



Spring Expectation

EU: Ban on discrimination based on obesity

DE: Minimum wage in Germany – effectiveness for transit suspended

CZ: Another failure of Supreme Public Prosecutor's Office in the case of revocation of the licence of solar power plant

We are now several weeks into 2015, and I believe that we will evidently not get bored this year either. We have a new justice minister to look forward to – and in view of the fact that he is one of the most significant critics of the New Civil Code, the legal profession will definitely be watching his next steps with anticipation. In the office we are now celebrating the second anniversary of the merging of the offices in Bratislava and Prague, and we have welcomed new colleagues – and for these purposes we have also expanded our Prague office space. Moreover we have been successful in several public tenders, whereby we are extending our activities into new areas. Because the weather outside no longer looks that wintery, we can look forward to the April Run and Help event, where our office joins forces with Open Gate and Konto bariéry and has undertaken to run at least 200 km. We wish you a beautiful spring too!

Veronika Odrobinová

CZ: The amendment to the Investment Companies and Investment Funds Act is effective as of 1. 1. 2015.

The amendment regulates which activities might be performed by other subjects in the context of funds management or administration (e.g. allocation and payment of yields from the assets of the fund). The amendment has an impact on duties of the depositary towards the funds administrator. (LZ)

CZ: New private placement regulation

As of 1. 1. 2015 the Investment Companies and Investment Funds Act regulates private placements. Outside the regime of the act it is possible to make a non-public offer of investment in investment funds to persons who are not "qualified investors" if the number of these persons does not exceed 20. (JM)

SK: Amendment to Emission Quotas Trading Act

As of 1. 1. 2015 certain duties of operators have changed and new ones have been added. Trading in pollutants has been deleted from the act, and verifiers of emission records are now subject to unified accreditation in the entire EU. (AT)

CZ: Termination of APW

Unless an agreement to perform work anticipates its unilateral termination, it is difficult to terminate it otherwise than by an agreement of the parties. According to the Civil Code, such an agreement can be cancelled as of the end of the calendar quarter by a notice of termination submitted 3 months in advance. (TJ)

EU: Ban on discrimination based on obesity

The European Court of Justice has defined the limit of the ban on discrimination as a result of obesity. In the case under judgement the employer made a highly obese employee redundant. The employee challenged the employer's procedure as discriminatory.

The court ruled that if obesity makes it significantly more difficult for the employee to perform his profession, from the legal aspect it is a medical disability, and so any discrimination against such an employee is forbidden. The court also emphasised that in order to benefit from protection against discrimination, it is not relevant whether or not the employee caused the obesity himself.

In the case of obese employees the so-called transfer of burden of proof is also applied, i.e., that in the case of a court dispute the employer must prove the fairness of treatment of the obese employee. Every employer is also obliged to adopt all suitable measures to ensure that obese employees can also work for the employer. This duty may not be observed only if such measures would represent an excessive burden for the employer.

Tomáš Procházka

CZ: Records of occupational accident and provision of accident report

As of 1. 1. 2015 an employer is now obliged to record a description of an accident and classification of the injury in the accident book. The employer no longer reports less serious accidents to the health insurance company. (JKol)

CZ: Amendment to the Labour Inspection Act

Effective from 1. 1. 2015 an amount of the fine for exceeding the maximum scope of work performed on the basis of an Agreement to Perform Work or Working Activity Agreement was increased up to CZK 2,000,000. (MG)

DE: Minimum wage in Germany – effectiveness for transit suspended

On 1. 1. 2015 the General Minimum Wage Act became effective in Germany. It designates its uniform level at EUR 8.50 gross, to which everyone employed on the territory of Germany has a right (irrespective whether working for German or foreign employers). This legal regulation will thus also impact many Czech and Slovak entrepreneurs, in particular transport companies. In spite of the fact that according to the current decision of the German government, for a transitional period it does not apply to drivers just driving through the territory of Germany, it will continue to apply in cases where lorries are loaded or unloaded on the territory of Germany. (AJ/ZH)

CZ: Creation of Central Register of Misdemeanours impending

In its first reading the Chamber of Deputies supported a proposal to introduce a Central Register of Misdemeanours, which should help in the fight against minor crime. (MR)

CZ: Transfer of real estate contributed into a company as non-monetary contribution

According to the Supreme Court the transfer of real estate deposited earlier as a non-monetary contribution in the company has no impact on the amount of a company's registered capital, and a decision on a registered capital change is not required in connection with such real estate disposal. (TM)

CZ: Transfer of right to write off technical improvements ("TI") for tax purposes

The Supreme Administrative Court has ruled that it is not possible to transfer to a new tenant the right of an original tenant to write off the TI performed by the original tenant. After the termination of the lease only the landlord has the right to write off the TI for tax purposes. (DV)

