actions and increased their lending interest rates, citing also rising interbank lending rates on the market. In terms of the largest Czech banks, reference to interbank lending rates can be considered merely an excuse as their balance sheets clearly show excess of liquidity reflecting high account balances of their clients. Anyway, given the current level of inflation, even relatively high mortgage rates will mean at the end of the day that borrowers effectively pay a negative interest rate for their loans.

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## Czech Legal News

# The New Building Act Promises a Better Tomorrow

by Denisa Molnár

Despite many obstacles during the legislative process, a completely new Building Act was adopted in July 2021 by the Czech Parliament, entering into force (with a few exceptions) on July 1, 2023. Its main goal is to accelerate and make the building permitting process more efficient. Here are the most important changes:

### ACCELERATION OF PERMITTING PROCEEDINGS

The permitting process shall be easier thanks to 3 changes. Firstly, binding deadlines have been set for the building authorities for issuance of building permits: in respect of simple constructions (e.g. family houses) 30 days, in more complex cases 60 days or even 120 days in cases,



where environmental impact assessment (EIA) is required. The deadlines may be extended in particularly complicated cases.

Secondly, the so-called concerned authorities (such as authorities focusing on water, air, public health protection, waste disposal etc.) will have to issue their binding assessments within 30 days from delivery of the respective request (with possible prolongation by additional 30 days). Should the authority fail to meet the deadline, the binding assessment shall be deemed affirmative and without objections. Another tool for simplification of the proceedings is the passage of competences of most of the concerned authorities to the building offices. Therefore, the majority of the binding assessments will be handled directly by the building offices and thus the builder does not have to contact numerous authorities and wait for their statements.

Last but not least, the permitting process will be integrated into one proceeding, unlike the current dual planning and building permit proceedings. This step should make the permitting process much easier and quicker.

#### DIGITALIZATION

Applications for issuance of a building permit can now be submitted electronically via an online portal together with the project documentation in digital form. One of the significant advantages is the possibility for the builder to see, at what stage its permitting process is.

#### BUILDING OFFICES UNDER STATE CONTROL

The building offices shall no longer be organized by the municipalities. Instead, a new network of state building offices shall be established, led by the Supreme Building Office and followed by the Specialized and Appellate Building Office in charge of very complex constructions (e.g. highways, airports). The regional building offices shall represent the first instance of the new system.

#### ILLEGAL CONSTRUCTIONS

Illegal constructions, i.e. constructions started or built without a valid building permit or in violation of the issued building permit, may even under the new Building Act be permitted retrospectively, but only if the builder was in good faith. It means that if the developer must have known, that

he was building without a valid building permit, he should not have the possibility to legalize the construction subsequently. Illegal buildings that do not meet the conditions for subsequent legalization will be demolished at the expense of the state.

When judging the new Building Act, experts say, it could have been more "courageous". The protection against inactivity of the building offices has not been fully followed through. Despite the fact that binding deadlines have been set for the decision-making, the act lacks effective tools for their enforcement. Nevertheless, taking into account the rather bad condition of the current building legislation, adopting the new Building Act is a lesser evil than to postpone the necessary reform of building laws by decades.

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The lessor also has the option to negotiate a contractual penalty with the lessee in the lease agreement. However, the amount of the penalty, together with the security, may not exceed the aforementioned three times the monthly rent.

Another complicated issue for the lessor is ensuring adequate rent levels, especially for long-term leases. The solution is, perhaps surprisingly, not to be found in the Civil Code, but it is a practice developed via facti, namely the inflation clause. It allows the landlord to secure a rent level that is resilient to unpredictable inflationary increases. Today this has again become an important issue. However, it should be pointed out that the lessor ceases the ability to unilaterally increase the rent or to bring an action before a court to determine the amount of the rent.

Nevertheless, the most pressing problem of the lessor remains the situation where the tenant owes rent and refuses to vacate the apartment. In order to avoid such a situation, lessors may be advised to conclude an enforceability clause before a notary public when concluding a lease agreement with the lessee. Such a clause supersedes an enforceable court order by which the lessee consents to the lessor enforcing satisfaction of his right to payment of the due rent. If the enforceability clause is not concluded, the landlord risks high costs associated with enforcing its rights in court. The enforceability clause for the eviction of an apartment recently was subject of a Supreme Court order. According to the court, which it is not a title of execution. This resolution was received very lukewarmly by the professional community and we can only wait to see if it will be overcome in the future.

