

The Act of the Year is a common project of firms, associations and other entities engaged in the quality of Czech business regulation.

As part of the Act of the Year, we discuss various business law topics. A survey in which we award the most inspiring examples of legislative acts in business for the previous year is a regular part of the project. Hundreds of entrepreneurs participate in the voting every year.

The topic of the 11th edition is regulation in the digital world. As in prior years, we provided businesses and lawyers with a number of analyses, surveys and opinions, thus inspiring many digital regulatory topics which transform the world of business and the society.

The Act of the Year is organised by Deloitte Legal in cooperation with its partners from the business and legal community. By this project, we actively provoke the social debate on the areas of need and forms of business regulation in the Czech Republic.

The Act of the Year 2019: Masks helped us reveal a crisis

Dear Partners of the Act of the Year, Ladies and Gentlemen,

The start of another edition of the Act of the Year, which has already been organised for 11 years, was amazing. The project was again supported by a wide range of organisations actively involved in the quality of Czech business legislation. The patronage was assumed by the Chamber of Commerce of the Czech Republic and the Czech Bar Association, joined this year by the Chamber of Tax Advisers of the Czech Republic. The Nomination Board worked in a positive, creative atmosphere as usual. This year has also seen many quality nomination proposals and inspiring discussions on them.

This edition of the Act of the Year was dedicated to the regulation in the digital world. At the Nomination Board meetings, I was thinking about how well this year's nominations and the regulation topic matched with the accompanying events.

When we discussed the possible (and subsequently the winning) nomination of the Act on the Right to Digital Services with the Nomination Board members, my colleague reminded me of a previous debate on the right to being offline, which was reflected in the prior-year nomination relating to the Constitutional Court's judgement on electronic records of sales (the right to information self-determination): "It is fine that the state will be online but has not the creeping digitalisation of government services driven us to a state in which people wishing to exist successfully have no option to decide whether they will provide online information or not?"

Then the coronavirus spread. We would have been most happy to provide our data online in March and April 2020 in exchange for quality government services! However, it was mostly impossible. On the other hand, we gained great experience and learnt our lesson – same as I failed in demanding cooperation from authorities, those who lack electronic signatures, data boxes or banking identity may fail as well even in a digitised state if

we do not take these people and the right to being offline into consideration in the process of state digitalisation.

The faux-pas in introducing Czech digital toll stickers at the beginning of the year is gone with the wind. However, the Act on the Right to Digital Services raises the same issues but about a thousand times greater: how to organise successful tenders for all those revolutionary IT solutions and how to protect all our digitally processed personal data?

I was also thinking about the second and third winning nominations during the months working from home: how easy and practical it would be to simply post an update of a binding government form on a website, especially at the time of emergency! However, where is the appropriate borderline between the speed and efficiency of the state (that is demanded so much by businesses) and preserving rights and freedoms? The Constitutional Court intervened in the nomination that placed third this year and the Municipal Court in Prague intervened in the calling of the emergency state during the pandemic. Are the decisions hindered by the state or are they supported by businesses that yearn for a well-functioning state?

The outcome of this year's Act of the Year survey describes us as follows: we want to digitalise and substantially increase effectiveness of the state but not to the detriment of freedoms and rights.

This is a terribly hard job. However, if we know what we want it is half the battle. Is it not a paradox that masks might be the impulse that helped us discover this vision?

Thanks to all of you who were in this together with us this year!

Tomáš Babáček

Project Leader and Chairman of the Nomination Board



News Release

Act on the Right to Digital Services as Act of the Year

Prague, 29 April 2020 – The topic “Digital state: Data circulate, people don’t” referring to the Act on the Right to Digital Services became the winner of the 11th edition of Act of the Year survey. This Deputy’s draft of a law establishes a general right to communicate with state authorities in a digital form, creating a legal framework based on which all state administration services are to be digitalised within five years.

