Legal update

September 2023

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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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News in legislation

Amendment to the Act on Electronic Acts and Authorised Conversion of Documents

At its meeting on 15 September 2023, the Chamber of Deputies adopted an amendment to the Act on Electronic Acts and Authorised Conversion of Documents regulating **the regime of publication of data on data box holders in the public list** in the first reading and the draft is now heading to the Senate.

The current legal regulation has introduced a public list of data box holders (including for natural persons and natural persons engaged in business), in which each holder is listed obligatorily, although the legal regulation allows for deletion from this list upon an active request. According to the submitter of the amendment, this leads to excessive interference with privacy as one of the fundamental rights. In particular, it is possible to find out the address of all the subjects concerned in the list of data mailbox holders, which, in the opinion of the submitter, is redundant and disproportionate.

The proposed amendment does not change the scope of data published in the list of data box holders, but replaces the opt-out principle with an opt-in principle. Thus, instead of an automatic inclusion in the list and the necessary active request for deletion, a natural person or a natural person engaged in business may request inclusion in the list.

Draft Law on Collective Civil Proceedings

On 15 September 2023, the government's Draft Law on Collective Civil Proceedings passed its first reading in the Chamber of Deputies, which introduces legal regulation on collective actions in consumer matters, i.e. legislation that will comprehensively and complexly regulate the collective enforcement of rights in the area of business-to-consumer relations. It implements the European Directive on Representative Actions, which requires EU citizens to have access to representative actions to protect the collective interests of consumers.

The law will allow similar claims arising from the legal relationship between a business and consumers to be dealt within a single proceeding. The aim of the collective proceedings will be, first and foremost, to ensure better access to justice for all persons who do not find it worthwhile to enforce their rights individually - i.e. in the first phase, mainly consumers.

However, collective proceedings will only constitute **a special type of civil proceedings.** Therefore, the rules applicable to civil procedure as such, i.e. in particular the Code of Civil Procedure, shall apply to issues not covered by the Draft Law on Collective Civil Proceedings. A single action will bring all claims (of several consumers) arising out of a single unlawful act, which can thus be enforced in a single legal proceeding.

The legal standing to bring a class action will be vested in a designated non- profit entity in accordance with EU regulation, namely a legal entity that is registered in the list of authorised persons under the Consumer Protection Act or jointly several such persons. The standing of the group members whose claim is being considered in the proceedings will be limited. **The fundamental right of the group members will be to choose whether or not to participate in the collective proceedings (opt-in principle).** If they choose to do so, they will become 'participating group members'. This will be a sui generis procedural status. These group members will not be considered as parties to the proceedings, but will nevertheless have several rights in the proceedings. By acting for the group as a whole, the applicant will be obliged to defend the interests of the group at all times.

The collective procedure will be divided into two phases. First, it will be necessary to determine whether the conditions for a joint trial are met – this is the phase of the proceedings in which the question of the admissibility of the collective action is examined. If the conditions are proven, the proceedings will move to the collective proceedings on the merits phase.

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In order to be able to conduct a collective procedure, it will be necessary to fulfil the special conditions of the collective procedure.

- The group will need to have a sufficient number of members – at least 20.
- The plaintiff will be a pre-designated non-profit entity subject to control by the Ministry of Industry and Trade of the Czech Republic.
- The claims must be similar in terms of the factual questions to be heard, with an emphasis on the expediency and cost-effectiveness of such a hearing.
- The group must be adequately represented.
- It must not be an abuse of the law.

Finally, however, it must be stressed that the discussion of the Draft Law is only at its beginning and it can be assumed that it may undergo changes in further readings of the law.

News in case law

Damages for emergency measures in times of covid

(Judgment of the Supreme Court of the Czech Republic, Case No. 30 Cdo 63/2023 of 31 August 2023)

The Supreme Court dealt with the appeal of a commercial company which claimed compensation for damages against the Czech Republic – the Ministry of the Interior, which it incurred as a result of crisis measures (a Resolution of the Government of the Czech Republic) by which retail sales and the sale and provision of services, inter alia, in the applicant's establishment were restricted and subsequently completely prohibited at certain specified times. According to the applicant, the alleged damage represents its lost profits for the period from 28 October 2020 to 28 February 2021 in the amount of CZK 1,100,123. The applicant also claimed compensation for legal costs of CZK 39 000, which it also claimed to have suffered as a result of the crisis measures it had referred to.

The applicant stressed that, pursuant to the provisions of Section 36 of Act No. 240/2000 Coll., on Crisis Management and on Amendments to Certain Acts (the Crisis Act), the State is objectively liable for damage resulting from the crisis measures adopted, irrespective of whether their adoption was correct or necessary.

The applicant then claimed interest for late payment from 11 April 2021, stating that the claim had fallen due on the day before the date on which it submitted its claim for compensation.

