



The Act of the Year 2012
Final Report

Editorial

Dear Partners

More than ever before, a company's success is currently evaluated not only by economic criteria but also in terms of corporate social responsibility. The company's approach to the impacts of its own activities on the environment, as well as consideration for the needs of the community, also play an important role in building a company's prestige.

As a successful company, we have sought to perceive such values and to get meaningfully involved. It is important for us to focus on the values, relationships and responsible behaviour towards the society and the environment. We perceive corporate social responsibility as the philosophy that is the source of our inspiration and also the motivation for our future work.

We are pleased that our approach is not at all exceptional. There are hundreds of companies engaged in corporate social responsibility. Some companies support the availability of social services, their employees' volunteering activities and help for disabled people.

Ambruz & Dark/Deloitte Legal is one of the leading law offices in the Czech Republic and has the ability, determination and responsibility to enhance the Czech legal environment.

For this reason, our major CSR activity includes the "Act of the Year", an annual survey to stimulate discussion among Czech businessmen, politicians and the public about the quality of the legislation and its impacts on the business environment. We are presenting you with the final report on the fourth annual survey, which, according to the response of businessmen and the legal public, is achieving increasingly more prestige and recognition.

The fourth year of the survey attracted even more attention of businessmen and the expert public than in the previous years. The number of companies participating in the voting more than doubled compared to the last year and the attention of the media also increased significantly. I am convinced that you, our partners, also contributed to the success of the fourth annual Act of the Year to a great extent.

Therefore, on behalf of the organisational committee, I would like to thank you for your efforts in this co-operation with us. We appreciate your support and hope that our co-operation will continue in the future.

On behalf of the organisational committee of the Act of the Year

Tomáš Babáček,
Ambruz & Dark/Deloitte Legal

About the Act of the Year

The fourth year of the survey was organised by the cooperating legal offices Ambruz & Dark/Deloitte Legal together with their partners. The purpose of the survey was to contribute to the discussion among Czech businessmen, politicians and the public on the quality of legal regulations adopted last year and their impact on the Czech business environment and on the quality of the legal environment in the Czech Republic in general.

The nomination process

This year, the general public had an opportunity to send nomination tips for the Act/Flop of 2012 through the www.zakonroku.cz website for the first time. This was also the first year in which nominations were selected by a special nomination committee, predominantly comprising representatives of legal professions. Nominations were prepared from relevant categories of legal regulations based on the practical experience with the application thereof or with respect to the expected impact on the business environment in the Czech Republic.

As usual, preference was given to regulations that have an expected impact on the system and that affect a broad range of business entities. Under the rules of the Act of the Year 2012 survey, generally-binding legal regulations of the Czech Republic and the European Union that were adopted in the prior year, such as the following: constitutional acts, acts, regulations issued by ministries, governmental decrees, and EU regulations and directives, can be nominated.

The nominations can also relate to new international agreements that had an effect on the business environment in the Czech Republic. In the category of "Flop Act of the Year", voters could select from legal regulations that ceased to be effective in the given year, principally because they were cancelled by the Constitutional Court of the Czech Republic or the Court of Justice of the European Union. As authors of the nominated legal regulations are presented individual regulations' initiators and/or those who have significantly contributed to the given regulation's adoption. The respondents of the Act of the Year survey are entrepreneurs, representatives of firms and other selected individuals of the Czech economy.

