



# Legal update

January 2021

## Weinhold Legal

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The information contained in this bulletin is presented to the best of our knowledge and belief at the time of going to press. However, specific information related to the topics listed in this bulletin should be consulted before any decisions are made.

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### New legislation

#### Amendment to the Cyber Security Act

On 30 November 2020, the Government submitted to the Chamber of Deputies a bill amending Act No. 181/2014 Coll., On Cyber Security and Amending Related Acts (the Cyber Security Act) (“**Act**”), as amended (the “**Amendment**”).

The purpose of the Amendment is to adapt the Czech legal order to Regulation (EU) 2019/881 of the European Parliament and of the Council on ENISA (European Union Agency for Cyber Security), on certification of cyber security of information and communication technologies and repealing Regulation (EU) No. 526/2013 (Cyber Security Act) (“**Regulation**”) and to express the competence of the national and governmental CERT (Computer Emergency Response Team) to search for vulnerabilities.

Contact details of the authorities and persons on whom cybersecurity obligations are imposed (for example, an electronic communications service provider or the administrator and operator of a critical information infrastructure information system) provided to the National Cyber and Information Security Authority (“**Authority**”) or the national CERT operator (legal entity pursuant to Section 18 of the Act) shall be extended by:

- the identification of the information or communication system and
- the range of public DNS records (they determine which services run on the Internet domain) or public IP addresses.

According to the Amendment, the operator of the national CERT and also the CERT of the government (which is part of the Office) should not only carry out vulnerability assessments, but also search for vulnerabilities in the field of cyber security in the public part of cyberspace. The existence and level of risk is derived from the existence of a vulnerability. The equation used for risk assessment is: risk = impact x threat x vulnerability. If risk and threat are to be monitored, the vulnerability of information systems must be also monitored.

The Office concludes a public contract with a legal entity for the purpose of cooperation in the field of cyber security and ensuring activities pursuant to the Act. A legal entity is selected to conclude a public contract for the selection of applications in accordance with the Administrative Procedure Code, which is announced by the Office. According to the Amendment, it is proposed to amend the wording of the Act so that the procedure for selecting applications is to be replaced by a call for a draft contract or for the adoption of a draft contract, as the conclusion of the contract is not preceded by any procedure, as stated in the Explanatory memorandum.

Furthermore, the Amendment should add that the Office may enter into a public contract with a legal entity selected in accordance with the Administrative Procedure Code, for cooperation in the field of cyber security certification and ensuring certain activities under Article 58 of the Regulation (e.g., monitoring the activities of public entities, authorize conformity of assessment bodies and limit where applicable, suspend or withdraw an existing authorization, etc.).

The role of the national cyber security certification body under the Regulation is proposed to be assigned to the Authority, which will in addition oversee compliance with the rules included in European Cyber Security Certification schemes.

New factual substances of offences are also to be introduced for:

#### **1a) manufacturers or providers of products, services or processes issuing EU declarations of conformity if an entity:**

- issues an EU declaration of conformity even if the conditions set out in the Regulation are not fulfilled after its issuance,



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b) does not keep documents and information pursuant to Article 53 (3) of the Regulation,

(c) fails to submit a copy of the EU declaration of conformity to the Authority and to ENISA in accordance with Article 53 (3) of the Regulation; or

(d) does not provide additional information on cyber security related to certified products, services and processes ICT (information and communication technology) to the extent and in the manner specified in Article 55 of the Regulation.

**2b) the holder of a European Cyber Security Certificate**, if it does not inform the competent conformity assessment bodies of any later identified vulnerabilities or irregularities.

In the case of approval by the Chamber of Deputies and the Senate, the intention is for the Amendment to take effect on June 28, 2021.

## Newly published case law

### Immediate termination of employment

*(Judgment of the Supreme Court of the Czech Republic file no. 21 Cdo 991/2019 of 28 August 2020)*

In a lawsuit before the District Court for Prague 6, the plaintiff demanded that the immediate termination of his employment relationship to be declared invalid. The employer (defendant) immediately terminated the employment relationship in accordance with Section 55 par. b) of Act No. 262/2006 Coll., the Labour Code ( "**Labour Code**" ), when he assessed as a particularly gross breach of duty, among other things, that the plaintiff lent the defendant a facade scaffolding to the client of the defendant, which was "arbitrarily and improperly used" without there being a corresponding written document in the defendant's records. By this conduct, the plaintiff violated the obligation to properly manage the funds entrusted to him by the employer arising from Section 301 letter d) of the Labour Code.

The District court upheld the action because it did not find the violation in fulfilling the client's request to keep the scaffolding, which is necessary in the case of immediate cancellation due to a particularly gross breach of work duties, to be sufficiently gross. Due to the loan of the equipment being for free lending and the plaintiff's efforts to maintain above-standard relations with the defendant's client, the District court did not find that the powers arising from the concluded employment contract were exceeded.

The Municipal Court in Prague upheld the judgment of the first instance. Although, unlike the district court, it found that the plaintiff had exceeded his powers, the severity of the infringement lent itself to a written complaint, not to the immediate termination of the employment relationship.

The defendant filed an appeal against the decision of the Court of Appeal, which was upheld by the Supreme Court and annulled the decision of the lower courts. In his statement of reasons, he emphasized the breach of the relationship of mutual trust between the employer and the employee and the questioning of the plaintiff's reliability. In addition, he pointed out the plaintiff's position as a managing employee and the resulting obligation to ensure compliance with legal and internal measures to protect the employer's property under Section 302 letter. f) and g) of the Labour Code.

### Differentiation of severance pay

*(Judgment of the Supreme Court of the Czech Republic file no. 21 Cdo*

*68/2020 of 18 May 2020)*

In the present dispute, the Supreme Court dealt with the issue of differing amounts of severance pay for employees depending on the method of termination of employment.

Although the employee (plaintiff) in the present case requested the termination of the employment relationship due to redundancy by agreement, the employer (defendant) terminated the employment relationship with him by notice. If terminated by agreement, the plaintiff would be entitled to severance pay of 5.5 times of the average monthly earnings under the Collective agreement, whereas at the end of the termination relationship he was legally entitled to severance pay of only three times the average monthly earnings. On the basis of the above, different severance pay was therefore paid depending on the manner in which the employment relationship was terminated, which the applicant considered to be discrimination against employees by the employer.

The defendant argued that there was no discrimination and argued that he preferred the dismissal on the ground that severance pay was an instrument to overcome the difficult financial situation after termination of employment. Accordingly, by agreement, he terminated his employment only with staff members who held lower positions than the applicant and whose income was significantly lower than that of the applicant. The defendant also pointed out that the Collective Agreement did not require him to terminate his employment, preferably by agreement.

The Supreme Court came to the conclusion within the appeal that if in the case of termination of employment by law there is a choice in the actions of the participants, its use cannot be considered discriminatory or unequal. It also stated that the main value protected by private law is contractual freedom and that therefore the defendant cannot be denied the right to choose which he has by law.

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