



Legal update

May 2022

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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.

Banking, Finance & Insurance:

Daniel Weinhold, Václav Štraser

Mergers and acquisitions:

Daniel Weinhold, Václav Štraser

Insolvency and Restructuring:

Zbyšek Kordač, Jakub Nedoma, Michal Švec

IT, Media & Telecommunication:

Martin Lukáš, Jakub Nedoma, Michal Przeczek

Real estate:

Pav Younis, Václav Štraser

Personal Data Protection

Martin Lukáš, Anna Bartůňková, Tereza Hošková

Labour law:

Anna Bartůňková, Eva Procházková, Daša Aradská

Slovak law:

Tomáš Čermák, Karin Konečná

Family office:

Milan Polák, Zbyšek Kordač, Michaela Koblasová

Dispute resolution: Milan Polák, Zbyšek Kordač, Anna Bartůňková, Michaela Koblasová, Michal Švec

Competition law / EU law:

Tomáš Čermák, Jana Duchoňová

Start-ups and Venture Capital:

Pav Younis, Martin Lukáš, Jakub Nedoma, Petra Karabut

Public procurement & Public sector:

Martin Lukáš, Monika Švaříčková, Tereza Hošková

News in Legislation

Amendment to the Payment Transactions Act

On 11 May 2022, the Senate approved a bill to amend Act No. 370/2017 Coll., on Payment Transactions, as amended, and other related acts (the "**Amendment Act**").

The Explanatory Memorandum to the Amendment Act states the main reason for its adoption as technical changes, responding to problems arising from the application practice of the Payment Transactions Act.

However, the Amendment Act does not only introduce technical changes, it also introduces public sanctions for breaches of the conditions for the provision of the Dynamic Currency Conversion service and introduces new licensed categories of providers of this service, which should result in greater protection for bank customers when making card payments abroad or when withdrawing money from ATMs, as well as greater protection for foreign tourists when making such payments domestically.

Dynamic conversion involves the immediate conversion of the amount charged into the currency in which the customer's bank account is held. It therefore offers payment of the transaction directly in Czech crowns, not in the currency of the country in question, but at an exchange rate that is usually disadvantageous for the client.

In addition, there is a new obligation to inform the client before the transaction about the exchange rate used, as well as about the fee for this service. If the obliged entity fails to provide this information, it will not be entitled to payment for this service.

The Amendment Act also introduces the licensing of operators of independent ATMs providing dynamic conversion services, with the possibility to withdraw such license. The provision of the service through ATMs will be supervised by the Czech National Bank and, in the case of merchants, by the Czech Trade Inspection Authority.

Another change in this area is the introduction of a public sanction for breach of the information obligation when providing the dynamic conversion service, which, according to point 101 of the Amendment Act, is to take the form of a fine of up to CZK 500,000.

The effectiveness of the Amendment Act is set for 1 July 2022.

Lex Ukraine II

On 18 May 2022, the Government approved, at the proposal of the Ministry of the Interior, a draft law containing a set of measures called LEX Ukraine II, the subject of which is an amendment to all three laws, which in their totality form a set of measures called LEX Ukraine I, thus responding to the experience from practice and the need to supplement some of the approved measures ("LEX Ukraine II").

Among the most significant changes that LEX Ukraine II will bring, if approved, are:

- Extending the grounds for inadmissibility of an application for temporary protection on grounds of EU citizenship;
- extending the time limit for processing an application for temporary protection to 60 days;
- introducing a legal obligation for Ukrainian refugees to report changes of residence of more than 15 days within three working days of such a change;
- Extension of the grounds for expiry of temporary protection;
- introducing a legal obligation for Ukrainian refugees to report changes of residence of more than 15 days within three working days of such a change;
- reducing the period for which the state pays health insurance for foreigners with temporary protection between 18 and 65 years of age to 180 days;



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- not paying humanitarian benefits in cases where refugees are accommodated in facilities where they are provided with free meals;
- when paying the second to sixth humanitarian benefit, verifying whether the refugees are actually in our territory; or
- the possibility for embassies not to accept applications from Russian and Belarusian citizens for residence permits in the Czech Republic.

