Legal update

November 2020

Weinhold Legal

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News in legislation

Law on screening foreign investments

On 13 November 2020, the Chamber of Deputies approved in the third reading a draft law which aims to transpose into the Czech legal framework Regulation (EU) 2019/452 of the European Parliament and of the Council, which establishes a framework for the screening of foreign direct investments into the Union.

The draft law is intended to create a mechanism for screening foreign direct investments which will serve to (i) monitor potentially risky capital flows into the CR, (ii) screen suspicious transactions and for (iii) the possible restriction of those transactions that are evaluated as dangerous. It should be noted that at the moment, none of the aboved mentioned activities is systematically performed in the Czech Republic.

The draft law distinguishes between two groups of investments and thus introduces two regimes

The first group includes foreign investments into the most sensitive fields defined in Section 7. A foreign investor that would want to invest into those fields would have to obtain prior state permission. This includes foreign investments into a target person that:

- carries out production, research, innovation or secures the life cycle of military material in accordance with the act governing external trade with military material, or into the target object though which the above mentioned activities are done,
- operates a part of critical infrastructure as defined by an authorized office,
- is an administrator of an information system of a critical information infrastructure, administrator of a communication system of a critical information infrastructure, administrator of an information system of a fundamental service or an operator of a fundamental service, or
- develops or produces goods specified in attachment IV of Regulation (EC) 428/2009 which sets up a Community regime for the control of exports, transfer, brokering and transit of dual-use items, or into the target object, through which the above mentioned goods are developed or produced.

The second group includes all other investments which could endanger the safety of the state or internal or public order (Section 8). While it will be possible to conclude such investments without a prior permit, during the first five years from their conclusion the state is entitled to revisit these transactions and screen them. To ensure legal certainty, a foreign investor can voluntarily ask for state confirmation that the state has no objections against the investment (called „consultations"); the obligation to submit a proposal for a consultation is determined in Section 10 for the foreign investments that are made into the subjects with license for a radio or television broadcast or into publishers of the most influential periodic press.

Another important element, that together with the screening mechanism is intended to contribute to the security of state's safety interests regarding the capital flows from abroad, is to improve the awareness of relevant subjects about possible risks. Necessary information and recommendations should reach the possible recipients through various communication channels – via specialized websites and social networks, during targeted trainings, but also seminars for public and providing consulting services

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Apart from operating the verifying mechanism, the Ministry of Industry and Trade will be responsible for calling and organising regular meetings of state organs in order to exchange information about current trends and risks.

The draft law will take effect the first day of a third calendar month after the promulgation. If no problem occurs during the rest of the legislative process, the law will become effective at the beginning of spring 2021.

Newly published case law

The validity of a provision not governed by law

(Judgment of the Supreme Court file no. 31 Cdo 684/2020 of 9 September 2020)

In this dispute, the contractor (plaintiff) demanded a payment of 977.589,- CZK with accessories from the defendant for labour based on a contract for work. According to art. V (11) of this contract for work „in case of a payment delay longer than 5 days, the supplier withdraws from the contract for work". As the orderer failed to pay some of the payments in due time, in accordance with the above mentioned article, an automatic withdrawal of the contractor took effect and thereafter, the contractor demanded payment of the amount due through action.

The court of first instance partially uphold the action and declared that the withdrawal from the contract for work is valid.

Following appeal of both the plaintiff and the defendant, the appellate court modified the judgment of first instance court as the appellate court did not agree that the contract for work had terminated as a result of the withdrawal. The appeal court noted that neither party had reasoned with the withdrawal and that under the legal framework there is no such thing as „automatic withdrawal". An automatic withdrawal could not be considered based on the art. V (11) of the contract for work; such a provision would have to be „far more explicitly formulated so there could be no doubt".

The Supreme Court nullified the judgment of the appellate court and sent the case back to the lower court for further proceeding as the Supreme Court came to conclusion that appeal court had not considered the matter correctly. Besides other things, the Supreme Court noted that all legal acts are subject to legal interpretation. The appeal court did not attempt to interpret article V (11) and declared that the parties had not agreed on the automatic withdrawal. If only because of this, the appellate court's conclusion according to the Supreme Court, is at least preliminary. Beside this, the Supreme Court noted that „**the fact itself, that the legal framework did not foresee certain provision, does not mean that parties could not agree on such provision and that the parties could not be obliged to follow it. Only when a certain provision is in conflict with the meaning and purpose of a legal norm, it is possible to consider its validity (if the meaning and purpose of the legal act requires).**"

Appeal in a case of compensation for a delayed flight

(Judgment of the Constitutional Court file no. IV.ÚS 1922/2020 of 8 September 2020)

The plaintiff demanded at the District court in Prague that the defendant be ordered to pay 600 EUR with accessories based on the legal title of lump sum damages for a delayed flight in accordance with Regulation (EU) No 261/2004 of the European Union and of the Council of 11. 2. 2004 which establishes common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights („regulation 261/2014").

The District court upheld the lawsuit as it came to a conclusion that the plaintiff's flight had been delayed for 80 minutes which caused the plaintiff's almost one day delay to his final destination (Montreal). The defendant appealed this decision, but the Municipal court in Prague affirmed the judgment.

The Supreme Court dismissed the defendant's appeal based on Section 239 (1) letter c) law No 99/1963 Coll. Civil Procedure Code („Civil Procedure Code") as the verdict concerned payment not exceeding 50 000 CZK and does not fall within consumer contract law, where this limit does not apply, but is a claim arising from regulation 261/2004.

Therefore, the defendant decided to file a constitutional complaint against the judgment of the Supreme Court. The defendant claimed the Supreme Court wrongfully defined the conditions of admissibility of its appeal. According to its opinion, the Constitutional Court had previously stated that as a condition for the dismissal of an appeal in Section 238 (1) letter c) of the Civil Procedure Code is formulated by a vague term „relations from consumer contract" it is necessary to interpret this term in favour of the dispute's parties so access to the Supreme Court is granted. As for the character of the claim arising from the regulation 2611/2004, according to the defendant, the Constitutional Court noted that even though the claim has its legal base in a EU regulation, the condition of its constitution is the existence of a contractual relation (consumer contract) between the passenger and the air carrier.

With reference to its previous judgments, the Constitutional Court granted the constitutional complaint and nullified the judgment of the Supreme Court. The reasoning of the Constitutional Court can be summarised in the following manner: **in a dispute concerning a claim based on regulation 261/2006 where the party is a natural person as a consumer and concerning payment not exceeding 50 000 CZK, an appeal is not inadmissible under Section 238 (1) letter c) of the Civil Procedure Code as it falls within the consumer relation. If the Supreme Court dismisses such appeal, he violates the applicant's right to judicial protection declared in art. 36 (1) of Charter of Fundamental Rights and Freedoms and art. 6 (1) of the European Convention of Human Rights**.