Weinhold Legal

Legal Update

JULY 2026

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Anna Králíková, epravo.cz

News in legislation

Amendment to the Act on Criminal Liability of Legal Entities

On 1 July 2026, part of Act No. 270/2025 Coll. entered into force, amending, among other legislation, Act No. 418/2011 Coll., on the Criminal Liability of Legal Entities and Proceedings against Them (the "**Act**"). The amendment introduces a new special diversionary measure in proceedings against legal entities: a conditional waiver of the criminal prosecution of a legal entity.

A conditional waiver of criminal prosecution may be ordered by a court or, during pre-trial proceedings, by a public prosecutor, provided that all statutory conditions are met. The legal entity must consent to this procedure, compensate for the damage caused or take other necessary measures to ensure that it is compensated, surrender any unjust enrichment or take measures to ensure its surrender, undertake to adopt appropriate measures to remedy or eliminate the harmful consequences of the criminal offence, and pay a monetary amount to the State for the purpose of assisting victims of crime. At the same time, having regard to the circumstances of the case and the extent to which the public interest has been affected, this procedure must be considered sufficient.

A decision on a conditional waiver of criminal prosecution under **Section 37b(1) of the Act must specify a probationary period of between six months and two years**. Where a decision is made under **Section 37b(2) of the Act**, however, **a probationary period of up to five years may be imposed**, having regard to the nature and seriousness of the criminal conduct, the circumstances in which it was committed or the circumstances of the legal entity. This may apply in particular where the legal entity assumes additional obligations aimed at remedying the consequences of the criminal conduct and preventing further unlawful conduct.

The conditional waiver of criminal prosecution is closely linked to the new rules governing supervision over the preparation and implementation of an effective set of preventive and remedial measures. As part of this diversionary procedure, **a legal entity may** therefore **undertake to prepare and implement a compliance programme** aimed at eliminating the causes of the unlawful conduct, establishing effective internal control mechanisms and creating safeguards to prevent further criminal conduct.

Compliance with this obligation will be supervised by **a monitoring person selected by the legal entity from among the categories of persons specified by law and approved by the court or public prosecutor**. The monitoring person may, in particular, be an auditor or an attorney specialising in the supervision of the preparation and implementation of preventive and remedial measures. Unless the court or public prosecutor determines otherwise, the monitoring person must submit a report on the performance of the supervision at least once a year.

The practical significance of the new legislation lies primarily in the increased importance of compliance programmes in the context of the criminal liability of legal entities. Effective preventive and remedial measures will no longer be relevant solely for the purposes of preventing criminal conduct or potentially exonerating a legal entity from criminal liability, but may also have a direct impact on the course and outcome of criminal proceedings. It will therefore become even more important for business corporations to have effective internal control mechanisms, rules for preventing unlawful conduct and procedures for addressing identified misconduct.

Case Law Update

Transfer of an Ownership Interest Prior to the Incorporation of a Limited Liability Company

(Resolution of the Supreme Court dated 3 June 2026, Case No. 27 Cdo 3437/2024)

In this decision, the Supreme Court considered whether an agreement on the transfer of an ownership interest in a limited liability company may be validly concluded during the period between the establishment of the company by its founding document and the company's incorporation, i.e. before it is entered in the Commercial Register.

In the case at hand, a limited liability company was established by a deed of incorporation under which its founder was to become its sole shareholder and first managing director. On the same day, however, the founder concluded an agreement with a third party on the transfer of a 50% ownership interest in the company, before the company had come into existence. Following the company's incorporation, the transferee sought an amendment to the entry in the Commercial Register so that she would be registered as a shareholder holding a 50% ownership interest. The registration court dismissed the application, concluding that the agreement on the transfer of the ownership interest was null and void because it required performance that had been impossible from the outset. It held that an ownership interest in a company could not be transferred before the company had been entered in the Commercial Register. This conclusion was subsequently upheld by the appellate court.

The Supreme Court disagreed with this interpretation. It stated that neither legal literature nor its existing case law casts doubt on the possibility of **an agreement concerning assets that are yet to come into existence**. The fact that the asset forming the subject matter of a transfer does not yet exist at the time the agreement is concluded does not, in itself, render the agreement invalid on the grounds of initial impossibility of performance. According to the Supreme Court, this conclusion also applies to an agreement on the transfer of an ownership interest in a business corporation, as an ownership interest constitutes property in the legal sense

An agreement on the transfer of an ownership interest is therefore not invalid merely because the ownership interest did not yet exist at the time the agreement was concluded and the founder was not yet its owner. In such a case, the transferee becomes the owner of the transferred ownership interest at the time the company comes into existence, unless a later date for the acquisition of title has been agreed. The Supreme Court therefore set aside the decisions of the lower courts, which had considered the agreement invalid due to initial impossibility of performance, and remitted the case to the registration court for further proceedings.

The decision is particularly significant for corporate practice in connection with the establishment of companies. It confirms that the transfer of a future ownership interest in a limited liability company may be contractually agreed before the company comes into existence without the agreement being automatically invalid.

