GIESE & PARTNER

CZECH REPUBLIC & SLOVAKIA

Newsletter 2/24

General Interest

Much More Than Just a Few Words

35 Years of Genscher Balcony

by Martin Holler

"We have come to you to inform you that today your departure...". This unfinished sentence marked one of the most significant events at the end of the Cold War. On 30 September 1989, the German Foreign Minister at the time, Hans-Dietrich Genscher, stepped onto the balcony of the German embassy. He addressed around four thousand East German refugees who had been waiting in the embassy garden for weeks in the hope of freedom. Genscher's words were interrupted by a thunderous cheer from the crowd as the refugees understood that they were allowed to travel to the West.

Photo © Marie Nálepová

Only three days later, 5,000 more East Germans had gathered in the garden of the Lobkowicz Palace, the seat of the German embassy. Another 2,000 refugees were waiting in front of the building. The streets around the Lobkowicz Palace were lined with their abandoned Wartburg and Trabant cars with many car keys just hanging from street trees. Their owners could eventually also travel to freedom by train.

The events in Prague became a symbol of the end of the Iron Curtain. In the following three months, the world would change forever with the fall of the Berlin Wall and the collapse

of communist regimes across the former Eastern Bloc. The peaceful Velvet Revolution succeeded and the dissident Václav Havel became the new president of Czechoslovakia.

Today, the balcony of the Lobkowicz Palace on which the iconic words were spoken, is commonly known as the "Genscher Balcony". A bronze plaque commemorates what is now regarded as one of the most important and emotional moments in the history of Central Europe.

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Czech Legal News

New Digital Economy Act

by Karolína Szturc

The online environment in the Czech Republic is about to undergo a significant transformation with the introduction of the draft Digital Economy Act. This legislation, recently approved by the government, aims to establish a clear and fair regulatory framework for digital platforms, ensuring that users and smaller businesses are protected, competition is encouraged, and innovation is fostered.

1. KEY OBJECTIVES AND PROVISIONS

The Digital Economy Act aims to address the challenges posed by the rapid growth of the digital market. It introduces comprehensive rules covering a range of activities, including the operation of online marketplaces, social networks, cloud services, internet connection providers, search engines, and intermediary or hosting services. Its goal is to strengthen the protection and security of users in the online environment and to ensure that users' data is managed securely.

It prepares the Czech Republic for the adaptation of several European Union regulations, such as those aimed at protecting minors from targeted advertising. It also prohibits targeted advertising based on sensitive personal data, such as health, religious beliefs or racial origin.

One of the key provisions of the legislation is its approach to illegal content, based on the principle from the EU's Digital Services Directive that "what is illegal offline must also be illegal online". This includes allowing users to report illegal content through a formal, duly substantiated notice, to which service providers must respond and, where appropriate, remove it.

To prevent monopolistic practices, the Act introduces rules that vary based on the size of the company. This proportional approach ensures that smaller businesses are safeguarded, fostering a competitive and innovative digital market.

2. OVERSIGHT AND ENFORCEMENT

The Czech Telecommunications Office is the regulatory authority responsible for overseeing and enforcing the Act. In matters of personal data protection, this role falls to the Office for Personal Data Protection. These bodies should ensure compliance and dealing with any breaches of the law.

The Act sets out stringent penalties for non-compliance. Companies that violate the law may be fined up to CZK 10 million or 6% of their worldwide net turnover. In serious cases, companies could also be banned from operating on the digital market.

3. A DYNAMIC AND EVOLVING FRAMEWORK

The Digital Economy Act is not a one-time fix but a dynamic framework expected to evolve alongside the digital landscape. As new European Union regulations emerge, the Act will likely undergo revisions to stay relevant and effective. Adaptability will be key to maintaining a regulatory environment that meets the demands of the fast-paced digital economy. The Digital Economy Act is expected to enter into force during 2025.

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Cybersecurity Shake-Up

Is Your Company Ready for the New Rules?

by Radek Werich

The Czech government intends to introduce a new cybersecurity law in times of increasing digital threats and an evolving cybersecurity landscape. It transposes the European Union's NIS2 Directive, which aims to establish a high common level of cybersecurity across the EU. Vulnerabilities in critical infrastructure are addressed, ensuring a more unified approach to cybersecurity across member states.