“The winning law should facilitate access to state services. However, the passage of this act is only the beginning and there will be a need to develop a number of new solutions. I am proud that Deloitte is involved in creating one of them, the “BankID”. It is currently not simple to log into (authenticate) services provided by the state. BankID represents a new use of an authentication tool used by five million people in the Czech Republic every month to log into their online banking. Deloitte will be involved in launching and utilising BankID in the digitalisation of private and public services in the Czech Republic,

said **Diana Rádl Rogerová**, Office Managing Partner of Deloitte Czech Republic.

The Act of the Year survey has been organised by Deloitte and Deloitte Legal since 2010. From five nominees, hundreds of entrepreneurs selected the best legal regulation, collection of laws or a legislative act with a positive impact on the Czech business sector. The patronage was once again taken over by the Chamber of Commerce of the Czech Republic, the Czech Bar Association and newly by the Chamber of Tax Advisers of the Czech Republic. The Nomination Board comprised twenty experts from various (not only business) areas.

“For the second consecutive year, the winner has a large margin. Last year, the winning act related to fast-tracking the construction of transport, water and energy infrastructure; this year, it is digitalisation of the state administration, which received almost half of all votes. The Nomination Board again showed an inspiring example of the beneficial effects of regulation. Regulation may increase efficiency and create infrastructure for the involvement of entrepreneurs and the non-profit sector in addressing the needs of the society,

said **Tomáš Babáček**, Attorney-at-Law of Deloitte Legal, the head of the Nomination Board and the Act of the Year project leader.

Act No. 12/2020 Coll., on the Right to Digital Services and on Changes to Some Other Acts, requires, among other things, the issuance of necessary electronic forms and interconnection of registers to eliminate situations when people have to carry documents from one authority to another. The act was adopted by Deputies and Senators across the political spectrum.

“The crisis has shown how much easier things could be for us if digitalisation was at a more advanced level. The Act on the Right to Digital Services means tremendous progress – the state agendas will be digitalised within five years. The act is also ground-breaking in bringing citizens to the fore by stipulating that citizens have not only obligations, but also rights in relation to the state,

added **Martin Kupka**, Deputy and a co-author of the winning piece of legislation.

“The voting at the Czech Bar Association unanimously confirmed the high demand of attorneys-at-law for increasing the efficiency of the state’s functioning by way of digital technology. With the increasing pressure on efficient performance of the legal profession, the need for attorneys-at-law to resolve client matters in a time and cost-effective way is also more intense,

added **Robert Němec**, Vice-President of the Czech Bar Association.

Not only the Act on the Right to Digital Services, but also some of the many judgments of the Constitutional Court, which frequently regulates the state’s digitalisation efforts within the constitutional framework, were included among this year’s five nominees.

“The winning act fundamentally changes the approach to the legislative framework of digitalisation. This act creates conditions for accelerating the completion of an interconnected public administration data fund and starting blanket mandatory share of data once obtained about each entrepreneur or a citizen by all competent authorities. I greatly appreciate that no Deputy or Senator voted against the winning act. Even the act which placed second is revolutionary in a sense as it substantially improves the clarity of domestic law

said **Vladimír Dlouhý**, President of the Chamber of Commerce of the Czech Republic.

“All of the three winning regulations or acts aim to make life and work easier for entrepreneurs and citizens. They fulfil the principle that the state is here for people rather than vice versa. And that the performance of state powers must be predictable,

concluded **Jiří Nesrovnal** from the Chamber of Tax Advisers of the Czech Republic.

Overview of Nominated Acts

Digital state: Data circulate, people don't (Act on the Right to Digital Services)

Regulation	Act No. 12/2020 Coll., on the Rights to Digital Services and Amendments to Certain Acts (full text)
Author	Proposal of Deputies Barbora Kořanová, Martin Kupka, Ivan Bartoš, Pavel Jelínek, Pavel Kováčik, Jan Chvojka, Jan Bartošek, Helena Langšádlová, Věra Kovářová and others
Reasons	The act establishes the general right to communicate digitally with the state and the state's obligation to address matters digitally. It creates a legal framework which should enable the digitalisation of all public administration services, issuance of the necessary electronic forms and interconnection of registers within five years so that people no longer have to carry documents from one office to another. The agreement on the adoption of the act across the political spectrum brings the promise of actual implementation in practice. The implementation will require an efficient decrease in administrative demands placed on businesses, and data security in the interconnected state registers.

