



## **CZECH REPUBLIC LEGISLATION DEVELOPMENTS 2010/2011**

From the international perspective year 2011 is important for the Czech Republic mainly due to completion of the next important step of the European integration process. On May 1<sup>st</sup> 2011 the last seven year provisional restrictions concerning protection of the local labor markets in Austria and Germany expired. Despite the fact that no major impact to the German and Austrian labor market is expected, removal of labor market restrictions is, from the Czech perspective, considered to be an important stage in European integration. At the same time however, the Czech Republic, along with other three EU member states, decided not to join the Pact for the Euro originally aimed to act as a "debt brake" and open the way for tax harmonization.

The Czech legislative agenda in 2010/2011 was primarily focused on harmonization of domestic law with that of the EU. The most significant changes were achieved in the area of unfair competition, data protection, insolvency proceedings and consumer protection.

### **Unfair Competition**

A 2010 amendment to the Commercial Code (Act.No.152/2010 Coll.) implemented legislative changes related to unfair competition. The amendment classifies the practices of so called "*catalogue companies*" as a type of misleading conduct. During recent years businesses were offered "free" unsolicited entries in various lists or catalogues and were usually required to send their address details in a confirmation of interest document. However, based on the fine print contained in the confirmation, a contract of advertisement was concluded. The payment for such advertisement was typically several times higher than the price of a similar advertisement in other media. Resolution of subsequent disputes was complicated due to the fact that disputes between the parties to such agreements were to be resolved before authorities or an Arbitration court in the state where the office of the catalogue company was located. However, with effect

of 1 July 2010, all the advertising materials of such catalogue companies must contain clear and unambiguous information that the material is an offer to conclude an agreement and not an offer for a free of charge advertisement. Any contract concluded without complying therewith will be deemed invalid and disputes between the parties to the contract must be resolved exclusively before Czech courts.

Since a competitive relationship between companies offering catalogue advertising and parties suffering detriment did not normally exist, the Commercial Code amendment extends the general definition of unfair competition and also the respective specific definition of unfair advertisement by including conduct in “standard” business transactions, as well as competitive conduct.

The amendment provides a significant new general provision, applicable to any type of unfair conduct. The provisions set forth that any agreement shall be held null and void if the ban on unfair competition is breached upon the execution thereof pursuant to the applicable provisions of the Commercial Code. This new special provision of Commercial Code therefore nullifies agreements, their parts or individual provisions, which do not respect the prohibition of unfair competition.

### **Consumer Credit Act**

The new Consumer Credit Act (Act No. 145/2010 Coll.) came into effect on 1 January of this year. The act introduces new obligations for banks and financial institutions granting loans, credits or similar financial services. The act implements the EU Consumer Credit Directive (No. 2008/48/EC). Among other things, financial institutions are required to provide more information about credit conditions and will bear more responsibility for assessing the creditworthiness of persons applying for loans. The act aims at remedying the information asymmetry between creditors and debtors

In the case of consumer credit, the added protection is motivated by asymmetry regarding information and expertise, which put consumers at a disadvantage compared to financial service providers. Strict sanctions introduced by the new legislation should now regulate some non-

banking institutions which had been granting loans quite wildly and were subject to almost no regulation.

According to the new legislation, a creditor is obliged to provide to consumers more advance information in the agreement as such and during the performance thereof. If the agreement does not contain information required by the act, the consumer has the right to notify this fact to the creditor. If the consumer uses of its right, the consumer credit shall be subject to interest equal to discount rate of Czech National Bank valid on the day of conclusion of the agreement and provisions of the agreement which concern other payments shall be considered invalid.

The act introduces an obligation of the creditor to consider the ability of the consumer to pay-off his/her credit. The goal is to protect consumers against risky loans. The act further regulates conditions for premature pay-off of consumer credits and states that a consumer is obliged only to reimburse necessary and objectively incurred costs connected to the premature pay-off of the credit.

Further, consumers have the right to withdraw from an agreement without giving a reason in the period of 14 days after its conclusion. The creditor, in this case, may not claim any penalty from the consumer for withdrawing.

### **Amendment to Insolvency Act**

A 2010 amendment to the Insolvency Act (Act 182/2006 Coll.) is a reaction to a judgment of the Constitutional Court by which it declared as unconstitutional the principle that the right to deny the validity and value of filled insolvency claims belonged only to the debtor and the bankruptcy administrator and not to individual creditors. The authorization of a creditor to deny a claim of another creditor in form of a court motion has been introduced by new legislation. A motion must be filed in form of a standard document available on the Ministry of Justice web pages. The new provisions of the Insolvency Act also removed the suspension of voting rights of a creditor as an automatic consequence of a petition for denial of his claim having been filed. This modification was implemented in order to prevent abuse of such claims by other creditors during insolvency proceedings.

### **Storage of data on e-mails and calls**

The Czech Constitutional Court has cancelled a law ordering that internet providers and telephone operators retain data on internet and phone communications and hand them to the police and state intelligence authorities upon their request. The complaint against the controversial law on electronic communication was filed by a group of Parliament deputies. The law was criticized for inadequately protecting people's privacy and that it did not set clear rules for the use of the gathered data. The stored data did not concern the actual contents of the communication, rather the traces of the electronic communication that show who communicated with whom and when they communicated. Under the concerned law telephone operators and internet providers were required to store all the data on phone calls, SMS messages, faxes, e-mails, visits to websites and the use of some internet services for a minimum of six months and obliged to delete the data after twelve months. The law on electronic communication was enacted as result of an EU directive with the intent to fight terrorism. Critics of the law say it turned into an instrument routinely used in police work where investigators asked for the data automatically and even in trivial cases.

### **Tax changes to solar power stations**

The recent boom of photovoltaic power stations in Czech Republic has been confronted with an important change in tax law related to this field. Under a new 2010 tax amendment entrepreneurs in the solar power station sector are now subject to a new 26 % tax on solar power stations. In the past this sector became very attractive for businessmen because it guaranteed a high return on investment for reason that they were exempt from income tax for the year when the power station was put into operation and for the following five years. This exemption was canceled by new legislation. This tax is not imposed on small private power installations on roofs of private houses.

As a reaction to the newly imposed tax and the cancellation of the tax exemption, a large number of law suits and international arbitrations have already been filed against the Czech state by power station owners.

### **Czech drug-related legislation**

Partly as the reaction to the widely criticized 2010 amendment liberalizing drug legislation, a new amendment to the Act on Addictive Substances (Act. No 167/1998 Coll.) was adopted (Act. No 106/2011 Coll.) The new amendment provides for a ban of 33 new synthetic drugs in order to prevent their free sale in shops and on the Internet. The 30 substances to be banned include butylone, flephedrone, mephedrone, methylone, naphyrone and salvinorin A. So far these drugs have been legally available in shops on the Czech/Polish border in so called *Amsterdam Shops*. The new law has been criticized for the fact that no fixed date was set for the introduction of the new rules so as to enable people to get rid of these substances.