

## New Public Procurement Directives

On 28 March 2014 new public procurement directives were published in the Official Journal of the European Union (“Directives”).

The Directives lay emphasis primarily on the simplification of public procurement procedures and their electronization, promoting economic advantageousness of the tender as a basic evaluation criterion, taking into account social and environmental aspects of public contracts and the involvement of small and medium-sized enterprises in public procurement.

This should be achieved by dividing public contracts into smaller lots. Such divided public contracts will enable the participation of smaller suppliers, which could not otherwise participate in larger contracts for economic or capacity reasons. Member States may impose an obligation upon contracting authorities to justify why they did not divide larger contracts into smaller lots. The contracting authorities will be entitled to enable one economic operator to submit a tender only for limited number of lots where the contract is divided.

The Directives explicitly declare that the principle of proportionality is a basic principle of public procurement (together with the existing principles of transparency, equal treatment, and non-discrimination).

General exclusions from the rules on public procurement are extended. Newly, the rules shall not apply, for example, to services concerning loans, services concerning a client’s representation by attorney, in political campaigns, or social and other special services with an estimated value of EUR 750,000.

The Directives reflect decision-making practice, on the basis of which they clarify conditions of the so-called in-house exceptions (i.e., the possibility of the contracting authority to award public contract to its subsidiary without a procurement procedure). They explicitly state that the volume of activities performed by a legal entity controlled by the contracting authority in favour of such a contracting authority has to exceed 80 %.

Extensive changes affected the field of proof of fulfilment of qualification and evaluation of tenders. The directive enables the contracting authority to exclude from the participation in the award procedure a supplier if this economic operator in the past already breached a public contract or violated professional duties. As an evaluation criterion the contracting authority may require a certain level

of qualification and experience of the staff assigned to performing the contract in case the quality of this staff is significant with respect to performance of the public contract.

The new legislation also envisions introducing of a European Single Procurement Document, by means of which tenderers may prove the fulfilment of qualification criteria for the participation in the public tender in any Member State of the EU.

The Directives regulate a new type of procurement procedure – the so-called innovation partnership. Its goal is to develop an innovative product, which is not available in the market, and its subsequent purchase. Innovation partnership is divided into several phases. For each phase the contracting authority determines certain targets, which suppliers should reach. On the basis of the procedure and in considering of the fulfilment of stated targets, the contracting authority may after every phase decide to terminate the innovative partnership.

The directive brings new possibilities for changing of the public procurement contract without a new procurement procedure. The contracting authority may change such a contract in case a total price increase does not exceed 50 % of the value of the original public contract and other specific conditions are fulfilled as well.

The Member States of the EU shall transpose the directives at the latest by 18 April 2016. According to the press release published by the Ministry of Regional Development of the Czech Republic, however, these directives are likely to be transposed into the Czech legal order prior to this date.

For the information to be complete the respective directives are following:

- Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts;
- Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC; and
- Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC.

## Legislative News

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### The statutory measure of the Senate on taxes relating to the acquisition of immovable property

The Statutory Measure of the Senate on the Tax to Acquisition of Immovable Property (further referred to as “**Statutory Measure**”) replaces the Act on the Inheritance Tax, Gift Tax, and Real Estate Transfer Tax. Although the subject of the tax is the acquisition of immovable property for consideration, the transferor of the immovable property shall remain the taxpayer in case of the acquisition of the ownership right by means of a purchase or exchange. In such case the acquirer of the ownership right shall remain the guarantor. The transferor and the acquirer may agree, however, that the acquirer will be the taxpayer, whereas in such case the transferor shall not serve as a guarantor. The Statutory Measure has altered rules on determining the tax base and limited the obligation to submit an expert opinion for the purposes of determining the tax base.

### Amendment to the Act on Accounting

In relation to the recodification of private law the lawmaker adjusted the terminology of the Act on Accounting (further referred to as “**Act**”). The Act newly relates also to new

types of accounting units without legal personality (for example, trust funds, or funds administered by a pension company). On the other hand, the Act does not adopt a significant principle of a new private law, that an area above and below a plot of land forms a part of the plot of land as well as buildings thereon. It is, thus, necessary to claim plots of land, buildings, or agricultural units of permanent grassland and forestry as independent assets.

### Government decree setting up limits for addictive substances with respect to drivers

The government decree (further referred to as “**Decree**”) sets up limits for addictive substances (different from alcohol). When they are reached in a blood sample, the driver is considered to be under the influence of this addictive substance. The Decree together with the amendment to the Act on Traffic on the Road Network should make the procedure of detecting and proving of a committed misdemeanour quicker, as once exceeding the stated limit the driver shall be automatically considered as influenced by an addictive substance, and, thus, there will be no need to complete an expert opinion.

## Office Updates

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### ŘANDA HAVEL LEGAL remains in the IFLR1000 rankings also in the year of 2014

Yet again in 2014, the international rating publication IFLR1000 ranked ŘANDA HAVEL LEGAL among recognized law firms in banking law, project finance, and mergers and acquisitions.

IFLR1000 carries out a worldwide independent market research of legal services in the segment of finance law and identifies leading law firms in individual countries and legal areas. Internationally, ŘANDA HAVEL LEGAL has repeatedly ranked among established law firms in the Czech Republic in the field of finance and banking law.

### We master trust funds

One of the significant and interesting novelties introduced by a new Civil Code is the legal institution of trust funds

(“svěreňecké fondy”). It enables to separate the property from its owner into the fund, which is not owned by the original property owner or any other third party. During its administration in the trust fund the property is without an owner. The trust fund may typically serve for intergenerational protection of the property or its protection against business risks. Our law firm has already gained much valuable, practical experience in this area; we establish trust funds and provide comprehensive legal advice in this field. Iva Javorská, partner of ŘANDA HAVEL LEGAL, lectured on trust funds this year in the Czech-French Business Chamber.



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