Existing regulations are significantly updated, expanding their scope to cover more entities, including medium and large-sized companies. Reporting requirements are tightened and stricter security measures to protect national infrastructure are introduced. The law aims to increase the resilience of essential services, mitigate cyber risks, and improve cooperation between private entities and the state. It aligns with broader EU goals of building a secure and unified digital market by ensuring that critical sectors are well-protected against cyber threats.

It is important to note that this is currently only a government bill prepared in collaboration with the National Cyber and Information Security Agency (NÚKIB). As the bill is still to be debated in the Parliament, it may be subject to amendments or revisions before final approval.

The bill is expected to take effect from 1 January 2025, so companies should stay informed about the legislative process to anticipate changes that may affect their obligations under the new law. There are the highlights of the proposed changes:

DESIGNATION AS A REGULATED SERVICE PROVIDE

Companies whose services are deemed critical for social or economic functions may be classified as regulated service providers by the National Cyber and Information Security Agency (NÚKIB). This includes sectors such as energy, manufacturing, finance, healthcare, and digital infrastructure. Once classified, these companies must meet strict cybersecurity standards and will be subject to regular audits. They are also required to register with NÚKIB within 60 days of meeting the conditions for designation.

IMPLEMENTATION OF SECURITY MEASURES

The law mandates that companies classified as regulated service providers implement both organizational and technical security measures. These include risk management, access control, identity verification, and incident detection systems. For companies with higher responsibilities, stricter requirements will apply, including the establishment of a formal information security management system and continuity planning.

INCIDENT REPORTING

Companies are required to report any significant cybersecurity incidents to NÚKIB. These incidents must be reported within 24 hours of discovery, and additional updates must follow within 72 hours. Final incident reports must be submitted within 30 days.

SUPPLY CHAIN SECURITY

Another critical aspect is supply chain security. Companies must assess the cybersecurity risks associated with their suppliers and ensure that these risks are managed through appropriate contractual agreements.

PENALTIES FOR NON-COMPLIANCE

Failure to comply with the new cybersecurity requirements can result in substantial financial penalties. The maximum fine for serious violations is set at CZK 10 million which is substantially lower than under the maximum under the NIS2 Directive. Violations that trigger fines include failing to implement adequate security measures, not reporting incidents in a timely manner, and not cooperating with the regulatory authorities during inspections.

Additionally, the law allows for other punitive measures such as public disclosures of non-compliance, which could harm a company's reputation.

PREPARING FOR THE NEW REGULATIONS

Companies should begin preparing for the new regulatory landscape by conducting a thorough review of their cybersecurity policies and incident response protocols. The proposed law represents a shift towards more proactive cybersecurity management, particularly in sectors critical to national infrastructure. Failing to meet these new obligations may not only result in financial penalties but also disrupt operations and damage reputation.

Companies should consider working closely with their legal counsel to ensure compliance with the new requirements. This includes registering services with NÚKIB if necessary, implementing the mandated security measures, and ensuring that cybersecurity risks are addressed in all contractual arrangements with suppliers.

In summary, the new law emphasizes the growing importance of cybersecurity and places significant responsibilities on companies in key sectors. Management teams must ensure that their companies are ready to meet these new challenges to avoid penalties and ensure the security of their operations.

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Collective Actions

An Opportunity for Consumers

by Jana Kostěncová

Consumer disputes often remain unresolved because consumers are not interested and often do not have enough funds to enforce their claims before the courts. This shall now change. A new act on collective civil court proceedings introduces the collective actions to Czech procedural law. Disputes concerning rights or interests of several persons (especially consumers) shall now be decided within one civil proceeding.

A comprehensive framework enables the effective collective enforcement of consume rights against entrepreneurs.

In collective civil court proceedings, several separate claims with similar factual and legal basis will be combined into one. The increase in the total value of the sued amount shall motivates consumers to join and claim their rights. They will become part of a larger group with a stronger legal status and don´t have to bear the whole legal costs.

It is to be noted that the act allows not only consumers, but also some business entities to participate in collective proceedings. These are entrepreneurs with fewer than 10 employees and an annual turnover of less than CZK 50 million.

In the first instance, only the Municipal Court in Prague has jurisdiction to hear collective actions. This approach aims to ensure uniform, cost-effective and efficient handling of such specific disputes.

