



The First Candle

CZ: Anti Money Laundering and amendment to the Act on Public Registers

SK: Increase of "unaffected" sums

EU: Trademarks for scents and flavours

Dear Friends,

Last Sunday was the first Advent and for us the most demanding part of the work year is now here. As much as possible needs to be done before Christmas, and we also need to get ready for some changes that will come in the new year. Advance warning and quiet expectations have given way to haste and multitasking.

Although we've barely had time to take stock, we know that this will be a good year. We succeeded in negotiating and closing transactions for our clients, winning disputes and coming up with solutions to various problems, while at the same time learning a great deal. At the beginning of the year there were 25 lawyers in our firm and today we are more than 40. We are also beginning to gain a better perspective of where our work will lead in the next year. We are implementing measures which will push our firm and how we work for our clients another step forward.

When we have time to pause for a moment we realise again that the most important aspects of our work are mutual encounters and enrichment. On that note, let me say thank you for all the good encounters this year.

Stanislav Dvořák

CZ: The statutory deadline for subordinating to the Business Corporations Act is approaching

Companies that were established prior to the effectiveness of the Business Corporations Act, i.e. prior to 1 January 2014, and which have yet to subordinate to this Act as a whole, now have only very little time left to take advantage of the general opt-in option. The statutory deadline for subordination to the Business Corporations Act is 1 January 2016. (MŠ)

CZ: Amendment to the Road Traffic Act

The highway speed limit for vehicles weighing more than 3.5 tons will be lowered to 110 km/h from 31 December 2015. (LL)

EU: Trademarks for scents and flavours

Next year a new concept of trademarks will be introduced in the EU, under which it will be possible to register products with a characteristic flavour or scent. (JStr)

EU: Forthcoming amendment of the Act on Payments

The amendment aims to transpose European Parliament and Council Directive 2014/92/EU. The proposed changes will enable EU consumers to open a payment account with the basic elements, establish a uniform procedure for changing accounts and will help increase the transparency and comparability of payments made to them. (LZ)

SK: First draft of the new Civil Code

The re-codification commission published the text of the first draft of the new Civil Code in Slovakia. (MSA)

CZ: Guarantor's liability in the terms and conditions

Upon signing a contract that refers to general terms and conditions (GTC), the individual signatory may become the guarantor of the legal entity for which he is acting. It is sufficient to ensure that the declaration of the guarantor in the GTC is drafted specifically enough and that it states all formalities required by law. This conclusion was reached by the Supreme Court of the Czech Republic (Decision ref. no. 23 Cdo 1292/2015).

In this case, a company executive signed a finance lease contract, which included GTC containing the guarantor's declaration as the natural person who signs the contract. The executive thus with one signature literally both signed the contract on behalf of the company while also simultaneously becoming a guarantor for the company as an individual, although he signed the contract *only* once and *only* as an executive of the company.

According to the Supreme Court of the Czech Republic, the fact that the executive signed the contract (which included the GTC that secure the obligations of the signatory) only once as the company representative does not have an effect on the validity of the guarantor's declaration, if it follows from the contract that the signatory at the same time expresses his will towards the guarantor's declaration for his person. Insisting that he sign a second time (as a guarantor) would, in the opinion of the Court, be too formalistic.

In this case the Supreme Court decided according to the legislation in force until 31 December 2013, i.e. according to the old Commercial Code. In our opinion, however, the same conclusion also applies to the new Civil Code (from 1 January 2014), as the new legislation is far less formal as regards the interpretation of legal acts and instead seeks to emphasise the true will of the actors.

Dominika Veselá | Vojtěch Faltus

CZ: Concurrence of enforcement of decision (execution) with pledge (Section 309a of the Code of Civil Procedure)

Upon a concurrence of execution and pledge over the same receivable, execution by compulsory debiting from the debtor's account shall not take place if the pledge over the receivable was made earlier. The financial institution has an obligation to inform the relevant court (executor) about this fact. (TJ)

EU: Extension of the powers of the European Commission

During unannounced inspections for possible breaches of competition rules, under the new interpretation of Art. 20 (4) of Council Regulation No. 1/2003, the European Commission is authorised to inspect employees' personal devices located at the workplace. (NJ)

EU: Working hours extended

The European Court of Justice decided in the Tyco C-266/14 case that time spent on business trips to the first and from the last customer by employees without a permanent or regular workplace qualifies as working hours. This may also affect Czech employees, especially those working as sales representatives or service technicians. (VO)