## Security and Corroboration of the Lessor's Position

by Lenka Charvátová

The lease of an apartment or a building is a timeless topic in the Czech legal system. One of the most resounding issues is the allocation of rights and obligations between the lessor and the lessee, which is governed by the principle of protection of the weaker party. As a result, the chances of the lessor to pursue its claims out of court are limited. One example is the situation in which the lessee doesn't pay his rent, notice of termination by the lessor is given, but the lessee doesn't vacate the apartment, which leads to damage to the lessor. What are the "out of court" options for the lessor in this and similar situations?

One of the common institutes used to improve the lessor's position is of course a deposit. The deposit may amount up to a maximum of three times the monthly rent.

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# Supreme Court Puts the Articles of Association Under Threat

by Jan Valíček



services not specified in Annexes 1 to 3 to the Trade Licensing Act". The company may choose from 81 specific branches of activities and 1 residual branch of activities. As commonly recommended by advisors, the articles of association do not contain a precise specification of the company's activities. Therefore, any further change or expansion did not lead to a necessary amendment of the articles of association. Such approach could save money and time for the shareholders. However, the Supreme Court of the Czech Republic has expressed its disagreement with this approach and considers such stipulation in the articles of association indeterminate, and therefore putative (invalid).

The implementation of this new interpretation of law will result in additional administration and costs. As such amendment requires the form of a notarial deed. Should your company's articles of association not comply with the Supreme Court's decision, this may lead to a fine up to CZK 100,000 or even to the involuntary dissolution of the company.

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arrangement, belongs to both partners equally. This applies regardless of who earns or spends the income. Czech law sees marriage as a partnership where each partner contributes their part, not necessarily in financial form, but also as caring for family matters.

The aim of this legislation is evident – lawmaker ensures that both partners enjoy the same standard of living. The same applies when it comes to the termination of the marriage and a fair separation of the joint ownership of the spouses must be achieved. The shares of both spouses on assets and liabilities shall be the same. In other words, each partner receives half of the former joint ownership.

Nonetheless, according to Czech courts, this rule is not mandatory and can be adjusted in particular circumstances. This leads us to a different kind of equality, focused on the fairness of results.

The Supreme Court of the Czech Republic stated that a settlement of joint ownership of spouses must be executed fairly and all decisive factors of the particular case must be taken into consideration.

The most frequent reason for settling the joint ownership in a disproportionate way (disparity) is a situation when one spouse chooses to stay unemployed on purpose and does not contribute to the joint ownership with any financial assets. On the other hand, this does not apply when one partner is unemployed, but takes care of the household and other members of the family while the other works and supports the family financially.

Furthermore, the behaviour of a spouse might have a significant influence on the court's decision how the joint ownership is divided. Habits and addictions such as alcoholism, violence, gambling or acting

## Joint Ownership of Spouses: Always 50-50?

by Jana Kostěncová

A marriage establishes new rights and duties between the spouses. It doesn't change everything, but for example a new property regime is established once the marriage is formed. Any income or property acquired during the marriage unless explicitly excluded by a contractual

Do your company's articles of association include a general specification of its object of business "Manufacture, trade and services not specified in Annexes 1 to 3 to the Trade Licensing Act"? Do they lack a precise specification of the activities? In this case, an amendment to the articles of association is highly recommended. The reason for this is that the Supreme Court of the Czech Republic has issued yet another revolutionary decision. This time the decision is related to the companies' object of business stipulated in the articles of association.

Usually, companies active in businesses, which do not require a special qualification under the Trade Licensing Act, prefer a general description of their business. The articles of association usually just state "Manufacture, trade and

prodigal, lower the likelihood of receiving an equal share, but only on the condition this kind of behaviour had an impact on disposing of the joint assets as well as on satisfying family needs. Neglecting to provide for family matters and leaving the family household without reasonable grounds is as well considered as a ground to settle a share of joint ownership of spouses differently than 50-50. In contrast, the reasons for the failure of a marriage,

for instance adultery of only one partner, plays no role. This differs from previous legislation when the spouse responsible for failure of a marriage could have his share deprived or lowered by the court's decision. It should be noted that the court may decide on the disparity not only on the basis of the party's application, but also on its own initiative.