The state may impose obligations only through a legal regulation (cancellation of the practice of obligatory tax forms informally set by the ministry)

Regulation	Judgment of the Constitutional Court dated 12 November 2019, ref. no. Pl. ÚS 19/17 (No. 337/2019 Coll.) regarding the proposal to cancel Section 72 (1) of Act No. 280/2009 Coll., the Tax Code, as amended by Act No. 458/2011 Coll. (full text)
Author	Constitutional Court, based on a proposal of a group of 19 Senators
Reasons	Although the judgment concerns tax law, there is a significant overlap in other areas – it generally strengthens the principle of legal certainty as an integral feature of the rule of law. The primary message is the reminder that the state can require the fulfilment of an obligation only based on a legal regulation. Only then can the law and the procedures of public authorities be predictable, substantially fulfillable and subject to constitutional control. In this respect, the Constitutional Court is consistent with its previous similar judgments regarding local sales/purchases reports and electronic sales records, and together with the expert public, it assumes the long-term opinion that higher tax collection efficiency cannot be at the cost of erosion of the rule of law.

Decrease in the costs of business (online incorporation of companies)

Regulation	Directive (EU) 2019/1151 of the European Parliament and of the Council of 20 June 2019 amending Directive (EU) 2017/1132 as regards the use of digital tools and processes in company law (full text)
Author	European Commission
Reasons	Starting from 1 August 2021, all Member States are to allow online formation of limited liability companies and potentially also joint-stock companies and to allow online registrations of branches and filing of documents and information in business registers. Online procedures have to allow formation without the physical presence of individuals and they may not be subject to the condition of obtaining a business permit. This measure is intended to decrease the costs of business operation.

Higher predictability and better clarity of legal acts (single effective dates and overview of obligations)

Regulation	Act No. 277/2019 Coll., which Amends Certain Acts in Relation to the Adoption of the Act on the Collection of Laws and International Treaties (full text)
Author	Motion to amend presented by Deputies Marek Benda and Martin Kupka and motion to amend presented by Deputies Marek Benda, Jakub Michálek, Zuzana Ožanová and Věra Procházková regarding the government bill
Reasons	Legal regulations will now come into effect only twice per year, i.e. as of 1 January or 1 July. Each regulation will now also contain an informative overview of the obligations introduced. These new elements could significantly increase user comfort of businesses as well as all other addressees of legal regulations. They will also strengthen the predictability of regulatory changes and simplify the operation of information systems providing businesses with clear lists of their regulatory obligations.

The state cannot collect a special fee for fulfilling its obligations (cancellation of the fee for filing a motion for the investigation of a public tender)

Regulation

Judgment of the Constitutional Court dated 30 October 2019, file no. Pl. ÚS 7/19 (No. 309/2019 Coll.), cancelling the provisions of Section 259 of Act No. 134/2016 Coll., on Public Procurement, as amended (full text)

Author

Constitutional Court, following the proposal of Transparency International – Česká republika, o. p. s.

Reasons

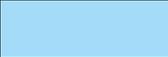
A healthy business environment includes competition in public procurement. Its fairness is supervised by the Office for the Protection of Competition. The Office fulfils this duty with the help of motions pointing out possible errors. However, until November 2019 the filing of a motion and its investigation was subject to the payment of a fee of CZK 10,000. The cancellation of the fee eliminated a precedent where putting a motion before an authority competent to perform supervisory activities incurred a fee; in this case a motion before the Office for the Protection of Competition in the area of level playing field of businesses.



