



# Legal update

December 2022

## Weinhold Legal

### Content

#### News in legislation

**Amendment of the Consumer Protection Act and the Civil Code**

**Amendment of the Energy Act**

#### News in case law

**Liability of a website operator for a link leading to obviously false information**

**Register of beneficial owners not to be available to the public**

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, Ondřej Tejnský

#### **Competition Law / EU Law:**

Tomáš Čermák

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

**ESG – Environment, Social, (corporate) Governance**  
Daniel Weinhold, Tereza Hošková

#### **Family Office:**

Milan Polák, Zbyšek Kordač, Michaela Koblasová

#### **Insolvency and Restructuring:**

Zbyšek Kordač, Jakub Nedoma

#### **IT, Media & Telecommunication:**

Martin Lukáš, Jakub Nedoma, Michal Przeczek

**Labour Law:** Eva Procházková, Anna Bartůňková, Daša Aradská, Ondřej Tejnský

#### **Mergers and Acquisitions:**

Daniel Weinhold, Václav Štraser

#### **Personal Data Protection**

Martin Lukáš, Tereza Hošková, Daša Aradská

#### **Public Procurement & Public Sector:**

Martin Lukáš, Tereza Hošková, Monika Švaříčková

#### **Real Estate:**

Pav Younis, Václav Štraser

#### **Slovak Law:**

Tomáš Čermák, Karin Konečná

#### **Start-ups, Venture Capital and Cryptocurrency:**

Pav Younis, Martin Lukáš, Jakub Nedoma, Michal Švec, Ondřej Tejnský

### News in legislation

#### **Amendment of the Consumer Protection Act and the Civil Code**

On 7 December 2022, Act No. 374/2022 Coll. was published in the Collection of Laws, which significantly amends Act No. 634/1992 Coll., on Consumer Protection, as amended, and Act No. 89/2012 Coll., the Civil Code, as amended (the "**Amendment**").

The Amendment aims to transpose the so-called European Union Modernisation directives, approved at the EU level to provide consumers sufficient protection in the digital single market. The Amendment also corrects certain legislative errors that have caused the legal regime of consumer protection to be incompatible with EU law.

One of the most significant elements of the Amendment is the extension of the information obligation for the business entities concerning goods and services offered online. Thus, business entities, when providing a discount on goods or services, will have to inform consumers of the lowest price of such goods or services in the last 30 days, which is intended to prevent manipulative practices with discounts only "by eye". The amendment also requires the introduction of mechanisms to allow consumers to evaluate goods or services only if they have actually purchased such goods or services. These mechanisms are intended to prevent fake reviews.

The amendment also implements the so-called 'push-button amendment' to the Civil Code, which has been widely discussed in the past. In the case of e-commerce purchases, business entities will have to make it clear that by pressing a button, which de facto concludes a contract between the consumer and the business entity, the consumer is obliged to pay for the goods or services. Caution should really be taken, because failure to mention this information on such a button invalidates the contract, unless the consumer invokes the issue of validity directly.

The amendment also introduces full regulation of digital content contracts. It regulates the way in which digital content is made available, liability for defects, the obligation to update digital content regularly, the specific method of withdrawal from the contract and other specifics of this type of contract.

Changes can also be expected in the case of contracts concluded by telephone, where if the contract is concluded in this way, the offer of goods or services will also have to be provided to the consumer in text form.

Another new feature is the legal presumption of defects upon receipt. It will now be presumed that the goods were already in a defective condition upon takeover if the defect becomes apparent within one year.

As the Amendment comes into force on 6 January 2023, it is important to prepare for all changes as soon as possible.

#### **Amendment of the Energy Act**

On 1 December 2022, Act No. 365/2022 Coll., amending Act No. 45/2000 Coll., on business conditions and the performance of state administration in the energy sectors and on amendments to certain acts, as amended (hereinafter referred to as the "**Energy Act Amendment**"), came into force..



# Legal update

December 2022

## Weinhold Legal

The Energy Act Amendment introduces the long-discussed "windfall profit tax" or "windfall tax" in the energy sector. It is interesting to note that the Energy Act Amendment implements EU Regulation No. 2022/1854, which directly conditions its direct effect by transposition by member states.