According to the Minister of the Interior, LEX Ukraine II represents one of the important instruments that, once approved in the legislative process, will allow not to further prolong the state of emergency, which was also one of the reasons for proposing these measures.

News in Case Law

To assess the gross disproportionality of the reciprocal benefits

(Judgment of the Supreme Court, Case No. 33 Cdo 42/2021, of 25 January 2022)

The applicant claimed payment of CZK 340,000 against the defendant, in particular on the ground that she had concluded a purchase contract with the defendant (the buyer) on 3 November 2015, the subject of which was the sale of an apartment for a purchase price of CZK 660,000, which, according to the applicant, was grossly disproportionate to the value of the apartment being transferred, since the apartment in question was sold several months later for CZK 998,000.

Although the District Court in Zlín dismissed the applicant's claim, the Regional Court in Brno upheld the decision of the District Court, and the applicant's appeal to the Supreme Court of the Czech Republic was dismissed, the Court of Appeal commented on the essence of the institute of disproportionate deprivation, stating in its judgment that:

"In contrast to the facts of usury, the legal regulation of disproportionate deprivation is based on a single purely objective criterion, which is the gross disproportion of mutual benefits. Whereas the purpose of usury is to protect a possible breach of will in conjunction with a breach of equivalence, the purpose of disproportionate shortage is (only) to protect a breach of equivalence. In terms of legal consequences, usury is null and void, whereas disproportionate shortage gives rise to a restitutionary claim by the defrauded party.

In the context of the current legal framework, which does not set any specific threshold for what constitutes disproportionate shortening, the prohibition of shortening by more than half can be considered the default rule. In other words, the gross disproportionality of the consideration will be a limit of approximately half of the consideration (a range of 45 to 55 %), from which the court will depart only if there are special reasons for doing so.

The comparison of the counterparties (disparity test) is based on the normal price at the relevant place and time. This is primarily a comparison of the ratio between the normal price of the transaction and the consideration, but other circumstances may also play a role. It is not impossible for the court to find a gross disproportion in a particular case even where the ratio of the consideration exceeds that range, but this will be the case in exceptional situations where the rejection of the claim of the defendant would be excessively harsh or where even a ratio exceeding half of the consideration (or the range) is found to be contrary to the principles of justice in a particular case."

In this judgment, the Supreme Court therefore followed the rules already laid down in the Austrian Civil Code of 1811, which regulated this institution, known as *laesio enormis*, in the provisions of Sections 934 and 935, based precisely on the concept of shortening by more than half.

On the exercise of the duty of the managing director to ensure proper accounting

(Resolution of the Supreme Court, Case No. 27 Cdo 2887/2020, dated 24 November 2021)

In these proceedings, the Supreme court overturned the decision of the Court of Appeal, which declared invalid the resolution of the company's general meeting approving the company's financial statements and decided that the economic result (loss) in the amount of CZK18,194,000 would be paid from retained profits from previous years.

The Court of Appeal invalidated the resolution of the general meeting on the grounds that, although the company in question had made an economic profit in excess of CZK 100 million in 2017, the managing director of the company had, in the opinion of the Court of Appeal, impermissibly interfered with the decision-making power of the general meeting on how to dispose of the economic profit by deciding to create extensive accounting reserves at the expense of the economic result, thereby effectively deciding on the disposition of the economic result himself, and then merely submitting to the general meeting for approval the situation thus subsequently created. The general meeting did not, therefore, actually decide on the distribution of the profit, and that decision of the general meeting (on the distribution of the profit) must therefore be regarded as contrary to law and therefore invalid.

The Supreme court, however, took a different view, overturning the judgment of the Court of Appeal and stating in its order that:

"The creation of reserves in the cases and in the amounts provided for by law (or by the articles of association) cannot in any way unlawfully interfere with the right of the members of a limited liability company to a share in the profits.

Only if the managing director creates reserves in violation of the law or the articles of association could it be considered that the profit, the distribution of which may be decided by the general meeting, has been reduced (in violation of the law) by means of the reserves thus created.

In other words, without assessing whether the reserves have been created in accordance with the law (or the articles of association), it cannot be concluded that their creation has interfered with the shareholders' right to distribute profits."

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