# Legal update

May 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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## Updates in legislation

### Regulation on Artificial Intelligence (AI Act)

The text of the Regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence ("the Regulation") was approved by the European Parliament on 13 March 2024 and the preparation of the long - awaited Regulation is now nearing completion. This is a truly ground-breaking Regulation that will have an impact not only on the operation of companies using AI for their business activities, but also on the lives of all of us.

The Regulation is a key part of the EU's Digital Single Market Strategy. The Regulation was built on a Commission document called the AI White Paper. This White Paper outlined policy options to achieve the twin objectives of promoting the uptake of AI and addressing the risks associated with some uses of this technology. The regulation is designed to achieve these objectives. The regulation is a very sturdy system of legislation that has the potential to have a huge global impact, as it is one of the first efforts to regulate the use of AI.

The primary objective of the Regulation is to ensure the proper functioning of the internal market by establishing harmonised rules, in particular as regards the development, marketing and use of products and services using AI technologies or provided as stand-alone AI systems in the EU. The preamble to the Regulation states that AI is a rapidly evolving group of technologies that can contribute to a wide range of economic and social benefits across a spectrum of industries and social activities. However, the Regulation recognises that, depending on the circumstances of its specific application and use, it may create risks and cause harm to public interests and rights protected by Union law.

In its introductory clauses, the Regulation defines an AI system as *"software that is developed using one or more of the techniques and approaches listed in Annex I, and that can generate outputs such as content, predictions, recommendations or decisions affecting the environment with which they interact for a given set of human-defined goals"*. It then categorises these AI systems according to their risk as follows:

i. **Systems with unacceptable risk** - this category includes AI systems that will be prohibited from being used after the Regulation takes effect. These include, for example, AI manipulating human behaviour, AI based on so-called social scoring or systems designed for remote "real-time" biometric identification of persons in public places for law enforcement purposes;

ii. **High risk systems** - AI systems falling into this category will be able to be used, unlike the above mentioned ones, but only after meeting a wide range of obligations set out in the Regulation, e.g. the requirements for input data quality, the existence of detailed technical documentation, automatic logging of AI steps, AI transparency or human supervision of AI. According to Annex III of the Regulation, high-risk AI systems include, for example, AI systems intended for use as safety components in the management and operation of road transport and water, gas, heating and electricity supplies, or AI systems intended for use for the purpose of assessing students in educational or training institutions and for the assessment of examinees normally required for admission to study in educational institutions;

iii. **Low or minimum risk systems** - AI systems falling into this group will be assessed as low risk and will only be subject to some of the obligations set out in the Regulation, such as the transparency obligation where even these systems will have to notify users that their data is being processed by AI, as in the case of chatbots;

iv. **Systems not falling under the Regulation** - as the name of this residual category implies, this is AI that does not fall under the regulation of the Regulation at all and therefore the obligations set out in the Regulation do not apply to it at all.

The Regulation also provides for the establishment of effective, proportionate and dissuasive penalties for breaches of the Regulation's obligations. The Regulation provides for a certain corrective to take into account the interests of small providers and start-ups and their economic viability.

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In conclusion, it should be noted that the Regulation will apply to manufacturers based outside of the EU, in addition to EU Member States, if they are manufacturers of technology that is supplied to the EU. The impact of the Regulation is already being likened to the effects of the General Data Protection Regulation (GDPR), however, how it will actually affect everyday lives and business relationships will have to be seen until it takes effect.

## Judicature

### Beginning of the time limit for filing an action for clarification on matters discussed at the General Assembly

*(Judgment of the Supreme Court of the Czech Republic of 29 February 2024, Case No. 27 Cdo 1535/2023)*

The judgment of the Supreme Court of the Czech Republic of 29 February 2024, Case No. 27 Cdo 1535/2023, concerned a situation where a shareholder submitted a request for an explanation of one of the items of the general assembly before the general assembly. However, at the general assembly held on 31 May 2019 (the "**General Assembly**"), the company's board of directors did not provide the shareholder with an explanation and did not decide on his request for an explanation. Instead, the Chairman of the Board of Directors instructed the Board of Directors to provide an opinion on the request for an explanation by 12 June 2019, whereupon the Shareholder left the General Assembly, thereby rendering the General Assembly quorate and a substitute General Assembly had to be convened.

At the alternative general assembly held on 11 July 2019 (the "**Alternative General Assembly**"), the shareholder - on the same agenda item as at the first general assembly - reasserted the right to clarification of identical matters. The Company's Management Board and the Chairman of its Supervisory Board refused to provide explanations at the Substitute General Assembly. Following this, on 8 August 2019, the shareholder filed a lawsuit with the court to obtain an explanation of the matters discussed at the General Assembly (the "**Lawsuit**").

The merits of the proceedings in question were whether the shareholder filed the Action in time within the meaning of Section 360(3) of Act No. 90/2012 Coll., on Commercial Corporations (hereinafter referred to as the "CCC"), according to which the court decides on the shareholder's action to provide an explanation, but only if this right is exercised before the court within one month of the general meeting at which the explanation was refused, or from the refusal or failure to provide the information within the time limit pursuant to Section 358(1) of the CCC, while the court does not take into account the right exercised later.

The Court of First Instance agreed with the shareholder's view that the Statement of Claim was filed in time, however, on appeal filed by the company, the Court of Appeal reversed the decision of the Court of First Instance and held that the Statement of Claim should have been filed within 1 month of the General Assembly, which it was not, pursuant to Section 360(3) of the Act. The shareholder decided to defend against the decision of the Court of Appeal by appealing to the Supreme Court of the Czech Republic.

