

Press Release

Czech companies and entrepreneurs have voted the increase in legal certainty in the field of real estate and public registers the Act of the Year 2013

Prague, 19 May 2014 – This year's edition of the Act of the Year and Flop of the Year survey now has its winners. In the Act of the Year category, entrepreneurs and experts most appreciated the recodification of private law: new public registers that should increase legal certainty in the field of real estate and public registers of legal and natural persons. By contrast, the Senate Ordinance referring to an amendment in the tax legislation in respect of the recodification of private law was seen as the worst legislative achievement of the year by entrepreneurs. The fifth year of the survey was organised by Ambruz & Dark Deloitte Legal in cooperation with the survey's partners. Almost 200 significant Czech business firms took part in the voting.

The entrepreneurs who were invited to participate in the survey decided the winners of the Act of the Year and the Flop of the Year categories between 14 March and 9 May 2014 by voting at www.zakonroku.cz, based on the nominations of the nomination committee. The committee was made up of selected lawyers with various legal specialisations and other Czech business personalities. The goal of the survey is to foster discussion among Czech entrepreneurs, politicians and experts on the quality of the legal regulations adopted in the past year and on their impact on the Czech business environment as well as the quality of the legal environment in the Czech Republic in general.

"Neither of the two topics that gained the most votes was appreciated by entrepreneurs for the first time. The recodification of private law already received very good scores last year, and this time its accompanying legislation on public registers of real estate, corporations and natural persons was also appreciated. The entrepreneurs anticipate an increase in legal certainty and in the efficiency of state administration. Also, the currently most criticised topic – the late-adopted and poor-quality tax legislation – has appeared several times before," commented Tomáš Babáček from Ambruz & Dark Deloitte Legal, the chairman of the survey's organisational committee. *"Another legal achievement the entrepreneurs greatly appreciated, surprisingly perhaps, was state interference in the case of the market failure of a specific sector – state interference in certain conditions of providing telecommunication services in this case. I see this as a certain sign of abandoning the glorification of the invisible hand of the market from the nineties, and a call for the need for responsibility in business and for regulations created by entrepreneurs themselves in order to prevent the state from interfering,"* added Tomáš Babáček.

"I believe the survey has been contributing to improvements in the Czech business environment for years now, as it provides feedback to lawmakers from those who are most affected by the implementation of the legal regulations they produce," added Vladimír Ambruz, an Ambruz & Dark Deloitte Legal partner.

The Act of the Year Survey 2013 Results

Act of the Year 2013 – Best legislative achievement for the business environment		%
1.	The recodification of private law: new public registers	32.4 %

2.	State interference in the case of market failure (regulation of telecommunication operators)	24.1 %
3.	International cooperation in investigating tax evasion (agreements on the exchange of information in tax matters)	14.8 %
4.	Improved insolvency regulations	14.8 %
5.	Support of the functioning of the EU internal market (resolving consumer disputes online)	13.9 %

Flop of the Year 2013 – worst legislative achievement for the business environment		%
1.	Poorly and late I: Tax legislation	33.3 %
2.	Poorly and late II: Tax on the acquisition of real estate	25.3 %
3.	Inefficient legislative process lacking concept (the Public Procurement Act)	19.5 %
4.	Much ado about (unfortunately) nothing: the strongly-publicised struggle to improve corporate transparency	11.5 %
5.	Blanket repressive regulation (the alcohol trade)	10.3 %

“The winner of the Flop of the Year category, the worst legislative achievement of the year for the Czech business environment, is, quite as expected, Senate Ordinance No. 344/2013 Coll., on the amendment of tax legislation with respect to the recodification of private law. The Ordinance amended some key acts and was adopted just before the end of 2013. Most entrepreneurs were therefore kept waiting until the last moment to see how they would have to adapt their systems and what taxes they would have to pay from certain transactions. Also the form of the ordinance seemed problematic, as well as the extent of the proposed changes. Up until today, some of the changes introduced remain problematic in practice,” noted Radka Mašková, a director in Deloitte’s tax function and a member of the Act of the Year 2013 Nomination Committee.

“It’s nice to see that this year, the good legislative achievements include more legal regulations created by the Czech state administration and not only by the EU, as was the case last year,” Štěpán Holub, a partner of the Holubová advokáti law firm and a member of the Act of the Year 2013 nomination committee, commented on the results.

