



Legal update

August 2022

Weinhold Legal

Contents

News in Legislation

Energy Saving Tariff

Gracious summer 2022

News in case law

Obligation to compensate damages for breach of statutory duty

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

ESG – environment, social, (corporate) governance

Martin Lukáš, Tereza Hošková, Michal Švec

Mergers and acquisitions:

Daniel Weinhold, Václav Štraser

Insolvency and Restructuring:

Zbyšek Kordač, Jakub Nedoma

IT, Media & Telecommunication:

Martin Lukáš, Jakub Nedoma, Michal Przewczek

Real estate:

Pav Younis, Václav Štraser

Personal Data Protection

Martin Lukáš, Anna Bartůňková, Tereza Hošková

Labour law:

Eva Procházková, Anna Bartůňková, Daša Aradská

Slovak law:

Tomáš Čermák, Karin Konečná

Family office:

Milan Polák, Zbyšek Kordač, Michaela Koblasová

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

Competition law / EU law:

Tomáš Čermák, Jana Duchoňová

Start-ups and Venture Capital:

Pav Younis, Martin Lukáš, Jakub Nedoma, Michal Švec

Public procurement & Public sector:

Martin Lukáš, Tereza Hošková, Monika Švaříčková,

News in legislation

Energy Saving Tariff

On 9 August 2022, Act No. 232/2022 Coll. was published in the Collection of Laws, amending Act No. 458/2000 Coll., on the conditions of business and the exercise of state administration in the energy sectors and on amendments to certain acts (the Energy Act), as amended, and Act No. 165/2012 Coll., on supported energy sources and on amendments to certain acts, as amended (the "amendment"), which entered into force on 10 August 2022.

The main objective of the amendment is to reduce the price of electricity, natural gas and heat to final customers through a so-called energy saving tariff, in a situation where a significant number of citizens are experiencing serious financial problems as a result of high electricity and natural gas prices, and this situation cannot be solved by other types of state aid.

The amendment will allow reduction of household energy costs through a financial contribution. The contribution from the state is a grant that goes from the state budget to electricity or gas traders, who are obliged to reflect the contribution in the amount set by government decree in the invoice for the supply of energy to the customer or to reflect it in advance payments. The final recipient of the contribution is therefore the customer, who will not have to apply for the contribution in any way. However, the situation will be different for the heat contribution, which will have to be applied for by, for example, a housing association or a community of unit owners.

The new legislation is designed to allow the government to issue a regulation in which it will determine the set of customers to whom the aid is addressed by selecting a specific distribution tariff and by determining the gas consumption or other criteria. In the actual regulation, the government will then define the amount of the contribution that the state addresses to each category of customer and certain other technical conditions necessary for the application of the legal institute.

The final amount of the contribution, as well as other matters related to the energy saving tariff, should be decided by the government at the end of August this year.

Gracious Summer 2022

Following the model of last year, the newly adopted Act No. 214/2022 Coll., on special grounds for suspension of execution and on amendments to related acts, introduced the possibility for debtors affected by execution proceedings to comply with the conditions of the so-called gracious summer ("Act"), effective from 1 September 2022.

The gracious summer applies to enforcement proceedings commenced before 28 October 2021, in which the debtor is a natural person and the creditor is a public entity referred to in Article 1(2) of the Act, e.g. the Czech Republic, a local self-government unit, a health insurance company, etc.

In order to halt executions within Gracious Summer 2022, the debtor must cumulatively by 30 November 2022 at the latest:

- (i) notify the executor in writing that he or she is requesting to initiate the procedure under the Act; and
- (ii) pay the principal amount sought to be recovered in the foreclosure proceeding, plus a lump-sum reimbursement of the costs of the foreclosure determined under section 3 of the Act.

The debtor may request the executor to communicate the amount of the principal sum sought to be recovered (or to communicate that the sum has



Legal update

August 2022

Weinhold Legal

already been recovered before the date of the entry into force of the Act), who is obliged to respond to the request within 15 days of its receipt. If the debtor requests communication of the amount of the principal recovered before 15 November 2022, the time limit for payment shall be extended by the number of days by which the executor has exceeded the 15-day time limit for reply and shall not end earlier than 5 days from the date on which the debtor receives the executor's reply.

Upon payment of the principal amount sought and the lump sum reimbursement of the costs of the execution, the bailiff shall issue a decision exempting the debtor from payment of any further claims sought over the principal amount sought to the extent that they have not yet been satisfied and shall decide to discontinue the execution to the extent of the claims paid or extinguished.

