



Legal update

June 2024

Weinhold Legal

Contents

Legislation News

Amendment to the Act on Transformations

Case Law

Decision of the CJEU on a reference for a preliminary ruling from the Municipal Court in Prague

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.

Banking, Finance & Insurance:

Daniel Weinhold, Václav Štraser, Ondřej Tejnský

Competition Law / EU Law:

Tomáš Čermák

Dispute Resolution:

Milan Polák, Zbyšek Kordač, Anna Bartůňková, Michaela Koblasová, Michal Švec

ESG – Environment, Social, (corporate) Governance:

Daniel Weinhold, Tereza Hošková

Family Office:

Milan Polák, Zbyšek Kordač, Michaela Koblasová

Insolvency and Restructuring:

Zbyšek Kordač, Jakub Nedoma

IT, Media & Telecommunication:

Martin Lukáš, Jakub Nedoma, Michal Przewczek

Labour Law:

Eva Procházková, Anna Bartůňková, Daša Aradská, Ondřej Tejnský

Mergers and Acquisitions:

Daniel Weinhold, Václav Štraser

Personal Data Protection:

Martin Lukáš, Tereza Hošková, Daša Aradská

Public Procurement & Public Sector:

Martin Lukáš, Tereza Hošková, Monika Švaříčková

Real Estate:

Pav Younis, Václav Štraser

Regulatory and Government Affairs:

Daniel Weinhold

Start-ups, Venture Capital and Cryptocurrency:

Pav Younis, Martin Lukáš, Jakub Nedoma, Michal Švec, Ondřej Tejnský

Legislation News

Amendment to the Act on Transformations

On 7th June 2024, the President of the Czech Republic signed a government bill approved by the Parliament amending Act No. 125/2008 Coll., on Transformations of Commercial Companies and Cooperatives, as amended, and other related acts (the "**Transformations Act**" and the "**Amendment**"), which will soon enter into force upon publication in the Collection of Laws and International Treaties of the Czech Republic.

The primary purpose of the adoption of the Amendment is to comply with the obligations of the Czech Republic arising from the legislation of the European Union, namely the obligation to transpose Directive (EU) 2019/2121 of the European Parliament and of the Council of 27th November 2019, which, in the parts subject to the Act on Transformations, amended the previously effective legislation contained in Directive (EU) 2017/1132 (the "**Amendment Directive**"). It should be added that despite the minimum number of amendments submitted during the legislative process, the deadline for transposition of the Amending Directive was not met, as it expired on 31st January 2023.

According to the explanatory memorandum to the Amendment, the content of the Amendment includes amendments to the Act on Transformations pursuing the main objectives of the Amendment Directive, namely:

- ▶ clarifying the rules on cross-border transformations, simplifying and streamlining the cross-border merger process, reducing the costs for those involved in cross-border transformations, including reducing their administrative burden;
- ▶ strengthening simplified and accelerated procedures for certain simpler types of cross-border transformations;
- ▶ strengthening the protection of the legitimate interests of certain affected groups of persons connected with the persons involved in the transformation, in particular the shareholders, who should have the right to withdraw from the company in certain circumstances, the creditors, who should have the right to be given sufficient security in certain circumstances, and the employees, in particular in the area of the right to information and consultation and the right to participate in the company's corporate bodies; and
- ▶ Promoting the use of digital tools at all stages of cross-border transformations, so that all legal requirements can be met online, without the need for face-to-face contact with public authorities.

Some of the above-mentioned objectives of the Amending Directive have already been more or less reflected in the existing wording of the Act on Transformations; the changes introduced by the Amendment further reflect the above-mentioned objectives in Czech legislation, as the Amendment in particular:

- ▶ normative establishment of a new type of transformation, i.e. a division by spin-off, under which, according to the provisions of Section 243 (1) (c) of the Act on Transformations as amended by the Amendment, the company being divided does not cease to exist and the spin-off part of its assets is transferred in exchange for a share or shares (i) to one or more newly established companies, then it is a so called spin-off with the creation of a new company (ii) to one or more existing companies, then it is a so-called spin-off by merger. The difference between this newly regulated type of transformation and the classic demerger by spin-off lies mainly in the fact that, while in the case of a demerger by spin-off the shareholders of the demerged company acquire the share of the successor company, in a demerger by spin-off the share of the successor company is acquired directly by the demerged company;