As with classic civil court proceedings, the parties here are the plaintiff and the defendant. However, not every injured consumer is considered a plaintiff, but only entity specially designated for that purpose which acts for the benefit of the participating consumers. A lawyer must always represent this legal entity.

Collective proceedings are based on the so-called opt-in principle. This means that persons asserting their claims must actively register for collective proceedings. This is done through a standardized form, which needs to be filled out and addressed to the plaintiff. A minimum of 10 registered consumers is required at any time. If the number of participating group members falls below this number, the court will stop the proceedings.

The act also introduces a new public register, the so-called collective proceedings register. It contains a chronological list of individual collective proceedings in which the admissibility of the collective action was decided.

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Game Over for Parasitic Tenants?

by Jan Valíček

Parasitic tenants - almost everyone has at least heard about a landlord, who cannot get rid of a tenant who stubbornly resists eviction. Even after the end of the lease. The existing legal framework only provides for lengthy solutions causing additional costs and loss of rent. Such a situation can soon turn into a nightmare for the landlord.

An upcoming amendment to the Civil Procedure Code provided by the Government of the Czech Republic seeks to change this. The amendment introduces a new instrument into the legal system, the so-called eviction order.

This type of court decision, analogous to a payment order, entails a simplified and accelerated procedure. This is, however, subject to the fulfilment of certain specific conditions:

- it concerns the lease of a flat or a house;
- the lease has already been terminated;
- the landlord has invited the tenant to vacate the property at least 14 days before the action is brought.

The court may decide without hearing the parasitic tenant and order him to vacate the property within 15 days. In case the tenant fails to comply with this court order, the landlord may initiate its enforcement. The tenant has the right to lodge a statement of opposition, which will cancel the eviction order and the traditional court proceedings shall continue. It thus seems that the eviction order will be an effective tool against former tenants who do not care about their rights, but not so much against seasoned scammers.

As this is a government bill, it will be subject to approval in the Czech Parliament. It is therefore possible that the final wording will undergo significant changes that could further strengthen the landlord's position. We will continue to monitor the further development of this bill so that we can effectively assist concerned landlords in the future. However, if you already have a problem with a tenant, do not hesitate to contact our team, who are prepared to defend your rights under the existing rules.

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Good News for Employers

New Rules for Non-Compete Clauses

by Dagmar Junková

Non-compete clauses have long been a critical tool for employers, particularly when it comes to protecting sensitive information that key employees may acquire during their tenure. These clauses are designed to prevent employees from joining competitors and using this knowledge after their employment ends.

UNDERSTANDING THE BASICS OF NON-COMPETE CLAUSES

When an employer and employee agree on a non-compete clause, the employee is restricted from working in their specialized field for up to one year after leaving the company. In return, the employer is required to pay the employee at least 50 % of their average earnings during this period as compensation.

But what happens if the non-compete clause becomes unnecessary? For example, if the employer decides to terminate the employee but wishes to avoid the ongoing financial obligation associated with the clause. Can the employer unilaterally withdraw from the agreement, and if so, under what conditions? Of course, we are not talking about cases where the parties amicably agree to terminate the non-compete clause.

THE LEGAL LANDSCAPE: WITHDRAWAL FROM NON-COMPETE CLAUSES

Under the Czech Labour Code, employers can only withdraw from a non-compete clause during the employee's tenure. However, the law does not clearly define the specific reasons that justify such withdrawal. This ambiguity has traditionally made it difficult for employers to exit these agreements without risking prolonged legal disputes.

Historically, the Czech Supreme Court ruled that employers could not reserve the right to withdraw from a non-compete clause without specific, justifiable reason. This strict interpretation often put employers in a difficult position.

A SHIFT IN JUDICIAL APPROACH

In a significant shift, the Czech Supreme Court has recently adopted a more flexible stance. The court now recognizes the importance of contractual freedom and the autonomy of both parties. This new approach allows employers to include more broadly defined withdrawal provisions in non-compete agreements. Specifically, an employer can now reserve the right to withdraw from a non-compete clause without needing to state a specific reason, provided the decision is made in good faith and not arbitrarily.