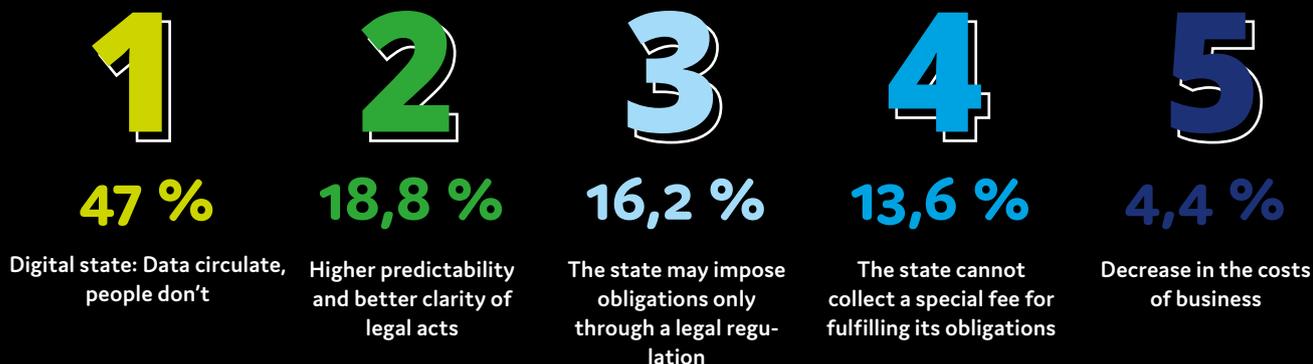
Results of the Act of the Year 2019

(announced on 29 April 2020)

5 acts that were voted on

-  **Digital state: Data circulate, people don't**
(Act on the Right to Digital Services)
-  **Higher predictability and better clarity of legal acts**
(single effective dates and overview of obligations)
-  **The state may impose obligations only through a legal regulation**
(cancellation of the practice of obligatory tax forms informally set by the ministry)
-  **The state cannot collect a special fee for fulfilling its obligations**
(cancellation of the fee for filing a motion for the investigation of a public tender)
-  **Decrease in the costs of business**
(online incorporation of companies)

Final ranking



Voting of the Chamber of Commerce of the Czech Rep.



Voting of the Czech Bar Association



CATEGORIES BY SEGMENTS

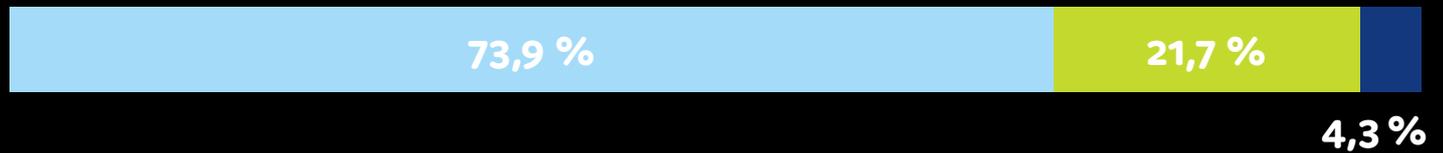
Advocacy and law



Banks and finance*



Tax advisory



Small and medium-sized businesses



Media



Towns and municipalities*



Non-profit sector



Trade and tourism



Industry and energy



Public administration



Quotes about the survey

Robert Němec, Vice-President of the Czech Bar Association, on the 2nd-placed act:

The second candidate also received a large number of votes, which demonstrates the great respect of advocacy for the principles of rule of law.

František Korbela, Attorney-at-Law, on the winning act:

I welcome the success of this act in the competition, because it could represent the much needed and definitive transition of the state administration into the digital world. But it will be necessary to keep a close eye on its implementation and the willingness of the individual authorities to bring this act to life.

Lukáš Zapletal, Coca-Cola HBC Česko a Slovensko, s.r.o., on the winning act:

While at the beginning of the nomination process, digitalisation might have been perceived “only” as a significant help, I believe that it now represents a clear necessity, considering the current state of affairs and the uncertain further development. I hope that a smooth implementation and use of the winning act in practice will become an important milestone on the path towards true digital simplification, which is much needed under any circumstances.

