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The promised end to the coronavirus is not (yet) in sight, so even after almost two years we briefly mention new measures related to the spread of COVID-19 disease at the beginning of our last Business Bulletin of this year. Although coronavirus is still the most interesting topic for the media, we cannot ignore other, equally important topics that also affect or will affect our daily functioning. That is why we present a summary down below of the most important information concerning the new Building Act (including the current developments related to the introduction of new government, which opposed the original version), information related to the change in the functioning of the data box system and we also mention the amendment to the Electronic Communications Act which, among other things, quite significantly affects the existing regulation of so-called cookies.

CURRENT ANTI-EPIDEMIC MEASURES

In connection with the renewed increase in the number of active cases of coronavirus SARS-COV-2, the (previous) government has again declared a **state of emergency for the period from 26 November to 25 December 2021** (according to the new government, it is not going to be extended for now), and other general emergency measures have been taken affecting various areas of daily life. On the other side, as the vaccination progresses, some restrictions are relaxed now for persons who are vaccinated or have had recovered from the disease and are considered to be free of infection. For the period of Christmas holidays and the end of the year, mainly the following measures have been taken:

- restriction of opening hours for stores over 200 m^2 – 24 December opened till 12:00 hours, closed on 25 December;
- specific New Year's Eve gatherings regulation – from 29 December till 2 January only 50 people may attend;
- gatherings outside of the New Year's Eve regulation may be held for 100 people (if they are moving) and for up to 1 000 sitting people;
- from 29 December till 2 January the maximum of 4 people may share a table in a restaurant, outside of this period maximum of 6 persons;
- restriction of opening hours of certain establishments ends on 25 December at 23:59 hours (along with the termination of the state of emergency);
- duty of respiratory protection in all indoor areas, only a respirator or other device with a filtration efficiency of at least 94 % (for example some of the nano-masks) is an adequate protection;
- in the first two weeks of the new year, pupils and school staff will be tested twice a week.

Non-infectiousness must be proven with a certificate of full vaccination or of past disease in the last 180 days in order to attend gatherings over 20 people, visit restaurants, cinemas, theaters and being provided some services. Compliance with the conditions by being tested with a negative result (either by a PCR or antigen test) is no longer recognized – with the exception of people under 18, people with contraindication to vaccination, and people who have started their vaccination process, who can prove their non-infectiousness with an RT-PCR test with a negative result no older than 72 hours. Event organizers, restaurateurs and other service providers are now obliged to verify non-infectiousness with a QR code scanner.

Along with the restrictions, **business support programs** were also announced (reintroduced or extended) – specifically the Antivirus program, Covid 2021, Covid-Uncovered Costs and the Compensation Bonus.

Further development of the measures will depend on the current spread of the disease, in particular the spread of the new omicron mutation.

We monitor all emergency and crisis measures for you and keep you updated on our website randls.com/coronavirus.

NEW BUILDING ACT

On 29 July 2021, **Act No. 283/2021 Coll., the Building Act**, was published in the Collection of Laws and is expected to **come into force on 1 July 2023**.

The Ministry of Regional Development considers the main benefits of the new Building Act to be the **speeding up and efficiency of building procedures, ensuring compliance with deadlines, digitization and overall modernization,** which should result in an inflow of investments and also ensure competitiveness. The negotiation of a **record amount of EU subsidies**, a large part of which is to be used for building projects, is also seen as a major positive, and the award of which by the EU also depended on the adoption of the new Building Act.

The Act is divided into thirteen parts and related annexes, and contains both substantive and procedural regulation of the building law. Within the substantive part, changes have been made to the distinction between buildings – buildings will now be classified as **small, simple, reserved and other.** Only small buildings will not be subject to the permitting process. The Act also affects and amends a number of other regulations; at the same time, Act No 284/2021 Coll. was issued amending certain acts in connection with the adoption of the Building Act.

The biggest change brought by the new law is considered to be the **establishment of a unified system of state building authorities** headed by the Supreme Building Authority. The Ministry of Regional Development expects this change to solve the basic problem of systemic bias and interference of local governments in decision-making on building permits. It should also put an end to bureaucratic "ping-pong" – the new law introduces the so-called appeal principle, which stipulates that the appellate body will have to make a final decision on the matter. Another expected positive is a uniform interpretation of building regulations and a unified procedure in building proceedings. However, critics of this change point to the fact that the procedure will become more distant from the citizens, as it will be decided by officials tens of kilometers away who are not familiar with the local situation.