The nomination committee

<i>JUDr. PhDr. Marek Antoš, Ph.D.,</i>	Lawyer (Department of Constitutional Law, Faculty of Law of Charles University), Businessman
<i>Mgr. Tomáš Babáček, LL.M.,</i>	Attorney-at-law, Prague (Ambruz & Dark/Deloitte Legal), Chair of the nomination committee
<i>Mgr. Richard Baček,</i>	Legal Counsel, Siemens, s.r.o.
<i>JUDr. Marie Brejchová, LL.M.,</i>	President of the Association of In-House Lawyers of the Czech Republic, corporate lawyer, Pražská energetika, a.s.
<i>JUDr. Monika Čírtková,</i>	Attorney-at-law, Kolín
<i>Mgr. Vítězslav Dohnal,</i>	Attorney-at-law, Tábor, Director of the Pro bono Alliance
<i>Mgr. Štěpán Holub,</i>	Attorney-at-law, Prague (Holubová - advokáti s.r.o.)
<i>Mgr. Jan Januš,</i>	Editor-in-chief, Právní rádce magazine
<i>Mgr. Bohumila Jelínková,</i>	Legal Counsel, BILLA spol. s r.o.
<i>Mgr. Vít Kovařík,</i>	Legal Counsel, LBBW Bank CZ a.s.
<i>JUDr. Jan Leščinský Ph.D.,</i>	Legal Counsel, Skanska a.s.
<i>RNDr. Luděk Niedermayer,</i>	Director, Deloitte Advisory s.r.o.
<i>Bc. Randy Novák, M.A.,</i>	Organiser of the initiative "ZrušmeZákon.cz"

The nominations for the Act of the Year 2012

The Act of the Year category:

1. SUPPORT FOR OUT-OF-COURT DISPUTE RESOLUTION (the MEDIATION ACT)

Author: European Commission – General Directorate for Justice and Home Affairs/ Ministry of Justice

Act 202/2012 Coll., on Mediation

A series of the implemented measures may lead to the establishment of mediation in the Czech Republic as one of proven out-of-court methods for dispute resolution (proceeding deadlines in the course of mediation, list of mediators' responsibilities, mediation oversight). As opposed to court or arbitration proceedings, under mediation proceedings one of the disputed parties is not imposed a solution against its own will, but the solution is rather an intersection between both parties' interests. As such, parties with a constructive approach are offered another alternative to achieve a dispute's solution that is efficient and the costs of which are low.

2. UNBLOCKING CHURCH PROPERTY THAT ENABLES ADMINISTRATION OF THE PROPERTY

Author: Ministry of Culture

Act 428/2012 Coll., on Property Settlement between the State and Churches and Religious Societies

Through the act, church property was unblocked, which after many years will finally enable proper care of this property. Additionally, the Act will contribute to the development of many municipalities, enable investments made by the business sector, municipalities and regions, and development projects undertaken by individual churches as such. Despite the fact that the Act may be problematic in certain respects, the prior state of affairs was unsustainable from a legal and economic perspective, and most un-economical.

3. CONCEPTUAL EXPANSION OF LIBERTY OF CONTRACT AND INTELLIGIBILITY OF REGULATIONS (RE-CODIFICATION OF PRIVATE LAW)

Author: Ministry of Justice

Act 89/2012 Coll., the Civil Code, and Act 90/2012 Coll., on Business Corporations

The new Civil Code and the relating regulations enhance the contractual parties' freedom of contract and the protection of free will (interpretation principles, relative vs. absolute invalidity of legal acts, form of legal acts, dispositive vs. cogent provisions, internal organisation of business corporations, etc). Also, the taxonomy of the Code and the removal of the double-tracked direction of civil and business law will, despite possible teething problems, lead to a general simplification in applying private law.

4. TOOLS IMPROVING THE FUNCTIONING OF THE INTERNAL EU MARKET (INTERCONNECTION OF COMMERCIAL REGISTERS)

Author: European Commission – General Directorate for Internal Market and Services

Directive 2012/17/EU, amending particular directives as regards the interconnection of central, commercial and companies registers

State commercial registers will be interconnected into a unified interface so that anyone can verify information on their business partners from other EU countries with ease. Similarly to the adoption of a unified European patent, this is a classic example of a tool that may improve the utilisation of the EU internal market's potential. Its full utilisation needs to be ensured all the more so today when some EU countries are facing economic problems and firms' ability to expand their business activities to other EU states under reasonable costs may be crucial for their sustainability and maintenance of employment.

5. EXTENSION OF TRANSPARENCY IN PLACING PUBLIC PROCUREMENT CONTRACTS

Author: Ministry for Regional Development

Act. 55/2012 Coll., through which the Public Procurement Act is amended

The Amendment is meant to enhance the degree of an entrepreneur's and the general public's awareness of the planned, implemented and completed tender procedures, the content of concluded contractual documentation and its subsequent compliance, as well as the role of sub-contractors. The results arising from the Amendment are yet to be seen in practical life (among other things with regard to the exceptions enabled by the Act), but in this respect the Amendment is definitely a step in the right direction.

