Legal Update

February 2020

Weinhold Legal

Contents

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.

Banking and Financial Services:
Pavel Jendrulek

Mergers & Acquisitions:
Daniel Weinhold, Dušan Kmoch, Dalibor Šimeček

Litigation / Arbitration:
Milan Polák, Ondřej Havránek, Zbyšek Kordač

Information Technology & Intellectual Property:
Martin Lukáš, Jan Turek

Competition Law / EU Law:
Tomáš Čermák, Vladimír Petráček

Insolvency Proceedings and Restructuring:
Zbyšek Kordač

Labour Law:
Ondřej Havránek, Anna Bartůňková

Real Estate:
Pav Younis, Václav Štraser

Legislative amendments

Right to Digital Services Act – eGovernment

On 1 February 2020, new Act No. 12/2020 Coll. on the right to digital services and the amending of some laws (the "Act"), also known as the "digital constitution" or "eGovernment", entered into effect. In the case of some provisions, however, their effect was postponed, as specified in § 27 of the Act.

This Act is the result of the activity of the 202020 initiative, supported by the ICT Union and other professional and employer associations. The bill was submitted to the Chamber of Deputies in April 2019 by a group of deputies from across the political spectrum, which gave it strong political backing.

The subject of the Act is the rights of natural and legal persons to the provision of digital services by public authorities in the exercise of their powers and the right of natural and legal persons to perform digital acts. On the other hand, these rights correspond to the obligation of public authorities to provide digital services and to receive digital acts. The Act itself is divided into 12 parts, which largely contain amendments to laws that are related to the provision of digital services.

The first – main – part of the Act is dedicated to a specification of what is meant by a digital service and a digital act and who their user is. At the same time, the institute of the so-called service catalogue is established here, and should contain an overview of the digital services to which the rights of users relate. Furthermore, this section regulates and establishes 11 "digital" rights of natural and legal persons in connection with the provision of digital services in 11 of its 14 paragraphs. That is why this law is often referred to as the "digital constitution".

A right that warrants mention, and could significantly facilitate user contact with public authorities, is the right to use data according to § 7 of the Act, which will come into effect in two years. This provision gives users the opportunity to consent to the use of data about them, their rights and obligations or legal facts concerning them that are kept in the basic register; the public authority will then be obliged to use these data. In this context, § 7 of the Act also provides that a public authority shall not require data entered in the basic register, which is made available to it for the performance of its agenda or, indeed, based on the consent of the service user. Thus, this right could significantly reduce the retransmission of data to different public authorities, which were previously unable to share with each other data already transmitted to one of them.

The following 9 parts of the Act are devoted to amendments to selected laws that are closest in nature to digital services. Since the beginning of the drafting of this law, it has been announced that its aim was to set up a basic framework for the use of digital services, but it was not its ambition to make an overall adjustment to the Czech legal order, which would require significantly more time and effort. Selected amended acts include the Act on Free Access to Information, the Act on Public Administration Information Systems, the Administrative Procedure Code, the Act on Administrative Fees, the Act on Verification, the Act on Electronic Acts and Authorized Document Conversion, the Act on Basic Registers, the Act on Cyber Security and the Electronic Identification Act.

Banking Act amendment – banking identity

The amendment to Act No. 21/1992 Coll. on banks, which was approved almost unanimously by the Chamber of Deputies on 4 December 2019 and which is currently awaiting the signature of the President of the Republic, is also closely related to digital society services. The purpose of this amendment is to create conditions for the introduction of the so-called banking identity, which would enable and facilitate access to digital services of the state (eGovernment), but also digital services provided by private entities. The legislators entrusted oversight of the entire system to the Ministry of the Interior.

This amendment will allow banks and branches of foreign banks to offer, provide

Legal Update

February 2020

or mediate identification services through a banking identity. In practice, the Institute of banking identity will allow the user to employ the security methods offered by Internet banking to verify his/her identity in a digital environment, thus enabling the user to use digital services.

Participation of banks and foreign bank branches in the project will not be mandatory, i.e. will be voluntary. Banks will therefore decide whether or not to participate in the project and whether or not to provide user identity verification via banking identity. Of course, user participation will also be voluntary and banks will confirm the identity of the user or pass on user data to other entities only if the user gives consent.

In general, the banking identity institute should allow a user to subscribe to a range of digital services offered by both public authorities and private entities. In practical terms, logging in to a digital service is similar to logging in to electronic banking, with the user's bank subsequently confirming the successful login to the digital service that the user was logging into. Under the Act on Public Administration Information Systems, access to the digital service (e.g. the public administration information system) using a banking identity will then be considered guaranteed identity access pursuant to 38ad(1) of the Act on Banks.

