

Legal Update

January 2019

Weinhold Legal

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The information in this newsletter is correct to the best of our knowledge and belief at the time of going to press. Specific advice should be sought, however, before investment and other decisions are made.

For further information, please contact your usual partner/manager or:

Banking and Financial Services:

Pavel Jendrulek, Ondřej Havlíček

Mergers & Acquisitions:

Daniel Weinhold, Dušan Kmoch, Dalibor Šimeček

Litigation / Arbitration:

Milan Polák, Ondřej Havránek, Zbyšek Kordač

Information Technology and Intellectual Property:

Martin Lukáš, Jan Turek

Competition Law / EU Law:

Tomáš Čermák

Insolvency Proceedings and Restructuring:

Zbyšek Kordač, Vladimír Petráček

Labour Law:

Ondřej Havránek, Anna Bartůňková

Real Estate:

Pav Younis, Václav Štraser

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Legislative amendments

Personal Data Processing Act approved by the Chamber of Deputies

The Chamber of Deputies approved a government bill on the processing of personal data (the "Act") and a related legal amendment in early December, more than six months after the effective date of the Regulation (EU) 2016/679 of the European Parliament and of the Council dated 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (the "GDPR").

The purpose of the Act is primarily to adapt Czech law to the effective GDPR, but also to implement Directive (EU) 2016/680 of the European Parliament and of the Council dated 27 April 2016 on the protection of natural persons with regard to the processing of personal data by the competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offenses or the execution of criminal penalties, and on the free movement of such data.

The Personal Data Processing Act replaces Act No. 101/2000 Coll. on the protection of personal data. The scope of the Act is rather broadly defined by § 2, which stipulates that the Act regulates the processing of personal data pursuant to the GDPR, the processing of personal data by competent authorities in connection with the prevention of crime, the keeping of public order and security, the processing of personal data while ensuring state national security, the processing of personal data by automated means and, finally, the status of the Office for the Protection of Personal Data.

The Act is not intended or designed to duplicate individual provisions of the directly applicable GDPR. Rather, it is focused on those areas in which the GDPR affords Member States the latitude to introduce appropriate domestic legislation. One such area is the widely discussed eligibility of a child to grant consent to the processing of his personal data in connection with the offering of information society services. The GDPR introduced a minimum age of 16; however, Member States are free to lower this age to 13, which was proposed in a motion to amend, though Czech legislators rejected it. Thus, the proposed age in the approved government bill is 15, which means that children younger than 15 will need the consent of a legal guardian for their personal data to be processed, e.g. in connection with opening user accounts on websites like Facebook, Spotify and Netflix.

Of the proposed motions to amend, the legislators approved an amendment relaxing the rules governing the processing of

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personal data for journalistic purposes or for the purposes of academic, artistic or literary expression. Legislators also approved new exemptions for the processing of personal data for the purpose of scientific or historical research or for statistical purposes. We should also mention the strengthening and expanding of the principle of opportunity, i.e. the possibility of the Office for the Protection of Personal Data cancelling the prosecution of a crime without notifying the individual concerned. Legislators additionally approved an expansion of the powers of the Office for the Protection of Personal Data, which should newly exercise powers pertaining to the right to information. The Office will now carry out review procedures pursuant to Act No. 106/1999 Coll. on freedom of access to information, while also being authorized to take steps against inactivity, where it is not possible to seek redress before a superior administrative authority.

There is a question as to the position the Senate will take on the legislator-approved Act and whether it will propose any amendments. Nonetheless, it may be assumed that the Act will proceed through the rest of the legislative process and become effective in Q1 2019.

Recent case law

Termination of employment for failure to rectify unsatisfactory work results

(Czech Supreme Court Judgment No. 21 Cdo 3795/2017 of 19 September 2018)

In this judgment, the Supreme Court ruled that under certain circumstances an employee may be served a valid notice of termination for failure to rectify unsatisfactory work results prior to the elapse of the reasonable deadline set by the employer for rectification (warning).

The applicant sought the Court's determination of the invalidity of the notice of termination served to him because it had been served before the elapse of the rectification deadline set by the respondent for the applicant in the written warning ('warning period'). In the applicant's view, the respondent could not have assessed whether the enjoined tasks had been performed.

According to the Supreme Court, grounds for termination pursuant to the provision of § 52(f) of the Labour Code are fulfilled at the moment it becomes clear the employee has failed within a reasonable period to rectify unsatisfactory work results despite a written employer warning. This moment generally occurs after a reasonable deadline to rectify unsatisfactory work results has elapsed. In the Court's view, however, cases cannot be ruled out in which, owing to the nature and number of the unfulfilled work tasks, or on account of the employee's conduct to date, there is no question before the reasonable deadline passes that the unsatisfactory work results cannot be rectified prior to the expiry of the warning period.

In such cases, the grounds for serving notice of employment termination pursuant to the provision of § 52(f) of the Labour

Code may arise prior to the expiry of the warning period. Thus, in such cases employment may legitimately be terminated by serving notice for the foregoing reason prior to the warning period.

Although we may perceive a certain relaxing of the rules for employers in connection with serving a notice of employment termination due to unsatisfactory work results in the foregoing Supreme Court judgment, we recommend continuing to exercise caution when serving notice of employment termination for these reasons, as such cases are frequently subject to litigation.

Elapse of statutory deadline

On 1 January 2019, the deadline for registering a beneficial owner before the 2018 year-end for legal entities entered in the Commercial Register elapsed

Further to the amending of Act No. 253/2008 Coll. on certain measures against money laundering and the financing of terrorism (the "AML Act"), a registry of beneficial owners was established with effect from 1 January 2018. The registry of beneficial owners has been set up under Act No. 304/2013 Coll. on public registries of legal entities and natural persons (§118b et seq.) and is kept by commercial (registry) courts.

Legal entities entered in public registries and trust funds incurred the obligation to enter their beneficial owners in the registry with effect from 1 January 2018; the deadline to meet this obligation was set for one year in the case of persons entered in the commercial register and in other cases three years. Thus, with the start of 2019 the deadline for meeting the obligation to enter beneficial owners in the registry elapsed for persons entered in the commercial register.

Registration may still be carried out, but a CZK 1,000 court fee will now have to be paid. Although no direct sanctions for non-fulfilment of the registration obligation have been explicitly imposed, failure to fulfil this obligation can have negative consequences ensuing, for example, from the AML Act, where an obliged person may be banned from doing business, or from Act No. 134/2016 Coll. on public procurement, where a vendor may be excluded from an award procedure.

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We hope you will find *Legal Update* to be a useful source of information. We are always interested in your opinion about our newsletter and any comments you may have regarding its content, format and frequency.

Please e-mail your comments to jiri.kvacek@weinholdlegal.com or fax them care of Jiří Kvaček to +420 225 385 444, or simply contact your usual partner/manager.