Martin Kupka, Deputy of the Parliament of the Czech Republic, on the 2nd-placed act:

It is also the second act which brings about the simplification and clarification of our legal system. The existence of two days within a year on which laws become effective and a table of obligations means it is easier to orientate oneself in what laws impose upon us and from when. Of course, to make life truly simpler, Czech laws would have to be revised with regard to how many obligations they impose. That is the only way to remove unnecessary business obstacles and at the same time to save money on state administration in the future.

Pavel Jiříček, Transparency International, on the 4th-placed act:

At Transparency International, we advocated the abolition of a nonsensical provision of the Public Procurement Act, more precisely the abolition of a fee that led to a significant drop in number of complaints submitted to the Office for the Protection of Competition and the public control over the efficiency of public spending reduced considerably. The fourth place in the survey and the total received percentage of votes are a good result. This is a clear proof that the repeal of the fee has received a positive response from the public, both professional and general.

Articles in the media

14. 4. 2020

Constitutional Court giving the Government a hard time by cancelling the fee for tender review as well. Will this be the Act of the Year? »»

8. 4. 2020

Acts coming into effect as late as from July? The state of emergency also affected the regulation nominated for the Act of the Year »»

16. 3. 2020

Notaries newly working online. Establishing a company as fast as opening a bank account »»

3. 3. 2020

Data will be provided to authorities only once and then shared with mobile phone operators and banks. Will this be the Act of the Year? »»

10. 2. 2020

Courts keeping the state in a tight rein, digitalisation or cost-cutting? Deloitte searching for the Act of the Year »»

Giving out the Act of the Year 2019 awards

14 May 2020

Awarded “Digital Constitution”. Deputies Ivan Bartoš, Barbora Kořanová, Martin Kupka and Zdeněk Zajíček from the Chamber of Commerce of the Czech Republic received the Act of the Year award. The topic “Digital state: Data circulate, people don’t (Act on the Right to Digital Services)” was the winner selected by the experts. The topic “Single effective dates and overview of obligations” placed second. Deputies Marek Benda and again Martin Kupka accepted the award for this piece of legislation.





16 June 2020 - The award for third place was handed over by Ivan Telecký, Partner at Deloitte Legal, to David Uhlíř (in the middle), Judge-Rapporteur at the Constitutional Court. The Constitutional Court was awarded for the topic “The state may impose obligations only through a legal regulation”.

Nomination Board for the Act of the Year 2019 (in alphabetical order)

Tomáš Babáček, LL.M., Deloitte Legal s.r.o., law office

Marie Brejchová, LL.M, Association of In-House Lawyers of the Czech Republic, lawyer at PRE, a.s.

Pavla Čapková, Czech Television

Monika Čírtková, JUDr. Monika Čírtková law office

Radek Hacaperka, APPLiA CZ – Appliance Manufacturers Association

Štěpán Holub, Holubová advokáti s.r.o.

Jan Januš, Info.cz

Veronika Ježková, Pro bono aliance, Head of the AdvoCats for Women team

Pavel Jiříček, Transparency International – Czech Republic

Soňa Jonášová, INCIEN

František Korbel, Ph.D, Havel & Partners, Lecturer at the Faculty of Law of Charles University, Member of the Government legislative council

Radka Mašková, FCCA, MBA, Deloitte Advisory s.r.o.

Ladislav Minčíč, Chamber of Commerce of the Czech Republic

Ivona Mottlová, Union of Towns and Municipalities of the Czech Republic

Václav Nekvapil, British Chamber of Commerce Czech Republic

Robert Němec, LL.M., The Czech Bar Association

Jiří Nesrovnal, Chamber of Tax Advisers of the Czech Republic
Barbara Pořízková, Supreme Administrative Court

Tomáš Prouza, MBA, Czech Confederation of Commerce and Tourism

Hana Rýdlová, Bulletin advokacie (Czech Bar Association newsletter)

Jan Slanina, Česká leasingová a finanční asociace

Karel Šimka, LL.M., PhD, Supreme Administrative Court

Radek Špicar, M. Phil, Confederation of Industry of the Czech Republic

Tereza Tomanová, Deloitte Advisory s.r.o.