The Flop of the Year category:

1. ADOPTION OF KEY ACTS "AT THE ELEVENTH HOUR" (THE DECEMBER TAX PACKAGE)

Author: Ministry of Finance

Act 500/2012 Coll., on Amendments to Tax, Insurance and Other Acts Related to the Reduction of Public Budget Deficits, and Act 502/2012 Coll., which Amends the Value Added Tax Act

The uncertainty relating to the percentage of the value added tax rate had an impact on the absolute majority of Czech businesses. Many companies had to prepare their budgets, price lists and contracts in multiple versions and be prepared to change their strategies and plans for 2013. The uncertainty (not only in the area of tax) has a negative impact on the economy, which is even greater than the determination of the tax burden as such. What is more, the reasons for this uncertainty are not of an economic or technical nature, but they are attributable to the functioning of the political system.

2. INADEQUATE BUREAUCRATIC PATCH ON THE STATE'S OVERSIGHT FAILURE (OBLIGATORY ORIGINATION CERTIFICATES FOR ALCOHOL)

Author: Ministry of Agriculture

Governmental decree 317/2012, based on which the form of documents on the origin of certain kinds of alcohol, distillate and other kinds of spirit is determined

Beverages containing poisonous methyl alcohol got into circulation due to the criminal activity of a limited number of subjects and the fundamental failure of state oversight. The new regulatory measure (obligation to issue and pass documents of origin among individual food industry businesses) transferred, to a certain degree, the costs of resolving the state's failure to businesses in the food sector, all across the industry and without any limitation of effect. Moreover, for the time being it is not apparent that the remedy to this state of affairs is directed intensely enough in the areas that caused this situation.

3. INCREASINGLY GREATER COMPLEXITY INSTEAD OF SUPPORT FOR THE PROPER IMPLEMENTATION OF REGULATIONS (AMENDMENT TO THE PUBLIC PROCUREMENT ACT)

Author: Ministry for Regional Development

Act. 55/2012 Coll., through which the Public Procurement Act is amended

The results arising from 16 amendments to this six-year-old Act is a situation in which both contracting authorities and suppliers are facing a tangible problem in understanding the responsibility bundle. Moreover, legislators are planning the preparation of another amendment that is supposed to adjust the new deficiencies. Paradoxically, as the case is in relation to other regulations, such continuous improvements in accuracy and tightening lead to lower legal certainty. As such, both the State and the private sector should rather pay attention to the proper implementation of the existing regulations by extending the number of good examples and duly eliminating non-compliance. The increasing complexity of the regulation itself leads to limited competition between public contracts, and additionally to the inefficient use of state funding.

4. REPEATED POSTPONEMENT OF THE EFFECTIVENESS OF REGULATIONS ALREADY ADOPTED

Author: Ministry of Labour and Social Affairs

Act 463/2012 Coll., which amends Act 266/2006 Coll., on Accident Insurance of Employees

The effectiveness of the Act on Accident Insurance of Employees from 2006 has been postponed repeatedly. However, once a regulation is duly adopted, it is expected to be functional, not only with regard to the effectiveness of the “legislation service” for which citizens pay, but also with regard to the respect for law which we need. As such, the parallel between the developments regarding the Service Act from 2002 is apparent.

5. TRANSFER OF RESPONSIBILITY FROM THE STATE TO PRIVATE ENTITIES (UNRELIABLE VAT PAYERS)

Author: Ministry of Finance

Act 502/2012 Coll., through which the Value Added Tax Act is amended

Pursuant to the Amendment, recipients of taxable supply are liable for VAT payments in the event that the provider of the taxable supply is declared unreliable or in the event that the recipient makes the payment to another account of the provider than the account registered with the Taxation Authority. As such, the State transfers a portion of its own responsibility for tax withdrawal to recipients, which includes the relating costs.

