

# Legal Update

September 2017

## Weinhold Legal

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The information in this newsletter is correct to the best of our knowledge and belief at the time of going to press. Specific advice should be sought, however, before investment and other decisions are made.

For further information, please contact your usual partner/manager or:

#### Banking and Financial Services:

Pavel Jendrulek, Ondřej Havlíček

#### Mergers and Acquisitions:

Daniel Weinhold, Dušan Kmoch, Dalibor Šimeček

#### Litigation / Arbitration:

Milan Polák, Ondřej Havránek, Zbyšek Kordač

#### Information Technology and Intellectual Property:

Martin Lukáš, Jan Turek

#### Competition Law / EU Law:

Tomáš Čermák

#### Labour Law:

Milan Polák, Ondřej Havránek, Anna Bartůňková

#### Real Estate:

Pav Younis

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## Legislative amendments

### Enforcement Code amendment

On 16 August 2017, the Senate approved a bill amending the Enforcement Code at its 9<sup>th</sup> session. The President signed the bill into law on 4 September 2017. The amendment enters into effect the fifteenth day following its enactment.

As a result of this Enforcement Code amendment, a bailiff is now authorised to enforce a maintenance charge for a dependent child up to 26 years of age who is systematically preparing to study a future vocation by issuing an enforcement order to suspend the driving licence of the obligor (debtor). Originally, the bailiff was only authorised to issue an enforcement order to suspend a debtor's driving licence where the maintenance obligation for a minor child had already been enforced.

### Act on Compensation of Damages for Infringement of Competition Law

A New Act on Compensation of Damages for Infringement of Competition Law, which entered into force on 1 September 2017, was published in the Collection of Laws under No. 262/2017 Coll. on 18 August 2017. The law transposes EU Directive No. 2014/104/EU of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union.

The proposed law is primarily intended to make it easier for any natural or legal person to claim damages caused by anti-competitive behaviour.

The law introduces the rebuttable presumption of damages in the event of a restriction on competition in the form of a cartel. In proceedings for damages caused by anti-competitive behaviour, it will be incumbent on the accused to prove no damage has occurred. The law contains a special statute of limitation with the explicit exclusion of some Civil Code provisions concerning limitation periods.

In damages proceedings, a court is bound by an Anti-monopoly Office or European Commission ruling that a restriction on economic competition has occurred and by whom it was committed.

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## Recent case law

### Work injury suffered on a business trip

*(Czech Supreme Court Decision 21 Cdo 2685/2016 of 5 May 2017)*

In its judgment, the Czech Supreme Court reaffirmed that the decisive factor in assessing whether an employee suffered an accident at work is whether the employee incurred the injury in the course of activity objectively performed for the employer in its substance, location and timing. Not all activities performed by an employee during a business trip can be considered work-related. The course of a business trip – from beginning to end – falls into several segments that cannot be assessed identically for the relationship to the performance of work tasks or in direct connection with them.

In the given case, the purpose of the employee's business trip to a ski area was to (help) strengthen and reinforce business relationships with clients; the employer left the choice of the manner in which these work tasks should be performed at the discretion of individual employees. However, given that the main purpose of the activity was skiing (taking into account the trip's timing and location), and because the employer also provided (paid for) multi-day ski passes for employees who took the business trips, it is clear the employer expected the employees to help fulfil the objective of the activity by, among other things, taking customers to the slopes. In this context, the skiing during which the employee suffered an injury cannot be considered a private (individual) "leisure activity" or the subject of a personal hobby.

The fact the employee was not obliged to ski and "faced no penalty for refusing to ski" is not material. Having regard to the foregoing circumstances and subject to the above conditions, what is decisive is that the employee who took customers to the slopes was, from an objective point of view, performing activity for the employer's benefit, i.e. carrying out work tasks for the employer.

### The court's omission of a creditor in the debt relief process

*(Czech Supreme Court Resolution 29 NSČR 50/2015 of 30 March 2017)*

In this case, the insolvency court had failed to deal with a debtor's creditor – a known creditor based in an EU Member State – in the debt relief process. The omitted creditor appealed the resolution in which the insolvency court had ruled the debtor should be exempt from paying any outstanding claims to creditors included in the debt relief. The insolvency court ruled the exemption should also apply to creditors whose claims were not taken into account in the insolvency proceedings, creditors who had not filed claims in the insolvency proceedings and guarantors and other persons who had right of recourse against the debtor for such claims.

The Appeals Court stressed that the debtor had properly identified the omitted creditor as an unsecured creditor in the petition for debt relief. According to the Appeals Court, the debtor cannot therefore be held culpable for the fact the claim of the omitted unsecured creditor was not made in time (i.e. at the time of approval of debt relief or fulfilment of the repayment schedule), included in the repayment schedule and satisfied in the debt relief process.

The Appeals Court further stated that the fact the omitted creditor had filed its claim with the insolvency court after the insolvency court had issued a resolution "on the discharge of debt relief" against which no appeal may be lodged, and with which the insolvency proceedings were completed, has no impact on the correctness of the contested resolution. This is true irrespective of the fact the insolvency court failed to deal with the creditor in compliance with § 430 of the Insolvency Act as it would have dealt with a known creditor based in a European Union Member State. The creditor appealed this Appeals Court decision at the Court of Final Appeal.

In the case in question, the Czech Supreme Court expressed the view that if it becomes apparent after the final termination of insolvency proceedings (after the court has acknowledged the discharge of debt relief by the debtor) that a debtor's creditor was not dealt with in the same manner as a "known creditor" pursuant to § 430 of the Insolvency Act as a result of a failure on the part of the insolvency court, this does not constitute a circumstance preventing the insolvency court from issuing a resolution in which the debtor, having met all obligations in a due and timely manner according to the approved debt relief method, is exempted from paying the remainder of its debts (including debt corresponding to the unsatisfied claim of such "known creditor"). The Czech Supreme Court stated in conclusion that a breach of European Union law shall not prejudice the liability of the State for damage caused to a "known creditor".

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We hope you will find *Legal Update* to be a useful source of information. We are always interested in your opinion about our newsletter and any comments you may have regarding its content, format and frequency.

Please e-mail your comments to [nikola.faltova@weinholdlegal.com](mailto:nikola.faltova@weinholdlegal.com) or fax them care of Nikola Faltová to +420 225 385 444, or simply contact your usual partner/manager.