



Legal update

October 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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News in legislation

Amendment to the act on the implementation of international sanctions

On 1 September 2022, Act No. 240/2022 Coll., amending Act No. 69/2006 Coll., on the Implementation of International Sanctions, as amended, and other related acts, entered into force.

The Explanatory Memorandum explains that this amendment primarily responds to the current situation in the implementation of international sanctions arising, in particular, from directly applicable EU legislation. Indeed, the hitherto relatively short Act could be confusing in places, as it mixed provisions of general application with provisions relating to purely international sanctions which are not linked to directly applicable EU legislation. The amendments concern, for example, the implementation of national sanction measures, the decision-making activities of the Financial Analytical Office (FAO) and the acquisition of information for its decision-making activities, the competence of the Czech Customs Administration authorities, and the management, disposal and sale of sanctioned assets.

The Act also amended Act No. 134/2016 Coll., on Public Procurement (PPA). Thus, the contracting authority may now not provide prices or payments to participants during the procurement procedure if international sanctions would prevent their award.

The selection of a supplier is now also subject to the absence of grounds for prohibiting the award of a public contract under the new provisions of Section 48a of the PPA. That defines the procedural procedure of the contracting authority in a situation where a particular participant in the procurement procedure is subject to international sanctions adopted at European or national level or on the basis of a UN Security Council resolution. In the event that a tenderer is subject to an international sanction prohibiting the award of a public contract, the contracting authority is entitled to exclude the tenderer from the tender procedure at any time during the tendering procedure. Where international sanctions apply to the selected supplier, the contracting authority must always exclude the supplier. Should the contracting authority discover that a subcontractor of a tenderer is a person subject to international sanctions, the contracting authority may invite the tenderer to replace such subcontractor. This invitation is mandatory for the selected supplier. The tenderer shall then be obliged to replace the subcontractor within a reasonable time limit set by the contracting authority. If the subcontractor is not replaced, the contract cannot be awarded to the contractor and the contractor will be subject to a prohibition on the award of public procurements.

The contracting authority is also allowed to withdraw from or terminate the public contract if, after the conclusion of the contract, it finds out that the supplier is subject to international sanctions consisting in a prohibition on awarding the public contract. It provides for the power of the Office for the Protection of Competition (OPC) to request the opinion of the FAO on whether a person is subject to international sanctions. Acts already punishable under the Act on the Implementation of International Sanctions, i.e. the failure to exclude a selected supplier subject to international sanctions in violation of the prohibition on awarding a public contract to it, have been excluded from offences under the PP.

Act on Special Grounds for Halting Execution

On 1 September 2022, Act No. 214/2022 Coll., on Special Reasons for Halting Execution and on Amendments to Related Acts, came into force.

The Act restores the ability of debtors in execution to comply with the conditions of the so-called grace period. To some extent, this is the legislator's



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response to the current situation due to the current energy crisis and rising inflation, as some debtors who would otherwise have benefited from the grace summer effective from 28 October 2021 were unable to do so because they used the funds they could have had at their disposal to pay for increased energy prices and other items that had become more expensive.

The reintroduction of the possibility to pay the amounts set under the 'summer of grace' is intended to allow debtors to settle their debts to the State and other public beneficiaries, which should help to reduce the number of pending executions. Secondly, the burden on the enforcement system should be reduced and the pressure on the social system. The reduction in the number of enforcement actions is also expected to reduce the number of people receiving social benefits and prevent them from moving into the grey economy.

Amendment to the Government regulation on occupational health conditions

On 11 October 2022, Act No. 303/2022 Coll. was published, amending Government Regulation No. 361/2007 Coll. stating conditions for occupational health protection, as amended. With effect from 12 October 2022, the minimum permissible temperature for certain types of work is reduced.

The minimum temperature for class I so-called sedentary work (sitting work with minimal whole-body physical activity, office administrative work, control work in supervisors' rooms and commands, typing, PC work, laboratory work, assembling or sorting small light objects) is reduced to 18°C from 20°C). In the case of sedentary work carried out in an air-conditioned workplace, the standard heating setting is 22°C, while the permitted range is 18 to 23°C.

News in case law

Form of future contract of sale relating to real estate

(Judgment of the Supreme Court of the Czech Republic file no. 33 Cdo 72/2021 of 27 May 2022)

The Court of Appeals held that the parties did not validly negotiate a future purchase contract for a property because they did not conclude it in writing. The Supreme Court rejected such an interpretation and overturned the decision of the Court of Appeal as well as that of the court of first instance, which had adopted a similar approach.