SK: Amended Income Tax Act

As of 1. 1. 2015, a businessman cannot claim expenses for so-called kilometrage as part of tax expenses if at the time of use the motor vehicle is not included in the commercial assets although it has been in the past. (TT)

CZ: Formal requirements of power of attorney for establishment of private limited liability company

If a power of attorney for the establishment of a private limited liability company is not granted in written form, or if the signature of the principal is not officially notarized, it constitutes an invalid legal act; a court will take this invalidity into account even without a petition. (MABB)

Personnel

**Petra Konečná | Prague**

From 15th January, Prague team of law firm Dvořák Hager & Partners was strengthened by Petra Konečná, who was appointed as managing attorney. Before that she worked at Felix a spol. and more than seven years at law office Schönherr (former Gleiss Lutz), where she advised number of major international and Czech corporations, as well as German speaking clients.

Petra is specializing mainly on banking & finance, capital markets, employment law, company law and M&A. She also has extensive experience in syndicated financing and option plans for employees.

Petra graduated from the Faculty of Law at University of Westbohemia in Pilsen. She also attended an annual study program at the Faculty of Law at Technische Universität in Dresden, Germany. In addition to her native Czech, she is fluent in German and English.

CZ: Restrictions on setting off of claims

Only receivables which can be claimed at court are eligible for set-off. This does not apply in the case of so-called dubious or uncertain receivables. (JK)

CZ: Expiry of responsibility for administrative delict according to Labour Inspection Act

On 1. 1. 2015 a change to the expiry of responsibility for an administrative delict was introduced. This expires if the administrative body had not initiated proceedings for a delict within one year from the day when it had learned of it, but at the latest 3 years from the commission of the delict. (MŠ)

SK: Agency employment from 1 March 2015

The user employer will also be responsible for maintaining comparable wages between an agency employee and a core one. The time of temporary assignment was set to a maximum of 2 years. In the case of early termination of employment, a notice period will run for the employee. (JS)

SK: Be careful of the size of lettering in consumer contracts from 1. 1. 2015

The size of the lettering in consumer contracts, general business terms and any other contractual documents related to a consumer contract must be at least 1.9 mm. (MAB)

SK: New deductible

On 1. 1. 2015 an amendment to the Health Insurance Act came into force introducing a new deductible. The deductible will reduce the assessment base of an employee for the purposes of paying premiums for public health insurance. (NJ)

CZ: New regulation of gambling

The Ministry of Finance has published proposals for a gambling act and gambling tax act. The proposals make regulation in this area considerably stricter and increase the tax burden, but they also allow foreign subjects to operate lotteries and allow their online operation. (SD)

CZ: Change of rates for calculation of travel compensation

At the start of the new year changes of certain rates important for the calculation of travel compensation provided to employees were introduced. The meals allowance was increased, as was the level of the average price of fuel. The rates of the basic allowance for the use of road motor vehicles are the same as last year. (KD)

CZ: Further failure of Supreme Public Prosecutor's Office in the case of revocation of the license of solar power plant

For the second time a court has rejected an action of the Supreme Public Prosecutor's Office for the revocation of the electricity generation license from the end of 2010 because cancellation of a decision on the granting of a license requires evidence that a criminal act has been committed and that calls into question the truthfulness of the information relevant for the granting of the license. (JŠ)

CZ: More powerful status of minority shareholders

The Business Corporations Act strengthens the status of minority shareholders and gives them an interesting possibility to demand the redemption of their stake by a majority shareholder at a price determined by an expert. (SS)

CZ: Ban on children entering restaurants

According to the Supreme Administrative Court, a ban on children entering premises (for example for the reason of focusing on a certain type of clientele) which is not based on objective and reasonable reasons and justified by a legitimate aim represents discrimination. (PK)

SK: Amendment to Public Procurement Act

The Public Procurement Office has circulated a draft of a public procurement act for comments from executive departments and state agencies. A completely new law should be introduced as part of the transposition of EU directives from 2014. (BH)

CZ: Inspection of vehicle register?

In its decision the Supreme Administrative Court confirmed the possibility of inspecting the register of road vehicles and asking for a duplicate or statement of the data contained therein if the applicant proves a legitimate interest and specifies his request in the prescribed form. (JS)

SK: Improving the effectiveness of public procurement processes

1. 2. 2015 saw the launch of an Electronic Contracting System - electronic exchange of anonymous bids and purchases of goods, construction works and services. The system should ensure a transparent form of public procurement. (ZUS)

CZ: Does comparison of competitors' prices from different periods of time constitute unfair competition?

The Supreme Court has declared that a price advertisement with truthful data constitutes unfair competition if it compares the prices of two competitors from different periods of time since it constitutes an attempt to mislead the consumer. (OH)

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