Disparity is an instrument which makes it possible to consider all specific

circumstances of a case Czech courts have outlined the basic principles for its application.



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## Ultimate Beneficial Owners in the Czech Republic and Practical Experience of Registering

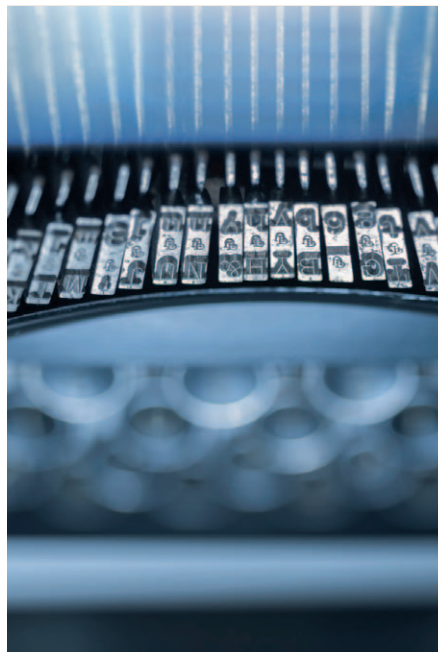
by Dagmar Junková

The new legislation concerning the register of ultimate beneficial owners (UBO) became a major topic this year. The main reason were **new sanctions associated with the non-registration** of the UBO, in particular:

- prohibition to pay out dividends to the UBO or to an entity without registered UBO, directly or indirectly.
- an unregistered UBO may not exercise cannot exercise voting rights, directly or indirectly while companies without registered UBO may not exercise voting rights in other entities.

Under the new legislation, entries in the register of beneficial owners may be made **either by a court or by a notary**. There are some experiences with the registration of a UBO in first months of operation of the new rules.

1. To enter a UBO, it is necessary to provide documents from which the UBO follows. These documents do not have to be submitted in the original and do not have to be provided with an apostille or superlegalized. Only the respective power of attorney must be officially verified and, if necessary, provided with an apostille or superlegalized.
2. The register of beneficial owners is public. However, the public only has



limited access, e.g. addresses of the UBO are not available to the general public, although they are entered in the register. Only selected categories of persons/institutions are authorised to view the complete extract.

3. Registration is subject to an administrative fee; **the fee paid to notaries is lower** than the fee paid to the court.
4. In our experience, it easier to register the UBO through a notary, since it is **possible to consult the notary in**

**advance on the sufficiency of the documents.** On the contrary, the Court refuses the application for registration of UBO if it finds the provides documents insufficient.

5. Entries made by a notary are also significantly faster. If e.g. the company participates in a public tender and **needs to have a registered UBO by a certain date, we are able to communicate this with the notary and ensure the timeliness of the registration.**

The procedure has also changed if the UBO cannot be determined or the UBO does not exist. Although the members of the company's senior management are still considered UBO, this is no longer automatically a member of the Czech company's senior management, but rather a member of the legal entity that **exercises the greatest influence.**

In this context, we would also like to point out that if the company needs to take **a decision in the form of a notarial deed** and does not have a registered UBO, the notary will check the status of the beneficial owners' register. If the notary finds that the company does not have a UBO registered, **it is not possible to take a decision in the form of a notarial deed until the UBO is entered** in the register. This can be problematic especially in situations where it is necessary to take a decision in the form of a notarial deed at a specific time.

In view of the above, we recommend that you register the UBO as soon as possible if the company has not yet done so.

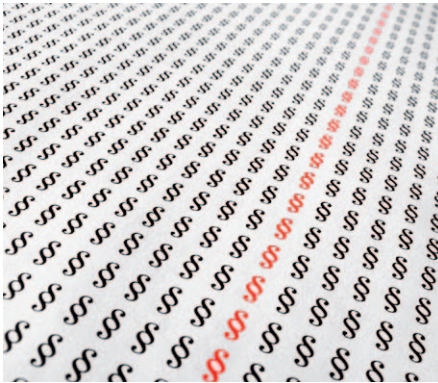


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## Slovak Legal News

# New Act on Protection of Competition

by Zuzana Tužilová



The new Act on Protection of Competition brings many important changes that everyone doing business in Slovakia should be aware of.

