

Legislation: what awaits us in 2009 (2)



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In addition to statutory regulations that have already become part of the Czech Republic's laws and have been described in the first part of this article (published here on 22 January), other important regulations relating to development and construction can be expected in 2009, with a varying degree of likelihood. Of course we cannot exclude the possibility that the current text of these drafts would change during the legislative process.

Liberalization of the secondary living market

Taking into account the suggested upcoming close date of effect and the high likelihood of approval, we should refer to the changes in Act No. 219/1995 (Foreign Exchange Act) in the first place. The amendment responds to the prevailing deficiencies in terms of compatibility of the Foreign Exchange Act with the obligations of the Czech Republic arising from the EU Treaty and to the expiry of one of the two transitional periods that allowed to keep the old mode of limitation of real estate acquisitions pursuant to the Foreign Exchange Act. During this period the Czech Republic was allowed to keep limitations on the acquisition of some domestic real estates - houses for secondary living - for a period of five years from the date of accession to the EU.

The government's draft amendment wants to cancel Section 17(2) of the existing Foreign Exchange Act, which sets forth conditions for the acquisition of real estates other than land that is part of the agricultural land fund or is covered by forests. The adoption of this amendment will fully liberate the market in houses for secondary living, which will fully open up for foreigners. This will implement Article 56 of the EC Treaty, which bans any limits on the free movement of capital and payments. As for lands that are part of the agricultural land fund or are covered by forests, the existing limitation on their acquisition by foreigners will remain valid for the rest of the transitional period even when the amendment comes into effect - in this case for seven years, with the possibility of extension by additional 3 years; acquisition will be only allowed to foreigners registered as agricultural entrepreneurs.

Arrangement of occupation of agricultural land

The government's proposal of an extensive amendment to Act No. 334/1992 Coll. on the Protection of the Agricultural Land Fund could have a huge impact on the implementation of development projects. In addition to the aspects of environmental protection, arrangement of competencies of authorities responsible for the protection of the agricultural land fund and improvement of the system of information

on soil quality, the amendment will be relevant for development projects especially because of the new arrangement of exclusion of land from the agricultural land fund and the newly proposed method of determination of fees for such exclusion. Based on the draft, the applicants for such exclusion will be obliged to submit documents on their general plan and approval will be given in some cases also in the form of decision. In contrast to the current arrangement of this process, this will not be necessary if the plan complies with the zoning or control plan. The proposal also envisions a significant increase in the costs of fees for the exclusion of new land depending on the protection zones. The fee will be equal to the basic land price multiplied by a newly set increase coefficient; land occupancy in developed areas would not be subject to any fee at all. On the other hand the occupancy of high-quality agricultural land should be much more costly than today.

New shape of the land fund?

The government's prepared draft amendment to Act No. 569/1991 on the Land Fund of the Czech Republic could influence the construction industry to a broader extent, especially in the public sector. It especially contains the obligation to create a state fund reserve for the state's development plan; this reserve should be defined in a government decree. In addition, principal changes in the fund management are also discussed; the current principle of collective management should be superseded by monocratic management. If the draft is adopted, the fund will be headed by a director with precisely defined powers and responsibilities; the fund's activities would be monitored by a supervisory board with enhanced competency. In addition to organizational changes, the draft amendment also contains other specific provisions, such as the free transfer of road land administered by the Land fund to regions and towns regardless of its classification in areas and corridors earmarked for transport and technical infrastructure within the framework of the regional development policy.

"Review" amendment

The implementation of construction plans in the public and private sectors could be also influenced by the adoption of the government's draft amendment to Act No. 100/2001 on the Assessment of Environment Impacts. The draft stipulates the rights of some entities (civil association and public welfare societies dealing with the protection of the environment, public health and cultural heritage, and towns affected by a certain plan that submitted a written statement on the documentation or opinion in accordance with the Environmental Impact Assessment Act) to demand the cancellation of a decision or its voiding by means of the procedure specified in the Code of Administrative Procedure. The draft's aim is especially to achieve compliance with the requirements of the so-called "review" directive of the European Parliament and the Council 2001/42/EC (SEA Directive).

Cooperatives, flats, rents

The real estate sector is also linked to the parliamentary draft amendment to Act No. 72/1994, which stipulates some joint ownership relationships to buildings and some ownership relationships to flats and non-residential premises ("Flat Ownership Act"). The aim of the draft is only to solve the situation of some cooperative members who properly exercise their claim to conclude a flat transfer contract and their claim has not been satisfied yet due to the cooperative's inactivity. Pursuant to the draft, this situation should be solved by introducing the assumption that the cooperative member's notice of transfer is properly delivered, the cooperative's obligation to perform the actions needed for the transfer, including preparation of the owner's statement, and the member's right to a default interest for the time for which the cooperative did not meet its obligation to conclude a flat transfer contract. This interest will be calculated from the ordinary price for the transfer of membership rights at the time and in the place of default. The draft should also influence provisions of the Commercial Code that provide for settlement in case of termination of membership in the housing cooperative.

To supplement the above summary of legislative drafts in the area concerned, we should also mention the

parliamentary draft amendment to Act No. 40/1964 (Civil Code) with respect to lease contracts. This draft only changes the procedure of exchange of rented flats, where the landlord's fictional consent to the tenants' agreement on the exchange is newly proposed, unless the landlord informs the tenants of its disapproval within 30 days of the presentation of the agreement and at the same time files an action for invalidity of the agreement, but the draft does not set any criteria for justification of the action.

Another parliamentary draft introduces changes in the Civil Code and cancels most provisions of Act No. 107/2006 on the one-sided increase of flat rents by adopting a new act on flat rents and their negotiations. This consists in the renewal of a controlled mechanism of rent growth and determination of the maximum rents and fees for related services by many other regulations, and also stipulates a check of the process of negotiating rents by state authorities. As regards these drafts, it is necessary to add that the government did not agree with them and they are not therefore too likely to be adopted eventually.

Preparation of an amendment to the Building Act

Based on information published by the individual ministries and the government, especially in the form of the Government's Legislative Work Plan, other substantial amendments could be also expected. First of all it is necessary to mention an extensive amendment to Act No. 183/2006 on Area Planning and the Building Code (Building Act). This plan is currently at the stage of publication of the first working draft, prepared on the basis of experience in implementation of the Building Act during the two years of its force. The commenting procedure on this draft is planned at the end of the first quarter of 2009. We should also mention, in connection with the draft amendment to the Building Act, that the draft decree on technical requirements on buildings has also entered an advanced stage of preparation; this draft should replace the existing Decree of the Ministry Regional Development No. 137/1998 on general technical requirements on construction (as amended by Decree No. 491/2006). Based on the Government's Legislative Work Plan, we can also expect draft amendments with a possible impact on the industries in question in 2009, prepared by the Ministry of the Environment, in particular the planned amendments to the Water Act, draft Waste Act and Air Protection Act - the deadlines for their presentation to the government are set at 3 September 2009.

In cooperation with Allen & Overy, Stavební fórum prepares a discussion meeting on "Standard Contracts in Construction - 3rd Generation Contracts" on 29 January 2009. For more information on the programme and an on-line application form visit the web discussion

<http://www.stavebni-forum.cz/diskuse2009>.

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