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## MANDATORY AND DEFAULT PROVISIONS IN COMPANY LAW: EDITORIAL / Mária Patakyová, Martin Winner

prof. JUDr. Mária Patakyová, CSc.  
Comenius University in Bratislava,  
Faculty of Law, Department of  
Commercial Law and Economic Law;  
Šafárikovo nám. 6;  
810 00 Bratislava; Slovakia;  
maria.patakyova@flaw.uniba.sk.  
ORCID: 0000-0001-5640-2381

Univ.Prof. Mag.rer.soc.oec. Mag. Dr.iur.  
Martin Winner; Wirtschaftsuniversität  
Wien, Forschungsinstitut für Mittel- und  
Osteuropäisches Wirtschaftsrecht;  
Gebäude D3, EG, Welthandelsplatz 1,  
A-1020 Wien; Austria;  
e-mail: martin.winner@wu.ac.at

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This special section of the volume of Bratislava Law Review Journal focusses on the issue of freedom of contract in company law in different European countries. One of the crucial issues is the role of mandatory and default provisions in company law. While in the case of mandatory provisions the legal entity and its shareholders or members cannot deviate from the rule, in the case of default provisions the articles of the company may contain deviating rules. The relative prominence of rules of either the one type or the other is one defining characteristic of a company law system and also of different forms of companies. While the UK system tends to prefer default rules, company law systems following the German example typically distinguish between a company law form characterised by mandatory rules for listed companies (of the *Aktiengesellschaft*-type) and a more liberal regime for closed companies (*GmbH*).

Both default and mandatory provisions are legal provisions of the legislative system. However, they work differently and fulfil different functions. The mandatory provision binds its addressee to something, while the default provision is just a suggestion. In relation to freedom of contract, the mandatory provision clearly limits the freedom of contract and thereby disrespects the wishes of the shareholders as contracting parties. Quite clearly, there must be some type of justification for such rules. Typically, such justifications can be found in externalities (e.g. negative effects of freedom of contract on third parties, such as creditors) or the protection of the weaker contractual party.

Default provisions do not limit freedom of contract but give preference to the human will. They enable participants of legal relationships to derogate from the regulation based on an affirmative expression of their will. But they do not force the parties, in our context the shareholders or members, to do so as they can still rely on the provisions contained in the law. Hence, such default provisions help to minimise transaction costs.

The following contributions address these issues for selected countries in Central and Eastern Europe. They are the result of a conference held at Comenius University in Bratislava on November 8, 2019. We hope that they help in strengthening the international scholarly discussion of this core issue of company law.