Voting & final results

The Voting Process

The broader public had an opportunity to send their suggested nominations through the website www.zakonroku.cz or publish them on the Twitter profile of the Act of the Year (@ZakonRoku) since 15 January 2013. The final nominations were subsequently decided by the nomination committee.

The nomination for the “Act of the Year” and the “Flop of the Year” categories were published on the website www.zakonroku.cz and via our exclusive media partners on 18 March 2013. On the voting day, the relevant contacts from the business sector and other professionals from the databases of Ambruz & Dark/Deloitte Legal, Deloitte and other partners (approximately 2,500 contacts) were notified of the commencement of voting.

The business public was informed about the nominations predominantly through our partners, who asked their associates and partners – directly, via internal newsletters and other marketing tools – to participate in the survey.

For almost two months, the addressed businessmen had an opportunity to participate in the survey and discuss the nominations. During this period, our website was attended by 2,356 users, of which 423 were directly involved in the survey (almost three

times the figure for the previous year). The voting closed on 10 May 2013 and the final results were published on the website www.zakonroku.cz and via our exclusive media partners on 16 May 2013. Other media were subsequently informed by means of a press release.

The final results

In the prestigious Act of the Year 2012 survey, in which more than 400 major Czech businesses voted (423 in total), the best rating was assigned to Directive 2012/17/EU of the European Council, aimed at interconnecting national commercial registers of individual EU Member States.

Contrarily, the worst legislative act and the winner of the Flop of the Year category is the amendment to the VAT Act, which introduces the institute of an unreliable VAT payer. Pursuant to Act No. 502/2012 Coll. prepared by the Ministry of Finance of the Czech Republic, now the recipient of a taxable supply guarantees the VAT payment if the provider of the taxable supply is considered an unreliable payer or if the recipient sends the payment to a provider's account other than that registered with the tax authority. As such, the institute of unreliable payer does not only relate to entrepreneurs who will be included in the black list of the tax authority but also to firms that will decide to carry out business with unreliable payers.

Summary of the results of the Act of the Year 2012

Act of the Year 2012		
The best legislative act for the business environment		%
1.	Intruments to improve the functioning of the eu internal market (interconnection of commercial registers)	25,3
2.	Support for the out-of-court resolution of disputes (the mediation act)	24,4
3.	Conceptual strengthening of contractual freedom and understandability of regulations (private law recodification)	19,7
4.	Increase in transparency in granting public contracts	16,5
5.	Unblocking church property to allow the management thereof	14,1

Flop of the Year 2012		
The worst legislative act for the business environment		%
1.	Transferring responsibility from the state to private entities (unreliable vat payer)	37,4
2.	Adopting the key acts at the eleventh hour (the december tax package)	32,4
3.	Increasing complexity instead of supporting the due application of regulations (amendment to the public procurement act)	11,5
4.	Inadequate bureaucratic patch for the failure of state supervision (compulsory birth certificates for alcoholic drinks)	10,6
5.	Repeated delay of the effective dates for adopted regulations	8,1

Comments to the results

Comments to the Act of the Year:

“Entrepreneurs appreciated most the legislative act that gives them hope that one of the largest problems of cross-border business activities within the EU – the availability of true and updated information on business partners – will be resolved. The Directive undertakes the EU and its Member States to adopt related legislation to ensure direct communication between commercial registers and reduces administrative and financial burdens for entrepreneurs and third parties,” said **Tomáš Babáček, Chairman of the Nomination Committee of the survey and Attorney-at-law of Ambruz & Dark/Deloitte Legal.**

“In a period in which a number of EU Member States face economic recession, the Directive on the inter-connection of commercial registers may make it easier for many companies to expand their business activities to other Member States at a reasonable cost. This may be crucial for their survival and maintaining the employment rate,” added **Luděk Niedermayer, member of the Nomination Committee and Director of Deloitte Advisory.**

Comments to the Flop of the Year:

