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LEGAL NEWS
AUGUST 2022

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Dear clients, let us introduce several news from Czech legislation and judicial decisions appeared during August 2022 and previous months. We will inform you about next changes soon.

From the legislation

+ Household Saving Tariff Act

On 1 August 2022, the President of the Republic signed an amendment to the Energy Act, which introduces a so-called savings tariff to help households with high energy prices.

This is to be done through subsidies in favour of energy suppliers, who are to reduce bills or advances by the subsidy received. The amount of support will be based on how households heat their homes (i.e. the amount of energy they use) and will apply to heat from central supply or domestic boilers, but the support is not intended to apply to weekend properties and electric vehicle charging.

The payment of support should take place in two waves in the form of a reduction in the final energy price; the first reduction will be reflected in the bill at the beginning of the heating season, the second "more massive" financial support will follow from 1 February 2022.

On the basis of the approved amendment, the Ministry of Industry will also be able to declare a state of emergency with the announcement of the last subscription level for the entire territory of the state and some restrictions. For example, suppliers will only be able to increase the price of gas by the increase in the price they themselves pay. However, if a supplier increases the price to a customer during an emergency or state of emergency, it will only have to notify the customer online, thereby being deemed to have given proper notice of the increase. The customer can then terminate such a contract within ten days.

+ The Video Sharing Platforms Services Act

Act No. 242/2022 Coll., on video sharing platform services, which transposes European Directive 2018/1808 into Czech law, was promulgated with effect from 15 September 2022.

In particular, the new law addresses the issue of liability for the dissemination of harmful content on platforms such as YouTube or Tik Tok. Videos are uploaded and often created by users themselves, and the liability of providers is limited - they are only liable for uploaded content if they know or can know that the uploaded content is illegal. This liability does not apply to merely harmful but not illegal content.

However, with the advent of the law, the rules are partially changing, as the law obliges video sharing platform providers to take sufficient measures to protect minors from video recordings that may endanger their development and the public from recordings that incite violence. These measures include, in particular, setting clear rules on sharing and introducing the possibility to report harmful content to the platform.

The law also regulates what advertising users can see. Video sharing platform service providers based in the Czech Republic must also register on a list maintained by the Broadcasting Council, which will supervise

their activities and decide on offences for breaches of the Act.

It should be noted, however, that the territorial scope of the Act is limited to the Czech Republic only, therefore foreign platforms will be subject to the regulations applicable in the states where they are based. The regulation of the transposed directive will therefore not, in principle, reach platforms that are not intended for users in the European Union.

+ Amendment to the Act on registration of beneficial owners

The President of the Republic has signed the amendment to the Law on the Registration of Beneficial Owners (ZESM), which was adopted by the Parliament in response to criticism regarding the insufficient transposition of the so-called Fifth AML Directive.

The amendment changes and expands the definition of beneficial owner with effect from 1 October 2022. Any natural person who ultimately owns or controls a legal person or legal arrangement will now be considered a beneficial owner. Following this new definition, the law sets out new criteria for determining who owns or controls a legal person or legal arrangement (e.g. a trust). The new definition will not be limited to a person with ultimate influence, but it will be sufficient to meet one of the criteria set out in the amended section 4.

The ZESM originally did not apply to, among others, educational legal entities, political parties, churches or trade unions. This exemption will now apply only if the state or a local government unit exercises decisive influence in them. The amendment also introduces a change in some terms, which, however, will be automatically written into the existing register.

Entities that have fulfilled the registration obligation under the existing legislation or that will be newly subject to this obligation will have a period of six months to adapt their data to the ZESM Amendment, during which time they will not be subject to the negative consequences of irregularities in the Register.

+ Amendment to the Freedom of Access to Information Act

With effect from 1 September 2022, an amendment to Act No. 106/1999 Coll., on free access to information, which transposes the European Open Data Directive, will come into force.

The amendment introduces a new obligation to provide information also to public undertakings in the transport and public services sector controlled by the state or a local authority. The obligation to publish certain information openly, without a request, is newly extended to so-called dynamic data or information on salaries and remuneration of public officials.

The amendment also introduces a new so-called denial ground - it will now be possible to refuse to provide information on the grounds of abuse of the right (i.e. typically in cases of so-called chicanerous applications submitted by, for example, hundreds of applicants at the same time with the aim of paralysing the activities of the authority).

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From the case-law

+ Taking into account the Russian invasion of Ukraine in international protection decisions

The Supreme Administrative Court (SAC), in its judgment of 10 March 2022, No.10 Azs 537/2021-31, held that the Russian invasion of Ukraine may be an exceptional fact under the circumstances of a particular case, which the SAC, otherwise bound by the facts prevailing at the time of the Regional Court's decision, may take into account even if it occurred after the Regional Court's decision. It may take it into account not only in the case of applications by Ukrainian refugees fleeing the war, since the case at issue here concerned a Russian-speaking and pro-Russian citizen of Ukraine who had left Ukraine fearing persecution by Ukrainian government forces.

+ Amount of compensation for the costs necessary to restore the damaged item to its previous condition

In its judgment of 16 May 2022, Case No. 25 Cdo 2651/2021, the Supreme Court (SC) ruled that the statutory provision preferring compensation for damages by restoring the damaged item to its original condition must be interpreted in such a way that restoration to its original condition must be possible not only factually (there must be a method of repair), legally, but also economically - that is, the repair must be meaningful while taking into account the circumstances of the injured party and his interest in preserving the integrity of the ownership of the particular item.

In general, an excess of approximately 30% over the total normal price of the damaged item can be considered acceptable, as more than a third higher repair costs than the general price of the item before the damage usually already represent disproportionately high costs and mean that the repair of the item is too expensive and consequently economically inefficient. It can therefore be concluded that the cost of repairs calculated at more than one-third above the normal price of the item before the damage constitutes, as a rule, an obstacle to compensation for damage by restoring it to its previous state, the so-called economic impossibility of this method of performance within the meaning of the first sentence of Section 2951(1) of the Civil Code.

+ Conditions of liability of the managing director for the company's debts

In its June decision, the Supreme Court commented on the liability of the managing director for debts incurred as a result of his breach of his duty of care, which the company fails to recover. It concluded that in order for the damage caused to be enforceable against the managing director, it is sufficient if his debt to the injured company is already enforceable at that moment - the company does not need to call on its managing director to pay his debt to the company.

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