Legal update

June 2024

Weinhold Legal

- ▶ **elimination of the obligation to appoint an expert** for the valuation of the assets by the court, since according to the Amendment the expert will be chosen from the list of experts directly by the company concerned. In this area, the set of cases in which it will not be necessary to carry out an expert valuation at all will also be expanded, which will simplify and speed up the conversion process and also reduce its financial intensity;
- ▶ **simplification of the information obligation**, when instead of the previously mandatory publication of the notice for creditors in the Commercial Bulletin, it is now sufficient to publish the notice for creditors, employees and shareholders by depositing it in the collection of documents of the Commercial Register;
- ▶ **modifying the rights of creditors to the provision of sufficient security**, which is referred to as sufficient security in the wording of the Amendment, by shortening the time limit for creditors to exercise this right from the current 6 months to 3 months;

The effectiveness of the Amendment is set for the 30th day following the date of its publication in the Collection of Laws and International Treaties of the Czech Republic, and therefore the Amendment should enter into force during the summer of this year.

Case Law

Decision of the CJEU on a preliminary question raised by the Municipal Court in Prague

(CJEU judgment of 16th May 2024 in Case C-695/22)

The factual basis of the present case was that Fondee a.s., which carried out the activity of an investment intermediary in the Czech Republic within the meaning of Section 29(1) of Act No.256/2004 Coll., on Capital Market Undertakings ("CMMU"), was fined by the Czech National Bank in its decision of 18th January 2021 for transmitting 407 orders of its customers to a securities dealer established outside the Czech Republic between 7th October and 27th December 2019.

Fondee a.s. did not agree with the imposition of the fine and therefore lodged an appeal against the CNB's decision with the CNB Bank Board, which rejected it by its decision of 18th March 2021. Fondee a.s. did not agree with this decision either and therefore brought an action before the Municipal Court in Prague ('the MCP') seeking annulment of the decision rejecting the appeal.

There was no dispute between the parties as to whether Fondee a.s. provided investment services to customers residing or having their registered office outside the Czech Republic, the dispute between the parties was mainly on the question whether the entities covered by Article 3(3) of MiFID II (i.e. entities exempted from the regime of free movement of services within the meaning of MiFID II), including Fondee a.s. may, by reference to Article 56 TFEU, which provides for a prohibition of restrictions on the free movement of services between EU Member States, participate in the provision of such investment services by transmitting instructions.

In the CNB's view, the exclusion of investment intermediaries from exercising the right to free movement of services under MiFID II extends to any involvement of such intermediaries in the provision of such services, and therefore, in the CNB's view, a Member State may prohibit such intermediaries from transmitting their customers'

instructions to investment service providers established in another Member State.

In these circumstances, the MSP decided to stay the proceedings and to ask the CJEU the following two preliminary questions:

1. "Does a person who is exempted from the scope of this Directive under Article 3(1) [of Directive 2014/65] and does not benefit from the free movement of services within the meaning of Article 34 of this Directive under Article 3(3) of this Directive have the right to the free movement of services enshrined in Article 56 [TFEU] if he does not himself provide investment services on the basis of a single European passport to a client established in another Member State, but receives an investment service from a foreign entity using a single European passport or is otherwise involved in the provision of the investment service to the final client (intermediates it)?"
2. "If the answer to the previous question is positive, does EU law, in particular Article 56 [TFEU], preclude legislation prohibiting an investment intermediary from transmitting customer instructions to a foreign securities dealer?"

The CJEU then stated that the essence of the preliminary questions referred was in fact whether the relevant wording of MiFID II must be interpreted as meaning that, even in relation to persons whom a Member State has exempted from the scope of that directive, MiFID II precludes national legislation from prohibiting such persons from transmitting instructions to investment firms in another Member State.

On the above question, the CJEU stated that "Article 3(1)(c)(i) of Directive 2014/65 must be interpreted as meaning that persons who have been exempted by a Member State from the scope of that directive are entitled to transmit the instructions of customers resident or established in that Member State for execution to investment firms established in another Member State and authorised for that purpose under that directive by the competent authority of that other Member State, and therefore precludes national legislation prohibiting such transmission."

That decision therefore held that the restriction contained in Section 29(4) ZKPT prohibiting the transmission of instructions to investment firms established in other Member States does not comply with EU law, and therefore it can be expected that the CJEU's decision will be reflected in future amendments to the ZKPT.

© 2024 Weinhold Legal
All rights reserved

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, s.r.o. 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.

Please send your comments to: Filip.Hainz@weinholdlegal.com or contact the person you are usually in touch with. To unsubscribe from publications: office@weinholdlegal.com