



Legal update

March 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

Amendment to the Act on selected measures against legitimisation of proceeds of crime and financing of terrorism

By 23 March 2024, the President of the Czech Republic must comment on the draft amendment to Act No.253/2008 Coll., on selected measures against legitimisation of proceeds of crime and financing of terrorism ("**Amendment**").

The primary objective of the Amendment is to implement the measures contained in the Action Plan to the Report on the Second Round of the National Risk Assessment of Money Laundering and Terrorist Financing, to eliminate selected shortcomings identified in the evaluation by the Moneyval Committee of the Council of Europe and, finally, to eliminate the shortcomings of Act No. 253/2008 Coll., the Act on selected measures against legitimisation of proceeds of crime and financing of terrorism ("**AML Act**"), which have manifested themselves in its application in practice.

The AML Act is one of the legal instruments regulating measures against the legalization of the proceeds of crime and the financing of terrorism, as well as certain rights and obligations of natural and legal persons in the application of these measures, aimed in particular at preventing the abuse of the financial system for these illegal activities.

The proposal itself regulates the following areas:

- ▶ the scope of persons who are subject to obligations under the AML Act,
- ▶ the possibility of not inspecting a client in cases where an investigation of a suspicious transaction could be frustrated is explicitly regulated,
- ▶ the upper limit of fines for persons responsible for breaches of the AML Act is increased,
- ▶ other amendments of a technical nature

Expansion of the circle of obliged persons

Currently, **lottery and bingo operators in the form of internet games** are not obliged persons under the AML Act. The new version of the AML Act includes the following among the obliged persons. According to the Explanatory Memorandum to the Amendment, the reason for their inclusion is the increased risk of misuse of the user account, which is set up as part of the registration for these gambling games, for money laundering.

Insolvency practitioners and restructuring administrator will also now become obliged persons. The new version of the AML Law introduces these professions among the obliged persons, mainly because they deal with the debtor's assets, which also include securities, bank accounts and cash. The competence of administrators thus includes by law their authority to dispose of other people's property. The value of the estate can be substantial, and the proceeds of crime can both be included in the estate and be used to acquire assets from the estate in the course of its monetisation

In the case of **dealers in precious metals and precious stones**, there will be a technical shift of these obliged persons from Section 2(2) to Section 2(1) to explicitly identify them as obliged persons.



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The possibility of not inspecting a client

At present, the AML Act does not contain an explicit provision allowing obliged persons not to apply certain elements of client control if there is a risk of tipping off the client. The Amendment creates a new requirement for financial institutions to take into account the risk of customer tipping when conducting customer identification and due diligence ("CDD") if they suspect that transactions are related to money laundering or terrorist financing. If the obliged person reasonably believes that by carrying out the identification and verification of that customer or potential customer, it may decide not to carry out a CDD, but in such a case it should also report the suspicious transaction to the Financial Analysis Authority ("FAA").

Increase in fines for persons responsible for breaches of the AML Act

Under the AML Act, an offence is committed by a natural person whose conduct is attributable to a legal person within the meaning of the Act on Liability for Offences and Proceedings thereon, which causes the obliged person to commit an offence under the AML Act.

The fine for offences caused by the actions of a natural person and attributable to a legal entity is currently capped at CZK 100,000. The amendment proposes to increase this maximum amount to CZK 1 000 000. In addition to the fine, a ban on the performance of the functions of a member of the statutory body or the performance of dependent work by a senior employee of any obliged person may also be imposed.

Effectiveness of the Amendment

The President of the Czech Republic must decide whether to sign the Amendment by 23 March. It can therefore be assumed that the Amendment may be published in the Collection of Laws in early April. The Amendment will probably come into force within a year at the latest.

News in case law

Loss of profit due to termination of contract negotiations

(Decision of the Supreme Court of 31.10.2023 in Case No. 23 Cdo 3191/2022)

During the course of the proceedings, the defendant was ordered by the district court to pay damages as a result of dishonesty (by unreasonable termination) in pre-contract negotiations for a construction contract.

The Court of Appeal agreed with the trial court that the defendant had acted dishonestly in the sense that it had terminated, without just cause, negotiations for the conclusion of the subject works contract, in which the parties had reached a point where the conclusion of the contract appeared highly probable.

