



Legal update

February 2024

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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

Effectiveness of the DSA Regulation

As of 17 February 2024, the new European Regulation 2022/2065 on a Single Market for Digital Services and amending Directive 2000/31/EC (the "Digital Services Act") will be effective. The DSA is a regulation that primarily contains rules for assessing the liability of information society service providers for users' online content and regulates content moderation and risk assessment by service providers. As the DSA is a regulation, the obligations it sets out will be directly applicable without having to be translated into Czech law. At the same time, however, the Ministry of Industry and Trade has, in connection with the DSA, put a draft law on the digital economy and on amendments to certain related laws up for comment.

According to the DSA, the main addressees of the obligations are providers of information society services, in particular providers of intermediary services, which include hosting services and online platform services, as well as web hosting services, social networks, internet search engines and internet connection services. The DSA divides providers into several categories and then assigns different levels of obligations to each of them according to the scope of the services they provide.

Obligations for all intermediary service providers include the obligation to establish a single point of contact for direct electronic communication with supervisory authorities in Member States and the Commission, or, for example, to publish content moderation reports

Obligations for hosting services include, in particular, the obligation to establish a reporting and action mechanism to allow users to report illegal content. Hosting service providers must respond to any report of objectionable content and, in the event of the removal of such a post, also provide the creator of the post with a justification as to why it has been removed. Hosting services also have a new obligation under the DSA to notify the relevant authorities in the event of suspected criminal activity that threatens the life or safety of persons.

According to the DSA, online platforms (social networks, app stores, online marketplaces, travel and accommodation portals, etc.) are now obliged to set up an internal system for handling complaints and to allow users to appeal against the platform's decision to remove user content or, for example, to respond to notifications from so-called trusted whistleblowers. In contrast, the DSA Regulation prohibits online platforms from using so called "dark patterns", which are practices that intentionally or effectively substantially impair or limit a user's ability to make autonomous and informed decisions or choices. Other obligations relate to advertising transparency, whereby these platforms must show their users whether and why an ad is targeted at them and who paid for it. Similarly, the user must be able to clearly identify whether the content displayed is sponsored or promoted. The DSA prohibits platforms from targeting advertising to minors based on profiling, as well as targeting advertising based on sensitive personal information such as ethnicity, religion or sexual orientation.

Online marketplaces will now be obliged to apply the *know your business customer* principle (i.e. the marketplace may only allow users to offer their goods or services if it obtains contact and other necessary information from them). Providers of online marketplaces will have to design their online interfaces in such a way that users using the marketplace to sell can easily inform customers about the origin of the products or services they offer and indicate their logo or trademark. In addition, marketplaces will have to randomly check whether the products or services offered are offered in compliance with the law or, for example, inform consumers that a service or product they have purchased on the marketplace has been sold illegally (e.g. if it is counterfeit).

In particular, the very large online platforms and search engines must now assess the risks associated with their service and take measures to mitigate them. Such risk mitigation measures will then be subject to independent audits. Other new obligations include, for example, the obligation to keep an archive of advertisements, the obligation to set up a compliance unit in its organisational structure to monitor compliance with the DSA rules and the obligation to pay an annual monitoring fee to the European Commission



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Content moderation rules

Certain digital services (hosting and online platforms, including social networks) will now be obliged to put in place a mechanism for users to report to these services that they consider content posted on them to be illegal. Most major social networks already have this mechanism, but the DSA also requires them to inform the author of the content of any action taken in connection with the designation of content uploaded by them as objectionable. Users must therefore be told the reason why their post has been removed. According to the DSA, if a user believes that a post has been removed unfairly, he or she will have the possibility to appeal against the deletion of the post to the online platforms.

A separate public authority, the Digital Service Coordinator, will oversee whether digital services meet these and other obligations set out in the DSA in each Member State. This is also where users can complain if a provider fails to meet its obligations under the DSA. In the Czech Republic, the government has designated the Czech Telecommunications Office as the digital coordinator.

Given the very wide range of new obligations for online businesses, we recommend that all persons operating in this area assess whether the new rules under the DSA apply to them.

