



Legal update

March 2025

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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 herein should be consulted on prior to any decisions being taken.

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News in legislation

Draft Law in the Financial Market Area

On 19th February 2025, a Government Bill amending certain financial market laws (the "Government Bill" or the "Bill") was introduced to the Chamber of Deputies.

The Bill, which was unanimously approved by the Government, establishes, in particular, a European Single Access Point ('ESAP'). According to the explanatory memorandum, the ESAP aims to simplify investor access to data on European investment companies by providing centralised access to publicly available information on financial services, capital markets and sustainability.

Access to the information will be free and open to all without any restrictions. The establishment of the ESAP does not create any new information obligations for the entities concerned. It is only a matter of centralisation and consolidation of data. The establishment of the ESAP will not replace the systems already in place in the Member States, but will be a mere superstructure, giving investors and the general public the opportunity to choose which solution to use. The ESAP will also give visibility to SMEs, on a voluntary basis, whereby they will be able to publish additional relevant information about themselves over and above the mandatory disclosures. This should help them to facilitate market funding.

This Bill implements European regulations into the Czech legal system. Specifically, Regulation (EU) 2023/2859 of the European Parliament and of the Council of 13 December 2023, Directive (EU) 2023/2864 of the European Parliament and of the Council of 13 December 2023 and Regulation (EU) 2023/2869 of the European Parliament and of the Council of 13 December 2023. These regulations were adopted as part of the Capital Markets Union initiative, the first phase of which was launched by the European Commission in 2015 when it issued the first Capital Markets Union Action Plan. It followed this up in 2020 with its second Action Plan, which includes the creation of the ESAP as part of its agenda. The ESAP will be established by the European Securities and Markets Authority ("ESMA"). The ESMA will collect data from national authorities. For the Czech Republic, the collection of information will be primarily carried out by the Czech National Bank and to a lesser extent by the Chamber of Auditors of the Czech Republic. It will be the responsibility of the above-mentioned institutions to verify the basic technical characteristics of the data and to transmit it to ESMA.

Except in specific cases, the published information will remain in the ESAP for a period of ten years. The ESAP is scheduled to be launched on 10 July 2027, however, a pilot phase will start a year earlier, when national collection points will start transmitting information to the database.

Case law

Limitation of claims for damages against the company's managing director

(Judgment of the Supreme Court of the Czech Republic Case No. 27 Cdo 2753/2023 of 21st November 2024)

Regarding the issue of the statute of limitations on the company's claim for damages against its managing director, the Supreme Court of the Czech Republic recently expressed its opinion in its judgment under Case No. 27 Cdo 2753/2023.

The plaintiff, as a limited liability company, sought from the defendant, who was previously its managing director, the payment of CZK 924,081 with accessories as compensation for damages caused by the breach of the duty to exercise his functions with due care, which was imposed on him by Section 135(2) in conjunction with Section 194(5) of Act No. 513/1991 Coll., the Commercial Code (hereinafter referred to as the "Commercial Code"). The company alleged that the damage was caused by the defendant's 'withholding' of funds from the sale of hunting licences and hunted game. In the present case, that 'withholding' was the withdrawal of funds from the company's treasury without it being clear what the managing director would use such funds for. The Regional



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Court in Ostrava explained that with regard to the duty to act in the performance of the duties of a managing director of a limited liability company, the applicant bears the burden of proof as to the occurrence of damage and the causal link between its occurrence and the breach of duty. The defendant, on the other hand, bears the burden of proving that he did not breach his duty of care. In the present case, the applicant has succeeded in proving the damage and the causal link between the damage and the defendant's conduct.

The Regional Court in Ostrava upheld the claim only to the extent of CZK 176,898, as the defendant had proved that he had used part of the claim for the benefit of the applicant (e.g. to purchase building materials, animal feed, etc.) and that another part was already time-barred. As there was another managing director in the company at the time, he should also have acted with due care and therefore should have been aware of the damage. The limitation period thus began to run at the time of the defendant's receipt of the individual transactions, pursuant to Section 398 of the Commercial Code. The applicant subsequently appealed to the High Court in Olomouc. The Court concluded that the applicant's argumentation was incorrect in that it argued that the claim for damages could not be time-barred since the defendant "held the money on behalf of the company" at the time of his office and that the limitation period only began to run at the time when the defendant ceased to hold office. If the court were to accept this, it said, the provision in section 131a of the Commercial Code governing partnership actions would be rendered meaningless. The action would then have to be dismissed as premature if it was brought before the dissolution of the statutory body. Moreover, such a decision would contradict the judgment of the Supreme Court of 15 September 2010, Case No. 29 Cdo 2308/2009.