However, the Court of Appeal held that the applicant's claim for compensation for loss of profit on the contract in question, which

the applicant would have received had the contract been concluded, was unfounded. The Court of Appeal held that the defendant was liable to the applicant only for the damage it had suffered as a result of the defendant's pre-contractual conduct. The loss of profit resulting from the failure to conclude the work contract could not be included in the damage thus suffered, since that compensation by the applicant was not causally linked to the defendant's conduct complained of.

The failure to conclude the contract cannot in itself be regarded as unlawful within the meaning of section 1729 of the Civil Code and cannot therefore be regarded as a cause of the damage.

The wrongful act is the termination of conduct without just cause, i.e. conduct that contravenes the principle of good faith. It is only in that conduct, and not in the failure to conclude the contract, that the cause of the damage suffered can be sought. That provision cannot therefore be understood as conferring a right to compensation for 'loss from the failure to conclude a contract', since there is no direct link between the breach of duty and that type of damage.

The loss of profit from a contract not concluded is therefore not causally linked to the termination of the party's conduct in concluding that contract without just cause within the meaning of Article 1729(1) of the Civil Code.

The Supreme Court held that merely because the defendant acted dishonestly in not concluding the contract and terminated the contract negotiations without just cause, the defendant was not obliged to conclude the contract and the damage claimed by the applicant could not be causally linked to the defendant's conduct in concluding the contract.

Costs of futile execution proceedings

(Ruling of the Constitutional Court of 8 November 2023 in case No. I. ÚS 2449/21)

The constitutional complaint can be described as the final stage of more than 20 years of litigation related to the "bankruptcy" of C.S. Fond.

In 1997, the Ministry of Finance ordered the compulsory transfer of the funds managed by C.S. Fond to the intervener. In 2014, the Supreme Court reversed the previous decisions of the lower courts and held that the complainant (the Ministry of Finance as defendant) was not liable for the damage in excess of 2 billion CZK that it was alleged to have caused to the intervener (as plaintiff). However, the complainant has already paid that amount to the intervener following the final judgment of the Court of Appeal.

Since the intervener refused to hand over the funds and withdrew its claim for damages, the complainant initiated further litigation. In that case, both the Court of First Instance and the Court of Appeal followed the previous legal opinion of the Supreme Court and upheld the applicant's claim. On the basis of their decision, the intervener agreed to repay the aforementioned amount of CZK 2 billion (the "principal"), but refused to pay default interest on the principal until the final resolution of the extraordinary remedies. The intervener's last extraordinary appeal,



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a complaint to the European Court of Human Rights, was rejected in 2019, but the intervener still failed to pay the interest.

The plaintiff challenged the Supreme Court's order with a constitutional complaint. In relation to the costs rulings, she stated that she considered it extremely unfair that she should be forced to pay "punitive" costs in excess of CZK 3.5 million if, after having previously succeeded on the merits of the case, she had proceeded to recover the claim in good faith in the correctness of the court decision (the enforcement order).

The plaintiff defended herself by reference to a previous decision of the Constitutional Court, which expressed the legal opinion that if a general court issues a materially unenforceable decision, which results in the subsequent execution proceedings being suspended, the execution court should in such a case explicitly consider whether the conditions for the application of Article 150 of the Civil Procedure Code (the possibility of not awarding compensation for costs according to the success in the case) are not present.

This decision, which the complainant used to defend herself, can be summarised by saying that, according to the Constitutional Court, if the State fails to ensure that the decisions of the courts are not enforceable, this cannot automatically imply fault on the part of the person entitled to the enforcement proceedings for the purposes of deciding on the compensation of the costs of the debtor. In such a situation, the ordinary court has the option of not awarding costs to the debtor.

The Constitutional Court notes, however, that a state authority is not a "standard" subject of law whose legitimate expectations

should be impermissibly interfered with in the event that a judicial decision issued in its favour by another branch of state power turns out to be unenforceable. Therefore, the preceding legal opinion does not apply in the case where the beneficiary is a public authority, since from a constitutional point of view it is not decisive which part of the public authority bears financial responsibility for the costs of the futile enforcement proceedings.

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