According to the Energy Act Amendment, the first period of the excess profits charge will be December 2022 and the second period will be calendar year 2023. The amount of the charge is set at 90% of the excess profits.

## News in case law

### Liability of a website operator for a link leading to obviously false information

*(Judgment of the Court of Justice of the European Union in Case C-460/20 TU and RE v Google LLC. of 8 December 2022)*

In the present case, complainants requested Google to remove links to critical articles of the investment models of companies of which the complainants were directors from the search engine results of Google, when searching for their names.

The complainants also requested Google to remove their photographs from Google Images search results when their names were entered, as the photographs in question were displayed without context.

However, Google did not comply with the deletion request for the reason that it did not know whether the information in the linked articles (which included the photographs in question) was true or not.

The European Court of Justice addressed a preliminary question concerning the interpretation of the General Data Protection Regulation (GDPR), as well as the right to privacy, the right to protection of personal data, the right to free access to information and the right to freedom of expression provided for in the Charter of Fundamental Rights of the European Union.

In particular, The European Court of Justice primarily noted that when, typically as in the case of the right to be forgotten, the rights to privacy and the protection of personal data are compared with the rights to freedom of access to information and freedom of expression, an important consideration is whether the content referred to contains at least partly false information.

According to The European Court of Justice, the right to freedom of expression and the right of access to information cannot be taken into account at all if the information in question turns out to be at least partly false and the information is not of secondary importance.

The applicant for deletion of a link to content containing at least partly false information must be entitled to present evidence to prove the obvious falsity of the information. However, the burden of proof must not be too onerous so that the right to be forgotten can achieve its useful effect (*effet utile*). The search engine operator cannot have an active role in seeking evidence of the conclusiveness of the applicant's allegations. If the applicant

proves that the linked information is not true, the search engine operator is obliged to remove the link to that information.

Concerning photographs, the search engine operator must always take into consideration the informational value of photographs bringing to the public, irrespective of the context in which they are published on the website from which they originate.

### Register of beneficial owners not to be available to the public

*(Judgment of the Court of Justice of the European Union in joined cases C-37/20 Luxembourg Business Registers and C-601/20 Sovim of 22 November 2022)*

The European Court of Justice has ruled that a provision of the AML Directive guaranteeing access by anyone in the general public to information in the beneficial ownership register is invalid.

The European Court of Justice considers that the possibility for anyone in the public to have access to the beneficial owner's information overly extensively interferes with the right to privacy and the right to the protection of personal data set out in the Charter of Fundamental Rights of the European Union, because the information in the beneficial owner register informs anyone in the public about the beneficial owner's factual and financial situation.

The judgment states that the objective of the beneficial ownership register is to increase transparency and thus prevent money laundering and terrorist financing, which is an objective of general interest. According to the judgment, this objective can in principle be achieved by making information on beneficial owners available to any member of the public. The chosen instruments are not limited to what is strictly necessary to meet the general interest objective, and are not proportionate to that objective.

In this respect, the original regime, where only persons or organisations demonstrating a legitimate interest had access to beneficial ownership data, should apply.

© 2022 Weinhold Legal  
All rights reserved

The information contained in this bulletin should not be construed as an exhaustive description of the relevant issues and any possible consequences, and should not be fully relied on in any decision-making processes or treated as a substitute for specific legal advice, which would be relevant to particular circumstances. Neither Weinhold Legal, v.o.s. advokátní kancelář nor any individual lawyer listed as an author of the information accepts any responsibility for any detriment which may arise from reliance on information published here. Furthermore, it should be noted that there may be various legal opinions on some of the issues raised in this bulletin due to the ambiguity of the relevant provisions and an interpretation other than the one we give us may prevail in the future.

Please send your comments to: [Jaroslav.denemark@weinholdlegal.com](mailto:Jaroslav.denemark@weinholdlegal.com) or contact the person you are usually in touch with. To unsubscribe from publications: [office@weinholdlegal.com](mailto:office@weinholdlegal.com)