Incase an employer determines that enforcing the non-compete clause is no longer necessary—perhaps because the information the employee holds has lost its competitive value—the employer may opt to withdraw from the agreement. However, this discretion must not be abused, ensuring that the employer's decision is fair and justified.

IMPLICATIONS FOR EMPLOYERS

This new legal interpretation brings greater flexibility and legal certainty to employers regarding non-compete clauses. Employers now have the opportunity to draft more adaptable agreements that can respond to changing circumstances without the fear of long-running disputes.

As always, careful drafting and consideration are essential. Employers should work closely with legal advisors to ensure that their non-compete clauses are both enforceable and adaptable to future needs.

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Employment to Become More Flexible

by Jaroslava Novotná

The government approved an amendment to the existing rules to increase flexibility of labour relationships. Now, the draft needs to be confirmed by the Parliament.

Termination of the employment should be made easier. The start of the termination notice period would be newly defined as date of delivery of the termination notice. The termination periods connected with a breach of work discipline or in cases when an employee does not meet the prerequisites/ requirements for performance of the agreed work would be shortened.

Employees who return to work from parental leave before their child turns two years, would be guaranteed the same work position at the same work place. In addition, work and family life balance should be supported by the fact that parents on a parental leave would be allowed to perform their work by the same employer based on an agreement to complete a job (DPP) or an agreement to perform work (DPČ).

There are also other interesting adjustments, such as a prolongation of the maximum length of the probationary period.

It will be interesting to follow what changes of the Labour Code will be made by the parliament. We will of course keep you updated.

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New Rules for Mergers

by Denisa Molnár

The latest amendment to the Act on Transformations of Commercial Companies and Cooperatives introduces significantly enhanced efficiency and clarity of the transformation process.

DIVISION BY SEPARATION

Under the new division by separation *(in Czech: vyčlenění)* a company can separate a portion of its assets and liabilities and transfer them to one or more existing or newly established companies. In exchange, it receives shares in those companies.

FAIR VALUE

The amendment introduces alternatives to the previous requirement for expert valuation of assets. Companies may now opt for one of the following methods:

(i) Fair value of assets. This is determined by a recognized independent appraiser, adhering to generally accepted standards and principles of valuation not more than six months prior to the registration of the transformation).

(ii) Fair value as reflected in the audited financial statements. This may be applied, if in the preceding accounting period, the company valued its assets at fair value. In both cases, the statutory body of the company has to consent to the chosen method of valuation.

EXPERT APPOINTMENT FLEXIBILITY

The appointment of the expert valuing the merged or divided assets is no longer done by the court. Instead, the participating companies may select an expert from a list maintained by the Ministry of Justice.

STREAMLINED PUBLICATION REQUIREMENTS

Companies are no longer required to publish the filing of the (de)merger project in the Commercial Gazette. Instead, companies now file the (de) merger project along with notification to creditors, employees and shareholders with the Collection of Deeds. Additionally, the notification must be published on the company's website at least one month prior to the general meeting's approval of the (de)merger. Alternatively, companies may register the basic data regarding the merger or division in the commercial register, publish the relevant documents on their website from one month before to one month after the general meeting's approval and file the notification to creditors with the Collection of Deeds.

ENHANCED CREDITOR PROTECTION

The amendment clarifies creditor protection rules. Specifically, it reduces the timeframe for creditors to submit their claims from six months to three months following the publication of the (de)merger project. Furthermore, the definition of claims eligible for security has been broadened to include future or conditional claims, provided they arise from obligations incurred prior to the publication of the (de)merger project.