News in case law

Obligation to compensate damages for breach of statutory duty

(Judgment of the Supreme Court of the Czech Republic Case No. 25 Cdo 418/2022 of 17 May 2022)

The claimant sought damages of USD265,000, including additional damages. During a business transaction between the claimant and his partner based in Dubai, the claimant, as a result of fraudulent conduct of a third party (consisting of sending instructions to redirect the payment) sent USD265,000 to the bank account opened with defendant, instead of the bank account owned by the business partner in Dubai. This account, which was established with the defendant, as a banking institution, was opened by a person who identified herself with a British passport that was reported lost.

From that account, the money was immediately sent to Nigeria to the accounts of several other persons. The damage of USD265,000 should have been incurred by the claimant as a causal result of the breach of the obligations imposed on the defendant by Act No 253/2008 Coll. on Certain Measures against the Legalization of the Proceeds from Crime and the Financing of Terrorism, as amended (hereinafter as "AML").

The Court of First Instance partially upheld the action, but the Court of Appeal reversed the decision of the Court of First Instance and dismissed the action. In its decision, the Court of Appeal held that, in view of the absence of a causal link between any breach by the defendant of the obligations laid down in Article 8(1)(a), (9) and Article 15 of the AML and the damage suffered by the claimant in the present case, the liability of the defendant for that damage cannot be inferred pursuant to the second sentence of Article 2910 of Act No 89/2012 Coll. Civil Code, as amended ('the Civil Code'), according to which the wrongdoer is obliged to compensate the victim for the damage which he has caused to the injured party by breaching, through his own fault, an obligation laid down by law and thereby interfering with the victim's absolute right. In the Court of Appeal's view, the defendant's liability under the first sentence of Section 2910 of the Civil Code was precluded by the alleged mechanism of the damage, where the interference with a right of a relative nature had occurred.

The claimant filed an appeal against the judgment of the Court of Appeal, in which it identified in particular two appeal issues, namely (i) whether an interference with the rights to a claim can constitute an interference with an absolute right pursuant to Section 2910, first

sentence, of the Civil Code and (ii) whether the AML protects the individual interests of persons injured by criminal activity and is therefore a so-called protective norm in relation to the claimant within the meaning of Section 2910, second sentence.

In relation to the first issue, the Supreme Court referred to its judgment of 30 August 2021 in Case No 23 Cdo 3320/2020, where it held that a monetary claim is not an absolute right within the meaning of the first sentence of Article 2910 of the Civil Code. Money in a bank account is a claim of the account holder against the bank. Such a claim is by its nature a relative (obligatory) right, and an interference with such a right is thus an interference with a relative (obligatory) right. The Court of Appeal therefore correctly decided, in accordance with the case law of the Court of Appeal, that the defendant's obligation to compensate for damages under the first sentence of Section 2910 of the Civil Code was not applicable.

According to the Court of Appeal, the second sentence of Section 2910 of the Civil Code is established when a legal norm whose content is aimed at protecting against the occurrence of a certain harm is violated without direct interference with an absolute right. However, a breach of such a rule is relevant only if it leads to the harm it is intended to prevent, i.e. a breach of the protective purpose of the rule in question.

The Supreme Court has also pointed out that a breach of a legal rule gives rise to an obligation to compensate for damage under the second sentence of Section 2910 of the Civil Code only if the rule is aimed at protecting the persons to whom the injured party belongs (personal protection), if the damage is of the kind that the rule is intended to prevent (substantive protection) and if the damage occurs in the way that the rule is intended to prevent, or if the risk to which the protective rule is aimed must arise (modal protection).

Finally, the Court of Appeal assessed that

"the AML is not aimed at protecting individuals or legal entities from harm caused by the fraudulent conduct of persons entering into bank transfers, but rather its purpose is to prevent the misuse of the state's financial system for the laundering of the proceeds of crime and the financing of terrorism."

Since the AML does not serve to protect the individual interests of persons harmed by criminal activity, the Supreme Court concluded that the AML is not a so-called protective norm in relation to the applicant within the meaning of the second sentence of Article 2910 of the Civil Code and dismissed the appeal for all the reasons set out above.

© 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: tomas.novak@weinholdlegal.com or contact the person you are usually in touch with. To unsubscribe from publications: office@weinholdlegal.com