The following legislative achievements were nominated in the Act of the Year 2013 survey:

Act of the Year category

1. The recodification of private law: new public registers

Act No. 256/2013 Coll., on the Real Estate Cadastre (Cadastral Act)

Act No. 304/2013 Coll., on Public Registers of Legal and Natural Persons

Author: The Czech Geodetic and Cadastral Office, the Ministry of Justice

Well-designed accompanying legislation to the new Civil Code acts governing public registers on the basis of material publicity. A significant increase of legal certainty in status matters and real estate transactions. New information obligations of the cadastre. Possibility of recording a whole range of new real estate rights (such as rental rights, tenancy, construction rights, further provisions, trust fund administration, or the possibility of renouncing the right to compensation of damage to your plot of land). Unification of two laws concerning the real estate cadastre since 1992 and the unification of title registers. Unification of recording all legal persons in private law in the Court Register. A significant speeding up of the register agenda by enabling direct recording in the register, performed by a notary, and by enabling suggestions to be submitted through a data box. Despite difficult conditions resulting from the fall of the government and the dissolution of the Parliament, both the laws were adopted in time and avoided the worst amendments made by MPs.

2. International cooperation in investigating tax evasion (agreements on the exchange of information in tax matters)

Agreement between the government of the Czech Republic and the Guernsey government on the exchange of information in tax matters and other similar agreements with the Isle of Man, the Republic of San Marino, the British Virgin Islands, the Cayman Islands, the Kingdom of Denmark, the Kingdom of Saudi Arabia, and the Republic of Panama (communications of the Ministry of Foreign Affairs Nos. 1/2013 Coll. Int. Tr., 3/2013 Coll. Int. Tr., 4/2013 Coll. Int. Tr., 6/2013 Coll. Int. Tr., 90/2013 Coll. Int. Tr., 14/2013 Coll. Int. Tr., 42/2013 Coll. Int. Tr., 91/2013 Coll. Int. Tr.)

Author: The Government of the Czech Republic

International cooperation, including new bilateral agreements on the exchange of information in tax matters, is the right track to solving a large part of tax evasion, although the Czech Republic should be even more active and support multilateral agreements on information exchange with all countries, in particular within the EU and the OECD. These provisions help balance out the disadvantages that small companies face because they do not exploit the benefits of tax havens (inappropriately-low tax rates or financial secrets). Restricting tax evasion will help stop the increase (or possibly achieve a decrease) in tax rates while preserving (or increasing) the total collected tax.

3. State interference in the case of market failure (regulation of telecommunication operators)

Act No. 214/2013 Coll., amending the Act on Electronic Communications

Author: Group of MPs (Jan Husák, Ludmila Bubeníková, Václav Cempírek, Jaroslav Eček, František Laudát, Pavol Lukša)

The amendment places a limit on the contractual fee for the premature termination of a contract (to a maximum of 1/5 of the remaining monthly fees); it also introduces the obligation to inform the customer of automatic renewals of the contract, along with some other information obligations. This Act reminds us that the state is responsible for governing the market if the market fails. It is also a reminder that entrepreneurs can efficiently prevent state interference by applying self-reflection and increasing their own quality standards.

4. Support of the functioning of the EU internal market (resolving consumer disputes online)

Regulation (EU) No. 524/2013 on online dispute resolution for consumer disputes

Author: the European Commission, the General Directorate for Health and Consumer Protection

The permanently-increasing number of online transactions brings about risks, in particular of complicated access to out-of-court resolutions of cross-border disputes. The European Online Dispute Resolution Platform has the aim of providing better consumer protection to EU citizens and at the same time increasing the level of trust in the EU single market and in online shopping and sales. Although one of the main priorities of the EU is the unification of the internal market, it remains fragmented, which impedes the strengthening of competitiveness and economic growth.

5. Improved insolvency regulations

Act No. 294/2013 Coll., amending the Insolvency Act and the Act on Insolvency Administrators

Author: the Ministry of Justice

A number of positive changes made in an economically-sensitive legal area, based on a careful practice analysis, and prepared in cooperation with experts from the S22 group for insolvency law within the Ministry of Justice provide an example of the right way to create legislation. The newly-introduced possibility of discharging debt for natural persons, a common debt discharge for married couples, lowered limits for the reorganisation of an enterprise, transparent accounting by insolvency

administrators, solution of the problematic relationship between seizure and insolvency proceedings, and a sensitive alignment with the new Civil Code.

Flop of the Year 2013 category

1. Poorly and late I: Tax legislation

Senate Ordinance No. 344/2013 Coll., on the amendment of tax legislation with respect to the recodification of private law

Author: Ministry of Finance

The Ordinance includes over a thousand amendments on two hundred and twenty-three pages, amending 40 Acts. It is a mixture of changes that were necessary as a result of the new Civil Code (NCC), and changes that have no connection whatsoever to this recodification (for example the dividend taxation issue). The original draft Act was presented to the Parliament only in late April 2013: only eight months before the NCC entered in force, but more than a year after the NCC became valid. Following the dissolution of the Parliament and the voting down of the draft by the Senate, it was presented to the Senate again in September as an Ordinance and in this form was passed by the Senate at the beginning of October. It was finally passed by the Parliament on 27 November, followed by a legislation vacation period of 33 days, including Christmas. An extreme example of how disorganised and unforeseeable tax legislation can be.