These rules may apply even where there are no giants in the provision of information society services. Indeed, in some cases, the DSA rules also apply to smaller businesses with websites, if they sell products or offer services on them without having to deal with the customer in person (as long as any form of user-generated content is allowed on the website).

News in case law

A Deathbed Gift

(Resolution of the Regional Court in Prague of 15 August 2023, Case No. 102 Co 96/2023)

On January 31, 2022, the testatrix entered into a deathbed gift (the "**Agreement**") with her daughter, the subject of which was a residential unit owned by her (the "**Apartment**"). In the Agreement, the testatrix expressly waived her right to revoke the gift for legal reasons. On 2 July 2022, the testatrix died, and her daughter had her ownership of the Apartment registered in the Land Registry pursuant to the Contract (with effect from 4 August 2022).

Subsequently, the District Court in Kolín, on 15 November 2022 by order of Case No. 20 D 727/2022-62 (the "**DC Order**"), included the Apartment both in the assets of the deceased and in her liabilities (as a liability for her daughter) when determining the normal value of the property and other assets of the deceased.

The Court of First Instance justified the inclusion of the apartment in the assets of the estate and the inclusion of the testatrix's obligation under the contract in the liabilities of the estate, both valued at CZK 1 500 000, on the grounds that the deathbed gift in respect of immovable property does not have translational effects and that therefore registration in the Land Registry was necessary for the transfer of ownership. The apartment was therefore still in the sole possession of the deceased at the date of her death and was therefore included in the assets of the estate and dealt with in the succession proceedings. The testatrix's obligation under the deathbed gift, i.e. the obligation to transfer the Apartment, was then included in the liabilities of the estate at the same value as the value of the Apartment.

The daughter of the testatrix appealed against this order, arguing that the Court of First Instance had incorrectly included the apartment in the assets of the estate, as it had been given by the testatrix to her daughter during her lifetime and that the deathbed gift should be regarded as a gift subject to the legal condition of the testatrix's death. According to the testatrix's daughter, the entry in the Land Register

is merely the completion of the deathbed gift (as provided for in the contract), i.e. after the condition precedent has been fulfilled. In her view, therefore, there was no need to wait for the conclusion of the succession proceedings before entering the deed into the Land Register. She also cited the incorrect inclusion of the value of the apartment in the liabilities and assets of the estate as a reason for the incorrect calculation of the notary's remuneration, since the basis of that remuneration, including the value of the apartment, was several orders of magnitude higher.

The Regional Court in Prague, as a Court of Appeal, found that a deathbed gift - as it follows from the provisions of the first and third sentences of Section 2063 of Act No. 89/2012 Coll., the Civil Code, as amended ("**the Civil Code**") - is generally treated as a devise. It is governed by the provisions on gift only if the donee accepts the gift and if the donor expressly waives the right to revoke the gift and issues a deed to the donee to that effect. A deed of gift does not in itself have the effect of vesting ownership in the donee. Where ownership of immovable property entered in a public register is transferred, the property shall be acquired by entry in such register.

Since the Contract complies with the requirements of the second sentence of § 2063 of the Civil Code, the conclusion is justified that the Contract must be considered not as a devise, but under the provisions on gift. The donee becomes the owner on the date of registration in the public register. In the present case, it was already established in the proceedings before the Court of First Instance that, pursuant to the Contract, the title to the Apartment was registered in the Land Registry in favour of the daughter with effect from 4 August 2022.

In the present probate case, although the Apartment belonged to the estate at the date of the testatrix's death, it subsequently passed to the ownership of the daughter by virtue of the Agreement and the registration of ownership in the public register made thereunder on 4 August 2022. Thus, at the time of the contested DC Order, the Apartment (and the obligation to 'make a gift' to the donee) did not form part of the estate and their value is not taken into account in determining the normal value of the estate.

The Regional Court in Prague concluded that **for the settlement of the testatrix's estate and the acquisition of the inheritance, the decisive factor is not the state that existed at the time of the testatrix's death, but the state of the estate that existed at the time of the decision on the inheritance** (at the time of the DC Order on the inheritance).

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