CZ: The effect of a bankruptcy declaration on unfair dismissal proceedings

In judgment 21 Cdo 3951/2014 the Supreme Court decided that proceedings brought by the legal action of an employee can be suspended by a declaration of bankruptcy on the assets of the employer. The Court shall inform the participants about the suspension and instruct them that the proceedings may be continued at the request of the plaintiff or the insolvency administrator. (PKc)

EU: The status of the public on projects with environmental impact

In its judgment in the case C-137/14 Commission v Germany, the European Court of Justice strengthened the rights of the public, especially non-governmental organisations, when authorising projects with environmental impact. (AT)

CZ: New obligations for landlords

We remind landlords of apartments and offices that from 1 January 2016 they are obliged to present a building energy performance certificate to the tenant, even when leasing only part of the building, and to state the energy performance class of the building in advertising materials. (JKol)

Events | Prague

Mazars and the law firm Dvořák Hager & Partners would like to cordially invite you to a specialized seminar:

Labor law and social networks

- How social networks intervene in labor law.
- The opportunities and problems of social networks for employees and employers.
- Foreign experience and case law.
- The tax implications of the activities of employees and employers on social networks.
- Everything will be illustrated with practical examples and recommendations.
- In keeping with tradition, news and interesting examples will be included. A new feature will be a section on tax news valid from 2016.

Date: 16 December 2015, 9 am

Place: Hotel Alwyn conference centre, Vítkova 26, Prague 8

Lecturers: Veronika Odrobinová and Tomáš Procházka, Dvořák Hager & Partners, Gabriela Ivanco, Mazars

Registration: lucie.keberlova@dhplegal.com

Participation fee: CZK 750 per person (without VAT)

EU: Non-financial reporting

Under Directive 2014/95/EU, large companies will be newly obliged to include an overview of non-financial information regarding environmental, social and labor questions, compliance with human rights and the fight against corruption and bribery in their company reports (e.g. annual report). The deadline for implementation is 6 December 2016, whereas the new rules should apply to the fiscal period beginning on 1 January 2017 or in the course of the calendar year 2017. (KJ)

CZ: Anti Money Laundering and amendment to the Act on Public Registers

In connection with the recently adopted AML Directive, the Ministry of Finance is preparing an amendment to the Act on Public Registers, which will stipulate the obligation for legal persons registered in the public register to also provide information about their actual owners (including the scope and nature of their participation in the company). Who will have access to such information – whether to a certain extent all or only some (especially state) institutions and individuals – remains unclear. (MG)

SK: Main line of business according to the Act on the Commercial Register

An amendment to the Act on the Commercial Register came into effect from 1 November 2015. If the applicant wants to engage in multiple lines of business, upon first registration it is required to state the line of business or the activity that it considers the main activity in the first place in the application form. (KL)

CZ: Members of parliament approve the creation of Fund to Tackle the Financial Crisis

Under the draft law on recovery procedures and crisis management in the financial market, selected financial institutions will be subject to the new obligation to contribute to the Fund to Tackle the Financial Crisis. (MR)

CZ: Consequences of the abolition of Safe Harbour

According to a statement by the Office for Personal Data Protection on 22 October 2015, it is possible, even after the abolition of the Safe Harbour system, to use alternative instruments to transfer personal data to companies from the USA, in particular standard contractual clauses or binding corporate rules. (RM)

SK: Confirmation from bank no longer required to establish s.r.o.

From 1 January 2016 it will no longer be necessary to provide a bank confirmation of paid-up registered capital to the Commercial Register. The contributions can also be paid in cash, which the administrator will subsequently confirm in a statement. (ZH)

Personal

Zlata Kunešová | Counsel | Prague

Our Prague team has been strengthened by the addition of Zlata Kunešová, who was appointed as counsel to develop the firm's banking & finance and regulatory & compliance practice. She previously worked at ČSOB, a major Czech bank owned by KBC Bank, N.V., where she was the executive director of the legal department and headed the bank's legal agenda.

Zlata has extensive experience in banking & finance, M&A, syndicated financing, insolvency & restructuring and financial markets regulation. A graduate of the Faculty of Law at Charles University in Prague, Zlata also attended a study program at Queen Mary and Westfield College, University of London, where she obtained an LL.M. degree. In addition to her native Czech, she is fluent in English and German.

Radek Matouš | Managing Attorney | Prague

Radek Matouš is an attorney-at-law specialising in all fields of individual and collective labour law. He is also a founding member of the Czech Employment Lawyers Association, which brings together prominent Czech lawyers who have been practising labour law for many years. He also has extensive experience in the fields of personal data protection, corporate law and competition law.