2. Poorly and late II: Tax on the acquisition of real estate

Senate Ordinance No. 340/2013 Coll., on the tax on the acquisition of real estate

Author: the Ministry of Finance

By passing the Act on the Tax on the Acquisition of Real Estate, as a result of which the seller (and not the “acquirer”) remained the payer, not only a wording “flop” has been created, but also an unnecessary legislative process that did not improve the current situation, rather the opposite. The possibility of cancelling a tax that is an unnecessary burden on the tax administration with no real macroeconomic significance in generating income for the state budget, remained unused, and what is more, new regulations have been added, not facilitating the transparent determination of the tax rate, and unclear for interpretation.

3. Much ado about (unfortunately) nothing: the strongly-publicised struggle to improve corporate transparency

Act No. 134/2013 Coll., on Certain Measures to Improve the Transparency of Joint Stock Companies

Author: the Ministry of Justice

If the aim was to ensure that only companies with clearly-identifiable end owners take part in public tenders, it did not work out. Although the Act cancels physical bearer shares for Czech joint stock companies, this will not ensure that Czech public contracts are awarded to companies with known end owners only: they will be given to companies with visible direct shareholders, but the end owners may, for example, be connected offshore shareholders. In addition, the whole issue could have been solved by amending the respective Acts, which would have been more suitable from a legislative structure point of view, and not by a separate regulation. This is an example of a regulation that probably served media and political purposes rather than solving the relevant problem.

4. Blanket repressive regulation (the alcohol trade)

Act No. 307/2013 Coll., on the mandatory labelling of alcohol

Author: the Ministry of Finance

Introducing high fees for outstanding tax sums represents an inappropriate obstacle especially for small and medium-sized entrepreneurs wishing to enter the market. The lawmakers worked on the automatic assumption that entrepreneurs would try to breach their obligations, instead of applying hard enough punishments to the ones who really do. A similarly unreasonable obstacle is the obligation of the persons responsible for labelling alcohol to install expensive video surveillance systems.

5. Inefficient legislative process lacking concept (the Public Procurement Act)

Senate Ordinance No. 341/2013 Coll., amending the Public Procurement Act

Author: the Ministry of Regional Development, Senator Pavel Eybert

The amendment postpones or cancels some newly-introduced institutes that were meant to contribute to better control and expertise when granting public contracts. Due to the insufficient implementation of new rules, the original concept is abandoned and the rules repeatedly changed, which leads to a significant decrease in legal certainty and a large increase in legislative process costs. Another aggravating circumstance is that the amendment has been passed as a Senate Ordinance, which should be kept for emergency cases. In addition, senators have passed a proposed amendment to this amendment, raising the limits for small public projects to the level before 2012, without prior expert discussion.

Partners of the Act of the Year 2013 survey

The Association of Small and Medium-sized Enterprises and Crafts of the Czech Republic, the American Chamber of Commerce, the British Chamber of Commerce, the Business for Society platform, the C.H. Beck publisher, the Beck-online legal registration system, the CSR Forum, the CZECH TOP 100 association, the Czech Lease and Finance Association, the Economia publisher, the Centre for Economic Research and Graduate Education – Economics Institute (CERGE-EI), the German Chamber of Commerce, the Czech Institute of Directors (CiOD), the Pro Bono Alliance, PubliCon, the Union of Towns and Municipalities of the Czech Republic, Transparency International, the Association of In-House Lawyers of the Czech Republic, and the publisher Wolters Kluwer Czech Republic.

In the previous edition of the Act of the Year 2012 survey, experts voted the Tools Improving the Functioning of the Internal EU Market (Interconnection of Commercial Registers) to be the best legislative achievement of the year for the Czech business environment. The Transfer of Responsibility from the State to Private Entities (Unreliable VAT Payers) was chosen as the Flop of the Year.

Rules of the Act of the Year 2013 survey

The rules state that any Czech or EU generally-binding legal regulation that became effective in the past year may be nominated in the survey: fundamental laws, acts, ministry regulations, government regulations, or directives and regulations of the EU. Also, international treaties with an impact on the Czech business environment can now be nominated.

In the Flop of the Year category, voters may also choose legal regulations that were cancelled in the past year, in particular as a result of a decision of the Czech Constitutional Court or the Court of Justice of the EU. The initiators or anybody who contributed significantly to the regulation's being adopted are stated as the authors of these nominations.

For more information, visit www.zakonroku.cz.

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