Finally, the Supreme Court of the Czech Republic agreed with the shareholder that the Application was filed within the time limit, since **the time limit under Section 360(3) of the CCC will only start to run from the General Assembly at which the shareholder's request should have been considered**, which in this case is the Alternative General Assembly due to the loss of quorum at the General Assembly. The Supreme Court of the Czech Republic held:

*"Where the law speaks of a general assembly at which an explanation was refused (or of the general assembly in section 358(1) of the Act), it means the general assembly at which the matter in respect of which the explanation was sought was discussed. Before the matter is discussed, it cannot be certain that the company will not provide the information. Nor does it make any difference if (as in the present case) the board of directors of the company refuses to provide an explanation before the general assembly. Indeed, until the vote on the matter on which the explanation was requested, the board of directors may change its mind and provide the requested explanation. Therefore, the preclusive period for bringing an action under section 360(3) of the CCC can never start to run before the general assembly meeting at which the matter on which the explanation was requested was discussed.*

*... However, the Court of Appeal overlooked (or implicitly found irrelevant) that the matter on which the explanation was sought was not discussed at the first general meeting due to the loss of its quorum. It was only discussed at the replacement general meeting and the time limit for bringing an action under section 360(3) of the C.C.C. could therefore not have started to run until the date of the replacement general assembly (11 July 2019). Whichever time it started to run at any of the times enumerated in Section 360(3) of the Companies Act, the period for filing the suit in the present case could not have expired earlier than one month from the date of the substitute general assembly (11/8/2019)."*

### Legal fiction of an employment relationship of indefinite duration

*(Judgment of the Supreme Court of the Czech Republic of 27 February 2024, Case No. 21 Cdo 637/2023)*

In the judgment of the Supreme Court of the Czech Republic of 27 February 2024, Case No. 21 Cdo 637/2023, the Supreme Court of the Czech Republic dealt with an employment dispute between an employee and an employer. The parties had previously concluded a fixed-term employment contract, which was extended four times (by agreements of 28 February 2013, 30 June 2015, 17 May 2017 and 30 June 2018) until 31 May 2020. On 19 December 2020, the parties entered into a further agreement to amend the employment contract (the "Agreement"), which included an arrangement for the Employee's involvement in the project identified in the Agreement from 1 January 2020 to 31 December 2022. The Employee considered that the Agreement extended his employment for an indefinite period. However, the Employee was subsequently served with a notice by the Employer that the period agreed in the Agreement to extend the employment contract would expire on 31 May 2020 and that the Employer did not anticipate any further extension of the employment contract. The employee did not agree to this and, after further negotiations, the parties concluded another part-time employment contract on 3 June 2020.

The employee applied to the court for a declaration that the (original) employment relationship between the employee and the employer is still in force, since it was extended indefinitely by the Agreement, and also sought a declaration in the petition of the action that, since the employment relationship has been repeatedly extended, the conclusion of the agreement on the extension of the employment relationship of 17 May 2017 should have violated Section 39(2) of Act No. 262/2006 Coll, of the Labour Code ('the Labour Code'), according to which the fixed-term employment relationship may be extended only twice, whereby the provisions of Article 39(5) of the Labour Code should have been activated at the same time and the employment relationship should have been extended for an indefinite period.

The trial court disagreed with the employee's conclusions and dismissed his claim. The Court of Appeal also disagreed with the employee and upheld the decision of the Court of First Instance. The employee

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therefore decided to defend himself by appealing to the Supreme Court of the Czech Republic, which upheld the previous decision and held that the employee's appeal was not well-founded.

The Supreme Court of the Czech Republic, in the reasoning of its judgment of 27 February 2024, Case No. 21 Cdo 637/2023, commented on the employee's claim that the employment relationship was extended for an indefinite period of time pursuant to Section 39(5) of the Labour Code. The Supreme Court of the Czech Republic stated that in order for an employment relationship to be extended for an indefinite period of time under Section 39(5) of the Labour Code, two conditions must be met:

i. the employment relationship must be terminated in violation of Sections 39(2) to 39(4) of the Labour Code and at the same time
ii. the employee must indicate in a qualified manner his or her willingness to work for the employer for an indefinite period of time.

Thus, the effects of Section 39(5) of the Labour Code do not come into effect automatically, but must be invoked by the employee before the expiry of the agreed period of employment. If the conditions are fulfilled, the legal fiction that the employment relationship was agreed for an indefinite period of time then arises. If these conditions have been met, the employee may invoke the protection of the competent court, which will then issue a declaratory decision, provided that the moment at which the legal fiction is triggered is not determined by the legal force of the decision, but by the date on which the conditions of the legal fiction have been met, i.e. the breach of the conditions for the conclusion (extension) of the fixed-term employment relationship and the timely delivery of the employee's notice that he insists on continued employment.

If the employee does not express his/her will in the manner described above, the employment relationship ends at the expiry of the agreed period, even if there is a violation of Sections 39(2) to 39(4) of the Labour Code. The Supreme Court of the Czech Republic further stated that the fact whether and which contract was concluded by the parties after the date on which the legal fiction of an employment relationship for an indefinite period should have occurred is also irrelevant for the assessment of the claim under Section 39(5) of the Labour Code.