The former act was limited to natural or legal persons registered in the commercial register or other registers. Now the law applies to any entity performing business activities or other activities which might affect the competition *irrespective* of the legal form, existence of any legal identity or

manner of financing of such entity.

The change in notification criteria relating to **establishment of a new joint venture** will significantly decrease the administrative burden on entrepreneurs. Before, creation of a joint venture was subject to review by the Antimonopoly Office, if the turnover criteria regarding parties of the joint venture were met, even if the joint venture was intended to perform *no business in Slovakia*. Thus, even extraterritorial joint ventures not affecting the competition on the Slovak market were subject to the Antimonopoly Office's review. If entrepreneurs failed to notify such joint venture duly and timely, the Antimonopoly Office was entitled to impose a fine. Now, the creation of an extraterritorial joint venture shall no longer be assessed by the Antimonopoly Office.

Furthermore, the new act introduces several minor improvements which shall increase the effectiveness of the proceedings held by the Antimonopoly Office. It expressly empowers the Antimonopoly Office to decide on **interim measures**, if there is a reasonable

assumption that (a) a cartel agreement was concluded or a dominant position was abused and (b) there is a risk of serious and irreparable harm to competition. Besides, the Antimonopoly Office is newly entitled to:

- impose any **behavioural or structural remedies** which are proportionate to the infringement committed and necessary to bring the infringement effectively to an end, provided if it is proven that a certain infringement has occurred,
- require **oral statements** and explanations from any person who might dispose with relevant information **at any time** irrespective of the fact whether proceedings were formally commenced by the Antimonopoly Office, or
- impose **forfeits** for failure to obey any decision by the Antimonopoly Office or to fulfil any duties during the antitrust inspection etc.

The new legislation clearly represents a big step forward. It now remains to be seen how the Antimonopoly Office and entrepreneurs will get accustomed thereto.

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## Slovak Legal Newsflash

by Veronika Kvašňovská and Valter Pieger

### REACHING THE RETIREMENT AGE – A NEW REASON FOR TERMINATION

The employers complain on a long term basis that the Labour Code is outdated, not very dynamic, flexible and does not meet the current demands of society. The legislators tried to mitigate this dissatisfaction by a new amendment to the Labour Code. The amendment

introduces a new reason allowing the employer to terminate the employment relationship with a particular employee. As of January 1, 2022, the employer is entitled to terminate the employment relationship if the employee is at least 65 years old and reaches retirement age. Employers intending to use the new termination reason are no longer obliged to offer another suitable job to the dismissed employee. However,



the employee is entitled to a severance payment. This applies also if the employment relationship was terminated due to the retirement age of the employee by a termination agreement.



It might seem that the newly introduced termination reason could be discriminatory towards elderly people. The legislator claims that this measure is justified because it is a part of the social policy supporting the employment rate and the labour market. It shall help to reduce unemployment of young people, increase the employment of fresh university and secondary school graduates and to boost the intergenerational exchange of employees in the workplace.

**HEALTH AND SAFETY RULES APPLY TO HOME OFFICE**

Employers, attention! Even in case of employees working remote from home, it is necessary to comply with corresponding health and safety rules. Various government regulations include a large number of rules that apply to home office work as well. These include for example the size of a desk, which must be at least 120 cm long and 75 cm wide, the type of a work seat, the lighting in the workplace, appropriate contrast between the screen and its background, the location of display, separation of keyboard from the screen, sufficient space in front

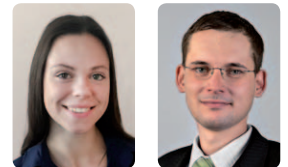
of the keyboard to support the hands and forearms, regular work breaks, etc. The employer should therefore primarily know all relevant rules in detail in order to be able to take appropriate measures and monitor employees' compliance with them.

**AUTOMATIC UPDATE OF THE DATA IN THE COMMERCIAL REGISTER**

The statutory bodies of legal entities are obliged to update data on shareholders, statutory bodies, members of supervisory bodies, etc. registered in the Commercial Register, or to coincide such registered data with the current status (as far as applicable) until September 30, 2022.