Zdeněk Tomíček, Association of Small and Medium-Sized Enterprises and Crafts of the Czech Republic

Alžběta Vejvodová, Právní rádce journal

Monika Zahálková, Czech Institute of Directors

Lukáš Zapletal, Coca-Cola HBC Česko a Slovensko, s.r.o.



Act of the Year: Regulation in the Digital World



Do you know what the term “digital regulation”, or more precisely regulation in the digital world, means? Would you like to find out in which phase digital regulation is now?

It is a response of states or organisations, such as the European Union, to the situation in which an increasing portion of our professional and private lives takes place in the online environment. This involves the most common things – communication, entertainment, shopping, contracting and provision of services. Nevertheless, law has been created to regulate situations where all these transactions are made in the physical world. Yet it has come out that the law does not address numerous aspects of the digital world. For example, a clear identification of the acting person in the digital world is not always possible. New ways of contracting are emerging and the violation of privacy and misuse of personal data or intellectual property rights are taking different shapes.

Everyone using the Internet on a daily basis should take interest in the existing digital regulation as it may affect us – both positively and negatively – to a great extent.

How to regulate BigTech companies?

BigTech companies control a major part of the Internet and it is hardly possible to browse online without using the services of the “Big Five” tech companies (Amazon, Apple, Alphabet, Microsoft and Facebook), which are, by the way, also the largest publicly traded entities on a global scale. This indicates their enormous influence on the current shape and rules of the Internet, which is why these entities attract the attention of national, or rather supranational regulators (considering the size of those companies). The areas of regulation vary – from competition and tax (e.g. the currently debated digital tax) to the key area of handling of personal data and privacy. In this respect, the European Union has recently taken a significant action – the General Data Protection Regulation (“GDPR”). This regulation aims to make an “inventory check” of our personal data, allowing each of us to find out which personal data are processed about us by individual companies. Thereby, we will become the true masters of our personal data and be able to decide upon their “exchange” for online services. The business models of many BigTech companies are based directly on

the handling of personal data, often used as a means of payment for online services that are otherwise provided “free of charge”. However, I believe that regulation should not be so strict to ultimately damage end clients, who indisputably benefit from the activities of BigTech companies in the form of quality and accessible online services. This does not only relate to services offered “for free”. The history of our activities in the online environment and the possibility to keep track of them enables exactly targeted advertising (we will only take a look at adverts that truly interest us). Besides, it is also possible to precisely assess our creditworthiness when we buy something on hire-purchase or ask for a mortgage loan, which does not only eliminate an unnecessary administrative burden (e.g. supplying certificates of income in paper form), but may also ultimately reduce the cost of services.

Digital communication with authorities, banks and companies

Regulation in the digital world should never be limited solely to the government seeking to set up conditions (often falling behind the technological reality) for the business activities of BigTech companies. Ideally, regulation should make it easier for people and enterprises when it comes to work, business activity and private lives.

Our opinion is based on the assumption that an increasing portion of our professional and private lives will take place in the online environment. One of the greatest challenges is one’s individual identity in the online environment, or, more precisely, its reliable authentication. Both the government and companies have to rely on the presumption that the person they are dealing with is truly who he purports himself to be – for the purpose of protecting sensitive data (an online request for a copy of records of criminal convictions), being able to enforce a contract concluded online (e.g. life insurance lasting several dozens of years or a loan agreement) or to prevent money laundering.