The number of civil servants should also be reduced, which will be made possible in particular **by the digitalization of both land-use planning and building permit procedures, including the introduction of an electronic file**. A so-called Builder's Portal and a Building Procedure Integration Platform will be set up, through which it will be possible to take digital actions vis-à-vis the building authority and the authority concerned, submit applications, enter data and documents, etc. The building authority will register all actions and enter all documents into the Building Procedure Register, within which the building authority and the authority concerned will deliver documents to each other.

Probably the most needed change is **the simplification and speeding up of the building procedure**. The new law introduces a **basic time limit of 30 days** for decisions concerning simple buildings and 60 days in other cases. This time limit can be extended by 30 days if justified, if on-site inspection is necessary or if the case is particularly complex. In clear cases, an accelerated procedure may apply in which a decision may be taken as a first act in the procedure within 30 days. If an EIA (Environmental Impact Assessment) is necessary, the building authority shall take a decision within 120 days of the date of commencement of the procedure. A very important point is the provision that introduces the **fiction of consent of the authority concerned** – if the authority concerned does not express its opinion within the time limit, it is deemed to have made a decision by consent and unconditionally. However, this provision does not apply to cases where it is necessary to have an EIA or a binding opinion from a nature conservation authority. The whole procedure **should not take more than 345 days, including appeal and review** (375 days in the case of an EIA).

Simplification of the building procedure can also be seen in the unification of the decision-making practice of the building authorities. The new state system will deal with all cases in a unified manner and a Specialized Building Authority will operate within the new structure to deal with dedicated buildings such as motorways and airports. Simplification then also consists of **integrating some previously separate permits and opinions into a single decision on building permits.** The decision will be the result of the cooperation of several officials dealing with each area, but the applicant will no longer have to "visit" various authorities himself. Only the opinions of the Agency for Nature and Landscape Protection, the state conservation authority, the fire brigade and several others will remain separate.

The law also introduces more stringent rules **for the removal and additional permitting of so-called illegal buildings.** It will now be possible to **retrospectively permit a building only if the builder acted in good faith**

and did not knowingly violate the law. Another novelty is the provision stating that if an additional building permit is not applied for within a set period of 30 days from the commencement of the proceedings, the building cannot be permitted ex post. Until now, the municipality has been responsible for demolishing illegal buildings, which has proved to be complicated because municipalities usually do not have sufficient resources to proceed effectively in these matters. The cost of demolishing illegal buildings will now be transferred to the state. The Ministry of Regional Development hopes that this uncompromising regulation will quickly discourage builders from constructing buildings illegally. The greatest emphasis on destruction will be placed on buildings that violate the public interest, i.e. contravene the zoning plan, environmental protection or conservation.

Changes will also be made to the **spatial planning**. There will be a **uniform process and non-binding deadlines** for the production of planning documentation at all levels. The possibility of making changes to spatial planning documentation and regulatory plans on the initiative of authorized persons and authorities has also been amended in more detail. The documentation will be produced in an electronic version and in a uniform fashion. The three largest cities – i.e. Prague, Brno and Ostrava – will be allowed to issue their own building regulations, which may differ from the national implementing regulations to the building laws. Such delegated regulations may relate to detailed requirements for the delimitation of land, requirements for the siting of buildings and technical requirements for buildings.

Last but not least, the Act deals with the regulation of **planning agreements between municipalities and developers**. The content of a planning agreement may include, for example, an obligation of the municipality to provide the developer with assistance to implement the project, to take steps to issue planning documentation or, on the contrary, to refrain from changing the planning documentation. The developer may then undertake to participate in the construction of public infrastructure or other public utility structures or to assume the costs of constructing such structures.

Although the new Building Act has not yet come into force, the new government has publicly declared that it plans to amend parts of it. According to the bill submitted to the Chamber of Deputies as the Parliamentary Press No. 63/0, the expected reorganisation of the state administration will be divided into two stages, with the Supreme Building Authority being established first as the central administrative authority, together with the Specialized and Appellate Building Authority, which will be responsible for the so-called reserved buildings. However, until 1 July 2023, the Supreme Building Authority will be an organizational unit of the Ministry of Regional Development, mainly to facilitate the transition of competence and to allow sufficient time for the establishment of the institutional structure of the Supreme Building Authority. In the next stage, regional building offices should be established as administrative authorities with limited territorial competence, to which the existing competence of municipal authorities in matters of building regulations will be completely transferred. Their establishment is proposed to be postponed to 1 January 2024, in view of the need to transfer the agenda, systematization of work and service positions and creation of the whole system of administrative offices.

On the other hand, the areas in which no changes should be made are, in particular, the acceleration and simplification of the entire building procedure, including the preservation of the fiction of consent in the absence of a decision within the set deadlines, the creation of a fully digital building procedure, the integration of individual statements and opinions into a single permit, strict conditions for additional permits and the removal of illegal buildings, and greater flexibility in spatial planning.