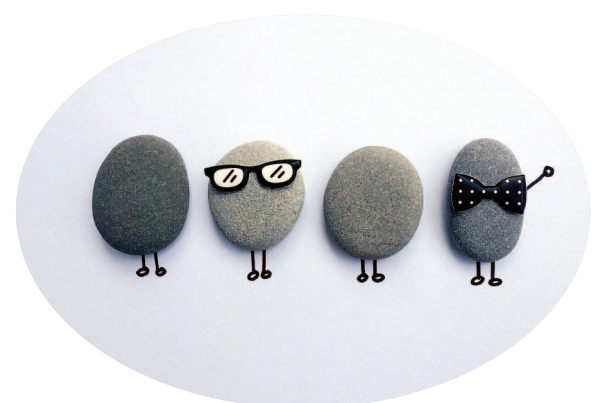
The parliament recently passed an act that should disburden the entrepreneurs. According to the new regulation (the President's signature is expected in the forthcoming weeks) the personal identification data, that is available to the government from other sources, should be automatically updated by May 31, 2022 at the latest. The government will subsequently inform the concerned individuals about the automatic update.

Please bear in mind, should you not receive such notification by the end of May 2022, you will be obliged to file an application for corresponding registration by September 30, 2022. If the filed application concerns only an update of the above-mentioned data, the proceedings will be accomplished free of charge. As of October 2022, all updates of identification data will be done automatically. Thus, if the shareholder of a company changes their permanent residence address or their surname, the change shall automatically be reflected in the Commercial Register, i.e. without the need to apply specifically for registration of the corresponding change.



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**Giese & Partner News**



**Newcomers**

Giese & Partner is pleased to introduce to you new members of our Prague and Bratislava teams:

**MGR. DAGMAR JUNKOVÁ**  
Associate, Prague



Dagmar extended our Prague team of Czech attorneys in September 2021. She graduated from the School of Law at Charles University in

Prague in 2007 and was admitted to the Czech Bar Association (ČAK) in 2011. Dagmar specializes in employment and immigration law, corporate law and litigation. She speaks Czech, German and English.

**MGR. JAN KODEŠ**  
Junior lawyer, Prague



Jan joined our Prague team as junior lawyer in June 2021. He graduated from the School of Law at Charles University in Prague

in 2021. Jan specializes in corporate law, employment law and real estate projects. He speaks Czech, English and German.

**MGR. VERONIKA KVAŠŇOVSKÁ**  
Junior lawyer, Bratislava



Veronika joined our Bratislava team as junior lawyer in September 2021 after having graduated from the School of Law at Comenius

University in Bratislava. Veronika specializes in procedural law, civil law, real estate projects and international law. She speaks Slovak, English and German.

## Recent News

### ■ CZECH LEADING LAW FIRM OF THE YEAR 2021

Giese & Partner is proud of being ranked as recommended Czech law firm in the field of Banking and finance.

### ■ PROMOTIONS

Giese & Partner is pleased to announce that our Slovak colleagues **Zuzana Tužilová** and **Valter Pieger** have been promoted to senior associates at our branch office in Bratislava.

### ■ THE LEGAL 500 EMEA 2021: GIESE & PARTNER AGAIN AMONG THE LEADING LAW FIRMS IN THE CZECH REPUBLIC

According to The Legal 500 Europe, Middle East & Africa 2021 edition, Giese & Partner continues to be one of the leading law firms in the Czech Republic in the areas of real estate projects and banking, finance and capital market law. **Martin Holler** and **Jitka Sytařová**, partners at Giese & Partner, were recommended as top experts in these areas of law.

### ■ IFLR 1000 RANKINGS 2021: GIESE & PARTNER RECOMMENDED LAW FIRM IN THE CZECH REPUBLIC AND SLOVAKIA

Giese & Partner was ranked by IFLR 1000 as recommended law firm in Banking and Finance, M&A and Restructuring/ insolvency in the Czech Republic, and in Banking and Finance and M&A in Slovakia.

### Further activities of Giese & Partner lawyers

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#### Czech Republic

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#### Slovak Republic

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