Various tools are already available nowadays – different forms of electronic signatures, personal ID cards with chips and data boxes. However, none of these solutions have become popular on a large scale (electronic signatures or ID cards with chips) or they cannot

be used as a tool for all situations (data boxes). Therefore, another necessary step is the regulatory support for creating an online identity that will be developed as a commercial solution, ideally in a form ensuring widespread use. Online banking will certainly serve as an appropriate starting point as it is already used by the vast majority of the population and the Bank ID initiative is based on it. The availability and wide use of a similar solution to authenticate the identity of each of us will then extend the offering of services to be used in the online environment.

In terms of public administration, the right to digital services is of major importance, requiring that authorities offer all their services online, albeit in parallel with the existing “paper regime”. In this area, it will be crucial to interconnect individual state registries to eliminate the need to go around individual authorities in person to request partial confirmations.

Finally, it is necessary to mention electronic signatures existing (in various forms) at present but still offering considerable room for growth. It seems, however, that the main obstacle no longer lies in technology and legislation but in the mindset of business partners, employees and employers, courts interpreting laws in individual disputes and control bodies. One’s own signature on paper is still preferred, no matter that the possibility of abuse is for many electronic solutions the same or lower and the related risks are often insignificant. In other words, even though we have a sample own signature available what makes it more certain that a particular document has been signed by the relevant person than when a long-term business partner sends an order from their long-used e-mail address “signed” by the business partner’s typed name and surname?

Jan Procházka

Partner, Deloitte Legal, Banking & Finance



Live Webcast & Panel Debate – BankID – possibilities of use for non-banking entities

Without a doubt, the bank identity is one of the most essential and welcome regulations of the “digital world”, enabling a faster digitalisation of the Czech economy. In times of meeting restrictions, we rely on online broadcasting. We have moved our recent panel debate online and focused on the bank identity and the possibilities of its use by non-banking entities. Radek Musílek, Štěpán Húsek and Ján Kuklinca (Deloitte), Filip Haering (Česká spořitelna), Martin Sládeček (Komerční banka) and Jan Blažek (ČSOB) discussed practical examples of the use of BankID in e-government and commercial services and the related legal and technological issues.

Watch the [full debate here](#).

Other events as part of the Act of the Year – Regulation in the Digital World:

- **Digital HR** – 3 June 2020
- **ECN Crowd Camp** – 10 – 12 June 2020



We thank our project partners

Under the auspices of:



Partners:



beck-online



Deloitte.

Legal

“Deloitte” is the brand under which tens of thousands of dedicated professionals in independent firms throughout the world collaborate to provide audit, consulting, legal, financial advisory, risk management, tax and related services to select clients. These firms are members of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee („DTTL”). Each DTTL member firm provides services in particular geographic areas and is subject to the laws and professional regulations of the particular country or countries in which it operates. Each DTTL member firm is structured in accordance with national laws, regulations, customary practice, and other factors, and may secure the provision of professional services in its territory through subsidiaries, affiliates, and other related entities. Not every DTTL member firm provides all services, and certain services may not be available to attest clients under the rules and regulations of public accounting. DTTL and each DTTL member firm are legally separate and independent entities, which cannot obligate each other. DTTL and each DTTL member firm are liable only for their own acts and omissions, and not those of each other. DTTL (also referred to as „Deloitte Global”) does not provide services to clients.

Deloitte is a leading global provider of audit and assurance, consulting, financial advisory, risk advisory, tax and related services. Our global network of member firms and related entities in more than 150 countries and territories (collectively, the „Deloitte organization”) serves four out of five Fortune Global 500® companies. Learn how Deloitte’s approximately 312,000 people make an impact that matters at www.deloitte.com.

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited („DTTL”), its global network of member firms or their related entities (collectively, the “Deloitte organization”) is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser.

No representations, warranties or undertakings (express or implied) are given as to the accuracy or completeness of the information in this communication, and none of DTTL, its member firms, related entities, employees or agents shall be liable or responsible for any loss or damage whatsoever arising directly or indirectly in connection with any person relying on this communication. DTTL and each of its member firms, and their related entities, are legally separate and independent entities.