In civil law, the parties cannot be forced to act in a form not required by law under penalty of (absolute) nullity. The reason why the law prescribes a particular form may lie in particular in the fact that such acts have serious legal consequences (contracts for the transfer of immovable property) or in the fact that such acts are subject to public law registration. The question of the protection of the rights of third parties is also relevant (contracts which form the basis for registration in the Land Registry or contracts which are entered in the collection of documents of the Commercial Register). These may be negotiations in which there is an interest in protecting the weaker party (e.g. consumer contracts, lease agreements).

The subject matter of a future purchase contract is not an immediate obligation to perform a specific performance in rem (establishment

or transfer of a right in rem to immovable property or its change or cancellation), but its content is "only" an obligation to conclude, within an agreed period of time, a performance contract which will be the basis for the performance which the parties to this preparatory contract are seeking.

According to the current regulation of the future contract, the court no longer substitutes only the expression of the will of the obligor, but determines the content of the contract using the general criteria laid down in Article 1787 (2) of the Civil Code. This is also why a contract of future sale of real estate does not have to be concluded in writing, since the preparatory contract does not have to contain the essential elements of a future contract of sale, but its content is to be determined "at least in a general manner". The content is therefore to be determined in such a way that the legal act constituting the contract for the future purchase of the property satisfies the requirements of legal certainty. However, the party entitled to the contract must prove the content of such a legal act, i.e. a contract for a future contract. This shifts the question of the written record of the parties' intention to the future contract to the area of procedural law (evidence) in civil court proceedings.

Transfer of the promissory note per order and its delivery to the transferee

(Judgment of the Supreme Court of the Czech Republic file no. 29 Cdo 1678/2020 of 31 May 2022)

The Supreme Court considered the prerequisites for the transfer of a promissory note per order, in particular the delivery of the note to the transferee.

In the present case, the dispute was whether there was a valid transfer of a promissory note by endorsement at the time the note was deposited with the court. In addition to the applicant (the transferor), a person authorised to act for the transferee was present at the transfer of the promissory note at issue in the courthouse. According to the Supreme Court, the conclusion that the promissory note was handed over to the drawee cannot be undermined by the mere fact that there was no physical handing over of the promissory note from hand to hand, moreover, in a situation where, on the one hand, the applicant (the transferor) affixes the endorsement to the disputed promissory note and clearly expresses its intention not to be its owner any longer and, on the other hand, the drawee (the person authorised to act on its behalf) attends the endorsement of the promissory note together with the applicant, the only (moreover clearly expressed) reason for the presence of that person at the endorsement is to make the drawee the new owner of the bill. The direct physical (almost 'ritualistic', in the lower courts' view) handing over of the promissory note to the drawee is not only not a prerequisite (in a situation where the bill is deposited with the court) for the drawee to be able to exercise effective control over the bill, but also makes no sense in terms of the purpose pursued by the requirement of handing over (tradition) of the transferred security, as set out in section 1103 (2) of the Civil Code.

In the opinion of the Supreme Court, the unambiguous wording of section 1103 (2) of the Civil Code makes it clear that the title to a security in the series is (as under the former legislation) transferred by endorsement and deed at the time of delivery. The contract constitutes the legal reason (title) for the acquisition of ownership, while the endorsement and delivery constitute the legal method (modus) for the acquisition of ownership. Even the new Civil Code



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does not require that the contract for the transfer of a security to a series be in writing.

The regulation contained in Section 1103 (2) of the Civil Code is mandatory and may not be derogated from (with effects on third parties) unless the law so permits (cf. Section 978 of the Civil Code). Since Section 1103 (2) of the Civil Code provides that the ownership of a security is transferred per order by endorsement and contract at the time of its delivery, and does not allow any exception - unlike the previous regulation contained in Section 17 (1) of the Securities Act - it is no longer possible to regulate the issue of transfer of a security differently after 1 January 2014.

A promissory note can therefore be transferred by endorsement even when it is deposited with the court. The transfer of a thing does not always have to be effected only by the physical handing over and taking over of the thing; the transferee may also acquire legal dominion over the thing in another way which (in accordance with the intention of the parties to the contract to transfer the thing) enables the transferee to have effective control over the thing and to be able to express a will to dispose of the thing as his own.

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.

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