# LEGAL ALERT

**SELECTION OF LEGAL UPDATES**

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## Do not include hidden clauses in consumer contracts!

The Supreme Court has confirmed that a contractual clause excluding a consumer's right to withdraw from a distance contract cannot be taken into account if it is **formulated in an unclear manner, concealed under a misleading heading, or incorporated into an unrelated part of the text with which it blends.**

The decision follows a long-standing line of case law and at the same time confirms that even an otherwise standard contractual provision may, under specific circumstances, be deemed ineffective and thus incapable of producing the intended legal effects.

### 1. Factual background of the case

The case concerned a real estate agency providing brokerage services for the purchase of real property.

The real estate agency concluded a distance agreement with a consumer regarding the purchase of real property. Although the documentation stated that the buyer did not have the right to withdraw, this statement was strategically placed in a final section entitled **"And a Few Instructions and Statutory Obligations at the End..."**, which primarily contained information provided in accordance with anti-money laundering (AML) legislation. The information on the (non-)existence of the right of withdrawal was addressed only very briefly so that it became lost within the more extensive AML-related text.

The Supreme Court described this arrangement as a **"textbook example of a hidden clause"** that may easily escape the consumer's attention. At the same time, it stated that such conduct cannot be regarded as fair dealing and **does not enjoy legal protection**.

The decision once again emphasizes that in the area of consumer law, not only the content of the contract itself is decisive, but also the manner in which it is drafted, the systematic placement of individual provisions, and their context within the contractual text.

Practice further shows that, particularly in the case of distance contracting of services, entrepreneurs sometimes tend to place provisions that are less favorable to consumers in less prominent parts of the contract. This approach, however, leads to such provisions being considered **ineffective** vis-à-vis the consumer, meaning that they do not produce the intended legal effects.

*(Decision of the Supreme Court of the Czech Republic, file no. 33 Cdo 79/2024, dated 29 January 2025)*

## European financial data in one place

New legislation in the field of capital markets introduces the groundbreaking project of the **European Single Access Point (ESAP)**. This digital portal will serve as a central hub for free and easy access to financial and non-financial information on companies and investment products across the entire European Union.

For capital market participants (issuers, investment funds, or banks), this marks the end of fragmented reporting.

The new legal framework introduces requirements for the standardization of formats and the addition of identification metadata (e.g. the LEI code) for statutorily defined information. In the Czech environment, the **Czech National Bank** will act as the main collection point responsible for transmitting data to the European system.

The principal benefit is a radical increase in transparency. The aim of ESAP is not to

create new disclosure obligations, but to unify the form of existing ones so that they are comparable and accessible to investors from any Member State. This change is intended to reduce information barriers that have so far limited cross-border investment due to the lack of clarity of national registers.

The entire system will be rolled out gradually in three phases between **2027 and 2030**, with a key part of the national legislation entering into force as early as **10 July 2026**. For companies, this means the need for timely technical preparation for the new method of data transmission so that their information transparency meets modern European standards.

*(Act No. 258/2025 Coll., on amendments in the area of capital markets in connection with the establishment and operation of ESAP)*

## Breakthrough Supreme Court Judgment: Payment of Interest Does Not in Itself Necessarily Constitute Preferential Treatment

In a recent judgment, the Supreme Court of the Czech Republic refined the interpretation of the conditions under which certain performance may be considered **"preferential treatment"** in insolvency proceedings.

The decision concerns situations where a debtor who is already insolvent pays agreed interest on a loan or credit to its creditors. For creditors, this is a key ruling that prevents insolvency administrators from automatically challenging standard interest payments merely because the debtor was in a worse financial situation at the time of payment. By this step, the Court significantly strengthened legal certainty in ordinary commercial and private-law obligations.

In the case at hand, the debtor was in a state of insolvency but nevertheless paid the creditor, in two installments, interest on a loan exceeding CZK one million. The insolvency administrator sought the return of these funds to the insolvency estate, arguing that the debtor did not receive any "new" consideration for these payments at that moment and that the creditor was therefore unfairly preferred over others. Lower courts initially upheld the administrator's claim, reasoning that consideration must always be provided simultaneously with the payment, which is technically impossible in the repayment of an old debt.

The Supreme Court rejected this rigid interpretation and laid down a clear rule: **when assessing the fairness of a payment, the nature of the entire relationship is decisive, not the isolated moment of payment**. A loan agreement is mutually balanced—the creditor provided the funds "in advance" and the interest constitutes their agreed price. The time gap between the provision of funds and the payment of interest is inherent to a loan and cannot be held against the creditor. Accordingly, if a debtor pays interest for which it has already previously received equivalent value (the loaned funds), this does not constitute unlawful preferential treatment of the creditor.

In conclusion, it can be stated that **standard credit and loan relationships enjoy enhanced legal protection**. The decision prevents situations in which honest creditors would be penalized for the debtor's proper performance of its obligations, even if the debtor delayed filing for insolvency. The Court emphasized that creditors cannot be sanctioned for the procrastination of the debtor's statutory bodies. This case law is a clear signal that **properly agreed and over-time performed remuneration for the use of capital is fully defensible under insolvency law**.

*(Judgment of the Supreme Court of the Czech Republic, file no. 29 ICdo 15/2024, dated 28 January 2026)*

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Should you have any inquiries or require legal consultation, please do not hesitate to contact us at info@sirokyzrzavecky.cz