"It is no surprise that this Act annoys entrepreneurs and that they consider it a serious complication in their business. By this Act, the state transfers a part of its own responsibility for tax collection to recipients of taxable supplies, including the related costs. No wonder entrepreneurs express resentment towards the Act," added **Tomáš Babáček, Chairman of the Nomination Committee of the survey and Attorney-at-law of Ambruz & Dark/Deloitte Legal.**

"It was revealed that entrepreneurs were predominantly worried about tax changes last year with the unreliable payer not being the only thing that troubled them. The December tax package relating to changes in tax rates effective from the beginning of this year was also a test of patience. The technical amendment, the approval of which was still uncertain three days before its effective date, is connected with a substantial increase in administration, which costs time and money that may be invested much more effectively. In addition, this amendment is connected with abnormal creativity for traders without the Internet and on-line banking," commented **Eva Svobodová, CEO of the Association of Small and Medium-sized Enterprises and Crafts of the Czech Republic.**

"While the state should better consider the transferring of some of its competencies to the more-effective private sector, by this act it transfers responsibility to the private sector without giving it any competence. The collection of taxes is one of the key tasks of the state, not entrepreneurs," says **Richard Baček, member of the Nomination Committee and General Counsel of Siemens CR.**

"The message from Czech businesses for local lawmakers in this survey is clear: 'If you need to increase taxes, listen to the opinions of the industry and leaders (drivers) of the Czech economy, let us know in time and do not burden us with unnecessary administration,'" said **Monika Zahálková, Managing Director of the Czech Institute of Directors.**

"The results show that Czech firms suffer most from the lack of any concept in certain changes made by the state, which significantly impact their business activities. Let us hope that the entrepreneurs' voice expressed through this survey will contribute to the improvement of the legislative process in the Czech Republic and make lawmakers consider the problems in the business sector more thoroughly," said **Marie Brejchová, President of the Association of In-House Lawyers (UPP ČR) and the Head of the Legal Department of Pražská energetika.**

The institute of an unreliable payer resulted from the society-wide demand for the elimination of VAT evasion by payers who significantly breach their tax obligations. Generally speaking, this goal may only be achieved by two basic approaches or by a combination thereof. The first approach is based on the extended authority of the Czech Financial Administration bodies, which is related to the necessary staff increase. The other approach consists of the adoption of a measure, the impacts of which will make tax payers eliminate the tax evasion risks themselves. The institute of an unreliable payer falls within this category.

We are convinced that the second approach is more effective than increasing the number of civil servants and tax inspections in the time of the required consolidation of public finance. This approach allows one to achieve the required behaviour of tax entities without enormously-increased costs on the part of tax payers as well as tax administrators.

Moreover, it is rather too early to evaluate a certain instrument before it has been applied, which also concerns the institute of an unreliable payer as the first unreliable payer has been published only recently.

As such, establishing this institute does not result in any obligations for recipients of taxable supplies. The VAT Act does not stipulate any obligation to verify whether the given business partner is an unreliable payer or not. Nevertheless, the recipient of the taxable supply may have to guarantee the tax payment if their business partner does not pay the tax on the rendered taxable supply. However, this risk can be minimised by paying tax directly to the tax administrator pursuant to Section 109a of the VAT Act.

RNDr. Ladislav Minčíč, CSc., MBA,
First Deputy Minister of Finance
of the Czech Republic
(24 May 2013)

Cooperation with partners and media partners

This year, the survey partners included the Association of Small and Medium-sized Enterprises and Crafts of the Czech Republic, the British Chamber of Commerce in the Czech Republic, Business for Society, the Czech Institute of Directors, the Confederation of Employer and Business Associations of the Czech Republic, Pro Bono Alliance and the Association of In-House Lawyers of the Czech Republic (UPP ČR).