Retroactive Approval of Remuneration of a Member of a Corporate Statutory Body

(Resolution of the Supreme Court dated 29 April 2026, Case No. 27 Cdo 3463/2024)

In this decision, the Supreme Court considered **whether the general meeting of a business corporation may retroactively approve remuneration for a member of its statutory body for the performance of their office where no agreement on the performance of office had been concluded for the relevant period.**

In the case at hand, the general meeting of a European company adopted a resolution by written procedure on the payment of remuneration to a member of its management board for the performance of office during the period from 2012 to 2021. One of the shareholders sought a declaration that the resolution was invalid. The shareholder argued, among other things, that the management board member had not validly held office on the relevant date and could not retroactively be awarded remuneration for a period during which no agreement on the performance of office had been concluded.

The court of first instance dismissed the application in this respect. The appellate court, however, declared the general meeting's resolution on the payment of the remuneration invalid. The appellate court proceeded on the basis that, where no agreement on the performance of office has been concluded, the member of the statutory body performs the office without remuneration. It therefore concluded that the general meeting could not subsequently approve remuneration for the performance of office in respect of past periods during which no agreement on the performance of office existed. According to the appellate court, the remuneration could not be regarded as another benefit within the meaning of the Business Corporations Act, because such a benefit cannot be provided "in addition to an agreement" where no agreement on the performance of office exists

The Supreme Court disagreed with this conclusion. It held that, even under the legislation effective from 1 January 2014, the absence of an approved agreement on the performance of office means that a member of an elected body does not automatically acquire a right to remuneration. **It does not, however, prevent the competent body of the business corporation from subsequently awarding such remuneration**. The decisive requirement is that the benefit must be approved by the general meeting or, as applicable, another body competent to approve the agreement on the performance of office. This preserves the business corporation's control over the remuneration of the members of its elected bodies.

According to the Supreme Court, there is therefore nothing to prevent the general meeting from awarding remuneration to a member of an elected body for a period preceding its decision, even where no approved agreement on the performance of office was in place during that period. The Supreme Court therefore set aside the appellate court's decision to the extent that it declared invalid the general meeting's resolution approving the payment of remuneration to a member of the board of directors and remitted the case to the appellate court for further proceedings.

The decision is particularly significant for the practice of remunerating members of statutory and other elected bodies of business corporations. It confirms that the absence of an approved agreement on the performance of office does not, in itself, preclude the retrospective award of remuneration for the performance of office, provided that such payment is approved by the general meeting or another competent body. At the same time, however, it emphasises that such a decision cannot replace the need for agreements on the performance of office to be properly and duly put in place, as such agreements remain the principal instrument for ensuring transparent remuneration of members of elected bodies.

Filing an Opposition to a Payment Order by an Intervening Party

(Resolution of the Supreme Court dated 29 April 2026, Case No. 25 Cdo 45/2026)

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In this decision, the Supreme Court considered whether an intervening party acting in support of the defendant is entitled to file an opposition against a payment order requiring the defendant to make a monetary payment.

In the case at hand, the claimant sought monetary compensation from the defendant company for personal injury. An insurance company joined the proceedings as an intervening party on the defendant's side. The court of first instance subsequently issued a payment order. Although the defendant filed an opposition against the payment order, the opposition was rejected as having been filed out of time. The intervening party filed a separate opposition within the applicable time limit, but the court of first instance rejected it on the grounds that it had been filed by a person who was not entitled to do so. This conclusion was upheld by the appellate court, according to which the Code of Civil Procedure does not expressly grant an intervening party the right to file an opposition against a payment order

The Supreme Court disagreed with this conclusion. It recalled that **an intervening party generally has the same procedural rights and obligations as the party it supports, except in relation to acts involving a disposition of the subject matter of the proceedings**. According to the Supreme Court, filing an opposition against a payment order is a procedural right and does not constitute a disposition of the subject matter of the proceedings.

The Supreme Court also emphasised that an opposition against a payment order is not an appeal in the strict sense. It has neither suspensive nor devolutive effect, and its filing does not result in the payment order being reviewed by a higher court. A timely opposition directly results in the payment order being set aside and the proceedings continuing. **An intervening party therefore cannot be denied the right to file an opposition merely because the Code of Civil Procedure does not expressly provide for such a right**.

The Supreme Court also referred to its previous case law, according to which an intervening party may submit a qualified statement of defence on behalf of the defendant in response to a request under Section 114b of the Code of Civil Procedure, thereby preventing a judgment by acknowledgement from being issued where the defendant remains inactive. It stated that there was no reasonable justification for preventing an intervening party from similarly filing an opposition against a payment order, particularly given that a request to submit a qualified statement of defence commonly forms part of a payment order.

The Supreme Court therefore varied the decisions of the lower courts by ruling that the opposition filed by the intervening party against the payment order was not to be rejected. The decision is particularly significant in cases where an intervening party with an independent legal or economic interest in the outcome of the proceedings acts in support of the defendant. **It confirms that an intervening party may actively defend the procedural interests of the party it supports, including by filing an opposition against a payment order**, provided that such an act does not conflict with the procedural position taken by the principal party.