



# Legal update

April 2022

## Weinhold Legal

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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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Daniel Weinhold, Václav Štraser

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### News in Legislation

#### **Bill on video sharing platform services**

In the Chamber of Deputies, the government's bill on video-sharing platform services is in the second reading. This Act is intended to implement the amendment of Directive 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13 / EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of the changing market situation.

Video-sharing platforms such as YouTube, Instagram, TikTok, and other networks allow advertisement placement, but current legislation does not adequately address this feature.

According to the bill, these video-sharing platforms will be subject to the supervision of the Broadcasting Council. It is therefore a step towards regulating these social networks to a level similar to that of Internet TV.

As in other media, the promotion of alcoholic beverages, cigarettes, etc. will be prohibited on these platforms.

Fines for offences under this Act are proposed up to the amount of 500 thousand CZK.

#### **Amendment to the Copyright Act**

The government bill amending Act No. 121/2000 Coll., On Copyright, on Rights Related to Copyright and on Amendments to Certain Acts (Copyright Act) is also currently in the second reading in the Chamber of Deputies. The amendment implements an amendment to Directive (EU) 2019/789 of the European Parliament and of the Council laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes, and amending Council Directive 93/83 / EEC and Directive (EU) 2019/790 of the European Parliament and of the Council on copyright and related rights in the digital single market.

An online content sharing service provider performs the act of communicating a work of art to the public if it makes available to the public a work of art or other protected subject uploaded by a user of such service. These providers (which are, for example, Uloz.to) will increase their obligations and expand their responsibilities. These providers will need to put in place an effective system to deal with complaints and abuses of copyright.

The bill regulates the broadcaster's ancillary services, which means services that allow online broadcasting at the same time as television broadcasting. The regulation will also affect trailers and watch-later services.

Publishers of lending works will be remunerated. Another newly proposed right is the author's right to a fair share of the publisher's income and also the publisher's right to use the press publication. This



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will affect periodicals in the online environment.

Money from internet companies for licenses could be distributed by the collective administrator.

### News in Case Law

#### **Fulfillment and offsetting of unjust enrichment**

*(Judgement of the Supreme Court File No. 28 Cdo 2829/2021 of 8th December 2021)*

By the action, the plaintiff sought the release of an unjust enrichment, which was incurred by the defendant when he excluded the plaintiff from the use of land and buildings beyond his co-ownership share. The court of first instance set the amount of unjust enrichment at CZK 600,000. The plaintiffs set off the defendant's receivables in the amount of CZK 277,000 for this amount, and the defendant also paid CZK 50,000 during the proceedings. The amount of CZK 168,000 paid before the commencement of the proceedings was not included in the set-off by the court.

The defendant filed an appeal, claiming that he paid the plaintiffs additional amounts to settle the recovered debt before the commencement of the proceedings – these were also confirmed by the plaintiffs in the lawsuit, when they described them as a partial debt settlement. However, the disputed amount of CZK 168,000 was missing in the set-off, so the defendant disputed the court's opinion on the need for a compensatory act.

As the Supreme Court has pointed out with reference to its older case law, set-off is a situation where no performance takes place, it is not possible to consider set-off as the termination of an obligation by performance. It follows that, even vice versa, the rules on performance cannot be applied to the cessation of an obligation by offsetting.

If the enriched person fulfills the unjust enrichment of the deprived person for this obligation, the deprived person's right to issue unjust enrichment ceases. There is therefore no need for the debtor to make further manifestations, as would be the case for set-off.

#### **Supplement to the agenda of the General Meeting at the request of a qualified shareholder**

*(Judgement of the Supreme Court File No. 27 Cdo 3620/2020 of 18th January 2022)*

The Regional Court rejected the motion to declare the resolution of the general meeting of the company invalid. By this resolution, the petitioner was removed from the position of a member of the Board of Directors

The company had two shareholders, each of whom owned exactly 50% of the shares. Shareholder A, as a qualified

shareholder, requested that a general meeting be convened. The agenda was to include the addition of an article on personal data to the contracts for the performance of the function of a member of the Board of Directors. Ten days later, this shareholder A proposed to add to the agenda of the General Meeting the item "dismissal of a member of the Board of Directors B due to a breach of duty of a member of the Board of Directors" (who is also the second shareholder with 50 % of all shares). However, Shareholder B and another member of the Board of Directors did not learn about this added item on the agenda until the day of the General Meeting. None of them agreed with the inclusion of this item on the agenda of the General Meeting. However, shareholder B was removed from the position of a member of the Board of Directors, as shareholder A owned a 50 % stake and shareholder B was not allowed to exercise in this case in accordance with Section 426 of Act No. 90/2012 Coll. (Business Corporations Act) their voting rights. The reason for the appeal according to the minutes of the General Meeting was a breach of duty in the performance of the function of a member of the Board of Directors by shareholder B. This shareholder protested against the resolution at the General Meeting, as according to him the deadline for supplementing the agenda was not met in the case of supplementing the program at the proposal of a qualified shareholder.

The Court of First Instance responded to the legal opinion expressed by the Court of Appeal, which argued that it was not possible to declare resolutions adopted at the General Meeting invalid only because the General Meeting was convened in violation of the law if all shareholders attended the meeting.

The adjustment of the additional supplement to the agenda of the General Meeting at the proposal of a qualified shareholder is based on Article 6 of Directive 2007/36 / EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain shareholders' rights in listed companies. For the purposes of this regulation, the company is obliged to do everything that can be reasonably required of it to inform its shareholders accordingly. It is therefore necessary that the request of a qualified shareholder be delivered to the company well in advance so that the legal deadline is met and other shareholders can familiarize themselves with the proposal. Subsequently, the Board of Directors of a joint-stock company must include the proposed item on the agenda of the General Meeting, if it fails to do so, it is an interference with the law of the proposing qualified shareholder, as such an item cannot be discussed at the next General Meeting.

It follows that a shareholder cannot propose an amendment to the agenda without a time limit. Although the amendment did not explicitly set deadlines for shareholders until the end of 2020, it is necessary to deduce them from the deadlines



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for the Board of Directors to publish the agenda of the General Meeting.

The amendment effective from 1 January 2021 sets the deadline for supplementing the agenda of the General Meeting by a qualified shareholder in Section 369 (2) of the Business Corporations Act. The request must be delivered to the company no later than 15 days before the General Meeting and, if a decisive date is determined, 10 days before it. If the qualified shareholder delivers the application only after the invitation to the General Meeting has been published and sent out, the Board of Directors will publish the supplement no later than 10 days before the General Meeting or 5 days before the decisive date for participation in the General Meeting.

In this case, this was not observed, the Board of Directors did not have time to discuss the proposal of shareholder A, and so it was not possible to decide on this item at the General Meeting.

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: [Lenka.Berankova@weinholdlegal.com](mailto:Lenka.Berankova@weinholdlegal.com) or by fax to +420 225 385 444 to Lenka Beránková, or contact the person you are usually in touch with. To unsubscribe from publications [office@weinholdlegal.com](mailto:office@weinholdlegal.com).

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