The bank will charge the service provider for the service that the bank provides to the digital service provider, i.e. for verifying the user's identity; therefore, the user does not pay directly for signing up for a digital service using a banking identity, but it can be assumed that, at least in the case of private entities, the user identity verification fee will be reflected in the end price of the digital service provided.

In connection with this amendment, it is also worth noting that banks will be entitled to use data from public administration information systems (basic population register, population registration information system, foreigners registration information system, identity card and travel document registration information system). This approach is necessary to enable banks to fulfil their obligations under this amendment.

In conclusion, the Czech Republic is not the first country in the world where such an institute has appeared. Institutions similar to the banking identity have been operating in countries such as Sweden, Denmark and Canada for many years. In today's world, where certain day-to-day activities inevitably are moving into the digital environment, the project can be viewed positively, especially in conjunction with the deployment of eGovernment services. It is expected that the banking identity will be put into practice during 2021.

Recent case law

Scope of statutory liability of a partner of a limited liability company

(Supreme Court Judgment No. 27 Cdo 5507/2017 of 28 August 2019)

In case 27 Cdo 5507/2017, the Czech Supreme Court dealt with the question of the scope of the liability of a partner of a limited liability company as amended by Act No. 90/2012 Coll., on Business Companies and Cooperatives (Business Corporations Act), as amended ("BCA").

In the present case, the applicant sought payment from the defendant against a limited liability company whose debts were guaranteed by the defendant (as its sole partner) who had not fully complied with his deposit obligation. The defendant had only halfway met his CZK 200,000 deposit obligation, thus guaranteeing the company's debts up to CZK 100,000.

The Court of First Instance dismissed the action, citing the partner's full compliance with his contribution obligation before the substantive decision in the present case (when he paid the remaining CZK 100,000)

because according to the Court of First Instance, the situation prevailing at the time of the judgment was decisive. The Court of First Instance also stated it was irrelevant for the decision that the defendant had already paid CZK 100,000 to another company creditor by virtue of his guarantor status as only the state of fulfilment of the deposit obligation recorded in the Commercial Register is decisive for the partner's liability.

The Court of Appeal agreed with the Court of First Instance that it was indeed irrelevant whether the partner had already rendered performance to another company creditor by virtue of his liability with reference to the principle of material publicity. However, the Court of Appeal altered the decision of the Court of First Instance and ordered the defendant to pay the sought amount, since, in its view, § 132(1) of the BCA expressly provides that a partner of a limited liability company is liable for the company's debts to the extent that he has failed to meet the deposit obligation under the state entered in the Commercial Register at the time he was called upon to render performance. The defendant filed a petition for appellate review against the judgment of the Court of Appeal.

In its judgment, the Supreme Court first stated that the effective legislation (§ 154[1] of the CPC) is based on the fact that for a judgment, the status at the time of its delivery is decisive, but this provision is without prejudice to substantive law, thus, it also does not affect the provision of §132(1) of the BCA, which expressly provides that: "[…] the *amount in which partners did not meet the deposit obligations according to the state registered in the Commercial Register (and thus the amount in which they guarantee the company's debts) is fixed at the time when the partners were invited by the creditor to render performance. Therefore, the fact that the repayment of most or all of the partners' contributions was entered in the Commercial Register following the creditor's request for performance pursuant to § 132(1) of the BCA is therefore irrelevant for the assessment of the creditor's claim.*"

The Supreme Court also confirmed that the above applies even if the entry in the Commercial Register does not correspond to reality, that is, the extent to which the partners actually fulfilled the deposit obligation.

In this context, however, we cannot forget the principle of the protection of the good faith of a person acting with confidence in the correctness of the entry in the Commercial Register in relation to the liability of the partners of the LLC. In its ruling, the Supreme Court emphasized that if the creditor of a limited liability company was informed at the time of the call to render performance that one of the partners of this company has already rendered performance under the guarantee pursuant to § 132[1] of the BCA, the liability of the partners for the debts of the company is reduced to this creditor by previously provided partner performance of which the creditor knew at the time of the call for performance, despite the fact that this partner-rendered performance has not been reflected in the entry in the Commercial Register.

In this case, the Supreme Court annulled the decision of the Court of Appeal and returned the case to it for further proceedings, as the Court of Appeal did not even consider the question of whether the applicant knew that the partner, as guarantor, had already paid CZK 100,000 to another creditor (that is, whether the applicant could be in good faith in the registration of the amount of fulfilment of the deposit obligation).