

# Legal News

June 2010

## Speedread:

- New EU Directive on mergers and divisions reduces the administrative burden weighing on involved companies

## EU Directive on mergers and divisions

Directive 2009/109/EC of the European Parliament and of the Council of 16 September 2009 amending Council Directives 77/91/EEC, 78/855/EEC and 82/891/EEC, and Directive 2005/56/EC as regards reporting and documentation requirements in the case of mergers and divisions published on 16 September 2009 in the Official journal L 259.

The aim of the new directive is to reduce the administrative burden weighing on companies by abolishing their excessive information obligations to a minimum needed in order to protect the interests of other stakeholders. Main changes brought by the directive are as follows:

- extensive reporting or information requirements relating to the merger or division of companies need not be complied with, provided that all the shareholders of the companies involved in the merger or division agree that such compliance may be dispensed with
- documents which the shareholders have the right to inspect may be published also on the websites of the company
- mergers between a parent company and its subsidiary shall need no longer be approved by the general meeting of the acquiring company, provided that the parent company holds at least 90 % of shares or other securities conferring the right to vote at the general meeting of the company or companies being acquired.

Member states shall transpose the stipulations of the directive till 30 June 2011.

- New EU Directive fights against the employment of illegally staying third-country nationals

## EU Directive on employees

Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, published on 30 June 2009 in the Official journal L 168.

This directive prohibits the employment of illegally staying third-country nationals in order to fight illegal immigration. In this respect, it lays down sanctions and measures to be applied in the Member States against employers who infringe that prohibition, such as:



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- financial sanctions according to the number such employees
- obligation to pay back every outstanding wage to such employees
- exclusion from the entitlement to EU funding or other benefits (including their possible recovery) for up to five years
- exclusion from participation in a public contract for up to five years
- temporary or permanent closure of the establishments or withdrawal of a licence to conduct the business activity
- obligation to ensure that the illegal employment of foreigners shall constitute a criminal offence (the Czech Republic has already included this in Article 342 of its new Criminal Code).

Member states shall transpose the stipulations of the directive till 20 July 2011.

### **Simplifying the calculation of interest on late payment**

- Amendment of regulation significantly simplifies the calculation of interest on late payments

The amendment of regulation no. 142/1994 Coll., (which states the amount of interest on late payment and charges on late payment according to the Civil Code) significantly simplifies the calculation of interest on late payments.

The amount of interest on late payment will no longer be counted twice -yearly (on 1 January and on 1 July) as it was in the past. Calculating interest during the entire duration of delay will now be based on the repo rate announced by the Czech National Bank (further increased by 7%), which is valid on the last day of the six-month period preceding the beginning of the delay. The amount of the statutory interest on late payments according to the Civil Code will therefore not change during the entire period of delay, even if the repo rate changes during the delay.

The new regulation may be disadvantageous for creditors when the delay of the debtor increases in a period of economic recession, when the repo rate is low, and even if the repo rate increases subsequently during the debtor's default, the amount of interest on the late payments will not be affected by such fact. The new regulation will be unfavourable for debtors in the opposite situation, when the day the delay in payments begins occurs in a period of economic growth.

The amendment will become effective on 1 July 2010 and will apply only to delays which newly came into being.

### **Criminal responsibility of legal entities**

- Bill that will introduce criminal liability for legal entities is currently being prepared

The Ministry of Justice is currently finishing a bill that will introduce criminal liability for legal entities. The criminal responsibility of legal entities will not preclude the criminal liability of particular natural persons. The act will provide the following sanctions:



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- dissolving the company
- forfeiture of property
- monetary fine
- prohibition of certain activities
- restrictions on participation in tenders for public contracts and in public tenders
- prohibition of receiving grants and subventions.

In 2004 a similar bill was refused in the first round. The chances of passing the new bill are better now due the duty of the Czech Republic resulting from European law to introduce effective, adequate and intimidating sanctions against legal entities. It has to be noted that this duty can also be satisfied by administrative law sanctions and not only by criminal law. Nevertheless no other states of the European Union have chosen this alternative.

### **Reducing entrepreneurs administrative burden**

- Major amendment of several acts reduces entrepreneurs administrative burden

The Chamber of Deputies approved the government's draft of an act, intended to reduce entrepreneurs administrative burden. It is a major amendment of several acts.

The act brings the following changes:

- a consumer is newly defined in the Civil Code as a natural person that when concluding a contract does not act for her/his commercial or other business activity or as an independent exercise of her/his profession (until now in certain cases a consumer could also be considered a legal person)
- the absolute negation of clauses in consumer contracts that violate the rights of consumers (up until now such clauses were only relatively invalid); which in practice means that such a clauses are invalid directly by law, and there is no need to claim their invalidity in the judicial process
- it is no longer necessary to inform the Trade Office about the interruption of conducting business
- it is no longer a violation of the law if somebody runs a business in an apartment without consent of its owner
- a higher level of freedom in the system of labelling new products. Newly labelling of goods has to reflect the nature and form of the sale (with specified exceptions)
- cancellation of duplicate obligations of the Czech Trade Inspectorate to monitor compliance with hygiene regulations in shops and restaurants.

The act will come into force on 1 August 2010.



## Continuation

### The amendment of the Act on Public Contracts

- Amendment of act brings significant changes in simplifying and increasing the transparency of the system for assigning public contracts

The approved amendment of Act no. 137/2006 Coll., on Public Contracts brings significant changes in simplifying and increasing the transparency of the system for assigning public contracts.

The amendment introduces a number of significant changes. One of the most important is a new obligation to publish all relevant information regarding the assignment of public contracts on the internet. The amendment further stipulates the duty of tender applicants to demonstrate their ownership structure. In the case of joint stock companies, this means that only companies having name-registered shares can apply for contracts, and they also have to submit a list of shareholders.

Besides the above mentioned the amendment brings:

- applicants' qualifications will be proved only by copies of the required documents; the originals of the documents will have to be submitted only before the conclusion of the contract itself
- the contracting entity of the public contract must prepare an economic and financial report if the estimated contract value exceeds 500 million Czech crowns
- tenderers have to report any conflict of interest of their employees
- value for money has to be taken into consideration when evaluating public contracts
- most members of the jury evaluating bids have to be independent of any relationship with the contractor
- increased possibilities of communication through the data box.

The Act will come into force on 15 September 2010.

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