



## **CZECH REPUBLIC DEVELOPMENTS 2008/2009**

From the international perspective, 2009 is important for the Czech Republic as it took over the EU presidency from France in January. The first three months of the presidency saw some positive points, mainly for the endeavor to prevent protectionism from spreading within the EU as part of measures to fight the global economic crisis. Unfortunately as a result of a successful no confidence vote in the government by the Czech parliament in March, the Czech Republic has now lost the remainder of its opportunity to pursue any agenda as president of the EU.

The legislative agenda in 2008/2009 was primarily focused on harmonization of domestic law with that of the EU. In the business environment the most significant changes were adoption of new Criminal Code, Electronic Communication Act, amendments of Civil Procedure Act, Land Registry Act and Bank Act.

### **Criminal Code**

The 2009 novelization of Criminal Code (Act. No.271/2008 Coll.) is primarily focused on the implementation of international treaties. The changes include a controversial lowering the age of criminal liability from 15 to 14 years.

New legislation also classifies several new crimes, including:

- stalking
- doping in sport
- negligence towards animals

The Code introduces means of alternative punishments, such as in home detention, for some cases of soft crime, such as minor thefts. In these cases the individual would be permanently monitored via a bracelet with a chip during the sentence period.

One of the most discussed aspects of the new law is a general ban of the publishing of personal data of crime victims and ban on publishing information from recorded police wiretaps. Critics call this censorship and an attack on the freedom of the press. Under the new legislation, crime victims have stronger protection as regards their private data being published. However, critics point out that the new law protects perpetrators of crimes as well.

### **Electronic Communication Act**

New rules for communication with courts and other state agencies have been introduced. The Electronic Communication Act (Act No. 300/2008 Coll.) makes the use of “Data Boxes” obligatory for all companies and other legal entities listed in the Companies Register. The Data Boxes will be created and administered the Ministry of Interior. Effective July 1<sup>st</sup> 2009 all courts, administrative agencies and other state agencies will use Data Boxes as the preferred form of delivery of decisions, summons and other official communications and as the prevailing form of communication among state agencies.

Attorneys are obliged to apply for a Data Box no later than 2012.

### **Amendment of Notary Act**

A 2009 amendment of the Notarial Act (Act Nr. 358/1992 Coll) provides for establishment of a new central electronic archive for data concerning all concluded marital agreements. This central archive will not be public and is to be used solely for purposes of inheritance proceedings managed by notaries. The original legislation proposed creation of a public archive, but this was after emotional public debate.

### **Civil Procedure Code**

Pursuant to several 2008/9 Amendments to the Civil Procedure Code (Act. No. 99/1963 Coll.) new rules for presenting evidence, delivery of documents, small claims procedures, use of electronic payment orders were implemented.

- Judicial payment orders in electronic form have been incorporated into the Civil Procedure Code alongside the traditional paper form judicial payment order. The aim is to facilitate use of the judicial payment orders in cases of *undisputed receivables*, which typically include telecommunications fees, utility charges, consumer loans, etc. Benefits of the electronic judicial payment order include speed in obtaining a decision and lower court fee.

The conditions for use of the electronic submission are that a certified electronic signature of the claimant must be used and that they may be used only for cases of monetary performance of up to CZK 1 million (EUR 37.000 app) .

- The effectiveness of civil court proceedings was improved by the new rules limiting the possibility of use of ordinary and extraordinary means of appeal. In small cases not exceeding claims in the amount of CZK 10.000 (EUR 350) the new legislation provides a simplified claim with no appeal. Use of some extraordinary means of legal redress have been limited to cases involving claims exceeding CZK 100.000 (EUR 3500) in business matters and over CZK 50.000 (EUR 175) in civil cases.

- Presenting of evidence during the course of a civil procedure is now concentrated in the initial stages of the court proceeding. According to the new rules the court may not accept evidence presented after preliminary hearings except in extraordinary circumstances.

- All the communication between courts and parties will be made in electronic form using “Data Boxes “ which will be obligatory for all entities listed in Commercial Register.

### **Amended Land Register Act**

- The new amendments introduce strict supervision over disclosure of some data from the Land Register. In practice this change will cause the Land Registry to check the identity of applicants for title summaries (extract from the Land Register and data from the Collection of Deeds). All this information will be provided to interested parties on submission of a written application that identifies the applicant and the purpose for which the information is requested.
  
- A new possibility to separate a site by a “border of extent of the lien” has been introduced. In practice it will be now possible to divide land used as security for a lien only on a part of the original site, without the need of a transfer for the establishment of a new site.

### **Amendment to the Employment Act**

An amendment to the Employment Act (No. 435/2004Coll.) increases the sanctions for employers who use illegal workers, increasing the penalty for allowing illegal work to the amount of CZK 5 million (EUR 180.000).

The amendment also incorporates a “green card” project to attract certain skilled workers from a limited number of non EU countries. A green card will consist of employment permits and residence permits for foreigner workers on the territory of the Czech Republic. The introduction of the green cards aims to eliminate redundant administrative obstacles. The Ministry of Labor and Social Affairs will also maintain records of job vacancies to be taken by green card holders, which could facilitate more flexible staffing for some employers.

**Act on Banks**

An amendment to the Act on Banks (Act No. 21/1992 Coll.) increases the Deposit Guarantee Fund compensation for account holders to EUR 50,000. Depositors are entitled to compensation of 100% of the value of deposits up to EUR 50,000 from the Deposit Guarantee Fund should a bank become unable to meet its obligations. With this legislation, the Czech government promises to establish and provide the same depositor protection as is enjoyed by depositors in other EC states. However, the law also enables branches of foreign banks to opt out of the deposit guarantee scheme, if they notify the Czech National Bank of this intention and prove that the deposit guarantee scheme in which they participate in their home state guarantees authorized persons the same degree of protection as is guaranteed by EC law.

**Random Inspections performed by the Tax Administrator**

The Constitutional Court of the Czech Republic called attention to the method of “surprise” financial inspections in a decision made last November. According to the ruling of the Constitutional Court, tax inspections can be performed provided that suspicion is supported by evidence that a taxpayer did not fulfill its tax liability. The Judges reached the conclusion that “a tax inspection cannot be entirely arbitrary, and the basis for its initiation must be clearly formulated by the tax administrator, i.e. the existence of specific doubts or suspicion that the taxpayer’s originally declared taxes assessed by the tax administrator (even if implicitly) are lower than they should be.” According to the Constitutional Court, arbitrary inspection resembles a police investigation as far as the privacy of people and firms is concerned. Yet while a police investigation must be founded on probable cause, tax authorities can infringe privacy during an inspection without cause. The judges declared that an inspection, during which an entrepreneur must hand over all its documentation and let officers in both the firm premises and private residence is an excess infringement of human rights.