AMENDMENT TO THE ELECTRONIC COMMUNICATIONS ACT

The Act No. 374/2021 Coll. introduced a significant amendment to Act No. 127/2005 Coll., on electronic communications, which, among other things, implements the so-called European Electronic Communications Code. The most important changes will come into effect on 1 January 2022 and, from a practical point of view, the most important are the changes to the so-called cookies and the new restrictions on the use of telemarketing.

Cookies

An "opt-in" mode (instead of the current "opt-out" mode) is now being introduced for the use of cookies. Therefore, the website user's prior active consent to their use will be required (passivity will not be sufficient), and cookies and other technologies cannot be used without consent (in particular advertising and analytical cookies). The exception to this will be those cookies that are necessary for the functioning of the website itself or other services explicitly requested by the user (e.g. tools used solely to add items to

the shopping cart and complete the order process) – the user does not have to consent to their use and they will be used by the website operator anyway.

In view of the above changes, it is particularly necessary to modify the existing cookie bars and prepare a (new) consent text including all necessary information for websites that do not comply with the new regulation. Businesses should also not forget the related information on the processing of personal data and revise the wording in this context.

Telemarketing

Even in the case of telemarketing (i.e. in particular telephone calls used by entrepreneurs to offer their products), the opt-in regime will now apply. Therefore, if individuals wish to be contacted with such offers, they will have to declare this clearly in advance (notify their communication service provider) by way of consent. This is a significant change to the existing regulation which completely turns the current practice inside out – until now, it was the individuals who had to actively declare to their communication service provider that they did not wish to be contacted for telemarketing purposes. In making this change, it was assumed that no one wanted to be bothered by such calls. However, it will also depend on how the new regulation will be implemented in real life, the extent to which compliance with the new legislation will be enforced and sanctioned by the authorities, and last but not least, how businesses themselves will approach the new regulation. In particular, it will be a question of how they will obtain consent from individuals – one cannot expect them to simply give up this communication channel.

AMENDMENT TO THE DATA BOX ACT

The comprehensive amending Act No. 261/2021 Coll., amending certain acts in connection with further computerization of procedures of public authorities, has resulted, among other things, in significant changes in the Act No. 300/2008 Coll., on electronic acts and authorized conversion of documents (in which, among other things, data boxes are also regulated). The most important changes are summarized in the following text.

Changes effective from 1 January 2022

With effect from the beginning of 2022, the amendments to the Act will revolutionize the delivery of documents between private parties. Compared to the current legal regulation, according to which delivery between natural persons who are not entrepreneurs, entrepreneurial natural persons, sole proprietors and legal entities is possible only if the person has requested that documents be delivered to his/her data box by these persons (so-called private or postal data messages), **delivery between private persons will now be possible unless the data box holder himself/herself makes it unavailable.**

In addition, a fiction of delivery will apply to these cases. This method of delivery means that after 10 days have passed since serving the message to the data box, the message is automatically deemed to have been delivered, regardless of whether or not the addressee has actually viewed it (of course, if the authorized person logs in to the mailbox within those 10 days, the message will be delivered at the moment of logging in). Until now, this fiction has only been applied to messages served to the data box by public authorities, but it should now also apply to the delivery of private data messages.

Changes effective from 1 January 2023

A novelty, which will come into force one year later, concerns the automatic establishment of a data box. Until now, data boxes have been automatically set up only for public authorities, legal entities registered in the Commercial Register, attorneys, tax advisors and insolvency administrators. Now, a data box will be automatically set up for **all legal entities**, including those registered, for example, in the register of associations, foundations or the register of associations of unit owners. The same applies to **all natural persons who are engaged in business** and for whom a data box will be established on the basis of their registration in the relevant evidence or registry. It will not be possible to deactivate these automatically set up data boxes even upon request.

Data boxes will also be established for all natural persons who use an electronic identification device issued under a qualified electronic identification system. This includes all persons who use the so-called NIA ID, a bank identity, a chip card or token for creating a qualified electronic signature (QES), or an ID card with an activated contact electronic chip. In this case, it will be possible to request that a data box created in this way be made inaccessible; however, if an individual fails to do so, it will, in conjunction with the extension of possible delivery described above (including the fiction of delivery), be a very significant change in the delivery of documents between private entities.

BILL ON WHISTLEBLOWER PROTECTION

The now former government presented the Chamber of Deputies with a bill on protection of reporting persons (Parliamentary Press No. 1150) implementing the Directive (EU) 2019/1937 of the European Parliament and of the Council on the protection of persons who report breaches of Union law.