CROSS-BORDER TRANSFORMATIONS

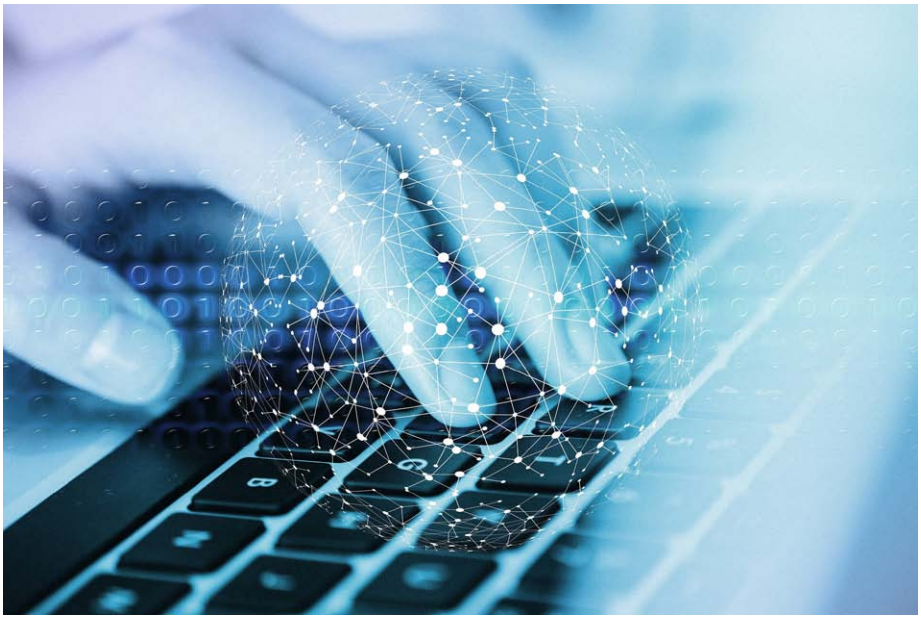
The scope of the Act on Transformations has been expanded to encompass cross-border relocations of registered offices to and from countries outside the EU and EEA. The amendment simplifies the preparation of reports on cross-border transformations and introduces streamlined procedures for certain types of cross-border transformations. Notably, notaries are now required to refuse issuance of certificates for cross-border transformations if they suspect the purpose is abusive or fraudulent, intended to circumvent national or EU legislation, or associated with criminal activities. In cases of serious suspicion, the notary may seek assistance from relevant public authorities.

CONCLUSION

This amendment is a positive development, as it addresses several shortcomings of the previous legislation, simplifies the process for cross-border transformations and reduces the administrative burdens and costs for the companies involved. However, the true effectiveness of these changes will only become apparent once they are implemented.

Don't Forget to Register in the RPVS!

by David Benčat & Valter Pieger



In Slovakia, the public Register of Public Sector Partners (RPVS) has existed for several years now. Registration is mandatory for all entities that receive financial means or other benefits from public sources above a certain threshold.

The purpose of the RPVS is to ensure transparency and public oversight in the management of public funds in Slovakia. This allows the public sector to know with whom they are actually doing business. This shall facilitate combating corruption, uncovering potential conflicts of interest and identifying connections to public figures. Detailed information about individuals and companies involved in public contracts, as well as their ultimate beneficial owners (individuals who in effect benefit from their activities) must be recorded in the RPVS and regularly verified and updated.

The RPVS may not receive as much attention today as it did when the law first came into effect. Nevertheless, it remains highly relevant. Any company or individual interested in participating in projects funded by public resources in the Slovak Republic should first carefully check whether they are required to register. Failure to do so could result in various penalties, among them financial fines or refusal to pay.

WHO IS CURRENTLY REQUIRED TO REGISTER IN THE RPVS?

The registration requirement applies to agreements with government institutions, municipalities, or public organizations for the supply of goods or services if the contract's value exceeds EUR 100,000 or EUR 250,000 in case of multiple partial or recurring performances. However, this is just the general rule; depending on the individual circumstances, this obligation may arise in other cases as well.

THIS ALSO APPLIES TO SUBCONTRACTORS

Be aware that it is not only the entities who win public contracts and directly enter into contracts with the public sector that are required to register, but also its subcontractors. This applies if the value of the contract between the company and their subcontractor exceeds the above-mentioned limits. In fact, if these conditions are met, even the subcontractors of subcontractors are required to register.

HOW THE REGISTRATION PROCESS WORKS

Registration in the RPVS can only be performed by so-called authorized persons. In practice, registration is usually carried out by attorneys, less commonly by notaries, tax advisors, or auditors. The authorized person must thoroughly examine the ownership and management structure of the company to be registered. At the latest after the company wins the contract, usually contacts an attorney, who then examines their ownership and management structure, identifies ultimate beneficiaries, prepares the necessary documentation, and submits the registration proposal to the relevant registration court.

Based on our practical experience as an authorized person, we assess the development to date of the legal framework around the RPVS as mostly positive. We particularly appreciate the changes that allow us to expedite the registration process for our clients, enabling them to promptly take advantage of related business opportunities.