Media Coverage of 2012 Act of the Year

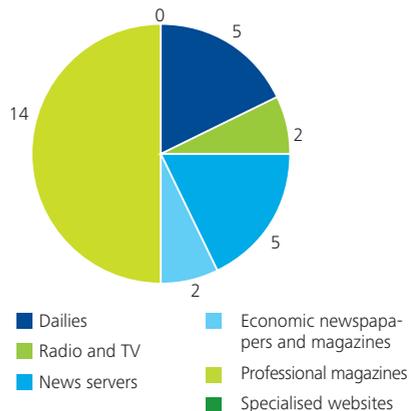
The survey drew exceptional attention from the media this year. In terms of the quantity of the media coverage, the publicity increased again, with 24 media outputs last year and 29 media outputs this year. Moreover, the quality of the individual media outputs also improved owing to the growing number of media partners. This year’s media coverage was ensured by our traditional partners, Hospodářské noviny and Ekonom, but also by other prestigious newspapers from the Economia publishing house, including iHNED.cz, Právní rádce and Probyznysinfo.cz.

As in the previous year, the legal public gained information via the professional magazine entitled “Právní rádce” as well as the titles published by the C.H.Beck publisher, such as “Soudní rozhledy” and “Právní rozhledy”.

Last but not least, our media partners also newly included the CSR fórum, PubliCon and Trade News.

For the first time this year, the media paid appropriate attention not only to the final results but also the announcement of the nominations as such. The survey was also covered by the audio-visual media, including continuous broadcasting on the ČT24 channel and the evening programme of Ekonomika 24. In this relation, we would like to express our thanks to all media that covered the survey, in particular to Jan Januš, editor-in-chief of “Právní rádce” and a member of the nomination board, for his enthusiasm as well as his published opinions and articles on the survey.

2012 Act of the Year - Media Coverage



Said about the Act of the Year

"In selecting the nominated regulations, it clearly showed that a number of legal norms are of ambivalent nature – we find here both the good and the bad aspects. Often an initially-good idea gets implemented imperfectly, as a result of which legal regulations suffer from unbalanced quality. Moreover, the nominations illustrate the traditional weaknesses of the Czech legislative process, ie putting off the resolution of various issues, adoption of acts at the last minute, and lack of concept and the inappropriate timing or aiming of legal norms. In my opinion, the crucial question for future discussion is the degree to which the State is to intervene in private legal relationships and regulate various areas of both the life of citizens and businesses,"

said Monika Čírtková, Attorney-at-law

"From the nominations for the Act of the Year we can see a number of interesting aspects. Firstly, the nominated regulations principally include conceptual changes that have long-term importance for enhancing the quality of legal certainty, and the transparency and intelligibility of the legal environment as a whole. As such, in 2012 the long-expected system could be implemented all across the field of private law. Secondly, the unblocking of church property will ensure that a great part of our country's soil can be used to its full economic capacity. It is interesting to see that the rest of the nominated legislation acts of success include regulations originating in the European Union, such as the Act on Mediation or the Directive on the Interconnection of Commercial Registers,"

said Štěpán Holub from the Holubová – Attorneys law office.

“It was really hard to select among regulations that frequently represent both a step forward to the simplification of the legislation framework for the business environment, and at the same time are also a step backward. There are many new norms with good intentions; however, the form or their realisation through individual adopted regulations is worse. Therefore, arriving at a conclusion as to whether the relevant norm’s contribution is positive or negative is difficult. Moreover, there is one thing that was clearly reflected by all panel participants – the opinion that any contribution to eliminate useless bureaucratic burdens for business is a step in the right direction and that in future legislators should pay attention to the quality of how such amendments are prepared and, if possible, that they are prepared enough in advance,”

adds another member of the Nomination Committee, Head of the Legal Department of Siemens, Richard Baček.

“I am glad that this year the Association of In-House Lawyers could participate in the Act of the Year survey, as corporate lawyers aim for cultivation of the legal environment, of which the quality of legal regulations is one of the pre-requisites. The survey helped to draw attention to the fact that there is a diversity of opinions. This can be seen from the opinions of my colleagues, who have participated in the debate and whose nominations varied and sometimes mutually differed. Personally, I realised that there is one category that is missing, ie the “Non-Adopted Act of the Year”. I feel the lack of an Act on State Service. And I dare to say that I am not the only person in this respect,”

said the President of the Association of In-House Lawyers and the Head of the Legal Section of Pražská energetika, Marie Brejchová.

Organisator:

Deloitte.

Ambruz|Dark

Partners:



Media partners:



Právní rádce



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