# Legal update

## September 2022

Weinhold Legal

## Contents



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
**ESG – environment, social, (corporate) governance**
Martin Lukáš, Tereza Hošková, Michal Švec
**Mergers and acquisitions:**
Daniel Weinhold, Václav Štraser
**Insolvency and Restructuring:**
Zbyšek Kordač, Jakub Nedoma
**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:**
Eva Procházková, Anna Bartůňková, 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, Michal Švec
**Public procurement & Public sector:**
Martin Lukáš, Tereza Hošková, Monika Švaříčková,


# News in Legislation

## Amendment to Freedom of Information Act

The amendment to the Act, part of which came into force on 1 September 2022, responds to the need to transpose the European Directive into Czech legislation. The aim is to expand the range of provided information, to expand the subjects obliged to provide information and to expand the methods of making it available. This amendment has a split effect and its last part will enter into force at the beginning of 2024. It already brings several innovations in the effective version.

The obligation to provide information will not apply to the activities of those public institutions and public undertakings which have the legal form of a company or national enterprise. Thus, the obligation to provide information will not apply, for example, to information on activities carried out in the ordinary course of business within the scope of the object or business of that public institution registered in the public register. Another exception is information which is of a commercial or industrial nature and the provision of which would put the public body at a disadvantage on the relevant market. However, these exceptions do not apply to the activities about which public undertakings are required to provide information.

According to the amendment, the obliged entities must register the information that they are obliged to publish as open data in the National Catalogue of Open Data, which is available via the website. This is not a new obligation, but the text of the law removes interpretative ambiguities. The National Catalogue of Open Data also serves as a single place for open data published in the Czech Republic. It can be used to easily search for published open data.

Another novelty is the identification of high-value data sets. These are in particular datasets that have a significant socio-economic or environmental benefit or that benefit a large number of users (data related to companies and their ownership, statistical data, geospatial data and other). These data should, with exceptions, be freely available and, where relevant, also available with the option to download the complete dataset, which will contain a set of related data.

As of 1 January 2023, the Act introduces new rules for individual disclosure of information on compensation and benefits. This issue has so far been addressed only in case law. It will be possible to provide compensation information about the individuals to whom the funds were granted for the performance of their duties as a public official. It will also be possible to provide information on compensation paid to a member of the statutory, management, supervisory or controlling body of the obliged entity, e.g. in the case of public institutions having the nature of commercial companies. For persons for whom the law does not allow this way of providing information, it will still be necessary to meet all the criteria of the Constitutional Court's salary ruling.

With effect from January 2024, the Act introduces the Central Register as a public administration information system, which will be administered by the Ministry of the Interior, and the system will be publicly accessible free of charge.

## Amendment to the Act on registration of beneficial owners

The legislator's amendment, which comes into force on 1 October 2022, responds to the European Commission's criticism in infringement proceedings on the incorrect implementation of the Directive. The central point of the amendment is the abolition of the distinction between the ultimate beneficiary and the person with ultimate influence. The amended law introduces a uniform material characteristic of the beneficial owner. The modified definition of beneficial owner is that the beneficial owner owns or controls the legal person

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or legal arrangement. However, this does not change the fact that a legal person can still be at the top of the control structure

## News in case law

### Establishment of liability of a member of an elected body of a legal person and foreseeability of damage in case of breach of due care

(*Judgment of the Supreme Court of the Czech Republic, Case No. 27 Cdo 59/2022 of 30 June 2022*)

In the present decision, the appellant sought payment of a sum of money. In the litigation preceding the present case, the defendant sued the plaintiff even though he knew that the claim of the company for which he was acting did not exist, and he also sued for claims that were time-barred. According to the Court of First Instance, the defendant did not act with due care. As a result of the action brought, the appellant incurred a claim for costs which the appellant did not recover in the insolvency proceedings and for which the defendant is liable under Article 159(3) of the Civil Code. According to the appellant, the defendant could have foreseen the damage that the company might suffer.

The appellant further submitted that if the defendant relied exclusively on the institution of the exemption from court fees, knowing that he might not be exempted from the payment of court fees, hence the costs of the proceedings, provided that he had demonstrably provided false information in his application for exemption from court fees, he had acted, according to the appellant, "at the very least negligently if he (failed to) foresee the potential damage."

It follows from settled case law that one of the conditions of liability under Section 159(3) of the Civil Code is the existence of an obligation which consists in the duty of a member of an elected body to compensate a legal person for damage caused by him in the performance of his duties. However, the question of whether the obligation must be mature has not yet been resolved in the decision-making practice of the Court of Appeal.

The distinction between the maturity of a claim and the possibility to fulfil the debt implies that it is not necessary for the obligation of a member of an elected body to compensate a legal person for its damage to have matured and that it is sufficient if it is possible to fulfil the corresponding debt. In view of this fact, it can be concluded that the meaning and purpose of Section 159(3) of the Civil Code does not require that a member of an elected body be liable for the debts of a legal person only from the moment the obligation to compensate for damage becomes due, and thus it is sufficient for his liability to arise if it is possible to fulfil his obligation to compensate for damage. It is therefore not necessary, in order for the defendant to be liable for the claim for costs, for the company to call upon him to compensate it for the damage caused by the defendant's breach of duty in the performance of his duties.

The court also addressed the issue of foreseeability of damages in the event of a breach of due care. According to the court, it is common experience that in civil litigation parties incur costs and that these are usually ordered to be paid by the unsuccessful party. Thus, the fact that the bringing of a lawsuit may lead to damages cannot be objectively unforeseeable, according to the court. That fact is not altered by the fact that, in previous proceedings with a similar subject-matter, no costs were incurred as a result of a different procedure followed by the court. Thus, when bringing an action on behalf of a company, in compliance with the standard of care of a prudent person, the party acting on behalf of the company must assume that, if it is unsuccessful in the proceedings, the company may be obliged to reimburse the other party for its costs.

### Official verification of signatures on the agreement on the transfer of shares in a limited liability company

(Judgment of the Supreme Court of the Czech Republic Case No. 27 *Cdo 1018/2021 of 4 May 2022*)

The applicant sought a declaration that a share transfer agreement was invalid. The central issue was whether the signatures of the parties to the share transfer agreement in a limited liability company had to be authenticated.

The Supreme Court agreed with the Court of Appeal that the requirement of a stricter written form of the legal transaction contained in section 6 of the Limited Liability Company Act does not apply in the case of a transfer of shares. The cited provision applies to acts relating to the establishment, formation, alteration, dissolution or winding up of a business corporation. The above provision does not apply to transfers of shares in a limited liability company which concern the status of shareholders (exercise of their ownership rights). However, the requirement of official verification of signatures in such a case result from a special rule set out in section 209(2) of the Civil Code.
With regard to the necessity of official verification of signatures, the Supreme Court has stated that unless otherwise provided in the share transfer agreement, the obligations under the agreement become effective on the date the agreement is concluded. On that date the share also passes to the transferee. However, the transfer is effective against the company only when the share transfer agreement is delivered to the company with the officially certified signatures of the parties. Only on that date does the transferee of the share become a shareholder. Thus, if the transfer of the share is not effective against the company, the person to whom the share is transferred does not become a shareholder. Thus, the Supreme Court held that a contract for the transfer of a share not incorporated in the certificate of incorporation must be in writing with officially certified signatures.