Radek previously headed the labour law practice group at Balcar Polanský Eversheds in Prague. He graduated from the Faculty of Law at Charles University in Prague and studied international trade at the University of Economics in Prague. He is a member of the Czech Bar and in addition to Czech is fluent in English and German.



Jakub Verlík
Junior Associate | Prague



Lucie Kubinyiová
Junior Associate | Prague

CZ: Draft of Consumer Loans Act

According to the draft, non-banks will be authorised to grant consumer loans only under a licence issued by the National Bank and will be entered in a special register. The validity of licences should also be limited to five years, with possibility of renewal, and loan providers must dispose of capital of at least CZK 20 million. (MABB)

SK: Increase of "unaffected" sums

The new Regulation on Deductions from Wages no. 292/2015 Coll. enhances the legal protection of subjects to execution proceedings. From 1 January 2016, the amount that cannot be drawn from the monthly salary shall be increased to 100% of the subsistence minimum, i.e. EUR 198.09. (JS)

CZ: Division of common property by court decision

Regardless of the actual possibility of division, the court shall not divide the common property if this would significantly reduce its value. For real estate the threshold is a value lower by more than 15%. (ER)

CZ: Draft amendment to the Consumer Protection Act

The Czech Parliament approved a draft amendment to the Consumer Protection Act (the senate returned it with amendatory proposals), according to which consumers will have the right to free of charge out-of-court dispute resolution based on the purchase contract or contract for services. Besides certain exceptions, disputes will be resolved by Czech Trade Inspection Authority or another entity entrusted by the Ministry of Industry and Trade of the Czech Republic. (JH).

EU: Cross-border protection of personal data

According to the European Court of Justice, the legislation of the member state governing the protection of personal data may also be applied to a foreign company doing business in the country in question through a permanent establishment. (MAB)

CZ: Person close to a limited liability company

According to the decision of the High Court in Olomouc ref. no. 2 VSOL 601/2015, it cannot be automatically presumed that the son of the sole executive director and partner is a person close to a limited liability company. (TM)

CZ: Same wage regardless of place of work

In connection with the recent court decision on equal remuneration this topic has come to the forefront of interest. The media has in particular covered the case of Czech Post, which under pressure from trade union members agreed with the unification of wage rates irrespective of the place of work. (TP)

CZ: Amendment to the Energy Act

An amendment to the Energy Act will enter into force on 1 January 2016, under which it will be possible to operate a photovoltaic electricity generating plant with an installed capacity up to 10 kW, without a licence and trade licence, only on the basis of an agreement on connection with the distribution system operator. (JŠ)

SK: Company in crisis

Since January 2016, an amendment to the Commercial Code will enter into force which shall introduce measurements against harm to the creditors of bankrupt capital companies, especially ban on returning of any performance replacing the own resources and performance representing contributions of the shareholders. (EŠ)



Authors | (AJ) Achim Jähnke | (AT) Annamária Tóthová | (BH) Bernhard Hager | (DV) Dominika Veselá | (ER) Eva Ruhswurmová | (EŠ) Eva Špulerová | (JH) Jana Horská | (JKol) Jana Kolářová | (JK) Jan Krampera | (JS) Jana Sapáková | (JM) Jiří Mačát | (JStr) Jitka Stránská | (JŠ) Jiří Šmatlák | (KD) Kateřina Demová | (KJ) Katarína Jendželovská | (KL) Katarína Liebscherová | (LL) Lucia Luptáková | (LZ) Lukáš Zahradka | (MABB) Marek Bomba | (MAB) Martin Baraniak | (MG) Martin Gřešák | (MSA) Mária Sadloňová | (MŠ) Martina Šumavská | (MR) Michal Růžička | (NJ) Natália Jánošková | (OH) Ondřej Huml | (PKc) Petra Konečná | (RM) Radek Matouš | (SD) Stanislav Dvořák | (SS) Stanislav Servus | (TL) Tereza Leníčková | (TJ) Tomáš Jelínek | (TM) Tomáš Mls | (TP) Tomáš Procházka | (VF) Vojtěch Faltus | (VO) Veronika Odrobinová | (ZHn) Zuzana Hnátová

**Dvořák Hager & Partners
Czech Republic**

Oasis Florenc, Pobřežní 394/12
186 00 Prague 8
Czech Republic

tel.: +420 255 706 500
fax: +420 255 706 550
e-mail: praha@dhplegal.com

**Dvořák Hager & Partners
Slovakia**

Cintorínska ul. 3/a
811 08 Bratislava
Slovakia

tel.: +421 2 32 78 64 – 11
fax: +421 2 32 78 64 – 41
e-mail: bratislava@dhplegal.com