The report definition

The bill defines report not only as a piece of information on breach of EU law, but broadens the definition to information on possible infringements with characteristics of an offence or a crime as well. Such broadening of the definition was expected and most of the member states have taken this path when implementing the Directive.

The reporting person

According to the bill, the term reporting person means a natural person, who learned about the possible unlawful conduct in connection with their work or other similar activity, which includes inter alia exercising rights and performing obligations arising from works, supply, and service contracts, or contracts on other similar performance. Thus, the reporting person may be **not only an employee reporting unlawful conduct of their employer, but also a supplier, who is a natural person (self-employed), or an employee of a supplier**. Determining the pool of possible reporting persons is closely connected to the duty of the employer, or more precisely of the obliged entity under Article 8 of the bill, to enable the reporting person to use an internal reporting system. The system should be accessible to any potential reporting person, including for example a supplier's employees, which could be somewhat problematic in practice. However, the effort to motivate the widest possible range of people to use internal reporting systems is a common practice in countries with an established tradition of whistleblowing regulation, in particular with regard to the possibility of eliminating potential unlawful conduct and adopting remedial measure without authorities being engaged.

Protection of the reporting person

Another aspect that we consider worth highlighting is the protection of the whistleblower. If the whistleblower's report complies with other requirements (not knowingly false, made in one of the foreseeable ways, etc.), the protection against retaliation may also apply to the supplier, or their employees who report the other party's unlawful conduct. The list of retaliation in both the Directive and the bill is not exhaustive, and therefore essentially any conduct in connection with the whistleblower's work or other similar activity that is triggered by the notification and that may cause harm to the whistleblower may be considered retaliation. In the case of contractors, this may include, in particular, termination of a contract by notice or withdrawal. Moreover, the whistleblower does not have to prove the link between the report and the retaliation; the burden of proof is on the entity whose conduct was the subject of the report. Along with the bill, an amendment to the Code of Civil Procedure (Parliamentary Press No. 1151) was introduced, which provides that, in cases of retaliation, the defendant must prove that the adoption of the alleged measure was objectively justified by a legitimate aim and constituted a proportionate and necessary means to that end. It should be added that if a reason other than the giving of the report, such as a breach of a contractual obligation by the supplier, is met (and possibly proven) for terminating the contract, the protection against retaliation will not apply.

As this is a bill that has not yet passed through parliamentary committees, we will continue to monitor the legislative process in the newly elected Chamber of Deputies and any changes to its wording for you.

CASE LAW

Proof of the legal title of the controller for all personal data processed for him by the processor – decision of the Supreme Administrative Court of the Czech Republic in the case No. 7 As 146/2021-26

The Supreme Administrative Court rejected the company's (complainant's) cassation appeal against the decision of the Municipal Court in Prague, in which it dismissed the complainant's administrative action against the decision of the Office for Personal Data Protection for lack of merit. In the decision of the Office in question, the complainant was ordered to delete personal data relating to persons in respect of whom it was a controller and for the processing of which it did not provide adequate legal title. In its judgment, the Supreme Administrative Court ('SAC') upheld the conclusion of the Office that the complainant is in the position of a controller also in relation to personal data processed for it by separate intermediaries, as it had determined the purpose of such processing.

The Office ordered the complainant to delete the personal data of natural persons for the processing of which it did not provide legal title under Article 6 of the GDPR. In particular, the personal data were obtained through the complainant's tied agent (an associate providing and promoting services on behalf of the complainant), who approached a potential client on the basis of data which the complainant was unable to provide proper legal title to obtain (the tied agent introduced herself on behalf of the complainant in a telephone conversation with the data subject). The complainant subsequently brought an action before the Municipal Court in Prague. In its administrative action against the Office's decision, the complainant stated that it disagreed with the Office's legal assessment that it was in the position of a controller in the context of the processing of personal data carried out by its tied agents. The complainant based its defense on the argument that it is not the complainant who is responsible for the incorrect processing of personal data, but its collaborators as tied agents who are independent business entities. However, the Municipal Court in Prague disagreed with this view and dismissed the complainant's administrative action. The subsequent cassation complaint lodged by the complainant with the SAC was also rejected. In its reasoning, the SAC stated that even if the processor (in this case the tied agent) is at fault in its activities, the ultimate responsibility for the correct processing of personal data lies with the controller for whose benefit it is acting.

The specification of the relationship, duties and responsibilities between the controller and the processor is often the cause of frequent misunderstandings, not least because it is essentially a cooperation between two business entities. However, the GDPR considers the controller, i.e. the one who determines the purposes and means of the processing of personal data, to be the responsible party. The processor is then the one who works for the controller.