The District Court for Prague 7, as the Court of First Instance, dismissed the action for ordering the defendant to pay the plaintiff CZK 1,139,123, including accessories (verdict I) and ordered the plaintiff to pay the defendant CZK 600 in costs (verdict II). The Municipal Court in Prague, as the Court of Appeal, upheld the judgment of the Court of First Instance in the judgment under appeal.

The Supreme Court found the extraordinary appeal to be well-founded. According to the Supreme Court, it is clear from the provisions of Section 36(1) of the Crisis Act that

"the institute of liability for damage arising in a causal connection with a crisis measure is a special legal regulation containing a special merits for the State's liability for damage, which is governed by this Act, not by Act No. 82/1998 Coll. or a general regulation. It establishes liability without regard to fault (so-called strict liability) and, unlike that Act, does not require the damage to be caused by an unlawful decision or an incorrect official procedure."

This special liability may arise if the following prerequisites are simultaneously met: 1) the implementation of the crisis measure, 2) the occurrence of damage and 3) a causal link between the crisis measure and the occurrence of damage. However, there is a possibility for the State to escape liability if it proves (the burden of proof is on the State) that the victim caused the damage himself. It is clear from the wording of Section 36(1) of the Crisis Act that the State is the responsible party.

In this connection, and in relation to the grounds of extraordinary appeal defined by the petitioner and the argumentation of the Court of Appeal, the Supreme Court first dealt with the question of **whether the Crisis Act distinguishes between crisis measures that operate on the entire territory of the Czech Republic and those that are directed against a specific person or a specifically defined group of individuals.** It does not follow from the linguistic expression that the range of individuals whose rights and obligations are affected by a crisis measure must be specifically defined or limited.

The same applies to the systematics of the Crisis Act, as no limitation of the State's liability for damage caused by individually targeted crisis measures results from it. Therefore, the Supreme Court also proceeded to consider the question whether such a limitation of the State's liability corresponds to the will of the historical legislator. The Supreme Court stated that it could not be inferred from anything that the historical legislator intended to limit the State's liability for damages only to individually targeted crisis measures. On the contrary, according to the Supreme Court, the historical legislator was aware that crisis measures would deal with large-scale emergencies, taking into account the experience of the floods which affected one third of the State's territory. Nor, according to the Supreme Court, can it be argued

„that the legislator cannot, at the time of the adoption of a piece of legislation, have foreseen to which all situations will be covered by that legislation in the future in terms of the definition of the hypothesis of the legal regulation contained in that legislation."

This situation is not exceptional and can be solved by standard methods of legal interpretation, including analogy and teleological reduction. **Therefore, the argument that the emergency situation consisting in an epidemic of a highly contagious disease affecting the entire territory of the State is unforeseeable is inappropriate.**

The Supreme Court therefore concluded that

"the limitation of the State's liability under Section 36(1) of the Crisis Act to situations where the crisis measure is directed against specifically identified individuals, as made by the Court of Appeal, is therefore unsupported by the law and cannot be inferred even by teleological interpretation. The Court of Appeal's legal assessment of the case is therefore incorrect on that ground. The Court of Appeal's reasoning that the State is not liable for the damage caused by crisis measures, which are by their nature the product of legislative action, is also incorrect."

In the second part of the assessment, **the Supreme Court dealt with the interpretation of the term "implementation of crisis measures", in view of the Court of Appeal's conclusion that the State should be liable under Section 36(1) of the Crisis Act only for damage caused by its activities in the implementation of specific crisis measures.** In other words, the mere issuance of a crisis measure by the Government cannot be regarded as its implementation within the meaning of section 36(1) of the Crisis Act.

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For the first time, the Supreme Court has expressed its opinion on this issue, which has not yet been addressed in its case-law, i.e. when the implementation of a crisis measure occurs as one of the conditions for the establishment of the State's liability for the damage caused by it, and has concluded that

"the State's obligation to compensate the damage caused by a crisis measure arises at the moment when such effects of the crisis measure occur that lead to the occurrence of damage. That moment must be assessed according to the particular circumstances of the case."

In the applicant's circumstances, the issuance of the crisis measures resulted in a restriction or ban on retail sales, which was intended to deprive the applicant of profits. It is clear from the nature of those measures that their effects took effect at the time specified in each individual crisis measure. From that point, the measures in question acquired the potential to cause damage to the applicant. That moment must therefore be regarded as the moment when the crisis measures were implemented within the meaning of Article 36(1) of the Crisis Act.

It is clear from the above that the Court of Appeal misjudged the applicant's claim on both parts of the question for which the appeal was allowed. Accordingly, the Supreme Court sets aside the judgment of the Court of Appeal.

Please send your comments to: **matej.novak@weinholdlegal.com** or contact the person you are usually in touch with. To unsubscribe from publications: office@weinholdlegal.com