The applicant then filed an appeal in which it asked the Supreme Court about the moment of the occurrence of the damage in the present case and the moment of the limitation of the claim for damages. The Court stated that no damage was caused by the moment of receipt of the cash by the company's managing director, since the retention of the funds was the exercise of the company's business management. It further held that the company could not claim damages for breach of duty of care before the damage had been incurred (before the funds were outside its sphere of disposal). It also held, contrary to the Court of Appeal, that if the defendant raises a statute of limitations defence, it bears the burden of proving the facts to which the law links the commencement and running of the limitation period. The Supreme Court here set aside the judgment of the Court of Appeal in the contested part and remitted the case back to the Court of First Instance.

Function of compensation for non-pecuniary damage

(Judgment of the Constitutional Court, Case No. Pl. ÚS 428/23 dated 23rd January 2025)

The Constitutional Court of the Czech Republic, in its recent ruling (Case No. Pl. ÚS 428/23), addressed the question of the function of compensation for non-pecuniary damage.

In her constitutional complaint, the complainant, who was an actress and former First Lady, sought the annulment of the orders of the Supreme Court, the High Court in Prague and the judgment of the Municipal Court in Prague. First, the complainant brought an action for the protection of personality before the Municipal Court in Prague, through which she sought to have the allegations that she had maintained a lover's relationship, including at the time of her husband's death, removed. The defendant (intervener before the Constitutional Court), which was a legal entity operating as a tabloid media, published the allegation on its website. From there, the information was then disseminated through other media, including television broadcasts. The applicant therefore sought the removal of the accusation from the website, a written apology and compensation for non-pecuniary damage pursuant to Article 13(2) of

Act No. 40/1964 Coll., Civil Code (former Civil Code), in the amount of CZK 5,000,000. It should be noted at this point that the substance of the previous and current statutory provisions on the protection of personality has remained unchanged. The Municipal Court then awarded compensation for non-pecuniary damage in the amount of CZK 1,200,000. Subsequently, the High Court awarded the applicant CZK 2,800,000 in excess of that compensation, finding that, in view of the position of the applicant and her deceased husband, the damage had been considerably greater. It added that account must be taken of the nature of the defendant's activities and the amount of the profits it had received in connection with the accusation. The Supreme Court then disagreed with the concept of preventive and punitive damages. Accordingly, the Supreme Court, in the judgment under appeal, awarded the original compensation of CZK 1,200,000. In response, the dissatisfied complainant lodged an appeal with the Supreme Court, but was unsuccessful when the Supreme Court rejected it by order. She therefore had no choice but to seek redress before the Constitutional Court, which she did by means of a constitutional complaint.

In her complaint, the complainant referred to the Constitutional Court's ruling in Case No. Pl. ÚS 668/21, according to which monetary compensation does not only have a satisfactory function but also a punitive function, which the Constitutional Court agreed with. The Constitutional Court has stated that it expects monetary compensation to be awarded only in cases where the dignity of a natural person or his or her esteem in society has been reduced to a significant degree (in accordance with the judgment in Case No. Pl. ÚS 1586/09). It has also added that determining the amount of specific compensation may be difficult for the courts, which is why they may exercise their discretion within the meaning of Section 136 of Act No. 99/1963 Coll., Code of Civil Procedure. The courts must therefore ascertain the facts and base their decisions on objective criteria designed to ensure the adequacy of the financial compensation with regard to its purpose. The award in question also emphasises that the intervener was one of the so-called tabloid media. The degree of protection of freedom of expression is considerably weakened in the case of the latter. At the same time, however, the amount of compensation for non-pecuniary damage cannot be liquidating even in the case of such media. Taking into account these facts, the Constitutional Court concluded by emphasising that the amount of profits which such medium would receive in connection with the unjustified interference may be taken into account by the courts when considering the adequacy of the monetary compensation, so that the resulting amount reflects not only the extent of the non-pecuniary damage caused, but also the social defectiveness and unacceptability of the unlawful act in question. To a limited extent, according to the applicant, the overall financial situation of the media outlet may also be taken into account. The Constitutional Court therefore found the constitutional complaint to be well-founded and therefore annulled the contested decisions and returned the case to the ordinary courts for further consideration. It also stressed that it did not prejudge the adequacy of the amount of financial compensation.

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