ARE YOU CONCERNED ABOUT THE DISCLOSURE OF YOUR ADDRESSES IN THE RPVS? AN EXCEPTION MIGHT APPLY.

The law is very strict regarding the data that must be recorded and subsequently published in the RPVS. One of the mandatory pieces of information that must be disclosed is the permanent residence address of the ultimate beneficiaries. This requirement

might be discouraging for individuals. However, since the introduction of the RPVS, there has been a notable change. Now, the law considers individual circumstances on the part of the ultimate beneficiary that may justify an exemption from this rule.

The addresses of the ultimate beneficiaries will not be published in the RPVS if the company can sufficiently prove to the registration court that their disclosure could pose a threat to the security or rights to personal protection of the ultimate beneficiaries or their close persons. The registration court will, however, not accept a simple hypothetical claim that this could happen. To prove these extraordinary circumstances, affidavits and supporting documents are most commonly used.

So the law today at least partially addresses the concerns of ultimate beneficiaries about the disclosure of their permanent residence addresses. We view this exemption positively, however we would welcome reconsideration of its broader application or a different approach that would address the concerns of our clients as fully as possible.

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New Consumer Protection Act

Update Your Terms and Conditions

by David Benčat & Valter Pieger

The new Consumer Protection Act enhances consumer protection significantly. E.g. the withdrawal period is extended from 14 to 30 days for agreements concluded during unsolicited visits to consumers' homes or at sales events. The law also strengthens protection against artificial price increases prior to discounted sales events, such as Black Friday. It also enhances online protection against non-transparent purchasing practices, fraudulent reviews, and deceptive marketing.

The new law also brings several benefits for companies. It removes certain administrative obligations that previously burdened sellers without adding real value to consumer protection. It is no longer required to post a notice of planned temporary business closures at least 24 hours in advance. The new Consumer Protection Act also introduces a "second chance" mechanism. This allows sellers to avoid or reduce penalties if they voluntarily cease legal violations and take corrective measures to benefit affected consumers. It also establishes new principles for imposing fines, setting them as a percentage of the seller's turnover to avoid excessively harsh penalties.

The Consumer Protection Act clarifies, modernizes, and aligns current consumer legislation with EU regulations. It introduces significant changes in the legal regulation of liability for defects (complaints), altering rights of consumers as well as their exercise. Sellers are now required to inform consumers about such aspects as compatibility and interoperability of digital goods. Last but not least, there are changes to the terminology used in consumer law. E-shop operating sellers, in particular, should be mindful of these changes and make sure to update their terms and conditions, as well as other documentation.

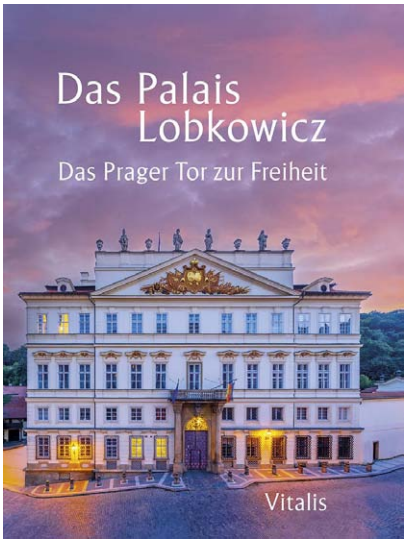
Giese & Partner News

AEEC Autumn Conference 2024 in Prague

Dr. Ernst Giese as Member of the Organizing Committee and Speaker

On November 14, 2024, Dr. Ernst Giese, will not only be giving the opening address to the **AEEC Autumn Conference 2024** in Prague together with Prof. Christian Held, Partner at BBH and AEEC Chairman, but also speak about implementation challenges and opportunities from recent EU Legislation for decarbonising the building and heating sectors in the Czech Republic.

Programme and registration >>



A Book About Lobkowicz Palace

Giese & Partner supported a book project on the Lobkowicz Palace, the seat of the German Embassy in Prague. The high-quality book **"Lobkowicz Palace - Prague's Gateway to Freedom"**, which vividly describes the history of the palace and its significance as the seat of the embassy, has been published in German and Czech.

Learn more about the book here >>

Further activities of Giese & Partner lawyers

Read more >>

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